

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO.: P2023-900006

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MATTHEW J. PLATKIN, Attorney General : ADMINISTRATIVE ACTION
of New Jersey, and SUNDEEP IYER, :
Director of the New Jersey Division on Civil : VERIFIED COMPLAINT
Rights, :
:
Complainants, :
:
v. : Received and Recorded By:
:
CITY OF MILLVILLE, : Stephen Dekovich, Chief Legal Specialist
:
Respondent. : Date: August 8, 2023
:

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:

CHARGE

Complainants Matthew J. Platkin, Attorney General of New Jersey, and Sundeep Iyer, Director of the New Jersey Division on Civil Rights (together “Complainants”), charge Respondent the City of Millville with unlawful discrimination in violation of the New Jersey Law Against Discrimination (“LAD”). N.J.S.A. 10:5-12(f); see N.J.S.A. 10:5-1 to -50.

INTRODUCTION

1. This case seeks to remedy unlawful discrimination by the City of Millville (“Millville”). Millville has unlawfully discriminated against litigants on the basis of national origin in violation of the LAD, N.J.S.A. 10:5-1 to -50.

2. Between June 2022 and December 2022, the Millville Municipal Court (“Court”), which is operated and funded by the City of Millville, offered both in-person and virtual court sessions for defendants who were required to appear before the Court. Millville, however, engaged in a pattern or practice of scheduling litigants who were or were perceived to be Spanish-speaking to appear at in-person court proceedings and thereby denied those litigants equal access to virtual court proceedings.

3. Starting in June 2022, the Court began to conduct in-person court sessions on Mondays and virtual court sessions on Wednesdays.

4. The Court scheduled a Spanish interpreter, L.D., to provide Spanish interpreting services for two Mondays each month. (This Complaint refers to L.D. as the “Court Interpreter.”) The Court did not schedule the Court Interpreter for any virtual court sessions on Wednesdays.

5. The Court could have made interpreting services widely available for virtual court proceedings, but it did not. The Court did have access to a virtual interpreting service, called Language Line, for litigants who required Spanish interpreting services at virtual hearings. But the Court rarely used Language Line at virtual hearings.

6. Instead, the Court maintained a practice of scheduling litigants who were actually or perceived to be Spanish-speaking for in-person sessions on the two Mondays each month when the Court Interpreter was available. Millville’s scheduling practices denied litigants who were actually or perceived to be Spanish-speaking equal access to virtual court proceedings.

7. Indeed, while the Court Interpreter’s services were available on only 24 percent of the days Millville Municipal Court was in session between June 13, 2022 and December 31, 2022 and were, during that time period, available only on in-person days, the Court Interpreter provided Spanish interpreting services for 95 percent of court appearances by litigants who needed Spanish

interpreting services on the record during that time. Language Line, by contrast, provided Spanish interpreting services for less than 5 percent of court appearances by litigants who needed Spanish interpreting services on the record during that time.

8. In maintaining a practice of scheduling litigants who were actually or perceived to be Spanish-speaking for in-person rather than virtual sessions, Millville discriminated against Hispanic or Latinx/e¹ litigants based on their actual or perceived national origin.

9. Data analysis for the period from June 13, 2022 through December 2022 shows that defendants with a Hispanic surname were almost twice as likely as defendants with a non-Hispanic surname to be scheduled for an in-person court appearance, after controlling for whether a defendant's charges required them to be scheduled in person under applicable court orders.

10. As a result of Millville's discriminatory scheduling practices, for the period from June 13, 2022 through December 31, 2022, approximately 44 percent of defendants with a Hispanic surname were scheduled in person, as compared to approximately 31 percent of defendants with a non-Hispanic surname.

11. Moreover, data also suggests that scheduling may not have been based only on litigants' actual need for interpreting services, but also may have been based on surname or other indicators of national origin. Indeed, litigants with Hispanic surnames were regularly scheduled

¹ In this Complaint, DCR uses the phrase "Latinx/e" to refer to individuals who identify as Latino, Latina, Latinx, or Latine. DCR has previously used "Latinx" as a gender-neutral term. However, "[s]ome people have challenged 'Latinx,' saying it's an Anglicization, as well as a word that is impossible to pronounce in Spanish. In response to that criticism, advocates for the term have begun to move in the direction of a new term: Latine." Paloma Celis Carbajal, Curator for Latin American, Iberian & Latino Studies, General Research Division, "From Hispanic to Latine: Hispanic Heritage Month and the Terms That Bind Us," N.Y. Public Library (Sept. 29, 2020), <https://www.nypl.org/blog/2020/09/29/hispanicheritage-month-terms-bind-us>.

for in-person hearings even when they did not require Spanish interpreting services, and even when they were not required to appear in person under the court orders governing scheduling.

12. The Court’s discriminatory scheduling practices continued from June 2022 through December 2022. In December 2022, Municipal Court Judge Jason Witcher publicly alleged discrimination in the Millville Municipal Court based on the Court’s practice of denying litigants who were or were perceived to be Spanish-speaking equal access to virtual court proceedings. Following those allegations, in early 2023, the Administrative Office of the Courts (“AOC”) announced certain measures that would require more Millville Municipal Court sessions to be conducted virtually.

