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SENT BY E-MAIL

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Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
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Dear Ms. Jang:

Please consider this a formal complaint pursuant to Title VI of the Civil Rights Act of 1964¹ [Title VI]; your Department's regulations implementing that law²; Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency"³ [Executive Order]; your Department's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons"⁴ [DOJ Guidance]; and the Department of Transportation's "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons"⁵ [DOT Guidance].

The complaint is against the Rhode Island Division of Motor Vehicles [RIDMV] for failing to provide meaningful access to the Rhode Island driver's license application process (specifically the computerized knowledge exam) for Danilo Saccoccio, a person with limited English proficiency [LEP]. Upon information and belief, RIDMV receives federal funding that thereby subjects its relevant programs, including the issuance of driver's licenses, to the requirements of Title VI.

While this complaint is lodged against RIDMV specifically for refusing to uphold its Title VI obligations vis-à-vis Mr. Saccoccio, the position RIDMV has articulated in denying Mr. Saccoccio meaningful access to the knowledge exam reveals that the agency's failure to respect its Title VI obligations extends far beyond this individual instance. In an April 20, 2015 letter,⁶

¹ 42 USC 2000d.

² 28 CFR 42.104(b)(2).

³ 65 FR 50121 (Aug. 16, 2000).

⁴ 67 FR 41455 (June 18, 2002).

⁵ 70 FR 74087 (Dec. 14, 2005). Per the Executive Order, the DOT Guidance should be consistent with the framework established within the DOJ Guidance; the DOT Guidance is applicable to recipients of DOT funding with regard to their Title VI obligations vis-a-vis LEP individuals. 70 FR 74088-89, 91.

⁶ Letter from Clare Sedlock, Administrator, RIDMV, to S. Brown, Executive Director, ACLU/RI, dated Apr. 20, 2015 (Appendix B).

RIDMV brazenly rejected that the Executive Order and DOJ Guidance apply to cases such as that of Mr. Saccoccio, insisting that because “the distinction based on language is not discrimination based on race, color, or national origin,” the complaint should be subjected to a rational basis analysis. RIDMV thus fails to appreciate that, in implementing Title VI, the Executive Order and DOJ Guidance were intended precisely to prevent that sort of misunderstanding over whether Title VI applies to LEP individuals in circumstances like these. The Executive Order and DOJ Guidance merely confirm that Title VI ensures that language barriers do not preclude access to important benefits or services offered by federally funded programs or activities. Apart from its non-compliance with regard to the instant matter of Mr. Saccoccio, by misconstruing the basic premise of the Executive Order and DOJ Guidance in implementing Title VI, RIDMV reveals that it cannot possibly comply with Title VI with regard to its other services and programs and the larger LEP population within its service area.

As an organization deeply concerned with the civil rights of LEP individuals, the American Civil Liberties Union of Rhode Island (ACLU/RI) requests that your Division investigate the barriers Mr. Saccoccio and LEP persons encounter in accessing RIDMV driver’s license application process, as well as with regard to its other programs and services, and that you issue a Letter of Finding requiring RIDMV to comply with Title VI in this area.

Background

Danilo Saccoccio, an Italian national, immigrated to the United States from Itri, Italy, on July 29, 2014. He was given permanent residency status in November 2014 and holds a permanent residency card that expires on November 14, 2024. Mr. Saccoccio has been married to an American citizen, Jessica Agresti, for ten years and has two children who are also American citizens. Although he has attended ESL classes for a short period of time since he has been here, and has an interest in attending more such classes when work and family duties allow it, Mr. Saccoccio speaks very limited English.

On or about September 2014, prior to Mr. Saccoccio’s interview for permanent residency status, his mother-in-law called the RIDMV to determine the process for obtaining a Rhode Island driver’s license under these circumstances. An RIDMV agent informed her that Mr. Saccoccio could drive legally with his Italian driver’s license for one year from his entry to the United States. The agent explained that once Mr. Saccoccio obtained a permanent residency card, he could present that card, together with a document establishing his address, in order to apply for a Rhode Island driver’s license. He would also need to pass a computerized exam, which the agent stated was offered only in English, Spanish and Portuguese.

Although RIDMV had indicated that Mr. Saccoccio’s Italian license would remain valid for one year, he was informed otherwise during his interview for permanent residency. The person who interviewed him suggested that he would need to immediately obtain a Rhode Island driver’s license if he wished to drive within the State. Thus, immediately following the interview, Mr. Saccoccio and his wife went to the RIDMV office in Cranston, Rhode Island so that he could apply for a Rhode Island driver’s license. They presented themselves at the information window, where the clerk reiterated the information that had been previously provided over the phone to Mr. Saccoccio’s mother-in-law: that he could drive with his foreign

license for a year, but would be required to pass a computerized knowledge exam in order to obtain a Rhode Island license, and this exam was only offered in English, Spanish and Portuguese. Because Mr. Saccoccio could not understand those languages, he would not be able to sit for the exam. He and his wife then left the RIDMV office without filing an application.

