

EXHIBIT 5

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June 14, 2010

VIA FEDERAL EXPRESS

Mark Kappelhoff, Chief
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Coordination and Review Section, NWB
Washington, DC 20530

Re: Complaint No. 171-08-21
Maricopa County (AZ) Sheriff's Office

Dear Mr. Kappelhoff:

Maricopa County Sheriff's Office ("MCSO" or "Sheriff's Office") submits this position statement in response to the alleged complaint of discrimination on the basis of national origin (Hispanic) by MCSO in the operation of its jail facilities. Upon receipt of the letter from Merrily Friedlander, MCSO conducted a thorough inquiry into the alleged complaint. Based upon this inquiry, MCSO denies that it has engaged in discrimination on the basis of national origin in the operation of its jail facilities.

The complaint appears to be based on the mistaken premise that MCSO discriminates against limited English proficient ("LEP") inmates and that MCSO has an "English-only policy" in its jails.¹ The facts contained in this position statement unequivocally demonstrate that the allegations in the complaint are completely meritless. MCSO does not have, and has never had, an English-only policy in its jails. As illustrated in this position statement, Spanish is spoken regularly on a daily basis throughout the jails by both inmates and officers. Not only would an English-only policy be impractical given the demographics of Maricopa County and the inmate population, it would create a security risk in the jails. Further, MCSO has for many years recognized

¹ MCSO has not had an opportunity to review the complaint referenced in Ms. Friedlander's letter. MCSO specifically requested to review the complaint but MCSO's request was denied by the DOJ on April 2, 2009.

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its responsibility to provide all of its inmates, including LEP inmates, with meaningful access to its services. Through its many accommodations, MCSO exceeds the guidelines set forth in the U.S. Department of Justice's ("DOJ") Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (Jun. 12, 2002) (hereinafter "Guidance Document") attached as Exhibit 1. Accordingly, MCSO respectfully requests that the DOJ Civil Rights Division close its investigation of MCSO.

BACKGROUND

MCSO is responsible for law enforcement activities, including, but not limited to, the unincorporated parts of Maricopa County. MCSO also is required to maintain the county jail system for adults and juveniles remanded to the adult judiciary system. MCSO currently operates six jail facilities located within Maricopa County. In 2008, over 130,000 people were arrested and booked into the Maricopa County jail system. The system housed an average of 9,244 inmates each day. The system is primarily responsible for housing inmates awaiting trial (pretrial) and those sentenced within the county to serve one year or less. Overall, 70 percent of inmates were pretrial, with 75 percent in jail on felony charges. In 2008, the average length of stay for an inmate was 26 days.

I. Maricopa County Information And Demographics

The size and demographics of Maricopa County are aspects important to understanding the culture of the jails. Maricopa County is the fourth most populous county in the United States with the population growing to almost four million people in 2009. It is also the 14th largest county in size covering 9,226 square miles. Maricopa County consists mostly of the Phoenix metropolitan area which includes Phoenix, Scottsdale, Tempe, Mesa, Chandler, Gilbert, Glendale, Peoria and several other neighboring cities and towns.

Maricopa County is very culturally and racially diverse. According to U.S. Census estimates for 2008, the population of Maricopa County was 59 percent Caucasian (not Hispanic), 31 percent Hispanic, four percent African American, two percent Native American and four percent other or mixed ethnicities. Contributing to Maricopa County's large Hispanic population likely is its close proximity to Mexico, at roughly 180 miles from some border areas.

II. MCSO Jail Demographics

Like Maricopa County itself, the MCSO jail facilities have both a diverse staff and inmate population. The Sheriff's Office currently employs more than 3,500 people, including approximately 2,100 detention officers who work within the jail system. It is the largest jail system in the state, and the third largest jail system in the United States.

The MCSO detention officers are approximately 63 percent Caucasian, 25 percent Hispanic, eight percent African American, three percent Asian and one percent Native American.

The Maricopa County Jail System accepts arrestees from law enforcement agencies throughout Maricopa County including, but not limited to, police departments in Apache Junction, Avondale, Buckeye, Chandler, El Mirage, Surprise, Tempe, Tolleson, Paradise Valley, Phoenix, Peoria, Gilbert, Scottsdale, Glendale, and Goodyear. See Exhibit 84 (2009 Booking by Agency). Of the over 100,000 people composing the Maricopa County jail inmate population in 2009, 41 percent were Hispanic, 39 percent were Caucasian, 15 percent were African American, four percent were Native American and one percent was other or mixed ethnicities.

III. MCSO's Jail Facilities

MCSO currently operates six jail facilities and the Central Intake facility. Combined, the facilities accommodate minimum, medium and maximum security inmates, juvenile inmates and inmates who have been administratively segregated from the general population for health or safety reasons.

Fourth Avenue Jail. The Fourth Avenue Jail opened in 2005 and is located in downtown Phoenix. It has a capacity of 2,064 beds, 288 of which are specifically designed to house the highest security level of inmates. The facility contains a fully staffed and equipped medical and dental clinic and offers educational and religious services in its classrooms and chapel.

Central Intake. Central Intake Division also is located at the Fourth Avenue Jail but it is its own separate division with its own command structure. Central Intake processes an average of 300 inmates per day with the number of inmates processed in Central Intake ranging from approximately 100-500. Inmates must be booked, fingerprinted, photographed and seen in an Initial Appearance ("IA") Court within 24 hours, as mandated by law.

Durango Jail. The Durango Jail opened in 1976. It is a minimum and medium security facility which houses approximately 1,500 male inmates in seven housing units and two barracks buildings. The housing units are designed in a "podular" configuration with each pod containing a general-purpose day room area equipped with tables and stools and a bathroom with shower area. There are also three large outside areas for recreation. The facility contains a fully staffed and equipped medical and dental clinic, a chapel and three education classrooms.

Estrella Jail. The Estrella Jail opened in 1991. It houses approximately 1,000 inmates. The population is predominantly female. The facility is also designed in a podular/dormitory configuration with each housing area containing a general-purpose day

room and a bathroom with shower area. It has a fully staffed and equipped medical clinic, chapel and three education classrooms.

Lower Buckeye Jail. The Lower Buckeye Jail opened in 2005 and is the largest detention facility in Arizona at 604,743 square feet. It houses 2,440 inmates of all classifications and includes separate housing for juvenile inmates and special management inmates. The housing units were designed to individually contain medical, mental health, education, visitation, religious services and various rehabilitation programs. The facility also contains conference and training rooms for MCSO staff. It also has several innovative tools for streamlining operations and increasing security including video visitation, NiceVision recording, touch screen controls and iris scan. The facility also has 262 inmate telephones and 44 TDD jacks for use with TDD machines, 166 video visitation screens and 63 visitor visitation booths.

Tent City Jail. The Tents Jail (or "Tents Complex") began in 1993 initially as a response to jail crowding. Currently, the Tents Jail can house up to 2,000 inmates. The Tents Jail is divided into Con-Tents and In-Tents. Con-Tents houses Work Furlough inmates, Work Release inmates and inmates sentenced to less than five days. Female inmates assigned to the Tents Jails are housed in a section of Con-Tents called Pup-Tents. In-Tents houses general population inmates sentenced for more than six days up to one year with the exception of O-Yard which houses approximately 244 inmates who are fully adjudicated on all local charges and are being held for other agencies.

Towers Jail. The Towers Jail opened in 1982. It was designed as a 360-cell facility with six tower units. Each tower contains four pods and each pod has a general-purpose day rooms and bathroom with shower facilities. It houses approximately 800 inmates. The facility also contains a fully staffed and equipped medical clinic, a chapel and classrooms. There are three outside areas for recreation.

MCSO'S LANGUAGE ASSISTANCE PLAN AND ACCOMMODATIONS FOR LEP INMATES

This position statement rebuts the baseless and inaccurate allegations made against MCSO and the misperception that has developed regarding the operation of its jail facilities.² There is no English-only policy in the Maricopa County jails. The use of Spanish is part of everyday life at the jails. Inmates communicate in Spanish with other inmates, officers communicate with inmates in Spanish, and inmates communicate with officers in Spanish on a daily basis. Because of the large number of Spanish speaking

² See, e.g., Prepared Remarks of Acting Assistant Attorney General Loretta King at the April 20, 2009 meeting of the Federal Interagency Working Group on Limited English Proficiency discussing the allegations leveled at MCSO ("And though I cannot discuss pending investigations, I would only say that our efforts are redoubled to bring those investigations to resolution. We have recently opened a number of new investigations, as well. One of the most notable is a joint investigation by COR and the Special Litigation Section of the Maricopa County Sheriff's Office regarding allegations of racial profiling and failure to provide language access, including an English-only requirement in the jails.").

inmates, the use of Spanish is not only important to everyday communication, it is essential to the overall operation of the jails and the safety of the inmates and officers.

MCSO's years of experience have helped it shape a language assistance plan that provides meaningful access to its services for all inmates. Inmates are never denied access because of their language ability at any stage of their incarceration. Many of MCSO's accommodations for LEP inmates have existed for *over 20 years*, much earlier than Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," reprinted as 65 Fed. Reg. 50121 (Aug. 16, 2000) and the release of the DOJ's Guidance Document. For example, use of the Language Line, which is a telephone service contracted through AT&T that provides instant interpretation over the telephone in over 150 languages, has been in operation at the jails for over 28 years. However, this Language Line is only used as a back-up to the many bilingual officers who collectively read, write and/or speak *over 60 different languages*. Furthermore, MCSO has expended great resources to translate the Inmate Rules and Regulations and hundreds of notices and forms used throughout the jails into Spanish versions.

MCSO does not have a formal written language assistance plan. MCSO's language assistance plan is a combination of its many language assistance services already in place, as well as its continual and innovative approach to improving access as inmate needs arise. This flexibility allows MCSO's language assistance plan to be amended to account for the dynamic and fast-paced environment in each of its six different jail facilities.³ Further, because the use of Spanish is so common in the jails, forcing officers to follow a specific protocol each time they interact with a Spanish speaking inmate would certainly hinder their ability to effectively conduct their jobs.

The well-documented history of MCSO's various accommodations which combine to form a customized language assistance plan and the evidence supporting this position statement demonstrate that the allegations in the complaint are without merit. MCSO meets and in many instances exceeds the guidelines set forth in the Guidance Document by providing meaningful access to LEP individuals, customized for the MCSO jails.

I. MCSO's Language Assistance Services

MCSO recognizes that its Spanish speaking LEP inmates and other LEP inmates will require language assistance in a variety of circumstances and mediums. In response, MCSO offers meaningful and practical language assistance to its LEP inmates through methods that guarantee prompt and accurate assistance and are optimized for the MCSO jail facility setting. Through its language assistance services, MCSO is able to provide simultaneous or near simultaneous language assistance in most situations.

³ The DOJ Guidance Document acknowledges that in some circumstances, the absence of a written language assistance plan will not impede the accomplishment of the goal of meaningful access and while the Department recommends a written plan, it is not required. *See* Guidance Document, 67 Fed. Reg. at 41455.

The Guidance Document divides language assistance into oral language services (interpretation) and written language services (translation). *See* Guidance Document, 67 Fed. Reg. at 41461-64. MCSO provides access to both interpreter and translation services to all LEP inmates. Through MCSO's resources, this language assistance is provided at a "time and place that avoids the effective denial of the service, benefit, or right at issue" and avoids the imposition of an undue burden on important rights. *Id.* MCSO's approach to its language assistance services has developed over years of experience serving LEP inmates and MCSO continues to improve its language assistance as changing circumstances arise.

(a) Identification Of LEP Inmates

LEP inmates are identified and recorded as such during the intake and classification processes at either Central Intake or the Self Surrender Center located at the Lower Buckeye Jail.⁴ A majority of LEP inmates are Spanish speakers and can be instantly accommodated by the large number of MCSO bilingual personnel. If the MCSO officers are unable to identify the language spoken, identification of the language can be made using language identification cards or by calling the AT&T Language Line. The language identification cards provide a statement, translated into 131 languages, instructing the LEP person to point to the language he or she speaks and explaining that an interpreter will be provided.⁵ *See* Exhibit 2 (AT&T Language Line Service: Language Identification Card). If the LEP person's language cannot be determined with the use of the cards, MCSO personnel may call the Language Line and operators will assist with the language identification. Identification cards and the Language Line are available at Central Intake and the Self Surrender Center, as well as all of the jail facilities.

(b) Language Assistance Services

(1) Interpretation

MCSO provides competent interpretation for LEP inmates through its bilingual staff and by the use of its Language Line. By utilizing both of these methods, the MCSO jails can provide interpretive services to inmates in over 150 different languages. These services are available 24 hours a day.

As addressed in both the Guidance Document and the letter from Ms. Friedlander, access to legal counsel can be of critical importance to all inmates and special language considerations must be made for LEP inmates. However, in Maricopa County, all interpreters for legal visits are coordinated and scheduled through the Maricopa County Superior Court, the other courts servicing Maricopa County, and legal counsel. MCSO does not, and has never, had any involvement in the use of interpreters for legal visits.

⁴ The Self Surrender Center is where persons sentenced by the courts report to serve their sentence.

⁵ The statement on the language identification card roughly translates to: "Show us what language you speak. We will provide an interpreter."

MCSO places no restrictions on when legal visits may occur. Inmates can meet with legal counsel, and interpreters assisting legal counsel, 24 hours a day, seven days a week. In all jail facilities, including Central Intake, MCSO has posted an information sheet in both English and Spanish describing how inmates can find and contact an attorney. As an additional accommodation in the Lower Buckeye Jail, this information sheet is also posted in the Self Surrender Center. *See Exhibit 3.* Further, all inmates who enter the Initial Appearance ("IA") Court are advised of their right to legal counsel and the services provided by the Public Defender's Office. *See Exhibit 4* (a recording of the Initial Appearance Court Admonition is played in both English and Spanish before a proceeding in the IA Court begins). Notably, MCSO does not have any authority to coordinate courtroom interpreters for the IA Court or any other court appearances. If a LEP inmate speaks a less common language or a language not spoken by any other MCSO officer, MCSO will request that the court interpreter assist with the MCSO Classification Section interview, if the interpreter is available. If unavailable, then the AT&T Language Line is used.