13. From January 2023 through August 2023, DCR conducted an independent investigation of Judge Witcher’s allegations. DCR reviewed all Millville Municipal Court calendars for the 23-month period from June 6, 2021 through April 26, 2023, all interpreting services invoices from July 2021 through December 2022, and more than 14,000 emails and attachments from Millville Municipal Court staff. DCR also listened to the audio recordings of all court dates between July 2021 and December 2022 on which Spanish interpreting services were provided; independently interviewed numerous witnesses; and retained an expert to analyze the data to determine whether—after controlling for whether litigants’ charges required them to be scheduled in person under the court orders that governed court scheduling—Hispanic litigants were disproportionately scheduled to appear for court in person.

14. DCR’s investigation corroborated Judge Witcher’s allegation that the Millville Municipal Court required litigants who were or were perceived to be Spanish-speaking to appear in person and thereby denied these litigants equal access to virtual court proceedings.

15. Millville's discriminatory scheduling practices harmed litigants who were or were perceived to be Hispanic or Latinx/e by requiring them to appear for court in person, which in turn required these litigants to take additional time off work, incur additional travel expenses, and arrange childcare. Millville's discriminatory practices are also particularly harmful because they risk undermining public trust in the judiciary.

16. By requiring Hispanic or Latinx/e litigants to appear for court in person and thereby denying them the opportunity to appear for court virtually, Millville's practice of scheduling litigants who were actually or perceived to be Spanish-speaking on the two in-person Mondays a month when the Court Interpreter was available treated litigants who were perceived to be Hispanic or Latinx/e differently based on their actual or perceived national origin.

17. In the alternative, even if Millville's scheduling practices could be viewed as facially neutral, its scheduling practices actually and predictably had an unjustified disparate impact on litigants who were perceived to be Hispanic or Latinx/e by requiring them to appear for court in person at disparate rates when compared to non-Hispanic litigants.

18. Complainants Matthew J. Platkin, the Attorney General of New Jersey, and Sundeep Iyer, the Director of the New Jersey Division on Civil Rights, seek relief to prevent and remedy Millville's violations of the LAD, including a permanent injunction prohibiting Millville from maintaining a policy or practice of scheduling litigants in a manner that denies them equal access to virtual court appearances based on their national origin, as well as compensatory damages for economic loss and other harms suffered by victims of Millville's alleged discrimination.

PARTIES

19. Complainant Matthew J. Platkin is the Attorney General of New Jersey. The Attorney General, having offices at 25 Market Street, Trenton, New Jersey, 08611 and 33

Washington Street, Newark, New Jersey, 07102, is charged with enforcing the Law Against Discrimination (“LAD”). The Attorney General is authorized to proceed against any person to compel compliance with any provisions of the LAD or to prevent violations or attempts to violate any such provisions. N.J.S.A. 10:5-8.2 and 13.

20. Complainant Sundeep Iyer is the Director of the New Jersey Division on Civil Rights (“DCR”), the agency charged with enforcing the LAD on behalf of the Attorney General, and maintains a primary office at 31 Clinton Street, Newark, New Jersey. Complainant Iyer brings this action in his official capacity pursuant to the authority of the Director of the Division on Civil Rights, pursuant to N.J.S.A. 10:5-8.2 and 13 and N.J.A.C. 13:4-2.2(d).

21. Respondent City of Millville (“Millville”) is a city in Cumberland County, New Jersey. Millville operates the Millville Municipal Court. Millville is responsible for funding the Court’s operations; appointing the municipal court judge, prosecutor, and public defender; and employing the municipal court administrator and all municipal court staff. The City maintains its principal office at 12 South High Street, Millville, NJ 08332. The Court’s principal office is located at 18 South High Street, Millville, NJ 08332.

FACTUAL ALLEGATIONS

DCR’s Investigation of Discrimination in Millville Municipal Court

22. The LAD provides that it is the policy of the State of New Jersey to prevent and remedy unlawful discrimination in all its forms, see N.J.S.A. 10:5-3, including unlawful discrimination based on actual or perceived national origin in municipal courts and other places of public accommodation, see N.J.S.A. 10:5-5(l), -12(f).

23. Millville Municipal Court is a “place of public accommodation” under the LAD. N.J.S.A. 10:5-5(l); see also Dale v. Boy Scouts of America, 160 N.J. 562, 593 n.7 (N.J. 1999)

(“New Jersey governmental entities are, of course, bound by the LAD.”) (overruled on other grounds); Ptaszynski v. Uwaneme, 371 N.J. Super. 333, 348 (N.J. Sup. Ct. App. Div. 2004) (“We are satisfied that not just a municipal police force, but any State governmental agency is a place of public accommodation for purposes of inclusion under the umbrella of the LAD; and, in fact, the New Jersey Supreme Court has already said as much.”) (citing Dale, 160 N.J.at 593 n.7).

24. Because Millville operates the Millville Municipal Court, Millville operates a “place of public accommodation” under the LAD. N.J.S.A. 10:5-5(1).