The following day, Mr. Saccoccio's mother-in-law again phoned the RIDMV and spoke with an agent who reconfirmed that the computerized exam was only offered in English, Spanish and Portuguese. The agent informed her that RIDMV offered no further accommodations to LEP applicants. She then requested to speak with a more senior staff person, and was transferred to Chuck Hollis, RIDMV Assistant Administrator. Mr. Hollis also made clear that RIDMV would offer no accommodations to LEP applicants, such as Mr. Saccoccio, who did not speak one of the three languages in which the exam was offered. Mr. Hollis rejected a proposal to pay for an interpreter so that Mr. Saccoccio could sit for the exam. Mr. Hollis further stated that if Mr. Saccoccio could not read and write in English, he should not be driving. The gist of these conversations was essentially confirmed by RIDMV's April 20, 2015 response to ACLU/RI.

Apart from commuting to work, Mr. Saccoccio has generally avoided driving – including, ironically, driving to ESL classes – because he fears being stopped while using his Italian license. The lack of a state license has also prevented him from applying for various jobs. Further, without a Rhode Island driver's license, Mr. Saccoccio is unable to purchase motor vehicle insurance in his name.⁷

When it became apparent that RIDMV would not take any reasonable steps to ensure Mr. Saccoccio's access to the knowledge exam, the family contacted the ACLU/RI for assistance.⁸ In February 2015, Steven Brown, Executive Director of ACLU/RI, sent a letter to RIDMV on Mr. Saccoccio's behalf.⁹ In this letter, ACLU/RI recounted that Mr. Saccoccio's efforts to obtain a driver's license had been frustrated due to RIDMV's refusal to take reasonable steps to permit Mr. Saccoccio to sit for the requisite knowledge exam.

In its letter, ACLU/RI underscored RIDMV's Title VI obligation to ensure Mr. Saccoccio, as an LEP applicant, meaningful access to a driver's license, a vital service provided by RIDMV. ACLU/RI did not demand that RIDMV translate the entire exam into Italian, but instead insisted that RIDMV meet its legal duties by offering some form of meaningful access to the exam, such as through the one-time hiring of an interpreter. ACLU/RI emphasized that without such accommodation, any non-English speaking person in Rhode Island, apart from those speaking Spanish or Portuguese, would be precluded from obtaining a driver's license. ACLU/RI requested RIDMV to “clarify the agency's position on this issue and how Mr. Saccoccio [could] take the driver's test in his native language.”¹⁰

In its reply, RIDMV denied altogether that the DOJ Guidance should even apply to the situation of Mr. Saccoccio, arguing that “[b]ecause the distinction based on language is not discrimination based on race, color, or national origin, the analysis and requirements of

⁷ Until he can obtain insurance in his name, Mr. Saccoccio's mother-in-law has added him to her insurance policy.

⁸ In the meantime, their attempts to reach by telephone a few elected officials for possible assistance had also been unsuccessful.

⁹ Letter from S. Brown, Executive Director, ACLU/RI to Clare Sedlock, Administrator, RIDMV, dated Feb. 17, 2015 (Appendix A). The letter erroneously referred to Mr. Saccoccio as a naturalized citizen rather than a permanent resident.

¹⁰ *Id.* at 2.

Executive Order 13166 do not apply to this situation.”¹¹ RIDMV insisted that “[m]any courts have found that discrimination based on language is not discrimination based on national origin as language is not an immutable characteristic.”¹²

RIDMV thus argued that it need not respect the DOJ Guidance, but instead should apply a rational basis analysis to its provision of language services for LEP individuals such as Mr. Saccoccio. It claimed that pursuant to this lower level of scrutiny, it had a legitimate state interest “to provide quality services to its customers in a timely manner subject to the financial constraints of a limited budget.”¹³ As such, RIDMV chose to translate the knowledge exam into Spanish and Portuguese, the top two foreign languages spoken in Rhode Island based on available census data; per RIDMV, this decision represented a “compromise” that “sought to utilize limited funding and provide the most efficient services to the largest population possible.”¹⁴

Apart from a general reference to census data, RIDMV’s response addressed only in broad strokes how it reached this determination to restrict translation to two languages. It did not purport to have engaged in any sort of systematic study to accurately capture the size of the Italian-speaking LEP population within its service area. Nor did it claim to have considered the frequency with which such LEP individuals seek to sit for the knowledge exam. While RIDMV insisted that its budget precluded it from translating the exam into Italian (or any additional languages beyond Spanish or Portuguese), it did not provide any specific figures or refer to any formalized study evidencing the same. Nor did it profess to have undertaken any type of assessment to determine what sort of language services would be appropriate to provide meaningful access to the knowledge exam for LEP individuals speaking languages other than Spanish or Portuguese.