The Guidance Document suggests hiring staff interpreters or contracting for interpreters when there is frequent need for interpreting services. *See Guidance Document, 67 Fed. Reg. at 41462.* As described above, "certified" interpreters are coordinated through the Maricopa County Superior Court and other courts for court appearances and legal visits. However, in the everyday functioning of the jails, it is MCSO's professional, administrative opinion that hiring or contracting for "certified" interpreters would not be a reasonable or suitable language assistance service. More importantly, as exemplified below, it would pose a safety risk given the jail facility setting. While in some other types of settings, employing a "certified" interpreter would be of benefit, the bilingual staff employed by MCSO are not only best suited to understand the conversational level of the languages most commonly used in the jails, but have also received the proper training to safely work inside a jail facility. MCSO's jail facilities range from minimum security to maximum security facilities, and house those awaiting trial on serious and violent felonies. For the safety of the interpreters, the other staff and inmates, "certified" interpreters are not employed or contracted solely for providing daily interpretative services. It is for these same reasons that MCSO does not use community members or volunteers for interpretive services.⁶

(i) Bilingual Officers

MCSO employs hundreds of bilingual or multilingual officers in its jails. These highly trained and experienced officers are capable of providing competent interpretive services to inmates and visitors. Currently, there are approximately 420 detention

⁶ MCSO allows volunteers to enter the jails to teach its voluntary educational programs provided by Adult Programs which falls under the Custody Support Division. However, these classes are conducted in a highly controlled environment with security measures in place. The same protection could not be offered to interpreters in order to match the access that bilingual officers already have. Bilingual officers are available to assist in any situation in all areas of the jails. It would not be practical, or safe, to allow interpreters this level of unfettered access.

officers capable of speaking, reading and/or writing in 64 different languages.⁷ Exhibit 5 is a list of all of MCSO's bilingual and multilingual officers. Exhibit 5 demonstrates that roughly 20 percent of all officers are bilingual or multilingual. Of those, 14 percent, or 294 officers speak, read and/or write in Spanish. Moreover, many more officers speak and understand Spanish at a level of proficiency that allows them to converse in the jail setting. Officers are not only allowed, but are encouraged to use their Spanish and other language skills while in the jails. All of the jail facilities have Spanish speaking bilingual officers assigned to shifts, as do the Ancillary Services Unit, the Canteen⁸, the Classification Section, the Custody Support Unit (responsible for adult programs), the Food Services Unit, Housekeeping, Central Intake, the Transportation Unit, and the laundry facility, which are all part of MCSO. When funding was available, MCSO officers who wanted to learn Spanish had the opportunity to take introductory Spanish classes offered by MCSO and the Governor's Office of Highway Safety. Further, because of MCSO's non-discriminatory hiring practices, there are a number of LEP officers and employees who require assistance in interacting with *English* speaking inmates.

It has been MCSO's standard practice for over 20 years that Spanish speaking officers assist inmates by providing interpretive services. MCSO has found that utilizing bilingual officers in this manner is highly effective, given the unique environment in the jail facilities. Bilingual officers are able to respond immediately to a wide variety of situations that arise in the jails ranging from giving general instructions and answering questions, to handling emergencies. It is the general practice for bilingual officers to make announcements to inmates in both English and Spanish. Further, bilingual officers are versed in the specific lexicon of the jail facilities and law enforcement generally. Certain words and phrases that are common in the jails may not have the same meaning in a formal translation. For example, a "shank" is a common term for a weapon, a "kite" is a note passed between inmates and a "stinger" is a device used to light cigarettes. Officers also learn common gang slang terms and references, such as words indicating that an inmate might be in danger. Special attention is also given to understanding different non-verbal communications, such as gestures and body language, which sometimes vary between cultures and nationalities. Having "certified" language interpreters, who are unfamiliar with the many dialects and unique terminology spoken in the jails would be far less efficient and may pose a danger to the inmates, staff and the interpreters themselves.

Bilingual officers understand and expect that their language services will be utilized on a daily basis by inmates and other staff. As described above, the large number of bilingual officers allows MCSO to have bilingual, Spanish speaking officers available to assist Spanish speaking inmates throughout the jail facilities.

⁷ Detention officers voluntarily self-report their language ability. Some officers speak, read and/or write in more than one language.

⁸ The Canteen is a service offered to inmates through which they can purchase various items during incarceration such as food items, toiletries, writing materials and calling cards.

In the past, MCSO actively recruited bilingual officers. For example, MCSO would make job postings in Spanish newspapers. Currently, MCSO does not need to specifically recruit bilingual officers because MCSO already receives a large number of applicants with bilingual skills and each recent detention officer class has been composed of officers with different cultural backgrounds, national origins and language abilities. That said, language ability has always been just one of many factors evaluated in hiring officers, and MCSO officers do not receive additional salary based on language ability.

From a practical standpoint, because of the large number of both inmates and officers who are Spanish speakers, use of Spanish is common throughout the jails on a daily basis. These conversations are not recorded or tracked as part of an official protocol, but are part of a regular day. Experience has shown that utilizing both English and Spanish is the most effective and professional means of communication. In fact, it would absolutely hinder the operation of the jails if there was no communication in Spanish. From a safety perspective, MCSO officers and inmates need to be able to communicate in Spanish, and do so with MCSO's encouragement.

(ii) Foreign Language Skills Roster

To increase efficiency and provide fast and accurate language assistance, MCSO created a database called the Foreign Language Skills Roster detailing the language capabilities of its detention officers. Detention officers voluntarily elect whether to report their language abilities for inclusion in the database. The database is available on the MCSO computer system and is accessible from all jail staff computer terminals, thereby linking the MCSO's vast bilingual officer resources together. When a LEP inmate enters one of the jail facilities, the MCSO officers are able to quickly locate a bilingual officer who can assist in interpretation and translation, as needed. For inmates who speak a less frequently spoken language, it is MCSO's common practice that once an MCSO officer is located in the database, a notation that the officer is available for language assistance is placed in the Jail Management System ("JMS"). When practical, the officer will make himself or herself available when interpretation services are needed, throughout the inmate's incarceration.

The database contains the officer's name, serial number, his/her current assignment and the language in which he/she speaks, reads, and/or writes. *See Exhibit 5.* It features tabs which allow the user to sort by language, for easy access. For example, if the user sorts by Spanish, the search yields the names of 294 officers bilingual in Spanish. *See Exhibit 6 (Spanish).* The database also provides notes on some of the less commonly spoken languages to assist officers in finding a detention officer with appropriate capabilities. *See Exhibit 7 and Exhibit 8 (MCSO recently released this Briefing Board reminding MCSO staff members of the database and its location on the system).*

The database demonstrates that communications are not limited to only English and Spanish. At the Durango Jail alone, officers collectively speak 20 languages other

than English.⁹ Either an officer on shift or an officer located through the language abilities database will assist a LEP inmate by interpreting the Inmate Rules and Regulations and any other information. Once again, the open use of multiple languages on a daily basis demonstrates that there is no "English-only" policy in the jails.

(iii) AT&T Language Line

MCSO has recognized for many years that even with the vast resource its bilingual officers provides, the jails will encounter LEP persons who speak a language in which no officer is competent to interpret. For this reason, MCSO utilizes a Language Line through vendor AT&T. As noted in the Guidance Document, language lines provide "speedy interpreting assistance in many different languages." Guidance Document, 67 Fed. Reg. at 41462. The Language Line provides contact with a network of operators capable of interpretation in over 150 different languages. In past years, Language Line calls included such diverse languages as Vietnamese, Polish, Farsi and Arabic. There is no restriction against use of the Language Line for Spanish interpretation. MCSO's Language Line Services Policy states: "The Office subscribes to the Language Line Services, which provides the Office with 24 hour a day access to interpreters in more than 150 languages. When, in the performance of his duties, an employee of the Office requires oral or document interpreting service, the employee may use Language Line Services." Exhibit 9 (MCSO Policy G1-5, Language Line Services).

The procedure for use of the Language Line is standard at each facility. Step-by-step instructions for the Language Line are posted in the intake areas, release area and the housing units for reference by the MCSO officers and employees. See Exhibit 10. To use the Language Line, the officer proceeds by calling the 1-800 number established by the AT&T Language Line and the MCSO Communication Division. The officer must provide his or her name, other identifying information and the language needed to the operator. If the officer cannot identify the language needed, he or she may use the language identification cards or put the inmate on the telephone. Interpretation can be accomplished using conference calling, two telephones, speakerphone, or by putting the inmate on the telephone and having the interpreter relay the message to the officer. Also, the officer is able to identify whether or not the call is an emergency, as the Language Line is equipped to handle both situations. The inmate then communicates with the operator and the interpreter will relay the information.¹⁰

The Language Line is available for use throughout MCSO's facilities. As discussed in Section IV (c) (2), the Language Line is most frequently used in the jails during the classification stage. In the classification area, interview booths equipped with telephones provide immediate access to this service for the Classification Specialists. Classification Specialists will then note the language needs of the inmate in JMS, in the

⁹ Currently, officers at the Durango Jail speak Arabic, Austrian, Danish, Dutch, French, Gaelic, Kiro, Polish, Romanian, Samoan, Spanish, Vietnamese, Hindi, Malayalam, Pampanga, Tagalog, Tamil, Urdu, Ga and Twi.

¹⁰ Invoices from Language Line use are available for review upon request.

comments section, so this information can be provided to detention staff in the housing units. If the Language Line service is needed within the jails, the officer will escort the inmate out of his or her housing unit to a telephone within the facility and place the call with the inmate. The officer will then escort the inmate back to his or her housing unit. Again, because of the large number of bilingual officers, the Language Line service, while available, is not frequently needed within the jails.

(iv) Emergency Procedures

MCSO officers are "first responders" when there is a medical emergency or any other type of emergency, such as an escape, fire, hostage situation, riot or evacuation in the jails. MCSO officers follow emergency procedures, meaning that depending on the situation, officers may call 911 or a Correctional Health Services ("CHS") employee, or lock down the inmates in accordance with their specific facility's procedure.¹¹ See Exhibit 12 (MCSO Policy DA-1, Emergency Procedures for Detention Facilities). If the emergency involves a LEP inmate, bilingual officers are immediately called to interpret. Other inmates also assist in interpretation during emergencies. Medical care is not withheld or delayed because of an inmate's language.

(2) Translation

MCSO has taken affirmative and exhaustive steps to ensure that vital documents, notices, rules and forms are provided in both English and Spanish, throughout the jail facilities.¹²

(i) Inmate Rules And Regulations

During an inmate's initial orientation to the jail system, each inmate receives a copy of the Inmate Rules and Regulations. The Inmate Rules and Regulations are fully available in both English and Spanish, and have been available in both languages for the past 25 years. In fact, it is MCSO policy to make the Inmate Rules and Regulations available in both English and Spanish. See Exhibit 13 (MCSO Policy DJ-1, Rules and Regulations for Inmates) ("Distribution of Rules and Regulations: Each jail shall maintain an adequate supply of the Rules and Regulations in both English and Spanish."); see also Exhibit 14 (MCSO Policy DD-1, Authorized Inmate Possessions) ("The property

¹¹ CHS, which is a separate entity from MCSO, provides medical care and medication to the inmates in the jails. MCSO understands that CHS intends to submit its own position statement in response to the complaint from the DOJ, if the DOJ so requests. See Exhibit 11 (letter from Laurence Tinsley, Senior General Counsel, Maricopa County Office of General Litigation Services to Clarisse McCormick stating that CHS will be filing a separate position statement).

¹² MCSO's decision to translate the Inmate Rules and Regulations and the many notices and forms into Spanish only was made after a cost benefit analysis, as supported by the Guidance Document. For inmates who do not speak English or Spanish, the Classification Specialists will work with court interpreters (when available) or the Language Line to ensure that the critical sections of the Inmate Rules and Regulations are covered with the inmate.

container shall include the following items... 6. A copy of the Rules and Regulations for Inmates in English or Spanish as requested by the inmate..."). Translation of the Inmate Rules and Regulations was contracted to a private vendor, Flores and Associates. See Exhibit 15. Because the Inmate Rules and Regulations are periodically updated (on average, every two years), new Spanish versions are also created. MCSO recently signed a contract with a new vendor, Alicia Nieto Jacobs Translation Services, to translate the most recent version of the Inmate Rules and Regulations.¹³ See Exhibit 16.

(ii) Notices And Forms Throughout Jail Facilities

MCSO actively translates hundreds of notices, forms and various postings into Spanish on a yearly basis. These translations have always been a proactive, commonsensical approach to addressing the needs of Spanish speaking LEP inmates.

Notices posted throughout the jails describe health and medical information (including identifying symptoms for common illnesses), schedules for religious services and classes and other general information helpful to inmates during incarceration. An index of postings from the Lower Buckeye Jail, and copies of the Spanish postings are attached as Exhibit 17. As evident from the index, not every posting is translated into Spanish. However, the many bilingual Spanish speaking officers are available to assist inmates with interpretation, and translation. In actual practice, inmates frequently assist each other as well.

Many forms available to inmates have also been translated into Spanish. At Central Intake, for example, a majority of the intake forms and IA Court forms are available in both English and Spanish. Within the jails, Inmate Request Forms, which are used by inmates to request a variety of services (for example, items from the Canteen, library requests, participation in a class or program) are printed in both English and Spanish. See Exhibit 18. MCSO also is currently in the process of translating several more of its most commonly used forms into Spanish.¹⁴

Although there are some forms that have not been translated into Spanish, all forms may be completed in Spanish. Bilingual officers are frequently asked to translate when inmates and/or visitors complete a form in Spanish or make any kind of written request in Spanish. Years of experience specific to the jail facilities make bilingual officers most efficient at translating these documents. Additionally, utilizing bilingual officers for these translations helps ensure a faster resolution.

(iii) Translation Services Provided By Bilingual Officers

¹³ This version was released for distribution in both English and Spanish on March 1, 2010.

¹⁴ MCSO is currently translating and preparing for distribution its Inmate Legal Services Request Form, Disciplinary Appeal Form, Inmate Grievance Form, Institutional Grievance Appeal Form, External Grievance Appeal Form and Visitation Form. MCSO's goal is to have these translated forms available for inmates and visitors by July 1, 2010.

MCSO also utilizes its experienced bilingual officers as a supplement to its translations completed by outside vendors. Bilingual officers serve as a quality control check to documents translated into Spanish. These officers are encouraged to provide suggestions and critiques to translated documents, thereby further utilizing their experience.

(iv) Language Line Translation

The Language Line provides another translation option. MCSO officers may call Language Line Services to arrange for document translation. This translation service provides a method of translation when no bilingual officer is able to assist.

(3) Additional Language Assistance Services

In addition to the interpretation and translation services described above, MCSO takes extra steps to make sure a LEP inmate's language needs are accommodated. If an individual inmate requires a unique accommodation, MCSO makes every effort to provide that inmate with meaningful access. For example, in March of 2009, a LEP inmate was having difficulty placing a legal call to the Chinese Consulate in California. The telephone number reached an automated service that was not compatible with the Inmate Telephone System. MCSO officers worked with the Inmate Telephone System to resolve the issue and the inmate successfully completed the call.

MCSO also makes efforts to work with vendors who can provide accommodations to LEP individuals. MCSO contracts with TouchPay to provide a service for families and friends of inmates to deposit money in the inmate's account. Inmates can use this money to make purchases at the Canteen. TouchPay now offers Spanish menu versions of the TouchPay kiosks located within the jails.¹⁵ The TouchPay system also has a telephone option with menus available in both English and Spanish.

(c) Notice to LEP Inmates, Their Family Members, And The Public of Language Assistance Services

Consistent with the Guidance Document, all of MCSO's language services are provided free of charge to inmates and their families. LEP inmates receive interpretive services by bilingual officers concurrent with the need of these services. When an officer determines that use of the Language Line will be necessary, the officer facilitates this call. Thus, in the practical operation of the jails, inmates are informed of the language assistance services as the need arises. Because of the many Spanish speaking bilingual officers, language needs can generally be addressed immediately for Spanish speaking LEP inmates. MCSO also is in the process of creating a sign written in Spanish that will

¹⁵ TouchPay is an outside vendor used by MCSO. TouchPay provides three user interfaces: the kiosks, the TouchPay IVR (telephone) system, and the TouchPay web portal. The web portal is currently available in English only.

be posted at Central Intake, Classification and the Self Surrender Center, informing arrestees and inmates that if they do not speak English, language assistance will be provided to them.¹⁶

Currently, the best source of information for the general public regarding any questions related to the jails is the MCSO's jail information hotline. A caller may call with a specific question, including a question about language services, and request the assistance of an operator in both English and Spanish. The MCSO's website provides a telephone line established specifically for Spanish speakers that is displayed on the website's main page and is described in Spanish. *See Exhibit 19 (www.mcso.org: Jail Information: Para la información en español tocante la cárcel, por favor llame 602-876-0322).* Additionally, the Communication Division of the Sheriff's Office currently employs two receptionists who speak Spanish.