25. The LAD provides, in relevant part, that it is unlawful discrimination for any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof . . . on account of the . . . national origin . . . of such person[N.J.S.A. 10:5-12(f)(1) (emphases added).]

26. In or about December 2022, Municipal Court Judge Jason Witcher publicly alleged that Millville Municipal Court maintained a policy or practice of scheduling litigants who were actually or perceived to be Spanish-speaking for in-person court appearances on the two Mondays a month when the Court Interpreter was available, thereby denying litigants who were actually or perceived to be Hispanic, Latinx/e, or Spanish-speaking equal access to virtual court appearances based on their national origin.

27. AOC announced that it was launching an investigation in December 2022. AOC concluded its investigation in February 2023, releasing a report summarizing its findings, titled “Report of Investigation into Millville Municipal Court Allegations” (“AOC Report”).

28. AOC’s investigation “examined [the] claim that defendants with ‘Spanish surnames’ were automatically scheduled for in-person hearings, as well as the claim that the

scheduling had a disparate impact on the Latino community,” and their conclusions were based on witness interviews and a “review of court files and audio recordings of more than 20 court sessions dating back to June 2022.” AOC Report at 1, 7.

29. From January 2023 through August 2023, DCR conducted an independent investigation of Judge Witcher’s allegations of discrimination in the Millville Municipal Court.

30. DCR reviewed all Millville Municipal Court calendars for the 23-month period from June 6, 2021 through April 26, 2023, and retained a data expert to analyze whether litigants who were or were perceived to be Hispanic or Latinx/e were disproportionately scheduled to appear for court in person.

31. DCR used Language Line invoices and Court Interpreter invoices to identify each Millville Municipal Court session between July 2021 and December 2022 on which Spanish interpreting services could have been provided by either the Court Interpreter or Language Line. DCR listened to the audio recordings of all such identified court dates during this period to identify the individual litigants for whom interpreting services were provided.

32. DCR requested and reviewed more than 14,000 emails and attachments from Millville Municipal Court staff.

33. DCR interviewed numerous witnesses, several of whom were not interviewed as part of AOC’s investigation.

34. As part of its investigation, DCR also reviewed the AOC Report and all appendices released therewith. Additionally, DCR reviewed witness statements AOC collected but did not publicly release when it released the AOC Report, including those of the Millville Prosecutor and Millville Public Defender.

35. DCR’s investigation revealed that Millville Municipal Court’s scheduling policies and practices discriminated against Hispanic, Latinx/e, and Spanish-speaking litigants on the basis of national origin.

36. The term “Hispanic” is used herein to include all people residing in the United States who identify as of Spanish-speaking descent. “Hispanic” does not include people who identify as from Brazil, Guyana, Suriname, or any other Latin American country in which the predominant language is not Spanish.

37. “Hispanic” indicates a person’s national origin.

38. The term “Latinx/e” is used herein to include all people residing in the United States who identify as of Latin American descent. “Latinx/e” does not include people who identify as from Spain, Equatorial Guinea, or any other predominantly Spanish-speaking country outside of Latin America.

39. “Latinx/e” indicates a person’s national origin.

40. “National origin” refers to a person’s (or their ancestor’s) place of origin, and any characteristics that are inextricably intertwined with or closely associated with such place of origin, including, but not limited to, physical, cultural, or linguistic characteristics.

Millville Municipal Court Operations

41. Millville Municipal Court holds its regular court sessions on Mondays and Wednesdays. The Court has maintained this scheduling practice since at least January 2012.

42. Millville Municipal Court’s Certified Court Administrator is Kimberly Hamlyn. She is employed by the City of Millville and reports to Millville’s Business Administrator. In that capacity, she oversees the operations of Millville Municipal Court, including the scheduling of in-person and virtual court sessions and the scheduling of the Court Interpreter.

43. The Court employs the Court Interpreter to provide live Spanish interpreting services two Mondays each month and has done so consistently since at least January 2012.

44. The Court also has a contract with Language Line, a service that can provide interpreting services in multiple languages, including Spanish.

45. The Court's original contract with Language Line allowed for the provision of interpreting services by phone.

46. By July 2021, the Court added an additional service to their Language Line contract, Insight Video Interpretation, which allowed them to provide litigants with video remote interpreting in multiple languages, including Spanish.

47. Prior to the New Jersey Supreme Court's March 2020 orders suspending in-person court appearances due to the COVID-19 pandemic, both Monday and Wednesday court sessions in Millville Municipal Court were held in person.

48. When Millville Municipal Court sessions resumed following the New Jersey Supreme Court's April 24, 2020 Order, all Millville Municipal Court sessions on both Mondays and Wednesdays were held virtually.

49. All Millville Municipal Court sessions on both Mondays and Wednesdays continued to be held virtually after the April 24, 2020 order until at least November 18, 2021.

50. On November 18, 2021, the New Jersey Supreme Court issued an order titled "Future of Court Operations – Continuation of Both In-Person and Virtual Court Events" (the "November 18th Order"), which established a framework for which court proceedings should be conducted in person or virtually. That order required that particular matters involving certain serious offenses should be conducted in person absent consent of all parties.