RIDMV further contended that even if the DOJ Guidance were to apply, the balancing test would nonetheless validate its current practice of limiting accommodations for its LEP population to the translation of the knowledge exam to the two top foreign languages spoken in Rhode Island.¹⁵ However, as noted above and will be discussed further below, RIDMV made this pronouncement without having actually undertaken the fact-specific inquiry required by the DOJ Guidance. It also focused only on whether or not it should have *translated* the exam into Italian. RIDMV did not indicate that it had engaged in any type of analysis to determine what other, less intensive, measures might be implemented to ensure Italian-speaking LEP individuals have meaningful access to its services.

In response to RIDMV’s reply, ACLU/RI again wrote to the agency, requesting confirmation of RIDMV’s position as to its obligations under Title VI.¹⁶ ACLU/RI reasserted its

¹¹ Fn. 6, *supra*, at 2.

¹² Fn. 6, *supra*, at 1. Furthermore, citing the Federal Motor Carrier Safety Administration’s [FMCSA] English language requirements for commercial drivers, RIDMV also asserted that the federal government makes such distinctions based on language skills that do not constitute discrimination based on race, color, or national origin. Fn. 6, *supra*, at 2. *See also* fn. 17, *infra*.

¹³ Fn. 6, *supra*, at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ Letter from S. Brown, Executive Director, ACLU/RI to Clare Sedlock, Administrator, RIDMV, dated Apr. 24, 2015 (Appendix C).

demand that RIDMV comply with its Title VI duties by providing Mr. Saccoccio meaningful access to the driver's license exam process.¹⁷ ACLU/RI proposed that the agency consider, at the expense of either RIDMV or Mr. Saccoccio: (1) hiring an interpreter to sit with Mr. Saccoccio during the exam; (2) permitting him to bring an interpreter himself (under reasonable ground rules to avoid concerns of coaching); or (3) any other accommodation that would offer meaningful access to the driver's license exam.¹⁸ ACLU/RI received no response to this follow-up letter.

RIDMV's outright denial that the Executive Order 13166 and DOJ Guidance should apply to Mr. Saccoccio's situation – an LEP resident seeking meaningful access to RIDMV's vital service of providing a driver's license – demonstrates that the agency does not uphold its legal obligations under Title VI. Its insistence that such a case lies outside of the LEP compliance standards for recipients of federal funding establishes that RIDMV is not carrying out the requisite analyses of the Italian-speaking LEP population in its service area with regard to providing meaningful access to a vital service, the driver's license knowledge exam. It further suggests that RIDMV has not conducted any formal assessment of its broader LEP population or that population's ability to access RIDMV's programs and activities, nor would it appear to have any policies in place requiring it to carry out such evaluations.

DOJ Standards

In implementing Title VI, the DOJ Guidance plainly states that all recipients of federal financial assistance must provide LEP persons with meaningful access to their programs and activities.¹⁹ The DOT Guidance, which adheres to the DOJ Guidance, explicitly cites “[s]tate motor vehicle administrations” as an example of an entity covered by the Guidance.²⁰ DOT Guidance further provides the example of “[p]ersons who apply for a driver's license at a state department of motor vehicles” as a population likely to contain LEP individuals that a recipient should consider when planning language services.²¹

DOJ specifically established its Guidance to clarify existing legal requirements in order to diminish the potential for discrimination against LEP individuals on the basis of national origin by recipients of federal funds, such as RIDMV.²² While RIDMV asserts that many courts have not found language-based discrimination as being tantamount to national origin discrimination, the DOJ Guidance itself points to the landmark Supreme Court opinion *Lau v. Nichols*,²³ explaining that the Court affirmed that “Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination.”²⁴

¹⁷ In its letter, ACLU/RI also responded to RIDMV's inapposite pronouncement that the federal government makes distinctions based on language skills with regard to the FMCSA commercial driver's regulations that do not constitute discrimination. ACLU/RI's response noted that these federal regulations apply only to *commercial* driver's licenses and, in any event, require a lower level of English proficiency than the driver's license knowledge exam. *Id.* at 1.

¹⁸ *Id.* at 2.

¹⁹ Fn. 4, *supra*, at 41458.

²⁰ Fn. 5, *supra*, at 74089, 91.

²¹ *Id.* at 74091.

²² Fn. 4, *supra*, at 41457.

²³ 414 U.S. 563 (1974).