(d) Inmate Requests For Interpretation And Translation Services

Because of the number of bilingual MCSO staff available, a LEP inmate's interpretation and translation needs are generally accommodated simultaneous to when the need arises. However, LEP inmates also may make a formal written request, using an Inmate Request Form, for translation or interpretation of jail related information or assistance. This method for requesting assistance will be included in the next revision of the Inmate Rules and Regulations. (As noted, a formal request is not required; informal requests arise on a routine basis and are addressed.)

(e) LEP Coordinator

The Inmate Classification Section is responsible for managing and overseeing MCSO's language assistance services. The Classification Administrator, or his designee, is the LEP Coordinator for the MCSO jails. In addition to conducting general facility reviews, Classification Specialists also monitor the various language assistance services MCSO provides, as well as the needs of LEP inmates.

II. MCSO's Ongoing And Innovative Approach To Serving LEP Persons

In addition to the interpreter and translation language assistance services MCSO provides to inmates, MCSO is constantly improving access to language assistance on its own initiative by offering additional services to inmates and training to officers. MCSO also is in the process of updating its website to offer translated portions to assist inmates' families in obtaining basic jail information. MCSO recently added a Spanish translation of its Self Surrender, Work Furlough and Work Release section to its website. *See*

¹⁶ The sign for Central Intake, Classification and the Self Surrender Center will state in Spanish "If non-English speaker, language assistance may be provided upon request."

Exhibit 38.¹⁷ Many of these accommodations go far beyond the suggestions made in the Guidance Document.

(a) Inmate Telephone System And Other Telephone Services

MCSO has for many years recognized that LEP inmates require specialized assistance for telephone usage. Communication via telephone is important for inmates as it serves as a method of contact with both family and friends, and legal counsel. MCSO has also taken into consideration the significant number of Mexican nationals, inmates with Mexican heritage, and inmates with family members located in Mexico in developing its telephone service plan for inmates. By combining all of these factors, MCSO has, for the past nine years, maintained a contract with a telephone service provider offering a collect call service to all inmates with accommodations for Spanish speaking inmates.

The contract and the negotiations leading up to the telephone service itself demonstrate MCSO's longstanding commitment to providing LEP persons with meaningful access to services during their incarceration. MCSO first negotiated its contract for the Inmate Telephone System ("ITS") in 2000. *See* Exhibit 20. MCSO took affirmative steps to ensure that ITS would be accessible for Spanish speaking inmates. *See id.* at 2.8.9 ("2/11/00 Clarification Question: Will you include * information on telephone label and in the branding, so Spanish speaking inmates know immediately what to do?").

ITS is a collect call service provided to inmates. It allows for both legal collect calls (legal calls are no charge to inmates) and collect calls to family and friends. The menu is available in both English and Spanish and inmates will immediately select their language choice. *See* Exhibit 20 at 2.10.6.6. From that point, inmates are able to select whether they are making a "legal" call (a call to legal counsel, court appointed investigator, etc.) or a non-legal call (a call to family, friends, etc.). Legal calls are coordinated by the inmate's legal counsel, who is responsible for making arrangements with the Maricopa County Superior Court Office of the Court Interpreter. ITS allows the inmate's legal counsel to connect an interpreter into the call, if necessary. Both the inmate and the recipient will be able to listen to instructions in either English or Spanish.¹⁸ *See* Exhibit 22 (Value Added Communication Statement of Work, at 5.3.7, 5.3.8); Exhibit 23 (Inmate Telephone Branding by Call Category). MCSO officers are also trained on the ITS system and how to assist inmates in using the System. Additionally, MCSO made extensive efforts to ensure that the instructions were appropriately translated to Spanish, taking into account, for example, the different interpretations of words such as "recorded" and "monitored." *See* Exhibit 24 (email

¹⁷http://www.mcso.org/index.php?a=GetSubModule&sm=Self_Surrender&rmn=Our_Jails&page=Surrender_Span.

¹⁸ Value Added Communications also makes instruction in both English and Spanish available on its website for call recipients to establish an account. *See* Exhibit 21.

communication from Linda Christophel to Rafael Gutierrez, Apr. 27, 2004, demonstrating efforts to ensure proper translation of the System menu). MCSO also provides a service for inmates to make outgoing calls to people with cellular telephones. Notice of this service was provided in both English and Spanish. *See Exhibit 25.*

Non-Spanish speaking LEP inmates are also able to make calls using the inmate telephones. Because MCSO employs a diverse staff with a variety of language skills, its bilingual officers can virtually always assist as on-hand interpreters in non-English, non-privileged calls. Alternatively, the Language Line also is available to assist any LEP inmates with using the ITS, or for any other reason.

Since 2000, MCSO has continued to work with its telephone vendors to improve the language access for Spanish speaking inmates. In 2005, for example, AT&T opted to discontinue its international collect calling from payphones. MCSO immediately perceived that this would negatively impact its inmate population with contacts in Mexico, many of whom were LEP Spanish speakers. MCSO initially remedied this situation by providing International Calling Cards, for purchase, through the Canteen. *See Exhibit 26* (Memorandum from the ITS manager to the Director of Telecommunications Technology Division regarding making International Calling Cards available through the Canteen for inmates to purchase). Again, Inmate Request Forms are printed in both English and Spanish and therefore International Calling Cards, and all other Canteen items, are accessible to Spanish speaking LEP inmates. Further, calling card information and instructions are printed in both English and Spanish. *See Exhibit 27.* In 2008, MCSO contracted through NCIC Communications to reestablish international collect dialing to Mexico. *See Exhibit 20* at 2.8.22. Notices distributed in both English and Spanish informed inmates of their option to make collect calls to Mexico through ITS. The notices also detailed the instructions for making collect calls. *See Exhibit 28.* Inmates currently have the option to purchase prepaid calling cards or calling collect to Mexico through ITS.

Lastly, all inmates have equal access to telephones in accordance with their classification level and ability to exercise privileges. *See Exhibit 29* (MCSO Policy DK-2, Inmate Telephone System) ("It is the Policy of the [MCSO] to allow inmates access to telephone service (subject to some restrictions) while maintaining the safety and security of all inmates, detention personnel, the public, and crime victims through the use of a computerized telephone system."). The Inmate Rules and Regulations provide instructions on telephone usage. *See Exhibit 30* at section 23. Inmates are never restricted from the telephone privilege because of their language ability. In the podular configuration housing units, telephones are located in each pod. In the dormitory style housing units, each dormitory room is equipped with telephones. Telephones are also available to inmates assigned to the Tents Complex in the day rooms. Generally, collect calls can be made from 8:30 a.m. to 10 p.m. and legal calls can be made from 8:00 a.m. to 5:00 p.m. in all facilities. However, if an inmate requires the use of the telephone for a legal call beyond these hours, an inmate will be granted a Special Circumstance Call, with prior written approval from the Jail Commander.

(b) Google Translate

As technology advances for translation services, MCSO is able to utilize new services in its jails. Google Translate is a free online service offered by Google that provides instant translation in 51 languages. MCSO has equipped control rooms in each jail facility with a computer linked to the internet, capable of connecting to Google Translate. This service provides a new and innovative translation method for MCSO officers.

(c) Inmate Library Resources

The Inmate Library shelves foreign language books and magazines so that LEP inmates who cannot read in English are able to obtain reading material. MCSO policy mandates that books and reading materials be made available to inmates in both English and Spanish. See Exhibit 31. The library offers selections in not only Spanish, but also French, German, Japanese, Vietnamese and Braille. Additionally, the library makes English textbooks available for inmates learning to speak English.

Inmates do not personally visit the library. Inmates use an Inmate Request Form (printed in both English and Spanish) to indicate their choice of reading material. This system allows equal access for inmates housed at the different facilities. Generally, inmates will make a request for a genre or topic, such as "westerns" or "mystery," but specific titles can be requested as well. Spanish speaking inmates will make this request in Spanish, and the library staff frequently fills requests in Spanish. Inmates also share reading materials amongst each other, and thus information about library resources also is communicated between inmates.

(d) Jail Intelligence Division -- Inmate And Personnel Safety And Security

MCSO operates the Jail Intelligence Division in all six of its jail facilities. It is comprised of three units: Jail Intelligence Unit, Inmate Telephone Monitoring Unit and Inmate Telephone Records Unit. The purpose of the Jail Intelligence Division is to collect and analyze information with the goal of making the jails safer for inmates and MCSO personnel. See Exhibit 32 (MCSO Jail Intelligence Mission Statement). It also is available to assist in crisis situations. The Jail Intelligence Division works in conjunction with the command staff to gather information by interviewing inmates, monitoring non-privileged inmate telephone calls and Inmate Request Forms, reviewing surveillance videos and assisting in pod and cell searches. If information collected from an inmate involves an inmate's family, the Jail Intelligence Division has the capability to contact MCSO or other outside law enforcement agencies to assist, if necessary.

To provide effective protection for all inmates, the Jail Intelligence Division employs many bilingual and Spanish speaking officers to communicate with LEP inmates. Of the 20 total officers and supervisors, over half are bilingual Spanish

speakers, with an average of four years experience in the Jail Intelligence Division. Spanish speaking officers are able to conduct interviews with Spanish speaking inmates.

The Jail Intelligence Division also works with state and federal agencies to monitor domestic and international crime. Because of Maricopa County's close proximity to Mexico, the Jail Intelligence Division collects and records information on organized crime and gangs both in the United States and in Mexico, and tracks the drug trade between the United States and Mexico. These efforts assist the Jail Intelligence Division in keeping all inmates safe, including Mexican nationals and inmates with families in Mexico.

(e) Inmate Legal Services

Inmate Legal Services ("ILS") provides legal services to inmates who are representing themselves in criminal or civil cases. Staff members respond to inmate requests for legal forms, materials and legal research. They will also make court filings for inmates. While the Inmate Legal Services Request Form is currently available in English, MCSO is in the process of translating a Spanish version of this form. Additionally, inmates may currently request legal materials using the Inmate Request Form, which is available in both Spanish and English.

ILS currently employs a total staff of 12. Of those, three staff members speak Spanish and are available to assist Spanish speaking inmates. However, ILS has limited resources and because many court forms must be completed in English, and specifically in the District Court of Arizona, all pleadings must be written in English, inmates who read and write no or minimal English are typically informed by ILS, in their own language, to seek legal assistance from the Public Defender's Office or an attorney.¹⁹ For those inmates, typically bilingual, who need some Spanish language assistance in order to represent themselves, ILS will provide assistance with materials and on preparing and filing legal motions, whenever possible.

(f) MCSO Officer Training

MCSO understands that a highly trained work force is essential to its approach to serving LEP persons, as well as the overall functioning of the jail facilities. Therefore, MCSO provides intense training for both new recruits and current officers. The training not only prepares staff to be qualified detention officers, but also provides specific training to address the needs of LEP inmates.

In addition to the classroom training recruits and employees receive, MCSO officers quickly learn the culture within the jails and the day-to-day operation of the jails on the job. Because Spanish is spoken with frequency, even officers with no formal language training coming into the jails learn key words and phrases in Spanish, such as

¹⁹ See LRCiv. 7.1(b)(1) ("All pleadings and other papers shall be written in the English language...").

asking inmates to line up, put their hands behind their back, walk together, change their clothes and other basic instructions. They also learn to listen for key words or phrases in Spanish that might indicate a problem or a safety issue. Again, this on-the-job training and experience makes MCSO officers the most effective resource to assist inmates with language needs. Officers also receive specific instructions on Language Line procedures for both interpreter and translator services. Instructions are also posted for reference. *See Exhibit 10.*

(1) Basic Detention Academy And On Line Training

MCSO's officer training academy is called the Basic Detention Academy. It is a nine-week program with 360 hours of instruction. Completion of the program is mandatory for all detention officers. Classes are accredited through Rio Salado College in Maricopa County.

As part of the Basic Detention Academy curriculum, recruits attend a mandatory class on Jail Diversity. *See Exhibit 33* (Basic Detention Academy class schedules for "week seven" for both 2008 and 2009). The class focuses on familiarizing recruits with issues created in dealing with people with varied customs, beliefs, lifestyles, social, physical, psychological, and economic needs. Specific attention is paid to training on language and cultural barriers. *See Exhibit 34* (Jail Diversity curriculum, at Section III A and B). The lesson extensively addresses the ills of racial prejudice and bigotry, emphasizing that national origin and other forms of discrimination are inappropriate at MCSO, or in society at large.

The Language Barriers lesson during Jail Diversity training reiterates that MCSO's Inmate Rules and Regulations are written in both English and Spanish, and that officers are free to ask for the interpretive services of other officers. It also parallels the DOJ's Guidance Document's directive that fellow inmates can be asked to assist if the communications do not delve into confidential matters:

Inmates Rules and Regulations are in English and Spanish. If you can not speak Spanish and there is an Officer working who can, ask them to interpret. If you speak Spanish and do not feel comfortable, you do not have to interpret. You may also use an inmate to interpret as a last alternative, as long as, the information you are asking of the inmate is not of a confidential nature. Care must always be taken to ensure that constitutional rights of the inmate are not violated.

MCSO Jail Diversity curriculum, III A. Exhibit 34. During this lesson, recruits also learn about the language assistance services MCSO offers to LEP inmates, including the AT&T Language Line and the Foreign Language Skills Roster. Again, this mandatory course underscores that no "English-only" policy exists in the MCSO jails.

MCSO also is in the process of developing in-service and on-line training courses designed to inform officers of expanded language assistance services as enhanced accommodations are implemented. These will supplement the Briefing Boards currently released to officers and staff members. The in-service training will also serve as a refresher training course for officers on the language assistance services MCSO offers.

(2) Advanced Training Courses And Language Classes

In addition to the Basic Detention Academy curriculum, there are various advanced training courses available to detention officers. See Exhibit 35 (2009 Advanced Training Calendar). The Governor's Office of Highway Safety offers elective courses for officers. One such class that has been offered in the past is "Spanish Training for Law Enforcement." See *id.* ("Spanish Language Training" course description). This was an elective course designed to teach officers key Spanish words and phrases to aid in interaction with Spanish speaking individuals. Sections covered included: introductory Spanish and useful law enforcement vocabulary, arrest/command expressions, interview questions and report information, specific questions for incidents (such as, specific crimes), family member and surname information, Miranda warnings, danger expressions, and gang slang, drug and weapon terminology. The course began in 2007 as a three-day course and was offered through the beginning of 2009.²⁰ See Exhibit 36 (Advanced Training Calendar 2008); Exhibit 35 (Advanced Training Calendar 2009). The 2009 course was designed as a five-day course. In 2008, as an extension of this course, detention officers who excelled were offered a Spanish immersion class that was previously offered only to sworn officers. Due to budgetary reasons, the Governor's Office is not currently able to offer "Spanish Training for Law Enforcement." If these classes resume, MCSO will continue to encourage officers to attend.

Some MCSO personnel receive individual training based on the requirements of their positions. For example, the Classification Section trains all Classification Specialists to complete simple inquiries and communicate basic instructions in both English and Spanish. Thus, there are several Specialists available to assist if a language question arises. Bilingual Classification Specialists also are available to conduct classification interviews, as well as address issues or concerns. The Classification Section also plans to supplement its training with in-service training on the language assistance services it provides. The 287(g) detention officers also receive additional training on immigration and nationality laws, the DOJ's "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" and cross-cultural issues. See Exhibit 37 (Memorandum of Agreement between the United States Immigration and Customs Enforcement ("ICE") and Maricopa County, at 5).