51. Between November 18, 2021, and June 12, 2022, the Court continued to hold the majority of court sessions virtually on both Mondays and Wednesdays, but it held certain court sessions in person during that time.

52. On or about June 13, 2022, the Court began holding nearly all of their Monday court sessions in person. Between June 13, 2022 and December 31, 2022, there were only four Mondays on which one or more court sessions were held virtually.

53. During that same period, from June 13, 2022 through December 31, 2022, most defendants who appeared on Wednesdays appeared virtually. There were eleven Wednesdays during that period on which a court session was held in person, but these sessions included only a small number of the cases scheduled for that day.

54. On October 27, 2022, the New Jersey Supreme Court issued an order titled “The Future of Court Operations – Updates to In-Person and Virtual Court Events” (the “October 27th Order”). That order amended the framework for which court proceedings should be conducted in person or virtually, and required the courts to hold a larger number of matters in person absent consent of all parties based on the severity of the charge.

Millville’s Discriminatory Scheduling Practices

55. According to Millville Municipal Court’s Certified Court Administrator, Kimberly Hamlyn, and other witnesses, prior to the COVID-19 pandemic, when all court sessions were held in person, the Court had a policy and practice of scheduling Spanish-speaking litigants on the two Mondays a month that the Court Interpreter was available.

56. Once Language Line’s Insight Video Interpretation service became available, in or about July 2021, according to Ms. Hamlyn and certain other witnesses, the Court could have

used Language Line to provide Spanish interpreting services on days other than the two in-person Mondays a month on which the Court Interpreter provided Spanish interpreting services.

57. The evidence DCR reviewed demonstrates that Millville Municipal Court nonetheless engaged in a pattern or practice of scheduling nearly all litigants who needed Spanish interpreting services for court proceedings on the two Mondays a month when the Court Interpreter was scheduled.

58. DCR examined data in three time periods: (1) July 2021 through June 12, 2022; (2) June 13, 2022 through December 31, 2022; and (3) January 1, 2023 through April 26, 2023.

59. For the period from July 2021 through June 12, 2022, nearly all Court sessions on both Mondays and Wednesdays were held virtually. This time period precedes the period during which Millville is alleged to have engaged in a pattern or practice of discrimination.

60. For the period from June 13, 2022 through December 31, 2022, nearly all Monday Court sessions were held in person and nearly all Wednesday Court sessions were held virtually. The Court is alleged to have engaged in a pattern or practice of discrimination during this time period.

61. The time period from January 1, 2023 through April 26, 2023 postdates the point at which the allegations of discrimination against Millville became public.

62. From July 1, 2021 through June 12, 2022, despite the availability of Language Line's Insight Video Interpretation service, Millville continued its practice of scheduling litigants who were or were perceived to be Spanish-speaking on the two Mondays a month that the Court Interpreter was available.

63. DCR's review of the Court Interpreter's invoices, Language Line invoices, and court recordings revealed that between July 1, 2021 and June 12, 2022, the Court Interpreter's

services were used on the record by litigants needing Spanish interpreting services 107 times, while Language Line's services were used on the record by litigants needing Spanish interpreting services only one time.

64. The Court Interpreter's services were available on only 26 percent of Millville Municipal Court's regularly scheduled court days between July 1, 2021 and June 12, 2022, but the Court Interpreter provided Spanish interpreting services for 99 percent of court appearances by litigants who needed Spanish interpreting services on the record during that time. Language Line, by contrast, provided Spanish interpreting services for less than 1 percent of court appearances by litigants who needed Spanish interpreting services on the record during that time.

65. The Court began holding its Monday court sessions in person on or about June 13, 2022. Nonetheless, the Court continued its practice of scheduling the Court Interpreter two Mondays each month. As a result, from June 13, 2022 forward, the Court Interpreter's services were made available to litigants only in person.

66. Yet from June 13, 2022 through December 31, 2022, despite the availability of Language Line's Insight Video Interpretation service, Millville continued its practice of scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month that the Court Interpreter was available.

67. DCR's review of the Court Interpreter's invoices, Language Line invoices, and court recordings revealed that between June 13, 2022 and December 31, 2022, the Court Interpreter's services were used on the record by litigants needing Spanish interpreting services 178 times, while Language Line's services were used on the record by litigants needing Spanish interpreting services only nine times.

68. The Court Interpreter's services were available on only 24 percent of the days Millville Municipal Court was in session between June 13, 2022 and December 31, 2022 and were, during that time period, available only on in-person days. Nonetheless, the Court Interpreter provided Spanish interpreting services for 95 percent of court appearances by litigants who needed Spanish interpreting services on the record during that time. By contrast, Language Line provided Spanish interpreting services for less than 5 percent of court appearances by litigants who needed Spanish interpreting services on the record during that time.

69. From June 13 through December 31, 2022, Millville's practice of scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month that the Court Interpreter was available had the effect of requiring these litigants to attend court in person, thereby denying them the opportunity to appear virtually.

70. Nonetheless, Ms. Hamlyn and other Millville Municipal Court staff claimed that once Language Line's Insight Video Interpretation service became available, the Court scheduled litigants based on whether the facts of their case met the criteria for in-person appearances under the governing orders issued by AOC, and not by their need for Spanish interpreting services.