²⁴ Fn. 4, *supra*, at 41458. As noted by the DOJ in its Statement of Interest in *Faith Action for Community Equity, et al. v. State of Hawaii, et al.*, “lower federal courts have held that language-based discrimination constitutes a form of national origin discrimination prohibited by Title VI. *See, e.g., United States v. Maricopa Cnty.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (citing *Lau*, 414 U.S. at 568); *see also Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1116-17 (9th Cir. 2009)

The DOJ Guidance goes further than a simple rational basis test, directing recipients to apply a specified four-factor analysis “to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.”²⁵ This individualized assessment guides the recipient to implement a “mix” of LEP services based on what is reasonable and necessary.²⁶

The balancing test guarantees meaningful access by LEP persons to critical services while not imposing an undue burden on smaller agencies or organizations; a recipient, therefore, may determine what various language assistance measures are sufficient to ensure meaningful access to its different types of programs or activities.²⁷ However, “[t]he flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed.”²⁸

Having completed the balancing assessment and having determined what language services are warranted, a recipient should prepare an implementation plan to address the needs of the LEP population it serves.²⁹ The written LEP plan will serve to document the recipient’s language assistance services and direct staff and LEP persons with respect to accessing these services.³⁰ Should a recipient choose not to create a written plan, it instead should consider alternative methods in which it can reasonably communicate a plan for providing meaningful access.³¹

Upon its own admission, RIDMV has not applied the DOJ Guidance to assess whether the driver’s license knowledge exam should be translated into Italian. Apart from considering census data, RIDMV has not suggested that it conducted any level of analysis to gauge the size and language needs of the LEP population within its service area. Nor did RIDMV describe any LEP plans that it had put in place. By refusing to conduct the appropriate analyses to determine the precise size and needs of the Italian-speaking LEP population in its service area and the resources required to fulfill those needs, RIDMV cannot purport to meet its legal obligations toward Mr. Saccoccio to provide meaningful access to the exam.

(noting that *Lau* concluded that “discrimination against LEP individuals was discrimination based on national origin in violation of Title VI”); *Jones v. Gusman*, 296 F.R.D. 416, 454 (E.D. La. June 6, 2013) (“[L]ongstanding case law, federal regulations and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination under Title VI.” (citing *Maricopa Cnty.*, 915 F. Supp. 2d at 1079)); *Aghazadeh v. Maine Med. Ctr.*, No. 98-421, 1999 WL 33117182, at *7 (D. Me. June 8, 1999) (denying hospital-defendant’s motion to dismiss where LEP patient-plaintiffs alleged that a failure to provide interpreter services violated Title VI); *Mendoza v. Lavine*, 412 F. Supp. 1105, 1110 (S.D.N.Y. 1976) (denying motion to dismiss in case alleging that defendants’ failure to provide language assistance services violated Title VI); *Pabon v. Levine*, 70 F.R.D. 674, 677 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging that State officials failed to provide unemployment insurance information in Spanish, in violation of Title VI.” (Attorneys for the U.S., Statement of Interest, *Faith Action for Community Equity, et al. v. State of Hawaii, et al.*, No. 13-450, D. Hawaii, 2015 U.S. Dist. LEXIS 51736 (Mar. 28, 2014).)

²⁵ Fn. 4, *supra*, at 41459.

²⁶ *Id.* at 41460.

²⁷ *Id.* at 41459.

²⁸ *Id.*

²⁹ *Id.* at 41464.

³⁰ *Id.*

³¹ *Id.*

I. RIDMV is Not Implementing the Four-Factor Analysis Outlined in the DOJ Guidance

As noted above, the DOJ Guidance sets out a four-factor analysis to assist recipients of federal funding in establishing whether they have taken reasonable steps to provide meaningful access to their programs and activities. The extent of a recipient's obligation to provide language assistance services in multiple languages is determined on a case-by-case basis, looking at the totality of the circumstances in light of four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or recipient; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity or service provided by the program to people's lives; and (4) the resources available to the recipient and costs.³² This fact-intensive assessment will guide recipients in determining the appropriate "mix" of LEP services it should offer, based on what is both necessary and reasonable.³³

RIDMV readily admits that it has not followed the DOJ Guidance in barring Mr. Saccoccio from gaining meaningful access to its services. Indeed, it rejects outright that the Guidance is relevant to the circumstances of this case in which an LEP individual seeks access to a vital service. Contrary to the fact-specific and systematic review detailed in the Guidance, RIDMV engages in only a high-level assessment of census data to conclude that the language accommodations for the knowledge exam should be restricted to the two most prevalent LEP groups in the State, Spanish and Portuguese.

However, by refusing any accommodation to Mr. Saccoccio or other Italian-speaking LEP individuals, RIDMV has ignored entirely its residual obligation to provide these LEP individuals with meaningful access to the exam. As discussed below, even roughly applying the four-factor analysis based on high-level data alone indicates that RIDMV should be offering some level of meaningful accommodation so that Mr. Saccoccio and the sizeable Italian-speaking LEP population in its service area have access to the knowledge exam.

The analysis below necessarily focuses on the facts of the case at issue. However, based on its assertion that the DOJ Guidance does not apply in this instance, and absent any evidence demonstrating that RIDMV has assessed or offered appropriate accommodation to the broader LEP population within its service area, RIDMV undoubtedly is breaching its Title VI obligations to facilitate meaningful access to the licensing exam for other LEP populations in the State. Its stance further indicates that RIDMV is not respecting the rights of its LEP population to gain meaningful access to the myriad of other services it provides.