(3) Individual Efforts

²⁰ There were also similar classes offered from 1996-2000.

MCSO officers also participate in language training on their own initiative. Some officers have found it helpful to learn Spanish through community classes or self study. A common study guide called "Speedy Spanish for Corrections Personnel" is used by officers (available on line at: <http://www.speedylanguage.com/ssc.html>). These additional individual efforts are entirely voluntary.

(g) Community Access To Jail Information

MCSO is continuing its ongoing effort to provide community members with greater access to non-confidential jail and inmate information. MCSO acknowledges that the worldwide web now provides an easily updated medium which can reach a large percentage of the community. With this in mind, MCSO is currently updating its website to offer certain portions translated into Spanish. MCSO recently added a translated section allowing persons to access Self Surrender, Work Release, and Work Furlough information and forms. This information is available in both English and Spanish. It includes the items that persons must have when arriving at the Self Surrender Center, work program details, and a description of items that are authorized and unauthorized for inmates to possess. See Exhibit 38. These updates will put MCSO on the cutting edge of website development for law enforcement and correctional department agencies, as a review of many other sheriff's offices' websites demonstrates that most offer little, if any, information in Spanish.

Currently, MCSO offers jail information to Spanish speakers through its jail hotline. If a Spanish speaking LEP person calls the jail facilities, his or her call will be handled by a Spanish speaking MCSO staff member. MCSO continues to improve its language assistance plan as technology advances and more resources become available.

III. MCSO's Approach To The Four Factors Stated In The DOJ's Guidance Document

The Guidance Document suggests that any recipient of federal funds under Title VI assess and discern how it addresses LEP issues. As evidenced by the various components of its language assistance plan described above, MCSO has for many years been aware of and complied with its obligation to provide language assistance to LEP individuals. In fact, some of its accommodations were implemented more than 20 years ago. The DOJ explains in the Guidance Document that four factors should be used to determine the extent of a recipient's obligation to provide services to LEP persons. MCSO has consistently evaluated and applied these factors in developing its language assistance plan.

The first factor is "the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population." Guidance Document, 67 Fed. Reg. at 41459. When a greater number of LEP persons are part of the service population, then it is more likely language services will be needed. See *id.* The Guidance Document suggests recipients examine prior experiences with LEP persons to

determine the "breadth and scope" of the language assistance needed. *See id.* at 41460. The second factor is the "frequency with which [recipients] have or should have contact with a LEP individual from different language groups seeking assistance." *Id.* Higher frequency of certain language groups indicates that "enhanced" language services will be needed. *See id.* Likewise, the Guidance Document provides that "less frequent contact" with certain language groups requires a "less intensified solution." *See id.* The third factor is the "nature and importance of the program, activity or service provided by the program." *Id.* Certain programs which have greater consequences for individuals, especially those affecting a person's rights and freedoms, require more accommodations. *See id.* The fourth factor is the "resources available to the recipient and costs." *Id.* Recipients should take into account the resources available to them when determining what language assistance services to provide. *See id.* To ensure that constitutional protections have been honored, while at the same time protecting the safety and security of officers and inmates, MCSO has long considered the data and factors now articulated as the four factors in the Guidance Document.²¹

Prior to the release of Executive Order 13166 and the subsequent release of the Guidance Document, MCSO began analyzing its LEP inmate population and specifically addressing the needs of LEP inmates. MCSO's policies and procedures demonstrate that there is not, nor has there ever been, a policy requiring that only English be spoken in the jail facilities. Indeed, MCSO policies show that just the *opposite* is true. MCSO's policy regarding communications with inmates, which became effective as of October 6, 1990, states: "All Detention personnel shall strive for effective verbal and written communications with inmates and all such communication shall be done in a professional manner." MCSO Policy DK-4, Inmate Communications, attached as Exhibit 39. In the MCSO jails, "effective" communication requires the use of both English and Spanish.

Several of MCSO's other policies explicitly require accommodation for LEP inmates. MCSO's policy dictates that Inmate Rules and Regulations must be provided in both English and Spanish. *See Exhibits 13 and 14.* The policies for the inmate disciplinary procedure and the inmate grievance procedure both explicitly state that "[a]ll jails shall make a reasonable effort to provide someone to interpret for those inmates who are illiterate or who do not read or communicate in English or Spanish." Exhibit 40 (MCSO Policy DJ-2, Inmate Disciplinary Procedure); Exhibit 41 (MCSO Policy DJ-3, Inmate Grievance Procedure; Sample Inmate Grievance Forms submitted in Spanish). It also is the policy of the MCSO to provide books and other reading materials in both English and Spanish in the Inmate Library. *See Exhibit 31 (MCSO Policy DP-3, Inmate Library Services)* ("This Policy establishes guidelines for providing inmates access to a wide variety of books and other reading materials, in both English and Spanish, to fulfill their educational and recreational reading needs.")²²

²¹ *But see Pratt v. Rowland*, 65 F.3d 802 (9th Cir. 1995) (finding that courts should afford appropriate deference and flexibility to prison officials).

²² Additionally, although the Arrest Procedures Policy applies to the arresting officers, and not the detention officers, it is noteworthy that the MCSO's Policy provides the mandatory advisory regarding contacting the Consular office of an arrested foreign national in both English and Spanish. *See Exhibit 42*

MCSO also acknowledged several years ago that its LEP population was becoming growingly diverse and subsequently took affirmative steps to accommodate inmates with limited English proficiency. For example, in a letter dated March 17, 1997 from the Sheriff's Office to the Office of the Court Interpreter, the Sheriff's Office makes the following request:

The Classification of inmates in Central Intake is critical to the Pre-Trial Detainees Housing while in the custody of the Sheriff's Office. During our assessment, the [Classification] Section determines any medical, psychological, suicidal ideations or program needs the inmate may have. Currently, when we encounter inmates whose primary language is other than English or Spanish, we contact the AT&T Language Line for interpreting services...If your designated interpreters could stop by the Classification Office on their way out of Central Intake, our staff could utilize the interpreters expertise to conduct the classification interview.

Letter from Joseph M. Arpaio, Maricopa County Sheriff to Mary Flurry, Office of the Court Interpreter (Mar. 17, 1997). Exhibit 43.

MCSO enforces a strict policy of non-discrimination based on national origin and prohibits disparate treatment based on race and national origin. In acknowledging the diverse population of both the MCSO jail facilities and Maricopa County as a whole, MCSO training materials for new recruits provide:

The State of Arizona has changed tremendously over the past five years, and will continue to do so in the coming years... In order to perform our jobs in an effective and professional manner, it is necessary to understand the various differences in our personal values and culture and those of the citizens we serve. It is not necessary to accept, agree, or change our own values and cultural uniqueness to understand the many changes and differences in our communities. However, it is necessary that we as professionals become aware of some characteristics and value systems of cultures other than our own and to understand our own views of the world to become more effective in how we do our jobs.

Cultural Awareness Trainer's Manual for Law Enforcement, 2001. Exhibit 44.

This emphasis on diversity also is mirrored by the officers that the MCSO employs. MCSO understands the value of employing a culturally diverse and multi-lingual staff. It not only better represents the community it serves, but also allows the MCSO to utilize the language skills of its staff. As a 2008 press release explained:

(MCSO Policy EA-11, Arrest Procedures). Further, officers are advised to use the AT&T Language Line if translation assistance is needed. *See id.* MCSO's commitment to providing accommodations to LEP persons extends throughout the Sheriff's Office.

On Thursday January 17, 2008 the Maricopa County Sheriff's Office will graduate 35 Detention Officers to begin work in the jails. This is not out of the ordinary, but this time the graduating class will include five officers who were born in other countries. The countries range from Great Britain to India, Romania, Mexico and Peru. They are not U.S. Citizens, but are employed as resident aliens with permits to work legally.

Maricopa County Sheriff's Office News Brief, (Jan. 17, 2008). Exhibit 45.

In developing its language assistance plan, MCSO has consistently considered the diverse community it serves and the importance of the services it provides to ensure meaningful access for LEP persons, as suggested by the four factors of the Guidance Document. In MCSO's opinion, it is one of the premiere agencies for addressing the needs of LEP persons and should be considered as a model plan by recipients of federal funds across the Country.²³

IV. The DOJ's Four Factors

(a) Factor 1: The Number Or Proportion Of LEP Persons Served Or Encountered In The Eligible Service Population

MCSO has performed an examination of the number of LEP persons it serves in its jail facilities for over 10 years. Since the early 1990s, MCSO has had a system in place to document every inmate who speaks a language other than English and every inmate who uses the AT&T Language Line for interpretative or translation services during classification. MCSO has used this information to improve its access to language assistance over the years. As recommended by the Guidance Document in the section specifically addressing Jails and Detention Centers, information regarding a person's language ability is initially collected during the intake and classification processes and maintained in the inmate's file in the Jail Management System ("JMS") for future reference. See Guidance Document, 67 Fed. Reg. at 41469.

When an individual first enters the MCSO jails at Central Intake, the arresting officer enters general biographical information into the Pre-Booking System. The Pre-Booking System allows the arresting officer to transfer custody of the arrestee to MCSO. The arresting officer has the option of entering the language spoken by an inmate at this stage. The field labeled "Interpreter Language" provides a drop-down menu where the officer selects the language. See Exhibit 46. This information is used by the Initial

²³ See Guidance Document, 67 Fed. Reg. at 41460 ("DOJ plans to work with representatives of law enforcement, corrections, courts [etc.] to share model plans and share best practices and cost savings approaches.").

Appearance ("IA") Court in arranging court interpreters.²⁴ The information also is transferred into JMS.

While the information entered by the arresting officer is helpful, the MCSO has its own identification stage, ensuring that each LEP inmate's language is recorded, even if it was already entered by the arresting officer. During the classification stage at Central Intake, Classification Specialists record the language spoken by a LEP inmate in JMS (for example, "Spanish speaker only") in the comments section. Exhibit 47 is a sample of a JMS entry indicating that the inmate is a Spanish speaker. At the Self Surrender Center at Lower Buckeye Jail, this information is recorded into JMS by a booking officer. Information from JMS, including language information, is printed on the rosters used by officers in each of the housing units in the jail facilities. Officers assigned to the housing units reference the roster each time they complete an Identification Headcount, which occurs at least twice per shift. See Exhibit 48 (MCSO Policy DH-6, Inmate Supervision, Security Walks, and Headcounts). Thus, officers working in the housing units with the inmates are aware of an inmate's language needs.

Language ability is again recorded in an inmate's file if the AT&T Language Line is used during the classification stage. Each time a call is made by a Classification Specialist to the Language Line, the Specialist fills out a "blue slip." See Exhibit 49. On the blue slip, the officer records the name of the inmate, the date and time of the call and the language used. Because of the large number of Spanish speaking officers, the Language Line is not often needed for Spanish speaking inmates during classification. However, the Language Line is always available for any LEP person and is sometimes used to contact Spanish language interpreters. Again, copies of the blue slips are placed in the inmate's file for reference.

As more fully demonstrated in part (c) of this Section, information collected and recorded at the intake and classification stages regarding language ability is used throughout the inmate's incarceration to assist in providing accommodations. It initially allows intake officers to begin coordination with the IA Court so the court employees can locate an interpreter. It also allows the Classification Specialists to attempt to arrange court interpreters to assist with the classification interviews. Further, if the language abilities database is used to locate an officer with certain language abilities, that officer will continue to assist the LEP inmate with translation and interpretation throughout incarceration, whenever possible.

In addition to the collection of information regarding the language(s) spoken by inmates, to maintain a more thorough assessment of its inmate population, MCSO records other demographic information including sex, age, race and national origin. The "Monthly Prisoner Recap ADP [Average Daily Population]" report for April 2009, attached as Exhibit 50, illustrates the statistics maintained in these categories. Statistics

²⁴ The IA Court and the arrangement of court interpreters are separate from the MCSO. The IA Court is a Court of Maricopa County. MCSO is not involved in court proceedings or the use of court interpreters.

are maintained on both ethnicity and citizenship as well. Exhibit 51 provides statistics on ADP by ethnicity through March of 2009. These statistics are further divided according to facility as demonstrated in Exhibit 52. Exhibit 53 provides the number of citizens by citizenship through March of 2009. Further, MCSO tracks statistics related to its Human Smuggling Unit. *See* Exhibit 54. This information allows MCSO to identify and analyze its inmate population as a whole in order to provide meaningful access to its diverse population.

(b) Factor 2: The Frequency With Which LEP Individuals Come In Contact With The Program

Executive Order 13166 also requires that meaningful access be provided "without unduly burdening" the fundamental mission of the agency. Executive Order 13166, 65 Fed. Reg. at 50121. An agency must take "reasonable steps," to ensure meaningful access to its programs and activities. *See id.* Taking into account the mission of MCSO at its jail facilities and the resources available to it, MCSO has taken very reasonable steps to accommodate both Spanish speaking and non-Spanish speaking LEP inmates.

As recognized by the Guidance Document, a recipient of federal funds should also consider the frequency of the languages spoken by the population it serves. The Guidance Document states, "[l]ess frequent contact with different language groups may suggest a different and less intensified solution." Guidance Document, 67 Fed. Reg. at 41460. The Guidance Document specifically provides the example of using a telephonic interpretation service in the context of less frequent and less predictable contact with language groups:

The plan need not be intricate; it may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services.

Id. MCSO has continually utilized this exact type of service by contracting for the AT&T Language Line service. This is just one of many accommodations available for LEP inmates.

Through the established methods of collecting language information, MCSO is able to monitor the frequency with which Spanish speaking inmates and other LEP inmates enter the jails. Information on the number of Spanish speaking LEP inmates and the use of the Language Line are maintained by the Classification Section on a monthly basis. During November of 2009, for example, the Classification Section interviewed 5,392 inmates. 520 of these inmates were Spanish speaking LEP persons, or roughly 10 percent. The Language Line was used one time to contact an Arabic interpreter. In the several months prior to November, the percentage of Spanish speaking LEP inmates was between 8.7 percent and 12.9 percent. Further, many of the Classification Specialists working in the Classification Section can and often do speak Spanish with the Spanish speaking LEP inmates.

MCSO's policy of tracking use of the Language Line at the classification stage through the blue slips provides MCSO with information regarding the frequency of languages encountered other than English. For example, for the first eleven months of 2009, the blue slips reveal that Classification Specialists used the Language Line for only 18 inmates, or an average of less than two per month. *See Exhibit 55 (sample blue slips for 2009).*

In accordance with the Guidance Document, based on MCSO's assessment of the frequency of LEP inmates entering the jails, MCSO allocates its resources according to the proportion of LEP inmates it serves. As discussed throughout this position statement, MCSO has gone to great lengths to accommodate its larger proportion of Spanish speaking LEP inmates. Furthermore, despite the fact that non-Spanish speaking LEP inmates are far less common, MCSO continues to offer meaningful access to all inmates.

(c) Factor 3: The Nature And Importance Of The Program, Activity, Or Service Provided By The Program

For many years, MCSO has recognized that, consistent with the Guidance Document, the more important the service, the greater the consequences to LEP persons, and thus, the more likely MCSO needs to provide adequate and meaningful language services. Incarceration clearly has a dramatic effect on an inmate's individual rights and freedoms. It is for this reason that at each stage of an inmate's incarceration, MCSO has taken great care to make appropriate accommodations for LEP inmates. Because Spanish is used in the jails on a daily basis, a Spanish speaking LEP inmate can almost always be immediately accommodated. When a non-Spanish speaking LEP inmate requires language assistance, MCSO has procedures in place designed to accommodate the inmate at every stage. Inmates are never treated less favorably because of their language ability.