71. Several of Ms. Hamlyn's emails, however, were inconsistent with that stated policy and were, instead, consistent with Millville's practice of scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month that the Court Interpreter was available and thereby denying these litigants the opportunity to appear virtually.

72. On March 30, 2022, as Millville Municipal Court was preparing to resume in-person court sessions on Mondays, Ms. Hamlyn emailed Millville's Public Defender and Municipal Prosecutor and provided a tentative schedule for Mondays after the return to in-person.

In the email, Ms. Hamlyn wrote: “We have the Spanish Interpreter on Mondays, so I may have to add 1st appearances for Spanish into this schedule.”

73. On September 9, 2022, Ms. Hamlyn emailed a staff member from AOC to explain why a “large number of in-person cases” had been scheduled the previous week. After noting that the session had many people who had charges she believed required in-person proceedings, she then added: “Spanish was in person as well.” (emphasis added).

74. Emails from attorneys requesting that their clients be rescheduled also suggested that attorneys were familiar with Millville Municipal Court’s practice of scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month that the Court Interpreter was available to provide Spanish interpreting services.

75. On September 19, 2022, an attorney emailed Ms. Hamlyn requesting to reschedule their client. The attorney wrote, “[Client] also speaks English so please put this matter on for virtual court on a Wednesday when it is rescheduled today.” There is no record of Ms. Hamlyn having disputed the attorney’s implication that the need for interpreting services would affect whether a litigant would be scheduled for a virtual court session.

76. On October 27, 2022, an employee from a law firm wrote to Ms. Hamlyn requesting to reschedule a client. The employee wrote, “The matter above is scheduled for [in-person interpreter date] at [time]. This is a simple traffic ticket and our client does not need an interpreter. Can it be moved to [virtual date] as [attorney] is scheduled to be there already virtually?” (emphasis added). There was no record of Ms. Hamlyn having disputed the employee’s implication that the need for interpreting services would affect whether a litigant would be scheduled for a virtual court session.

77. DCR's review of witness statements collected by AOC also revealed multiple witness statements that were consistent with Millville's practice of scheduling litigants who were or were perceived to be Spanish-speaking for in-person court sessions.

78. One witness statement collected by AOC, from a witness who is regularly present during Millville Municipal Court sessions on both Mondays and Wednesdays, stated:

The only real discernable change for interpreting cases during my time with Millville, was that at some point with the Monday docket, our interpreter . . . began appearing in-person. On that particular day, we would normally have primarily Spanish speaking persons scheduled on those dates. . . . Most of the interpretation is in person on Mondays with [the Court Interpreter]. . . .

...

I don't recall a specific instance of Spanish interpreting taking place on Wednesdays. It doesn't mean it doesn't happen. Since we began in person, it is over 90% in person for people needing an interpreter.

...

. . . It does appear that the majority of people needing interpreting services are scheduled on Mondays. I expect to see most of the Spanish interpreting on Mondays. I would be surprised to see 30 cases on Wednesday for interpreting because I am aware the in-person interpreter is available on Mondays.

I don't have any knowledge as to how matters needing the services of an interpreter are handled in Millville. As soon as we started in-person services, I would say about 99% of persons needing interpreter come in person. . . .

. . . The vast majority of interpreting services have been in person on Mondays. . . .

...

In my observations, there are two defining characteristics of in-person versus virtual. In-person is disproportionately trial days and interpreting happens most on Mondays. . . . There are Mondays when we have had a docket that appears to be mostly Spanish. I am not shocked by one case involving a Spanish interpreting on a

Wednesday, but I would be shocked by a bunch [of] Spanish interpreting cases on Wednesdays. . . .

. . .

Is there a disproportionate number of Spanish interpreting cases on Mondays, yes--- but I don't know how those cases are being selected or scheduled. There are plenty of Spanish names on virtual days. I have spoken with individuals who need an interpreter on a virtual day, and I then flag for reschedule. (emphasis added).

79. Another witness statement collected by AOC, from a witness who is regularly present during Millville Municipal Court sessions on both Mondays and Wednesdays, explained:

When the court resumed court operations virtually in 2020, I don't know that anything really changed with interpreting. I didn't notice. If I needed an interpreter Kim or her staff would arrange to have the [Court] [I]nterpreter there She would just be there virtually. . . . Whether virtual or in person [the Court Interpreter] would be the person that was providing interpreting for the Spanish language. I don't recall other cases with other languages except for ASL.

I am familiar with language line services. . . . I can't recall when language line could be used. The majority of Spanish interpreting cases are heard with [the Court Interpreter] in Millville. . . . I don't think I have seen her lately on the virtual dates. . . . I can't remember for virtual whether we have used language line in Millville. Occasionally, I will find that a person requires interpreting assistance and it wasn't known to the court, or the case fell through the cracks. In those situations, the case would be rescheduled. Rarely happens but it has happened.

80. These witness statements underscore that even where litigants who required Spanish interpreting services were initially scheduled for a virtual court appearance, Millville had a practice of rescheduling those litigants for an in-person court appearance instead.