Yet, based on current census data, the LEP population in Rhode Island continues to grow and now numbers nearly 87,000, or 8.71% of the total State population.³⁴ Of these, 23,000 speak

³² *Id.* at 41459 ; *see also* Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs, Federal Coordination and Compliance Section, Civil Rights Division, Department of Justice (Aug. 2011) at 10 [Common Language Access Questions].

³³ *Fn. 4, supra*, at 41460-61.

³⁴ Detailed Language Spoken at Home and Ability to Speak English for the Population 5 Years and Older by States: 2006-2008 (ACS), 2010, U.S. Census Bureau, Table 42 (available at <https://www.census.gov/hhes/socdemo/language/>), *cf* America Speaks: A Demographic Profile of Foreign-Language Speakers for the United States: 2000, U.S. Census Bureau, Table 41a (available at <http://www.census.gov/population/www/socdemo/hh-fam/AmSpks.html>).

a language other than Spanish or Portuguese. With such a significant LEP population, it is alarming that RIDMV maintains that its agency falls outside the purview of Title VI and the DOJ Guidance when it comes to issues of language barriers for LEP individuals. It is worrisome that 23,000 residents are being refused any sort of accommodation to access the driver's license knowledge exam. Indeed, given the size of the LEP population in the State, it is imperative that RIDMV employ the balancing test with respect to all of its services and programs to determine in what other instances, and for which LEP populations, reasonable steps to ensure meaningful access should be put in place.

(1) *The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population*

The DOJ Guidance directs that “[r]ecipients should first examine their prior experience with LEP encounters and determine the breadth and scope of the language services that [are] needed.”³⁵ The Guidance counsels that “it is important to: [i]nclude language minority populations that are eligible beneficiaries...but may be underserved because of existing language barriers.”³⁶ Other data to be consulted in order to refine the evaluation include census data for the area served, data from school systems and community organizations, and data from state and local governments.³⁷

RIDMV argues that it is not bound to adhere to the DOJ Guidance to identify the appropriate accommodations for LEP individuals with regard to the driver's license exam. It does not suggest that it has otherwise assessed its prior experience with Italian-speaking LEP encounters in any sort of formalized way or implemented any level of tracking or assessment system to understand the agency's encounters with Italian-speaking LEP individuals. Absent a formal analysis, which should also take into account existing language barriers, it would be impossible to capture an accurate picture of the Italian-speaking LEP population within the eligible service population.

RIDMV indicated that it relied solely on census data in order to determine into which languages the driver's license exam should be translated. It did not suggest that it has consulted with data from school systems or community organizations, or data from state and local governments. While census data may be an important input when planning appropriate language services, it cannot fully capture the needs of the LEP population. Census data might provide a rough snapshot of the size of various LEP populations in a given service area, but it will leave significant gaps in the data, such as the particular types of services used or required by each of the language groups.

Moreover, with approximately 2,470 Italian LEP speakers residing in the State, the most current census data reveals that Italian speakers represent the fourth most populous group within Rhode Island's LEP population (after Spanish, Portuguese and French).³⁸ Thus, based on a cursory review of census data alone, RIDMV would be on notice that a significant Italian-speaking LEP population resides in Rhode Island. By choosing to limit translation of the test

³⁵ Fn. 4, *supra*, at 41460.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Fn. 34, *supra*, at Table 42.

into only the two top foreign languages spoken, it should have known that it would also need to make some sort of accommodation for Italian-speaking LEP individuals.³⁹

(2) The Frequency with which LEP Individuals Come in Contact with the Program

Recipients of federal funding are instructed to “assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual.”⁴⁰ Agencies serving LEP persons on an “unpredictable or infrequent basis” should be guided by the balancing test to implement a plan in the event an LEP individual seeks services.⁴¹ Instead of refusing any level of accommodation whatsoever for LEP individuals outside of the most common LEP language groups, “[l]ess frequent contact with different language groups may suggest a different and less intensified solution.”⁴² The language accommodation plan need not be intricate, but might be as simple as ensuring staff are trained to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services, for example.⁴³

RIDMV rejects that it must apply the DOJ balancing test to situations such as Mr. Saccoccio’s, in which LEP individuals seek language accommodations in order to access the agency’s services. RIDMV did not otherwise suggest that it has measured the frequency of contact with Italian-speaking LEP persons in selecting into which languages to translate the exam. RIDMV did not indicate that it had implemented any sort of system to record contacts between the agency and the LEP residents in its service area.