(1) Intake

MCSO maintains two intake areas: Central Intake is located at the Fourth Avenue Jail complex and is where most arrestees are booked into the jails, and the Self Surrender Center is located at the Lower Buckeye Jail and is where self-surrendering inmates (e.g. those who have been sentenced by the courts) are booked to be housed at the Tents Complex. At both locations, extensive accommodations have been made for Spanish speaking inmates and other LEP inmates.

(i) Central Intake

After an individual receives a medical assessment by a CHS employee (CHS is the agency that provides medical care and medications to inmates) and if it is determined that he or she is healthy enough to enter the jails, then he or she proceeds to intake. At intake, information detailing the available access to medical care is posted in both English and Spanish. *See Exhibit 56.* Following the medical assessment, an individual is

booked, fingerprinted, photographed and seen in an IA Court. Once he or she is accepted into the jail as a pretrial detainee, he or she becomes an inmate.

The intake process at Central Intake is standard for each person who arrives at the jail. As stated above, during the pre-booking process, the arresting officer will enter identifying information into the Pre-Booking System. See Exhibit 46. The arresting officer may choose to enter the language spoken by the arrestee. The information on language spoken can then be relayed to the IA Court so that an interpreter can be arranged in advance, thereby decreasing any unnecessary delay for the LEP inmate. Intake officers make an initial assessment as to the language needs of individuals entering the jail. If the arrestee is a Spanish speaker, a Spanish speaking booking officer will complete the booking process. One of every eight booking officers, roughly five officers per shift, is a bilingual Spanish speaking officer. Spanish speaking arrestees are instructed in Spanish on where to stand for a mug shot, what information they need to give to the booking officers, the fingerprint procedure and other instructions throughout the process. Through working with Spanish speaking individuals on a daily basis, most of the intake officers know and understand common and important phrases in Spanish. If the individual is a LEP person who speaks a language other than Spanish, an officer will use the language abilities database to locate an officer proficient in his or her language. If there is no MCSO officer who can assist, then the Language Line is used.

Additionally, at this stage every inmate receives a 287(g) assessment by a 287(g) officer who identifies the inmate's citizenship, regardless of race or ethnic appearance.²⁵ The 287(g) officer interviews the individual to collect information such as place of birth and the first three digits of the person's Social Security Number. The 287(g) officer completes the screening by determining if the individual is in the United States legally. The interviews can be completed in Spanish, as many of the 287(g) officers are bilingual in Spanish, and some speak several languages.

All documents completed during booking are submitted to a MCSO acceptance officer for processing into the computer system. The acceptance officer generally does not speak with the inmate, as the officer is stationed in an area that is not authorized for inmates. After processing, the inmate is placed in the holding cell until he or she is taken to the IA Court. Holding cell determinations are based on the inmate's criminal history and physical and mental health. LEP inmates receive the same level of services (care, custody and control) regardless of language ability and language is not a factor in assigning an inmate to a holding cell. At this stage, a Pretrial Services agent conducts an initial interview in English or Spanish, prior to the Court appearance. If the inmate speaks a language other than English or Spanish, the Pretrial Services Agency will accommodate the inmate. The Pretrial Services Agency is a service of the Court, not MCSO. The information gathered during this interview is used by the Court to help determine whether the inmate should be held in a jail facility or released on bond.

²⁵ While 287(g) officers are technically employed by MCSO, they work under federal supervision and authority.

The IA Court is a Court of Maricopa County. The proceedings are conducted by Court officials separate from MCSO, however MCSO officers are present for safety considerations. An information sign is posted outside of the IA Court by the U.S. Department of Homeland Security describing in 21 languages that non-U.S. citizens who have been arrested or detained are entitled to have the MCSO notify their country's consular representatives in the United States so that they may receive legal assistance, contact their family, etc. *See Exhibit 57.* When the inmate enters the Court, before the proceedings begin, a recording is played in English and Spanish which advises inmates of their right to remain silent, their right to an attorney and that for certain charges, if they cannot afford an attorney, the Court will appoint one. *See Exhibit 4 (Initial Appearance Court Admonition.* Please note there is also a Spanish version). The recording also explains the different conditions of release, including bond payment, release with Pretrial Services and possible mandatory drug and alcohol testing. Inmates are also informed that violations of release conditions will result in release being revoked, and if inmates have any questions they should ask the judge.

Many other informational forms are provided in English and Spanish, including IA Court information related to outstanding charges, forms regarding extradition (if the inmate has outstanding charges in another jurisdiction), the Waiver of Extradition form and the Initial Appearance for Fugitive form. *See Exhibits 58 and 59.* The IA Court also provides information in both English and Spanish regarding the services provided by the Public Defender's Office for inmates who cannot afford an attorney. *See Exhibit 60 (Spanish form).*

If the inmate needs interpretive services during the Court appearance, the Court will appoint an interpreter. If possible, MCSO officers will ask that the interpreter accompany the LEP inmate to the classification area. If the interpreter is not able to accompany the LEP inmate, then a bilingual MCSO officer will assist or the Language Line is used. There are also special procedures followed for hearing impaired inmates. MCSO uses outside services that provide "certified" interpreters for hearing impaired inmates. After the inmate's initial appearance in the IA Court, inmates are returned to their assigned holding cell to await classification by a MCSO Classification Specialist.

(ii) Self Surrender Center

Inmates who self surrender, and who will be housed in the Tents Complex, report to an outdoor area near the Lower Buckeye Jail, where they wait until their surrender hour. Self surrender inmates come from the Maricopa County Superior Court, city court and/or out-of-county courts when residents of Maricopa County are sentenced to serve time in their own county. Like Central Intake, the process for each inmate is standardized and accommodations are made for LEP inmates to assure each receives equal treatment and meaningful access to services. The Self Surrender Center employs 60 officers with roughly 20 officers working each shift. There is a minimum of three bilingual officers staffed on each shift. Some of the bilingual officers are also 287(g)

detention officers. Like Central Intake, all inmates are interviewed by 287(g) detention officers. While these officers are not assigned because of a specific language need, the number of bilingual officers allows for this proportion to be consistently maintained. When a Spanish speaking self surrender inmate arrives, a bilingual officer assists throughout the booking process.

Signs throughout the intake area are posted in both English and Spanish. These signs detail what items inmates may bring into the jails, instructions on how to seek medical attention, alcohol withdrawal symptoms, the 287(g) process, disposal of unclaimed property, availability of kiosks for money accounts, and other general information.

In the first phase of the self surrender intake process the inmate completes a medical questionnaire, which is available in both English and Spanish. Inmates must arrive with their confinement order which lists their name, at least one numerical identifier, such as a Social Security Number or the date of birth, the date and time of surrender as imposed by the court, the Arizona Revised Statute or the charge on which the inmate is being booked, and the case or complaint number from the court. A booking officer then reviews the confinement order and the medical questionnaire with the inmate. Most of this information is copied directly into JMS. The booking officer also records the language spoken by a LEP inmate into JMS. Again, if the inmate is a Spanish speaker, a MCSO bilingual officer assists in the booking process. Likewise, if the inmate is a LEP person who speaks a language other than Spanish, officers will reference the language abilities database and an officer proficient in his or her language will assist. If there is no officer who can assist, then the Language Line can be utilized for such inmates.

At the Self Surrender Center, MCSO completes its own rudimentary check of blood pressure and review of critical issues like diabetes. If there are any medical issues, then CHS is notified and a CHS official continues the medical assessment.²⁶ Inmates are held in the holding tank area until they are fingerprinted.

Before inmates are transported to the tent areas, they are given a copy of the Inmate Rules and Regulations which includes specific rules for the Tents Complex. Copies are available in both English and Spanish. For non-Spanish speaking LEP inmates, critical sections of the rules are interpreted by a bilingual officer, or again, the Language Line may be used.

(2) Classification

After inmates are booked into the jails through Central Intake, they proceed through the Classification Section. Classification is the process by which the inmates are systematically subdivided into categories for security and programmatic reasons. See

²⁶ Correctional Health Services provides medical care and medication to the inmates in the jails.

Exhibit 61 (MCSO Policy DF-1, Inmate Classification). Classification also occurs at the Self Surrender Center in the Lower Buckeye Jail. The Self Surrender Center officers enter identifying information, including language ability, into JMS.

As described in Section I (e) above, the Inmate Classification Section is responsible for managing and overseeing MCSO's language assistance services. Because a majority of inmates proceed through the Classification Section, the Classification Specialists are able to monitor the needs of LEP inmates and assist in the coordination of language assistance services. The Classification Administrator, or his designee, is the LEP Coordinator for the MCSO jails.

The classification process is extremely standardized. It is a risk-based system developed by experts to predict institutional behavior. An inmate's current offender status and arrest and conviction history are reviewed and scored and the inmate is assigned a security level. Inmates are asked to confirm the information MCSO receives from the FBI and the Department of Public Safety. Several more factors are analyzed to assign the inmate to specific housing. These factors include institutional behavior, special housing assessments, medical needs, psychiatric needs, mental or learning disabilities and suicide risk. An inmate's language ability is not a factor considered for classification purposes. No inmate receives more or less favorable treatment because he or she is a LEP person. There are bilingual officers assigned to all of MCSO's jail facilities, therefore, LEP inmates are not placed in any one facility.

At the classification stage, bilingual Specialists are available to assist LEP inmates and other staff during the interviews. In the Classification Section at Central Intake, 13 of the 50 MCSO staff members speak Spanish, one speaks Portuguese and one speaks Afrikanese. Additionally, all Classification Specialists are taught to conduct simple inquiries and communicate basic instructions in both English and Spanish. See Exhibit 62 (Initial Classification Assessment form). MCSO has found that the ability to conduct face-to-face interviews contributes to the most accurate classification possible, which is one of the primary reasons efforts are taken to accommodate LEP inmates at this stage. Detailed considerations have been made for Spanish speaking LEP inmates so that all questions can be understood. For example, Classification Specialists are familiar with the school system in Mexico and when questioning an inmate about his or her education background, they are able to ask specifically about his or her level of education in Mexico, if that is where he or she was educated. See *id.*

In the event a bilingual MCSO officer or staff member is not available to provide language assistance, and if the court appointed interpreter is unable to accompany the LEP inmate through the classification process, the Language Line is used. When the Language Line is used, the Classification Specialists also record the language information in the inmate's file and attach a copy of the blue slip for reference. See Exhibit 49.

Classification interviews are conducted in rooms designed specifically for these interviews. There are interview booths equipped with telephone access so that when the

Language Line is used, both the inmate and the Classification Specialist are easily accommodated and the normal procedure is followed.²⁷

Forms used during the classification stage are also available in both English and Spanish. All inmates are asked to sign the Inmate Classification Program form acknowledging that they are being interviewed, stating the purpose of the interview is to safely classify the inmate in the least restrictive security level possible, and advising the inmate not to discuss the facts of his or her case with the Specialist. See Exhibit 63. This form is available in both English and Spanish.

Inmates also receive information regarding their classification level during this stage. Forms regarding Administrative Segregation placement, requests for removal from Administrative Segregation and declination of voluntary Administrative Segregation are printed in both English and Spanish. See Exhibit 64. These forms assist in identifying inmates in need of Administrative Segregation for safety or any other reason and are therefore an important accommodation for LEP inmates.

Once the classification is made, the information is entered into JMS. As explained above in part (a) of this Section, Classification Specialists record the language spoken by all LEP inmates into JMS and this information is thereafter printed on the inmate roster used at the facility to which the inmate is assigned. At this stage, a "booking card" (or "door card") also is printed for each inmate, which is used for identification purposes.

(3) Orientation

MCSO has taken special considerations to provide accommodation for LEP inmates throughout their incarceration. Inmates receive an informal orientation upon entry to each jail facility. There is no specific written protocol for orientation. Inmates arrive at each facility's intake area. Every inmate receives a bedroll, a copy of the Inmate Rules and Regulations, and hygiene items. The Inmate Rules and Regulations are fully available in both English and Spanish. See Exhibit 30. The Rules and Regulations cover critical information for inmates including court information, rules and disciplinary procedures, inmate grievance procedures, the Canteen and Inmate Funds Account, housing unit and living area information, legal services, library services, mail, meals, medical treatment and health care, inmate programs, the Inmate Telephone System, recreation opportunities, religious services, visitation and working status. Inmates must sign the back page acknowledging that they have received the Rules and Regulations. A copy of the acknowledgment form is maintained in the inmate's facility file. Inmates are then led to their cell or housing unit. In the day-to-day operation of the jails, Spanish speaking inmates receive information in addition to Rules and Regulations informally from bilingual officers and other inmates.

²⁷ In the jail environment, specialized treatment for certain inmates tends to arouse suspicion of that person with other inmates.

Throughout each jail facility, many signs are posted in both Spanish and English. MCSO has taken great care to translate hundreds of postings so that Spanish speaking LEP inmates receive relevant information. In the facilities structured with day rooms, signs are posted in each day room describing how to receive medical care, tips on staying healthy, programs and classes available, and other various information. The same postings are made in facilities structured with dormitories. Inmates in Administrative Segregation (who are outside of the general population) also have access to postings and information in English and Spanish during their day room time.

Additionally, announcements are generally made in both English and Spanish. MCSO requires that announcements regarding medication distribution be made in both English and Spanish throughout the jails. In the Tents Complex, all announcements are made in both English and Spanish. Practically speaking, if an announcement is ever made in English only, it is usually a word like "food," "lockdown," or "headcount" where the meanings can be easily deciphered based on the movement of the other inmates, or the daily patterns quickly learned by each inmate. Informal translations for inmates who have just arrived and are learning the daily routine are constantly made by inmates and/or officers. Further, as later discussed in more detail, MCSO offers a voluntary English class designed to teach inmates basic English skills. The English Learning Instruction (ELI) class is available to Spanish speaking LEP inmates who wish to improve their English skills while in jail. Part of the lessons is focused on teaching the inmates words and phrases they are likely to encounter while incarcerated.

MCSO also is able to supply language assistance to certain inmates who are not housed in the general population and require specialized assistance. For example, the inmates housed in the Psychiatric Unit of the Lower Buckeye Jail may require specific language accommodation. Bilingual officers specially trained for the Psychiatric Unit are available to assist these inmates.

Juvenile inmates are also housed separately from the general population and require specific accommodations. Male juvenile inmates are housed in Lower Buckeye Jail, and female juvenile inmates are housed in Estrella. Bilingual Spanish speaking officers are available to assist Spanish speaking juvenile inmates. MCSO offers educational classes to juvenile inmates and inmates under 22-years-old with special needs. For Spanish speaking juvenile inmates, a large portion of these classes is spent learning English through bilingual instructors. This is discussed in greater detail in Section V (e). MCSO staff members work with the families of juvenile inmates to provide them with information regarding education, release and other issues, as they arise. When the family members of juvenile inmates are LEP persons, MCSO provides the assistance of a bilingual officer to answer questions or concerns in their primary language.