81. The audio recording of at least one Millville Municipal Court session corroborated the witness accounts, indicating that the Court would reschedule a litigant who required Spanish- interpreting services for an in-person day on which the Court Interpreter was available. During a

July 20, 2022, virtual court session, the following exchange took place on the record with a litigant, identified here as Defendant G:

Millville Municipal Court staff: “I have you under [defendant name]. . . . Do you have a new license . . . do you need time to get your license?”

Defendant G: “Um, . . . no speak English.”

Millville Municipal Court staff: “Okay, alright, so we’re gonna have to schedule you on a day we have the Spanish interpreter, okay.”

Defendant G: “Okay.”

Millville Municipal Court staff: “[J]ust look out in the mail for your next court date.”

“Defendant G: “Okay.”

Millville Municipal Court staff: “[Y]ou’re free to go.”

82. The practice reflected in this exchange is inconsistent with the testimony provided by multiple Court staff members in their interviews with DCR. Those witnesses asserted that the Court had a practice of pulling up Language Line if a defendant expressed a need for Spanish interpreting services during a virtual court session. The exchange with Defendant G corroborates, however, that Millville’s actual practice was to reschedule litigants who needed Spanish interpreting services on one of the two in-person Mondays each month that the Court Interpreter was available.

83. When interviewed by DCR, Ms. Hamlyn had no explanation for why court staff did not access Language Line for Defendant G on July 20, 2022.

84. As a result of court staff’s actions, Defendant G was required to appear in court twice: once virtually on July 20, 2022, and once in person more than a month later.

85. DCR reviewed the complete case file for Defendant G. Court staff made a notation in their file, dated July 20, 2022, “PP [postponed] for Spanish Interp.”

86. DCR’s review of additional case files revealed numerous other litigants whose case files contained an explicit notation to postpone their case based on their need for Spanish interpreting services.

87. The testimony provided to DCR during the course of DCR’s investigation further corroborated Millville’s practice of scheduling litigants who were or were perceived to be Spanish-speaking for in-person court appearances on the days the Court Interpreter was available, thereby denying them the opportunity to appear virtually.

88. One witness interviewed by DCR stated that, during their training in or about March 2022, they were explicitly told by Ms. Hamlyn to schedule litigants who needed Spanish interpreting services on a Monday when the Court Interpreter was available, and that they were provided with a list of the dates the Court Interpreter was available. The same witness stated that the instruction from Ms. Hamlyn did not change when the Court began scheduling Monday court sessions for June 2022 in person.

89. A witness interviewed by DCR also stated that, after observing Spanish-speaking litigants with a Wednesday virtual court date being rescheduled for a Monday in-person court date, they asked Ms. Hamlyn why Ms. Hamlyn did not schedule the Court Interpreter more often so that Spanish-speaking litigants could appear for court virtually. The witness indicated that Ms. Hamlyn replied that she schedules the Court Interpreter based on the Court Interpreter’s availability. The witness further indicated that Ms. Hamlyn did not mention at that time that Language Line could be used by litigants who appeared in court when the Court Interpreter was not available.

90. Another witness interviewed by DCR stated that, on several occasions in the fall of 2022, they attempted to discuss concerns with Ms. Hamlyn that Spanish-speaking defendants and defendants who they perceived to be Hispanic or Latinx/e were being denied access to virtual court.

Millville’s Scheduling Practices Discriminated Against Hispanic and Latinx/e Litigants

91. Data analysis by DCR’s retained data expert clearly demonstrates that individuals with Hispanic surnames were significantly more likely to be scheduled to appear in person in Millville Municipal Court than they were to be scheduled to appear virtually.

92. The data expert retained by DCR classified each Millville litigant’s surname using race or ethnicity data from the U.S. Census Bureau that contains over one hundred sixty thousand distinct surnames, each of which occur 100 or more times in the 2010 US Census, implemented through the “Surgeo” statistical package for Python. For each litigant, the data expert determined the probability that the litigant would identify as Hispanic or non-Hispanic based on how individuals with each surname self-identified in the 2010 Census.²

93. Use of this method to identify race or ethnicity is well-established and commonly accepted. This method is frequently used in a wide variety of contexts and is accepted as a reliable statistical method for identifying race or ethnicity. See Consumer Financial Protection Bureau, Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity: A

² Names were classified based on surname only. For each person, the data expert determined the probability that the litigant would identify as a particular race or ethnicity based on how individuals with each surname identified in the 2010 Census. (For example, for people in the 2010 census with the surname “Hernandez,” 90 percent identified as Hispanic. Therefore litigants with the surname Hernandez had a 90 percent probability of being Hispanic.) For the data analysis in the Complaint, litigants’ surnames were predicted to be of a specific race/ethnicity based on the highest probability given for that surname from the 2010 U.S. Census. The lowest maximum probability was 35 percent; the highest was 100 percent. Nonetheless, no matter the criteria the data expert applied (highest percent, 50 percent, or another threshold) for determining whether a particular litigant’s surname was Hispanic, the results were similar and remained statistically significant.