Instead, in support of its position that it need not translate the exam into Italian, RIDMV stated that it “is aware of only one other individual in the past five years who, through an attorney, informally inquired about the provision of an Italian translated test.”⁴⁴ It is telling that the only encounter recorded by the agency is one that occurred with the assistance of an attorney. Presumably the attorney spoke English and could clearly communicate the needs of his or her LEP client. In addition, whether or not the request for the accommodation was in the form of a formal demand, given that an attorney, rather than an LEP individual, made the inquiry, it is not surprising that this encounter was somehow recorded.

RIDMV does not assert that it has a plan in place so that its staff might be prepared to make appropriate accommodations when an LEP person presents him or herself. Nor did the agency attest to attempting to facilitate communication between Italian-speaking LEP individuals and the agency, such as by posting signage in Italian or “I speak” language indicators. It is likely that other Italian-speaking LEP residents require language assistance to access the computerized exam, but are unable to communicate these needs and cannot otherwise afford the services of an attorney to do so. It may be that Italian-speaking LEP persons have attempted to communicate this need, but were rebuffed or misunderstood, or that their request simply went undocumented.

³⁹ Taking a broader look, the current census data further reveal that of the 86,000 LEP persons residing in Rhode Island, approximately 23,000 speak a language other than Spanish or Portuguese. *Id.* By restricting accommodation to Spanish- and Portuguese-speaking LEP individuals, RIDMV denies access to the knowledge exam to a large number of LEP individuals that speak other languages.

⁴⁰ Fn. 4, *supra*, at 41460.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Fn. 6, *supra*, at 2.

Without even a basic plan to prepare RIDMV staff for interacting with LEP individuals or a system in place for RIDMV staff to record such encounters, there is simply no way to evaluate the frequency of RIDMV's interactions with Italian-speaking LEP persons (or persons from any other language background) with any level of accuracy. However, considering the size of Rhode Island's LEP population beyond Spanish and Portuguese speakers, it can be assumed that RIDMV engages with these individuals on a relatively regular basis.

(3) *The Nature and Importance of the Program, Activity, or Service Provided by the Program*

The more important the activity, information, service, or program, or the greater the possible consequences of the contact with LEP individuals, the more likely language services are needed.⁴⁵ Where governmental agencies determine "to make an activity compulsory, such as requiring a driver to have a license, [it] can serve as strong evidence of the importance of the program or activity."⁴⁶

RIDMV does not dispute that the issuance of a driver's license represents a vital service, and "readily acknowledges the importance of a driver's license."⁴⁷ Mr. Saccoccio underscores the value of a driver's license for him in order to drive to work and even to attend ESL classes. However, Mr. Saccoccio worries about the consequences should he be stopped while continuing to drive using his Italian driver's license. Additionally, without a Rhode Island driver's license, Mr. Saccoccio has been limited in the number and types of jobs he can apply for, and is barred from obtaining motor vehicle insurance in his own name.

Yet, while RIDMV recognizes the importance of the driver's license, requires all drivers to possess a valid license in order to operate on its roads, and forces applicants such as Mr. Saccoccio to pass a computerized exam in order to obtain a license, it nonetheless outright refuses to provide any level of accommodation so that Mr. Saccoccio may access this service. RIDMV has elected to translate the exam only for two LEP groups (Spanish and Portuguese speakers), but offers no accommodation whatsoever to individuals from the remaining LEP populations, including those who speak Italian.

Given the importance of a driver's license, RIDMV must not limit accommodations to two LEP groups, but must take reasonable steps so that all individuals from all LEP populations may obtain meaningful access to this service.

(4) *The Resources Available to the Recipient and Costs*

The level of resources available and the costs associated with language services may have an impact on the steps a recipient should take to provide language services.⁴⁸ However, recipients should carefully consider "the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns."⁴⁹

⁴⁵ Fn. 4, *supra*, at 41460.

⁴⁶ Fn. 5, *supra*, at 74092 ; *see also* fn. 4, *supra*, at 41460.

⁴⁷ Fn. 6, *supra*, at 2.

⁴⁸ Fn. 4, *supra*, at 41460.

⁴⁹ *Id.*

RIDMV asserts that its resources are “quite limited” and “it would be prohibitively expensive for [RIDMV] to offer translations of the written test to anyone that requested it.”⁵⁰ RIDMV has insisted that its ability to comply with its statutory mandates and to provide efficient services would be adversely impacted if it were “to set a precedent that anyone requesting a translation for the written test could obtain one at the expense of [RIDMV].”⁵¹

While it may be that budgetary considerations prohibit RIDMV from translating the exam into the more than fifty languages spoken by LEP individuals living in Rhode Island, RIDMV does not appear to have conducted any analysis to determine the actual cost of translation into Italian or any other language (perhaps beyond Spanish and Portuguese). Moreover, without an accurate picture of the number of Italian-language LEP individuals in its service area, or the frequency with which they might demand access to the driver’s license exam, it is impossible to carry out the requisite cost-benefit analysis for translating the exam. Given the size of the Italian-speaking group based on census data, the vital importance of the exam, and the potential impact of cost-saving measures,⁵² the balance may weigh in favor of translating the exam into Italian.