(4) Medical Care

MCSO recognizes that it is important that inmates receive access to medical care. Under the current structure employed by Maricopa County, MCSO does not provide medical care for inmates in the jails. CHS, which is a separate entity from MCSO, provides medical care and medication to the inmates in the jails.²⁸ MCSO officers support CHS employees by escorting the inmates to and from the medical clinics, and they often remain present in the clinics with the inmates to provide additional security. MCSO has created a "Power Squad" responsible for escorting inmates to physical examinations, which are mandatory for inmates remaining in the jails for 14 days or longer.²⁹ Bilingual officers are assigned to the Power Squad to assist LEP inmates and generally there is at least one bilingual officer on each Power Squad.

In terms of an inmate seeking care in a non-emergency situation, MCSO officers are allowed to give an inmate a "Medical Inmate Request Form" (or, "Medical Tank Order"), which is available in both English and Spanish. *See Exhibit 85.* However, pursuant to HIPAA regulations and privacy concerns, this form must be picked up and processed by the authorized personnel of CHS. MCSO officers are not allowed to discuss medical information with an inmate, nor are they allowed to pick up a Medical Inmate Request Form from an inmate.

If there is a medical emergency in one of the jail facilities, MCSO officers are generally the first responders. All medical emergencies are addressed with the same standard protocol. *See Exhibit 12.*

(5) Discipline

Because a disciplinary proceeding and decision may affect an inmate's rights and privileges while in jail, this also is a critical stage where MCSO has taken steps to assure meaningful language assistance for LEP inmates. Disciplinary action is taken when an inmate violates any of the rules. As discussed above, inmates are provided with a Spanish or English copy of the Inmate Rules and Regulations during their orientation to their facility. The rules, the disciplinary process and the potential sanctions are fully described within the Inmate Rules and Regulations. *See Exhibit 30 at section 10.* MCSO provides an Inmate Disciplinary Procedure Policy to ensure standard procedures are followed for each inmate. *See Exhibit 40.*

If an inmate violates a rule, the inmate receives either a verbal warning or a written warning. A verbal warning may be issued in Spanish by a bilingual Spanish speaking officer. A written warning includes a written statement of the rule he or she violated, written by the officer who witnessed the violation. The form is called a Disciplinary Action Report ("DAR") and copies are provided to both the inmate and the shift supervisor. The statement is written in English, however, it is MCSO's policy to

²⁸ MCSO understands that CHS intends to submit its own position statement, if the DOJ so requests, in response to the complaint from the DOJ.

²⁹ The purpose of the Power Squad is to provide additional security from trained MCSO officers while inmates are transferred to and from their medical appointments.

take affirmative steps to provide interpretation for those inmates who do not read or communicate in English. *See id.* at procedure 2. ("All jails shall make a reasonable effort to provide someone to interpret for those inmates who...do not read or communicate in English or Spanish."). A LEP inmate may request an interpretation from an officer, or at the inmate's option, he or she may ask another inmate to interpret. Again, the Language Line is always available at every jail facility and an interpreter can be asked to interpret the DAR for the LEP inmate. The officer reporting the violation will notate on the DAR if the inmate needs a language accommodation. *See id.* ("The reporting officer shall describe the inmate's disability or language barrier in a notation on the DAR."). An inmate has the right to a disciplinary hearing. Inmates may waive this right by pleading "guilty" to the violation. If the inmate pleads "not guilty," a disciplinary hearing is conducted by a Hearing Officer. During the hearing, inmates may make a statement.

If there is a disciplinary hearing, accommodations for LEP inmates are made by bilingual MCSO officers. MCSO allows an inmate to request that another inmate accompany him or her, as an interpreter, to a disciplinary hearing. Requests which do not compromise safety or security are accommodated. However, when interpretation is needed, a bilingual MCSO officer will also be present for the interpretation. Occasionally, interpreters from the Superior Court's Office of Court Interpreters have participated in the hearings, if there is not a MCSO officer proficient in the inmate's language. Again, the Language Line may also be used during a disciplinary hearing.

Generally, decisions made by the Hearing Officer are written in English. However, the decisions are interpreted by bilingual officers for Spanish speaking inmates and other LEP inmates. No language barrier will prevent an inmate from understanding the disciplinary process or the decision made following his or her hearing.

Inmates also have the opportunity to challenge a disciplinary sanction by filing a Disciplinary Appeal Form. Though this form is printed in English, MCSO is currently in the process of translating and preparing a Spanish version. Further, the form may be completed in Spanish or any other language, and it will be translated for the Jail Commander's review. No Disciplinary Appeal is rejected or not fully considered because it is written in a language other than English.

(6) Grievance Process

MCSO also provides meaningful language assistance so that all inmates have access to the grievance process. The grievance process is described in the Inmate Rules and Regulations, which are available in English and Spanish. *See Exhibit 30* at section 11. Like the disciplinary procedure, MCSO provides an Inmate Grievance Procedure Policy to ensure standard procedures are followed. *See Exhibit 41.* To report a grievance, an inmate completes an Inmate Grievance Form. The form is available in English, however, it is MCSO policy to affirmatively provide accommodations to those who do not read or communicate in English. *See id.* Bilingual officers and/or other inmates often assist LEP inmates in completing the form and inmates may complete the

form in Spanish. *See id.* To better accommodate Spanish speaking LEP inmates, MCSO is currently preparing an Inmate Grievance Form printed in Spanish.

Inmates submit the Inmate Grievance Form to the Sergeant who may direct the grievance to the appropriate area, or assign detention line staff to attempt to resolve the grievance related to areas under their control. If an officer is unable to resolve a grievance, the officer will forward the Inmate Grievance Form to the shift supervisor and/or shift commander who will attempt to resolve the grievance. The inmate is informed of any actions and the shift commander will meet with the inmate to discuss the grievance and the proposed resolution. The Inmate Grievance Form is then forwarded to the Hearing Unit. An MCSO officer will interpret during a grievance proceeding for LEP inmates. The Hearing Unit Sergeant will meet with the inmate to attempt to resolve the issue. When a determination is made by the Hearing Sergeant, the inmate will receive a written response that documents the result of the grievance proceeding. If an inmate is a LEP person, then a bilingual officer will assist with interpretation. If no officer is able to assist in the LEP person's language, then the Language Line is used.

An inmate may choose to appeal a grievance decision. The inmate may first appeal by submitting an Inmate Institutional Grievance Appeal Form to the jail/division commander. If the inmate is again not satisfied with the resolution, the inmate may submit an Inmate External Grievance Appeal Form to an external referee through the Bureau Hearing Unit Commander. The inmate will receive a written response from the external referee. MCSO is currently preparing Spanish versions of these forms.

Communication of inmate appeal decisions for both institutional appeals and external appeals are handled for LEP inmates in the same method as decisions from the Hearing Unit both verbally and in writing. Decisions are written in English, but if the inmate who filed the grievance is a Spanish speaking inmate, the decision is interpreted for the inmate by a bilingual MCSO officer. The officer will go through the entire decision with the inmate, as well as explain that the next level of appeal may be pursued with the Federal District Court. The same procedure is followed for non-Spanish speaking LEP inmates, unless there is no bilingual officer with language proficiency, in which case the Language Line is used.

MCSO resolves approximately 15,000 grievances on an annual basis. *See Exhibit 65* (Grievance Resolved Totals for years 2007, 2008, and 2009 through November 30, 2009. Note that these charts do not separately list grievances that are not appealed at the institutional or external level, however the number of grievances without appeal is included in the "totals" column). Common grievances pertain to food, overcrowding and hygiene. Each grievance is addressed on an individual basis. Most are resolved at the administrative level, though a small percent become lawsuits.

(7) Visitation

MCSO has made accommodations for both inmates and visitors so that LEP persons are provided equal access to the visitation process. Visits are conducted consistent with the MCSO's Inmate Visitation Policy. See Exhibit 66 (MCSO Policy DK-3, Inmate Visitation). Depending on an inmate's classification level and facility, inmates may have three 30 minute "regular" (person living within Maricopa County) visits per week and three 30 minute "out of county" (person living outside of Maricopa County) visits per week, excluding visits by legal counsel (legal counsel may visit 24 hours a day). Depending on the facility, visits occur in person or by video monitor. For example, Lower Buckeye Jail is equipped with video visitation. In Lower Buckeye Jail, when an inmate has a visit scheduled, the name of the inmate and time of the visit are posted daily on a large board visible to the inmates. Inmates are called for their visit by name. Other facilities have similar systems in place. Language is not a barrier to receiving information about visitors, nor is it a barrier to using the video visitation equipment.

Although MCSO views the inmates of its jails as its primary responsibility, MCSO has also taken measures to accommodate LEP visitors so that language is not a barrier. Each visitor who is 18 years of age or older receives a Visitation Form. The forms used at each facility are very similar. See Exhibit 67 (samples from each of the facilities from 2009 have been provided). MCSO is currently preparing a Spanish version of the Visitation Form to better accommodate Spanish speaking visitors. Bilingual officers also are able to assist LEP visitors in completing the forms which ask for basic identifying information such as the name of the inmate, the name and address of the visitor, the length of the visit, and the citizenship of the visitor. All visitors must present an official form of U.S. government issued identification (federal, state, or local government). See Exhibit 66 (Procedures: 4. Valid Identification). It is the policy of MCSO that visitors must be in the United States legally to visit inmates in the jails. MCSO also does not allow convicted felons to visit an inmate. Individuals who have been arrested and booked into a MCSO jail facility generally must wait one year from the date of their release to visit an inmate in the jails.

At each of the facilities, many of the signs posted in the visitation area are in English and Spanish. These signs provide visitor rules and other information that is helpful to the family and friends of inmates (such as acceptable mail). Photographs of signs and postings translated into Spanish at the Towers Jail visitation area and the Tents Complex visitation area have been provided as an example, attached as Exhibits 68 (Towers) and 69 (Tents Complex). Although not every sign posted in the visitation areas has been translated into Spanish, bilingual officers are available to assist during the visitation process.

Grievances from individuals visiting the jails are rare. However, visitation officers are capable of resolving complaints, and bilingual officers located at each facility are available to assist, if needed. Additionally, the Communication Division of the MCSO currently employs two bilingual Spanish speaking receptionists who can address questions or issues over the telephone. If a Spanish speaking individual calls the

Sheriff's Office to make a grievance, his or her call may be routed to one of these receptionists.

(8) Release

The release process is uniform for all inmates, as required by State and Federal laws. Responsibilities for completing the release of inmates are shared between judicial control and the releasing facility. *See Exhibit 70 (MCSO Policy DO-2, Release Process).* Some inmates are released from Central Intake, depending on the decision made by the IA Court, or if their housing assignment is the Fourth Avenue Jail. Bilingual officers assist inmates being released at Central Intake. If a bilingual officer is not available to assist a LEP inmate, the Language Line is used. Language Line instructions are posted in the release station for all MCSO officers.

Inmates assigned to any of the jails (excluding the Fourth Avenue Jail) are released from the Lower Buckeye Jail. An inmate is removed from his or her location and taken to Lower Buckeye Jail, along with his or her booking card for identification purposes. The inmate waits in a holding tank where he or she changes back into street clothes. The inmate's thumb print is taken and he or she is given an account statement. The inmate is taken to a second holding tank where he or she is interviewed by another officer who reviews his or her file. The inmate must answer several questions unique to the individual to finalize the identification process. Inmates released to the Department of Corrections complete the same process, except their clothes are not returned. In this case, inmates must complete a form releasing their clothing to a specific individual. This form is available in both English and Spanish. *See Exhibit 71.*

At each stage of the release process, LEP inmates are accommodated. Spanish speaking inmates are interviewed by a bilingual officer. If an inmate speaks a language other than Spanish and no officer is able to assist, then the Language Line is used.

(d) Factor 4: The Resources Available To The Recipient And Costs

As recognized by the DOJ, a recipient must balance the resources available to it against the cost of the language assistance service. *See Guidance Document, 67 Fed. Reg. at 41460.* "[R]easonable steps' may cease to be reasonable where the costs imposed substantially exceed the benefits." *Id.* First and foremost, MCSO does not rule out any helpful policy due only to costs. This principle extends to MCSO's language related policies and services.

However, MCSO has extremely limited resources. According to the adopted Detention Operations budget FY 2009-2010, the total budget is \$183,677,977. Exhibit 72 provides an overview of the budget allocation by category. As demonstrated, more than 90 percent of the budget is allocated for personnel services (which includes salaries, benefits, and overtime pay). With one percent allocated for capital outlay, the remaining nine percent of the budget is divided for all detention operations supplies and services,

including jail supplies, utilities, repairs and maintenance, training and education, and inmate services. Further, the Detention Operations budget FY 2009-2010 was reduced by over \$2,000,000 from the FY 2008-2009 budget (which was \$185,870,904). Inmate programs, such as educational classes and the Language Line, are funded through the Inmate Service Fund which consists of profits made from the Inmate Canteen. Despite the limited budget, providing meaningful access to its services for LEP inmates continues to be a priority for MCSO, as it has been for over 20 years.

The Guidance Document provides several suggestions for reducing costs while still offering meaningful access to services. *See* Guidance Document, 67 Fed. Reg. at 41460. MCSO has for many years utilized several of these suggestions in its language assistance plan for both Spanish speaking LEP inmates and non-Spanish speaking LEP inmates. MCSO's highly trained bilingual officers are not only the individuals most capable of providing language assistance in the unique environment created by the jail setting, but they also provide immediate and cost effective translation and interpretative services. Further, recognizing the benefit to Spanish speaking inmates, MCSO has expended funds to translate hundreds of notices, signs and forms into Spanish, as well as the Inmate Rules and Regulations. MCSO will continue this practice.

Despite the fact that non-Spanish speaking LEP inmates account for a very small percentage of the inmate population, MCSO makes resources available to provide these LEP inmates with effective, meaningful access to services. As suggested by the Guidance Document, MCSO utilizes a telephonic interpretation service, the Language Line, when an inmate requires language assistance and a bilingual officer is not capable of assisting.

MCSO makes efforts to provide meaningful access beyond the suggestions in the Guidance Document. Every effort is made to accommodate Spanish speaking inmates in MCSO's voluntary educational classes and religious services. MCSO actively seeks Spanish speaking instructors for its programs and tries to coordinate Spanish speaking instructors even for programs taught by volunteering agencies.

MCSO has used the analysis explicated by the DOJ's four factors for many years to develop its language assistance plan. Any premise that MCSO *must* have a *written* language assistance plan to accommodate LEP inmates is misguided. In fact, the Guidance Document itself provides flexibility to recipients. *See* Guidance Document, 67 Fed. Reg. at 41459 ("After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages."); *also see* Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance, at 16 ("You are encouraged to review your [Language Assistance Plan] annually and to develop approaches that are consistent with your respective LAP designs, individual needs and circumstances."). Many of the accommodations used by MCSO actually predate the Executive Order 13166. If a language issue arises in one of the jails, MCSO officers use one of the established and tested accommodations. Because Spanish is

already spoken freely and frequently throughout the jails, attempting to reduce this practice to a rigid written plan would likely hinder the operation of the jails, negatively affecting all of the inmates and staff and thereby thwarting the objectives of the DOJ's four factor analysis. MCSO's language assistance services and its innovative approach to serving LEP inmates together form MCSO's effective language assistance plan.

V. Application Of DOJ Guidance To MCSO's Inmate Programs

As demonstrated above, MCSO has for years used the criteria explicated in the DOJ's four factor analysis to provide meaningful access to services at each critical stage of a LEP inmate's incarceration. Likewise, MCSO complies with the DOJ's guidance in providing its many programs to inmates. MCSO jails house inmates classified from minimum security to maximum security, with some inmates sentenced to county jail time and some unsentenced awaiting trial or with INS holds. While some inmates may spend only hours in the jails, others may spend several years. The average length of stay for an inmate is 26 days. That said, MCSO strives to offer programs to eligible inmates during their incarceration.