Methodology and Assessment (2014); Andrew J. Coleman, et al., The Classification of Ethnic Status Using Name Information, 42 J. Epidemiology & Cmty. Health 390 (1988); Iris I. Wei et al., Using a Spanish Surname Match to Improve Identification of Hispanic Women in Medicare Administrative Data, 41 Health Serv. Res. 1469 (2006); Allan F. Abrahamse et al., Surname Analysis for Estimating Local Concentration of Hispanics and Asians, 13 Population Res Pol. Rev 383 (1994); Evan T. R. Rosenman et al., Race and Ethnicity Data for First, Middle, and Surnames, 10 Data Sci. 299 (2023); U.S. Dep't of Health & Hum. Servs., Imputation of Race and Ethnicity in Health Insurance Marketplace Enrollment Data, 2015–2022 Open Enrollment Periods (2022).

94. Data analysis for the period from June 13, 2022 through December 31, 2022, shows that Millville's practice of scheduling litigants who were or were perceived to be Spanish-speaking for in-person court appearances resulted in defendants with Hispanic surnames being almost twice as likely as defendants with non-Hispanic surnames to be scheduled for in-person court appearances, after controlling for whether a defendant's charges required them to be scheduled in person under applicable court orders.

95. For the period from June 13, 2022 through December 31, 2022, approximately 44 percent of defendants with a Hispanic surname were scheduled in person, as compared to approximately 31 percent of defendants with a non-Hispanic surname.

96. The severity of the defendant's charge did not account for these disparities. The data analysis specifically controlled for the requirement in the November 18th and October 27th Supreme Court Orders that the severity and potential penalties of a defendant's charge should determine whether that person's court appearance is scheduled in person.

97. Critically, data analysis of Millville Municipal Court's regularly scheduled court days for the period June 7, 2021 through April 26, 2023, shows that defendants with a Hispanic

surname were less likely than defendants with a non-Hispanic surname to be charged with offenses that would require the Court to schedule them in person absent consent of all parties under the governing court orders. See November 18th Order at para. 2(b), 3, 4(f)(i); October 27th Order at para. 2(d), 3(f), 4(c). This means that defendants with a Hispanic surname were statistically less likely to have a charge for which the Court could not schedule them virtually.

98. This data suggests that scheduling may not have been based only on litigants' actual need for interpreting services, but also may have been based on surname or other indicators of national origin. Indeed, litigants with Hispanic surnames were regularly scheduled for in-person hearings even when they did not require Spanish interpreting services, and even when they were not required to appear in person under the court orders governing scheduling.

99. That data supports the statements of two witnesses interviewed by DCR, who noted that, based on their observations, it was possible that defendants were being scheduled not only based on their actual or perceived need for Spanish-speaking interpreting services, but also based on having a last name that was actually or was perceived to be Hispanic or Latinx/e.

100. All Millville Municipal Court employees interviewed by DCR indicated that litigants who made their need for a Spanish interpreter known either at or in advance of their court session had a sticky note added to their case file indicating that a Spanish interpreter was needed.

101. Ms. Hamlyn and other witnesses interviewed by DCR indicated that litigants' case files, including the litigant's name and any sticky note indicating a need for Spanish interpreting services, were available to both Court staff members responsible for scheduling and Court staff responsible for sending out the court notices to litigants with their scheduled date.

102. Ms. Hamlyn and other Millville Municipal Court staff members interviewed by DCR indicated that when cases are scheduled for first appearances, unless the date entered on the

ticket by the police officer was not a valid court date (e.g., a Tuesday or Thursday when court was not in session), the first appearance should be scheduled for the date reflected on the ticket.

103. One witness interviewed by DCR who was responsible for scheduling cases and issuing court notices indicated that they repeatedly observed court notices that had been issued to defendants for their first appearance that provided the defendant with a different court date than the date provided on the ticket.

104. That witness reported observing a discrepancy between the first appearance date on a defendant's tickets and the first appearance date on defendant's court notices under two circumstances. First, they sometimes observed those discrepancies for case files that contained a sticky note indicating that a Spanish interpreter was needed. Second, they sometimes observed those discrepancies for case files that did not contain a sticky note or other note indicating that a Spanish interpreter was needed, but that did involve a defendant with what they perceived to be a Hispanic last name.

105. The same witness further stated that they observed enough case files with that discrepancy to suggest that the discrepancy was not the result of data entry errors.

106. The disparities resulting from Millville's scheduling practices effectively disappeared after Judge Witcher's allegations became public.

107. Data analysis for the period after Judge Witcher's allegations became public, from January 1, 2023 through April 26, 2023, shows that during this timeframe there was statistically no association between Hispanic surname and whether defendants were scheduled in person, when comparing defendants with Hispanic surnames and non-Hispanic surnames. That is true regardless of whether the results are adjusted for whether the defendants' charges required them to be in person under the governing court orders.

108. Similarly, after Judge Witcher's allegations became public, for the period from January 1, 2023 through April 26, 2023, the percentage of defendants with a Hispanic surname scheduled in person was nearly equal to the percentage of defendants with a non-Hispanic surname scheduled in person.