However, it should be noted that Mr. Saccoccio has not insisted that RIDMV translate the exam into Italian. Instead, he has merely demanded that RIDMV uphold his right to some form of meaningful access, such as the one-time hiring of an interpreter or “offering any other accommodation that would give him meaningful access to the driver’s license exam as an LEP resident.”⁵³ While RIDMV claims that translation is cost-prohibitive, it has not considered, let alone assessed the financial impact of, any alternate accommodations.

II. RIDMV Does Not Provide LEP Individuals with Meaningful Access to its Services

RIDMV has fallen far short of its Title VI duties to offer language services commensurate with the needs of its Italian-speaking population and the critical nature of the driver’s license knowledge exam. Although RIDMV has the obligation to provide language accommodations, particularly with regard to vital services such as the driver’s licensing process, it has refused to provide any oral interpretation or translation services whatsoever. Moreover, RIDMV has refused to permit Mr. Saccoccio’s use of an interpreter supplied at his own expense, which is also an LEP individual’s prerogative under the DOJ Guidance.

(1) Oral Language Services

The DOJ Guidance illustrates the span of oral language services that might be made available to LEP individuals.⁵⁴ The decision as to which level of service should be provided will

⁵⁰ Fn. 6, *supra*, at 3.

⁵¹ *Id.*

⁵² Considering that driving rules and regulations tend to be uniform across states, and that most states will require individuals such as Mr. Saccoccio to pass a computerized knowledge exam, it might be feasible to share language assistance resources with another state with a large Italian-speaking LEP population. Furthermore, because all computerized exams must be taken at the RIDMV headquarters in Cranston, costs could be centralized to that location. (According to the RIDMV website, all out-of-country driver’s license transfers must be done at the RIDMV Cranston headquarters, located at 60 New London Ave, Cranston R.I., 02920. (See RIDMV website, available at <http://www.dmv.ri.gov/licenses/>.)

⁵³ Fn. 16, *supra*, at 2.

⁵⁴ Fn. 4, *supra*, at 41461.

be guided by the results of the balancing analysis. Whereas bilingual staff should be hired when particular languages are regularly encountered, when contact with a certain LEP population is infrequent or unpredictable, or when the recipient's programs and activities are less critical, contract interpreters, commercially-available telephonic interpretation services⁵⁵ or community volunteers may suffice.⁵⁶

The DOJ Guidance clearly discusses the provision of interpretation services as a duty of the recipient, to be provided at the agency's expense, stating that recipients "should generally offer free interpreter services to LEP persons," particularly in situations where "access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services."⁵⁷ The DOT Guidance warns specifically against the risks for an LEP individual seeking access to services at a department of motor vehicles that does not provide interpreters, or bilingual or symbolic signs.⁵⁸

The DOJ Guidance explicitly permits LEP individuals to choose to enlist the help of their own interpreter – whether a friend or family member, or an interpreter hired at their own expense – rather than rely on the one provided by the recipient.⁵⁹ Nevertheless, agencies are cautioned against relying upon the use of LEP persons' family members or friends to provide meaningful access to important programs and activities.⁶⁰

RIDMV's refusal to offer any level of meaningful access to Mr. Saccoccio, and its insistence that the DOJ Guidance would not apply in his situation, suggest that RIDMV does not offer LEP individuals with oral interpretation services in Italian (or any other language except perhaps Spanish and Portuguese). Nonetheless, the Guidance makes clear that free interpretation services should be the norm, and are particularly critical with respect to driver's license applications, a situation in which an important benefit is at stake and where accuracy is paramount to access this benefit. At the same time, however, the Guidance supports Mr. Saccoccio's right to enlist the services of his own interpreter at his own expense. Certainly, nothing in the Guidance supports RIDMV's position of denying Mr. Saccoccio interpretation services altogether – whether supplied by RIDMV or Mr. Saccoccio himself – and leaving him without any means of access to the driver's license exam because of his lack of English proficiency.

(2) *Translation Services*

Per the DOJ Guidance, vital written materials should be translated for frequently-encountered LEP groups likely to be affected by a recipient's program or in the eligible service population.⁶¹ An agency must determine the extent of its obligation to provide written

⁵⁵ The DOJ Guidance points out, however, that because nuances in language and non-verbal communication that inform interpretation are not available over the phone, telephonic language services should be used with caution. *Id.* at 41462.

⁵⁶ *Id.* at 41460, 62.

⁵⁷ Fn. 5, *supra*, at 74094; *see also*, fn. 4, *supra*, at 41462.