The Guidance Document provides that if an inmate's LEP status makes him or her unable to participate in a program, this should not "adversely impact the length of stay or significantly affect the conditions of imprisonment." Guidance Document, 67 Fed. Reg. at 41470. MCSO not only follows this guidance in offering its various voluntary education programs, religious services, and work programs, but goes further by offering classes and services in Spanish and making additional accommodations whenever possible. An inmate is never discriminated against or treated less fairly in the MCSO jails because of his or her language ability or national origin.

(a) Adult Education Programs

Adult inmates housed in Maricopa County jails are offered the opportunity to participate in a variety of different programs. *See Exhibit 73 (MCSO Policy DP-1, Inmate Programs)*. The Custody Support Division, which is part of MCSO, is responsible for overseeing the inmate programs. The Adult Services section of the Custody Support Division coordinates the adult programs offered to inmates. Each facility has a Program Coordinator responsible for creating class rosters, maintaining waitlists and other administrative duties. The programs offered by MCSO are funded through the Inmate Service Fund which consists of profits from sales of items at the Inmate Canteen. Several of the programs are also offered by volunteers from partnering agencies.

The programs are entirely voluntary and are available to all eligible general population male and female inmates. The programs are not available to inmates on lock down or in closed custody. The schedules for available classes are posted at each facility in the housing units and schedule announcements are frequently made as well. Inmates fill out an Inmate Request Form to attend a specific class. These forms are available in both English and Spanish, and an inmate can make his or her class request in Spanish.

MCSO officers are available to assist inmates in completing an Inmate Request Form, if needed.

There are currently approximately 24 classes offered to eligible inmates, a majority of which are taught by volunteers from surrounding churches, schools and communities. The programs range from substance abuse and treatment programs such as Alcoholics Anonymous, to educational programs such as GED courses, creative writing and English Learning Instruction, to personal and family development programs, such as the "Girl Scouts Behind Bars" program. A summary of the courses currently available is provided as Exhibit 74.

In accordance with the Guidance Document, all reasonable efforts are consistently made to accommodate the Spanish speaking inmate population in the facilities. Whenever a new program is created, the Section Commander of Adult Programs makes an effort to obtain both an English and Spanish version of the program. A request is made for "Bilingual Preferred" instructors when volunteers are sought, or on job postings, when the instructor is a MCSO employee position. Currently, there are 17 Spanish speaking staff members assigned to various educational divisions. However, because many of the courses offered are taught by volunteers, the availability of classes in multiple languages is sometimes subject to the resources of the vendors. When a new program is offered, a notice is posted, and if the program is offered in Spanish, a notice written in Spanish will also be posted. When possible, programs are offered in a serial fashion, in English then Spanish. Currently, there are three adult programs offered in their entirety in Spanish. Due to resource and volunteer availability, MCSO is unable to offer classes in languages other than English and Spanish.

(1) Alcoholics Anonymous

Alcoholics Anonymous is a voluntary 12 step program for recovering alcoholics, offered in both English and Spanish. MCSO partners with Valley Wide Hospitals and Institutions for this, and all other, 12 step programs. Volunteer instructors offer this class for one hour per week on an ongoing basis. Classes offered in Spanish are currently at the Lower Buckeye Jail, with class sizes ranging from 10-25, Durango Jail, with an approximate class size of 20, and Tents O-Yard, with an approximate class size of 15-20.

(2) Alcohol & Drug Education Program Team

Alcohol & Drug Education Program Team ("A.D.E.P.T.") also is offered in both Spanish and English on an alternating schedule. See Exhibit 75 (ADEPT and APTITUD postings). This is a voluntary two week substance abuse education program which focuses on the physical, emotional and behavioral damages from substance abuse, and ways to overcome these negative consequences. Classes are held four days a week for two hours per day at the O-Yard Tents. It is taught by Alpha Certified Substance Abuse Specialists.

(3) English Learning Instruction

English Learning Instruction (ELI) is a four-week voluntary English class designed to teach inmates basic English words and phrases that will assist Spanish speakers in communicating with detention officers and inmates who do not speak Spanish.³⁰ The course is modeled on other successful, comparable language immersion plans. The classes are taught by a bilingual detention officer. The curriculum focuses on teaching inmates phrases which will likely be helpful to them during their incarceration. For example part of the lesson may include: "I need soap; I need toilet paper; I need a comb; when is my court date?" The program began in 2006 and is currently offered two days a week for four weeks in the O-Yard Tents. The size and duration of the course are designed to accommodate as many interested inmates as possible, taking into consideration the fact that the average length of stay for an inmate in a MCSO jail is 26 days.

The ELI curriculum provides a foundation for the English language. The first half of the curriculum is devoted to a discussion of English grammar and verb structure; the second half is devoted to jail phrases. Success is measured by attendance, by the number of inmates who sign up for the course, and by the progress shown by the inmates on the program's pre- and post-written tests. The course is language based – there is no national origin component. It is offered to both U.S. citizens and non-citizens.

(4) Alpha Program

The Alpha program is a voluntary substance abuse program specifically designed to address recidivism. It is offered in conjunction with the Probation Department because part of the program continues after release from incarceration. Only sentenced inmates who received mandatory drug counseling as part of their sentence and are sentenced for at least six months may apply by filling out an Inmate Request Form. The program is small – less than five percent of the inmates participate. In 2008, 318 males participated and 87 females participated.

The first six weeks of the program take place at the Towers Jail facility where, during the day, inmates participate in the Inmate Work Program and receive counseling in the evenings from MCSO Alpha counselors. In the next twelve weeks, participants receive counseling from partnering entities, Sage Counseling and Concepts for Change. The program also continues after release. While the Alpha program is not an early release program, the Probation Department may recommend early release for inmates who successfully graduate from the first phase. However, the Probation Department is a separate entity over which MCSO has no authority.

At this point MCSO cannot offer the Alpha program fully translated in Spanish, however the program can accommodate Spanish speaking inmates who have a basic,

³⁰ ELI was previously offered as a two-week course, but is now offered over four weeks.

"working knowledge" of English. In the first six weeks of the program, MCSO is able to provide two bilingual Alpha counselors to assist Spanish speaking inmates. However, the counselors supplied by the partnering entities, for the second half of the program, are generally only proficient in English. Therefore, the program would not provide the same benefit to a LEP inmate with no English skills.

In the recent past, MCSO was able to offer "Spanish Alpha" as part of its high school program. From August 2008 to January 2009, 24 sessions taught approximately 36 Spanish speaking students. At this time, providing the Alpha program fully translated into Spanish, or any other languages, is cost prohibitive according to MCSO's cost-benefit analysis, however, as additional resources become available, MCSO will try to reinstitute this program in Spanish. See Guidance Document, 67 Fed. Reg. at 41460 (describing the cost-benefit analysis recipients must perform).

In the past, MCSO has been able to offer other classes in both English and Spanish. MCSO hopes to do so in the future and continues to work with organizations receiving grant money to expand the courses offered in both Spanish and English, in an effort to accommodate as many inmates as possible.

(b) Religious Services

MCSO is able to provide many of its religious services in both English and Spanish. Clergy offer Christian, Jewish and nondenominational services throughout the week in addition to study groups for other religions. Schedules for these services are posted in the housing units and announcements are made in both English and Spanish. Like the classes, participation in religious services is, of course, completely voluntary.

(c) Inmate Work Program

All sentenced inmates who are classified as presenting minimum, medium or maximum security risks and have no medical issues or history of negative institutional behavior must participate in MCSO's Inmate Work Program. Through the Inmate Work Program, inmates perform tasks such as food preparation, maintenance, landscaping, housekeeping, or docking.

MCSO officers assigned to Workbox are responsible for maintenance of the Inmate Work Program, which includes assigning inmates to various work positions, both within the jails and outside of the jails. Assignments to specific positions are made based on security level. The Inmate Work Program Policy contains a prohibition on discrimination in inmate work assignments based on race, color, religion, sex, age, handicap or national origin. See Exhibit 76 (MCSO Policy DM-1, Inmate Work Program).

Language plays no role in assignments for the Inmate Work Program. The positions are not dependent on language ability. The tasks are simple and often there are

pictures and signs available to aid in explanation. Many of these signs are in both English and Spanish. *See Exhibit 77* (signs posted in the MCSO Food Factory, which is one of the areas inmates are assigned to work). If a Spanish speaking inmate needs assistance during a work assignment, there are Spanish speaking staff members to provide help. In fact, because MCSO employs a large number of Spanish speaking employees, it is often a benefit to have Spanish speaking inmates available to communicate with the employees. If a LEP inmate speaks a language other than Spanish and no staff member is proficient in his or her language, the Language Line is also available for these inmates. No inmate has ever been re-assigned due to a language issue. In accordance with the Guidance Document, no inmate is denied any opportunity or adversely affected because of his or her status as a LEP person.

Participation in the Inmate Work Program may affect a sentenced inmate's release date through double-time credits and/or credit for time served. It is the courts' decision whether an inmate is eligible to receive this credit. Double-time credit (also called "two-for-one") is a method of release computation in which an inmate who participates in an approved work program will receive credit for two days served for each day of participation. The court may restrict an inmate's participation by specifying on the order of confinement: "FLAT TIME," "STRAIGHT TIME," or "NO DOUBLE TIME ALLOWED," or by ordering a specific release date.

Because this is a strictly court-based determination, MCSO adheres to the determination on the order of confinement. If an inmate is eligible for the double-time credit through the Inmate Work Program, the inmate will have the opportunity to earn this credit. There is no distinction made because of language ability and no determinations are made based on LEP status. Though the Program generally requires inmates to be fully sentenced to participate, the Sheriff recently opened the program to inmates who are fully adjudicated on local charges but are being held for other agencies.

(d) Tents Complex Programs

MCSO bases several programs in the Tents Complex, including the Work Furlough, Work Release and Weekender programs. The court may make a sentencing recommendation regarding one of these programs, but MCSO ultimately makes the determination of whether an inmate is accepted into the jail and/or the program, based on housing, security, or safety issues. All inmates participating in Work Furlough, Work Release or the Weekender program are housed in the "Con-Tents" facility.

MCSO makes no distinction between its treatment of English speaking inmates and LEP inmates in determining eligibility for the Tents Complex programs. There are no language barriers that would prevent LEP persons from participating in these programs. If a non-English speaking inmate requires assistance, the bilingual staff members are available to help. The Language Line also is available in the Tents Complex. The rules for the Tents Complex are contained in the Rules and Regulations for Inmates, available in both English and Spanish. Additionally, MCSO posts bilingual

notices for the items allowed in the tents. See Exhibit 78 (Con-Tents Authorized Articles).

(1) Work Furlough Program

The Work Furlough program allows qualified, sentenced inmates to work in the community during certain hours while serving their court-ordered sentence. See Exhibit 79 (MCSO Policy DN-2, Work Furlough). The Maricopa County Adult Probation Department acts as the Work Furlough Administrator and is responsible for determining eligibility requirements and placement into the program. MCSO's role is accepting or rejecting based on housing assignment, safety and security; housing the inmates; and releasing Work Furlough inmates in accordance with approved arrival and departure schedules. Language is not a barrier to participation or acceptance in the Work Furlough program, and a person's LEP status does not affect his or her ability to participate. The Adult Probation Department, which is separate from MCSO, provides an orientation in Spanish for Spanish speaking inmates.

(2) Work Release Program

The Work Release program allows inmates to continue employment or education during their incarceration. See Exhibit 80 (MCSO Policy DN-3, Work Release). The MCSO's role is accepting or rejecting based on housing assignment, safety and security; housing the inmates; and releasing Work Release inmates in accordance with approved arrival and departure schedules. MCSO ensures that Work Release inmates are only incarcerated during the hours and days according to their court order of confinement. Inmates sentenced to work release must not have any wants, warrants, holds, or unadjudicated charges, and must report to the jail promptly at the times and dates specified in the order of confinement. If an inmate arrives more than two hours late on two occasions, he or she will be removed from the Work Release program.

Participation in the Work Release program is designated by the courts. Like the Work Furlough Program, an inmate's LEP status does not affect the inmate's ability to participate in this program or MCSO's assessment of housing eligibility.

(3) Weekender Program

The Weekender program is for inmates sentenced to a minimum amount of jail time on the weekends. Information about the Weekender program is available through the jail telephone hotline service, which provides menu selections in both English and Spanish. Here again, an inmate's LEP status does not affect the inmate's ability to participate in this program or MCSO's assessment of housing eligibility.

(e) Juvenile Education Programs

MCSO jails also house juvenile inmates charged as adults who are either awaiting trial or have been sentenced to county time for misdemeanors or felonies. In accordance with Arizona Revised Statute § 15-913.01, MCSO's Juvenile Education Section offers educational services to juvenile inmates charged as adults and inmates under 22-years-old with special needs. MCSO operates a high school program called Hard Knocks High that reaches approximately 160 student inmates. In total, this is roughly 1.5 percent of the MCSO inmate population. High school courses are offered at Lower Buckeye Jail for males and Estrella Jail for females. Graduates can earn a GED or in some cases a high school diploma, and Arizona high schools will accept credits earned while in jail.

MCSO's high school education program not only accommodates Spanish speaking LEP juvenile inmates, but actively offers these inmates the opportunity to learn English. While the high school classes are statutorily required, MCSO offers English language classes juvenile inmates may elect to attend. MCSO provides an English immersion component to the program for Spanish speaking LEP student inmates. All student inmates who speak a language other than English may take the Arizona English Language Learner Assessment ("AZELLA") test to assist with class placement. Additionally, Spanish speaking student inmates may take the Test of Adult Basic Education ("TABE") in Spanish to roughly determine their grade level in their primary language. When student inmates are in the jail for a long period of time, they are retested with the AZELLA to monitor improvement in English skills. These language assessment tests are not mandated by statute; however MCSO offers these tests to assist the student inmates in receiving the most beneficial education possible. If a student inmate cannot test in English at any level, he or she is placed in the Structured English Immersion ("SEI") program. If a student inmate tests to at least a third grade level, he or she is placed in a regular English immersion course. As of July of 2009, only three of the currently enrolled student inmates were in the SEI program (or, 0.02 percent of the MCSO jail population).

The SEI courses are conducted during the same time periods as the rest of the high school courses and range from one to three hours, Monday through Friday. The SEI program is funded through the Inmate Service Fund. A bilingual instructor spends roughly two thirds of the class teaching English and one third of the class teaching GED courses in Spanish. If academically eligible, Spanish speaking LEP student inmates may study for and take the GED exam in either English or Spanish. Additionally, many of the teaching assistants are also bilingual and can provide assistance to Spanish speaking inmate students enrolled in various courses.³¹

³¹ In MCSO's Juvenile Education Section high school courses, student inmates must speak English during class for security reasons (excluding the SEI program). Security measures are heightened in programs for juvenile inmates for a variety of factors, including high frequency of gang membership and past records of violent conduct. However, as explained, student inmates test into classes where English is spoken and student inmates not proficient in English are enrolled in the SEI program, where Spanish and other languages can be spoke, and the focus is on English instruction. Student inmates are not denied education opportunities because of their language ability.

The Juvenile Education Section also offers other programs to juvenile inmates, such as substance abuse programs, programs teaching health and fitness, and parenting classes. "Spanish-Alpha" was also previously offered, as described above.