109. Data analysis for the period from January 1, 2023 through April 26, 2023 therefore strongly supports the conclusion that the disparities that occurred between June 12, 2022 and December 31, 2022 were the result of Millville's scheduling practices during that period.

110. Between June 12, 2022 and December 31, 2022, Millville's practice of scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month when the Court Interpreter was available discriminated against litigants based on their actual or perceived national origin by requiring litigants who are perceived to be Hispanic or Latinx/e to appear for court in person and thereby denying them the opportunity to appear for court virtually.

111. In the alternative, even if Millville's practice of scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month when the Court Interpreter was available is viewed as facially neutral, it actually and predictably had an unjustified disparate impact on litigants who are perceived to be Hispanic or Latinx/e by requiring them to appear for court in person at disparate rates when compared to non-Hispanic litigants.

112. Millville's discriminatory scheduling practices harmed litigants who were or were perceived to be Hispanic or Latinx/e by requiring them to appear for court in person, which in turn required these litigants to take additional time off work, incur additional travel expenses, and arrange childcare. Millville's discriminatory practices are also particularly harmful because they risk undermining public trust in the judiciary.

AOC's Report and Investigation of Judge Jason Witcher's Allegations

113. In reaching these conclusions, DCR's investigation also considered the findings in the AOC Report, which was released in February 2023.

114. The AOC Report stated that it evaluated the claim that "Hispanic/Latino defendants" were "being denied the opportunity to appear virtually and instead scheduled for in-person appearances because they had 'traditional Spanish surnames.'" AOC Report at 1. It found based on "[a] review of defendant rosters" that "Hispanic/Latino individuals were consistently scheduled for both virtual and in-person court sessions and, in fact, were more likely to appear virtually." Ibid.

115. The AOC Report, however, did not meaningfully address whether Millville engaged in scheduling practices that discriminated on the basis of national origin by treating Hispanic or Latinx/e defendants differently from other litigants. Where the AOC Report touched on that issue, it noted only that "in-person sessions did in fact have a slightly higher percentage of defendants with Hispanic/Latino-sounding surnames than virtual sessions." Id. at 3.

116. The allegations set forth in this Complaint, which are based on a much larger dataset of court appearances, expert data analysis, numerous interviews, and DCR's review of thousands of emails, tell a different story: Millville engaged in a pattern or practice of scheduling litigants who were or were perceived to be Spanish-speaking for in-person appearances and thereby denied them the opportunity to appear for court virtually. As a result of this practice, Hispanic and Latinx/e litigants were far more likely than other litigants to be scheduled for in-person appearances.

DISCRIMINATION STATEMENT

117. Complainants repeat the allegations set forth in the preceding paragraphs of this Complaint as though set forth fully herein.

118. Respondent operates Millville Municipal Court, which is a place of public accommodation under the LAD. N.J.S.A. 10:5-5(l).

119. N.J.S.A. 10:5-12(f)(1) makes it unlawful for any owner, manager, superintendent, agent, or employee of any place of public accommodation to “discriminate against any person in the furnishing thereof” on the basis of actual or perceived “national origin.”

120. In scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month when the Court Interpreter was available, Respondent has engaged in unlawful public accommodations discrimination by expressly singling out litigants for disparate treatment based on their national origin.

121. By scheduling litigants who were or were perceived to be Spanish-speaking on the two in-person Mondays a month when the Court Interpreter was available, Respondent has engaged in unlawful public accommodations discrimination by adopting a scheduling practice that has an actual and predictable disparate impact on litigants based on national origin and that lacks a substantial, legitimate, non-discriminatory justification.

DEMAND FOR RELIEF

122. Said acts of discrimination occurred in Cumberland County, New Jersey.

123. Complainants request the full extent of relief authorized by law, including but not limited to:

- a. Ordering Respondent, its officers, agents and employees to cease and desist from engaging in policies and practices that discriminate against individuals based on their national origin;
 - b. Ordering Respondent to modify its policies, practices, and procedures as necessary to ensure its programs, practices, and procedures do not discriminate against individuals based on their national origin;
 - c. Ordering Respondent to submit to training and monitoring by DCR for a period of three years;
 - d. Awarding compensatory damages to all aggrieved parties for out-of-pocket expenses, humiliation, emotional distress and mental pain and anguish caused by Respondent's discriminatory conduct;
 - e. Awarding penalties pursuant to N.J.S.A. 10:5-14.1a; and
 - f. Awarding costs, including attorneys' fees, pursuant to N.J.S.A. 10:5-27.
124. Complainants have not instituted any other action in any court, either criminal or civil, regarding this matter.

Danielle Thorne, of full age, hereby certifies that she is a Senior Advisor for Affirmative Enforcement in the Division on Civil Rights and is authorized to file this verified complaint on behalf of the Attorney General of New Jersey and the Director of the Division on Civil Rights, pursuant to N.J.S.A. 10:5-8.2 and 13. She has read this complaint and understands the allegations, and to the best of her knowledge, information and belief, the allegations made in this complaint are true.

DATED: 8/8/2023



Danielle Thorne
Senior Advisor for Affirmative Enforcement
NJ Division on Civil Rights