⁵⁸ Fn. 5, *supra*, at 74094. Moreover, DOT cautions that in the instance when the LEP individual attempts to apply for a driver's license, vehicle registration or parking permit, he or she might be forced to enlist the help of a stranger for translation, which "may raise serious issues of competency or confidentiality and may compromise the personal security of the LEP person." *Id.*

⁵⁹ Fn. 4, *supra*, at 41462.

⁶⁰ *Id.*

⁶¹ Fn. 4, *supra*, at 41463.

translations of documents based on a case-by-case assessment, taking into account the totality of the circumstances as informed by the balancing test.⁶²

Whether a document is “vital” may depend on the importance of the program, information or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.⁶³ The frequency with which the agency encounters particular languages spoken by LEP individuals will determine the languages into which vital documents should be translated.⁶⁴ Documents that must be translated into the language of each frequently-encountered LEP group include “[w]ritten tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required,” as well as driver’s license forms.⁶⁵ The Guidance also encourages the creation of a plan to assess, over time and across an agency’s various activities, what documents are “vital” to the LEP populations served.⁶⁶

While the DOJ Guidance recognizes that an agency could not realistically translate all written materials into all potential languages within its service area, it nonetheless makes plain that well-substantiated claims of lack of resources to translate all documents into multiple languages “do not necessarily relieve the recipient of the obligation to translate vital documents into at least several of the more frequently encountered languages.”⁶⁷ Where the four-factor assessment suggests that translation may not be necessary because it would be so burdensome as to defeat the legitimate objectives of the program, the recipient is not absolved of its obligation toward the LEP individual. Instead, the agency can consider alternative reasonable steps to provide meaningful access through, for example, “effective oral interpretation of certain vital documents.”⁶⁸ Recipients should also establish processes for managing written communication with LEP individuals in less frequently encountered languages.⁶⁹

Furthermore, the Guidance has established safe harbor provisions to provide greater certainty to a recipient as to whether its decisions regarding written translations meet its Title VI obligations. Providing translations in line with the safe harbor provisions is considered “strong evidence” of compliance.⁷⁰ A recipient falls within the safe harbor if it “provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.”⁷¹ With regard to situations in which a safe harbor is not used, such as where written translation of certain documents would be so burdensome as to defeat the legitimate objectives of the program, oral interpretation or other ways of providing meaningful access “might be acceptable.”⁷²

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*; fn. 5, *supra*, at 74094.

⁶⁶ Fn. 4, *supra*, at 41463.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Fn. 32, *supra*, Common Language Access Questions at 9.

⁷⁰ Fn. 4, *supra*, at 41463.

⁷¹ *Id.* at 41464.

⁷² *Id.*

As discussed, the driver's license knowledge exam constitutes a vital document. Based on census data, the current Italian-speaking LEP population ranks as the fourth most populous in the State, amounting to 2,470 persons. These two factors taken together tilt the scales into translating the exam into Italian. Further, given that this group numbers more than 1,000 people, translating the exam into Italian would place RIDMV within the safe harbor for Title VI compliance. Yet, even if RIDMV were to determine that providing translation of the exam for this group would defeat the legitimate objectives of the program, the agency is nevertheless obliged to offer some level of accommodation. It cannot simply maintain indifference and leave such a significant LEP population without meaningful access to this vital service.

Conclusion

As an agency providing vital services to the substantial LEP population of Rhode Island, RIDMV is not fulfilling its duties under Title VI to reduce language barriers for Italian-speaking LEP individuals such as Mr. Saccoccio. RIDMV fails to assess the needs of the Italian-speaking LEP persons it serves with respect to the computerized knowledge exam. It refuses to offer any sort of accommodation through oral interpretation or translation services so as to sufficiently mitigate the risk that Mr. Saccoccio is effectively barred from accessing the driver's license application process.

Moreover, its insistence that the DOJ Guidance does not apply to the situation of an LEP resident seeking to attain meaningful access to this vital service, or to other aspects of the drivers' license program, raises serious doubts as to compliance with its Title VI obligations with regard to its other programs and services, as well as its obligations to members of other language LEP populations in Rhode Island.

We urge the Civil Rights Division to investigate this matter and take action to ensure that RIDMV complies with its obligations under Title VI, the Executive Order and the DOJ Guidance such that Mr. Saccoccio, as well as all LEP residents of Rhode Island, will have access to appropriate and adequate language services as regards the driver's license exam and all of RIDMV's other programs and activities.

Contact information appears immediately below:

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Jennifer Doucleff, ACLU of RI Cooperating Attorney

Danilo Saccoccio c/o Jessica Agresti (spouse)

Deanna Jang
July 21, 2015

Thank you in advance for your attention to this matter. We would appreciate being kept apprised of any actions taken by your Division in this regard.

Sincerely,

Steven Brown
Executive Director

Jennifer Doucleff
Cooperating Attorney

Enclosures

cc: Danilo Saccoccio and Jessica Agresti
Clare Sedlock, RIDMV Acting Administrator
The Hon. Gina Raimondo, Governor