MCSO'S RESPONSE TO ALLEGATIONS IN THE COMPLAINT

As demonstrated above, MCSO has for many years provided meaningful access to its services for all inmates, including its LEP inmates. Further, and specifically with regard to its Spanish speaking LEP inmates, MCSO has not only complied with, but in many cases exceeded, the guidelines set forth in the Guidance Document.

(a) MCSO Absolutely Does Not Have An English-Only Policy In Its Jails.

The allegation that MCSO has an "English-only" policy in its jails, or that officers must communicate with inmates only in English, is demonstrably false. MCSO has proactively contributed to an environment in the jails where Spanish is commonly used to communicate on a daily basis. MCSO hires bilingual Spanish speaking officers who are routinely called upon to use Spanish to communicate with inmates and visitors. In addition, MCSO has offered Spanish language instruction to officers seeking to improve their Spanish, and MCSO currently provides mandatory diversity training as part of its Basic Detention Academy curriculum. MCSO offers classes to inmates in Spanish and conducts religious services in Spanish.

MCSO's policies belie any claim that there is an English-only policy in the jails. For over 20 years, MCSO has used both bilingual officers and the AT&T Language Line for interpretation services. While many announcements in the jails are made in both English and Spanish, some announcements, such as medication distribution announcements, are mandated to be in both English and Spanish. MCSO has for many years mandated that the Inmate Rules and Regulations be distributed in both English and Spanish. See Exhibit 13.

Further, the use of Spanish in the jails is essential to not only the safety of the inmates, but the officers as well. Officers must be able to communicate with inmates to provide instructions, maintain order, and assess situations for security. An English-only policy would be detrimental to the entire operation of the jails. Accordingly, it is not, and has never been a MCSO policy.

(b) Detention Officers Are Encouraged To Speak To Inmates In Spanish and Other Languages, And Do So Regularly.

The allegation that detention officers, even those who are bilingual in Spanish, are required to speak to inmates in English at all times, except in cases of emergency, is also demonstrably false. MCSO officers freely speak to inmates in Spanish or other languages. In fact, MCSO created the Foreign Language Skills Roster, a database detailing the identity and ability of its bilingual or multi-lingual officers. The database is

accessible at every facility and offers improved accessibility to bilingual officer interpreters. If an inmate needs interpretation and a bilingual officer is not readily available, an officer can access the language abilities database and immediately locate an officer proficient in the inmate's language. Prior to the development of the database, MCSO's duty rosters were used to identify officers with language abilities. MCSO also uses the Language Line for interpretation when necessary.

If an emergency arises, emergency procedures are followed regardless of the language spoken. If a MCSO officer is the first to respond to a medical emergency, he or she will call 911 and/or contact CHS immediately.

MCSO policies and procedures are expressly non-restrictive on the use of other languages. MCSO officers are trained in the Basic Detention Academy to request the assistance of fellow officers for Spanish translation. *See Exhibit 34* ("If you can not speak Spanish and there is an Officer working who can, ask them to interpret."). This mandatory training contradicts the allegation that bilingual detention officers must speak English. After spending just a few minutes in the jails, it immediately becomes apparent that officers constantly communicate with inmates in Spanish and inmates communicate with officers in Spanish.

(c) MCSO Does Not Provide Medical Care For Inmates – Medical Services Are Provided By CHS.

The complaint also alleges that the English-only policy in the jails places LEP inmates at risk for inadequate medical care due to the language barrier (e.g., potential misdiagnosis, incorrect administration of medications). Under the current structure employed by Maricopa County, MCSO does not provide medical care for inmates in the jails. Correctional Health Services, which is a department of Maricopa County, is the separate entity that provides medical care and medications to inmates. CHS will be preparing its own position statement and will address this allegation. *See Exhibit 11*. However, to assist CHS, MCSO developed the "Power Squad" to escort inmates to physical examinations. Bilingual officers are assigned to the Power Squad to assist LEP inmates and generally there is at least one bilingual officer on each Power Squad. In non-emergency situations, MCSO officers can provide inmates a "Medical Inmate Request Form," available in both English and Spanish. *See Exhibit 85*. If an emergency situation arises, an MCSO officer is generally the first responder and will call 911 or CHS immediately. If the emergency involves a LEP inmate, bilingual officers are immediately called to interpret. Other inmates also assist in interpretation during emergencies. The Language Line is likewise available. At MCSO, medical care is never withheld or delayed because of an inmate's language.

(d) MCSO Offers Voluntary Classes for Adults and Juveniles, And Exerts A Concerted Effort To Make These Classes Accessible To LEP Inmates.

The complaint asserts that MCSO has mandatory classes that inmates must attend on government, criminal justice and other topics, and that these classes discriminate against LEP inmates because they are conducted in English. This allegation is based on a mistaken premise that MCSO offers "mandatory classes."³² All classes offered by MCSO through Adult Services are completely voluntary. Moreover, MCSO does not offer classes on government or criminal justice.³³ Presently, MCSO is able to offer three courses taught fully in Spanish: Alcoholics Anonymous, Alcohol & Drug Education Program Team ("A.D.E.P.T."), and English Learning Instruction ("ELI"). MCSO makes a concerted effort to provide Spanish versions of classes when possible. When a class offered in Spanish becomes available, notices are posted in Spanish to notify inmates of enrollment. MCSO continually seeks to expand the number of programs it offers to inmates, both in English and Spanish.

Typically, classes are provided by fund grantees who volunteer to partner with MCSO. It is noteworthy that under the Sheriff Joseph Arpaio administration, the use of educational and rehabilitative type courses at the MCSO jails has grown exponentially.

(e) MCSO Offers Classes And Programs In Spanish As Part Of Its Effort To Provide Meaningful Access To Services At MCSO.

The complaint alleges that MCSO's two-week English language class is not sufficient to remedy the problems posed by the English-Only policy. Again, there is no English-only policy in the MCSO jail facilities. To the contrary, MCSO offers several classes and programs in Spanish as part of its effort to provide meaningful access to the services of MCSO. One such class is the English Language Instruction class ("ELI") as discussed in Section V (a) (3).

ELI is a voluntary *four-week* course designed to facilitate inmates to learn basic English words and phrases that will be helpful when communicating with other inmates and officers who do not speak Spanish. See Exhibit 81 (ELI class posting provided to inmates). The ELI program manual is attached as Exhibit 82. It should be emphasized that whether or not inmates choose to voluntarily enroll in the ELI program, or any of the other programs, each inmate's needs are met in the jails, regardless of his or her language ability. A Spanish speaking inmate does not need the ELI class to effectively communicate in the jails. As described in this position statement, MCSO's language assistance plan provides several means by which LEP inmates are accommodated. The

³² By Arizona statute, MCSO is required to offer educational services to juvenile inmates who are remanded as adults and inmates under 22-years-old with special needs. It is the Sheriff's Office's policy to provide both English and Spanish speaking inmates with the opportunity to attend education classes and nearly all juvenile inmates choose to attend. The educational services offered by MCSO are explained in Section V (e).

³³ The *voluntary* ELI course program manual includes a section on "National Heritage," which teaches Spanish speaking inmates the Pledge of Allegiance, the preamble to the Constitution, a basic overview of the U.S. Government structure, how to register to vote and how to become a U.S. citizen. This information is provided in Spanish and is a learning tool for inmates learning English. Not only are Spanish speaking inmates not discriminated against; this class is designed specifically for Spanish speaking inmates.

ELI class is an opportunity for Spanish speaking inmates to increase their knowledge of the English language, but only if they choose to do so.

(f) Defense Attorneys, And Interpreters For Legal Visits, Have 24-Hour Access To The Maricopa County Jail System.

The complaint alleges that MCSO schedules LEP inmates to meet with their attorneys and court-appointed interpreters at times when interpreters are often unavailable due to their regular courtroom duties, thereby impeding LEP inmates from meeting with their attorneys. This allegation is false and a misstatement of the procedure followed in all MCSO jails for legal visits. Interpreters for legal visits are arranged by the Maricopa County Superior Court, the other courts serving Maricopa County, and at the request of the inmate's own legal counsel. MCSO does not arrange for interpreters for legal visits. MCSO imposes no restrictions on the times or days when a legal visit may occur.

MCSO provides reasonable accommodations for after hours visits so attorneys and interpreters can visit. MCSO makes the necessary accommodations for this service 24 hours a day, seven days a week. The inmate's *attorney* (not a MCSO staff member) arranges the date and time of the visit. The attorney arranges the meeting time with the interpreter. The interpreter's availability is a function of the Maricopa County Superior Court's Office of the Court Interpreter, not MCSO. Privileged visits are routinely accommodated up to 9:30 p.m., however early morning visits, e.g., 2:00 a.m. or 3:00 a.m. can be arranged. Often times, legal visits will be conducted via video conferencing. MCSO also makes necessary accommodations for this service 24 hours a day, seven days a week. MCSO provides reasonable accommodations for all legal visits regardless of time of day.

(g) The MCSO Jail Hotline Has Spanish Language Options – And MCSO's Cutting Edge Website For The General Public Has Spanish Options.

The complaint asserts that MCSO's website, which contains descriptions of inmate programs, FAQs, and visitation information geared to the public, is in English only, thereby impeding LEP inmate and visitor access to important information. First, MCSO's website is provided as a public service. MCSO voluntarily developed the website to raise awareness of community work that MCSO has traditionally performed. All information MCSO provides on its website is considered public information and may be copied and distributed. The primary purpose is to inform the community about the services MCSO offers and the Sheriff and Sheriff's Office as a whole. The website features press releases, recent news stories and contact numbers for reaching various sections of the Sheriff's Office. The website was not designed to provide information to inmates at the jails or to their families. The MCSO website was never intended to address inmate issues such as discipline, grievances, booking, discharge, etc.

Notwithstanding the foregoing, MCSO continually updates its website in an effort to distribute information to the community. As described in Section II (g) above,

information and forms for persons who have been sentenced and must report to the Self Surrender Center are available on the MCSO website in both English and Spanish. *See* Exhibit 38. MCSO believes that information concerning bail, bonds or fines, inmate locations and visitation issues would be a beneficial addition to the website and plans to introduce these sections in both English and Spanish.

MCSO currently offers a jail hotline where members of the community can receive answers to jail-related questions. MCSO provides a Spanish telephone menu as part of its hotline service at 602-876-0322. This number is provided on the homepage of the MCSO's website. If a Spanish speaking LEP individual needs assistance in Spanish, bilingual MCSO staff members are available for these calls. Information regarding the hotline service is available in Spanish on the home page of the website. *See* Exhibit 19.

As previously noted, MCSO's efforts to include information in Spanish on its website exceed the standard practice throughout the country. Many law enforcement agencies and other entities throughout the country do not even have websites and, those that do, rarely have a bilingual option. A review of sheriff's office websites of counties containing the 10 U.S. cities with the largest Hispanic populations reveals that only two counties have links to Spanish versions of their websites, the County of New York and Dallas County.³⁴ Further, the websites for both the American Civil Liberties Union and Summit County's Sheriff's Office, whose LEP policies have been held up by the DOJ as models, do not provide a Spanish version of their websites.

(h) MCSO's Jail Visitation Policy Does Not Discriminate On The Basis Of National Origin Or Limited English Proficiency.

The complaint alleges that MCSO's jail visitation policy discriminates on the basis of national origin and limited English proficiency. This allegation is completely meritless. MCSO's jail visitation policy is applied uniformly for all visitors. There is no discrimination on the face of the policy, no intent to discriminate, nor is it applied discriminatorily. Every visitor must identify himself or herself by name and complete a Visitation Form. The Visitation Form asks for very basic information and looks very much the same at each facility. *See* Exhibit 67. The visitor must also present a U.S. government issued form of identification. A visitor does not have to be a U.S. citizen, but does have to be in the U.S. legally.

Once the visitor completes the Visitation Form, the biographical information is entered into the Jail Management System ("JMS"), along with certain personal characteristics of height, weight, hair color and eye color. The type of identification provided and the number on the identification card is also entered. Each visitor's information is run through the Arizona Crime Information Center ("ACIC") and the National Crime Information Center ("NCIC") and a check for wants and warrants is

³⁴ According to the 2000 census, the cities with the highest population of Hispanic persons are: New York, NY; Los Angeles, CA; Chicago, IL; Houston, TX; San Antonio, TX; Phoenix, AZ; El Paso, TX; Dallas, TX; San Diego, CA; San Jose, CA.

made.³⁵ No visitor citizenship information is captured in JMS. See Exhibit 83 (visit and visitor information computer reports – note that none of which has a field for citizenship data). A visitor may visit for 30 minutes, 60 minutes or 90 minutes depending on the amount of visit time the inmate has remaining for the week. A visitor is never denied a visit based on his or her national origin or LEP status.

MCSO does have certain requirements for visitors. A convicted felon cannot visit an inmate in a MCSO jail facility. Generally, individuals who have been arrested and booked into a MCSO jail facility must wait one year from the date of their release to visit an inmate in the jails. A visitor must be in the U.S. legally. As stated above, this does not mean that a visitor must be a U.S. citizen. Language ability and national origin are never factors in determining visitation eligibility.

Currently, the Visitation Forms are available only in English. However, MCSO is developing a Spanish version of the form. Bilingual officers also are available to assist LEP visitors in completing the forms. At the O-Yard section of the Tents Complex, at least one bilingual officer is scheduled to work at each shift in the visitation area. At the other facilities, Spanish speaking officers working in the visitation area or other nearby officers typically assist LEP visitors. In the event that a LEP visitor requires language assistance and no officer is proficient in his or her language, visitation officers also have access to the Language Line for interpretive services.

MCSO's visitation policy does not discriminate on the basis of national origin or language ability. It is the policy of the MCSO to collect the same identifying information from every visitor. If a LEP visitor requires language assistance, bilingual MCSO officers are available to assist, and this is routinely done in the jails. Additionally, MCSO employs two bilingual Spanish-speaking receptionists in its Communication Division who can address questions or grievances when Spanish speaking individuals call the Sheriff's Office.

CONCLUSION

For the forgoing reasons, MCSO respectfully requests that the DOJ Civil Rights Division close its investigation and dismiss the complaint alleging discrimination on the basis of national origin (Hispanic) by MCSO in the operation of its jail facilities. As demonstrated in this position statement, MCSO has long maintained an effective language assistance plan that complies with, and in many instances exceeds, the guidelines described in the DOJ's Guidance Document. Further, MCSO continues to expand its language assistance plan as inmate needs arise, technology improves, and additional resources become available.

³⁵ If a person has an outstanding warrant, the visit may occur, but that person will likely be arrested at the conclusion of the visit.

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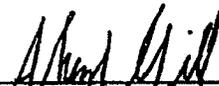
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The allegation that MCSO has an English-only policy in its jails is false. MCSO does not, and has never, had such a policy. Not only would such a policy be impractical, it would compromise the safety of the inmates and the MCSO staff members. Spanish is spoken regularly on a daily basis throughout the jails by inmates, visitors and staff members. Beyond the communications with bilingual officers, MCSO has made many accommodations, some of which have been in place for over 20 years, to provide meaningful access to its services for all inmates, regardless of language ability. The other allegations, as demonstrated above, are equally without merit.

If you have any questions or would like additional information, please contact me at (602) 778-3700.

Respectfully,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.



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cc: Clarisse McCormick, Esq., Maricopa County Attorney's Office
MaryEllen Sheppard, Maricopa County Sheriff's Office

Enclosures (Exhibits 1-85)