

1 VICTOR HARRIS
2 LEGAL AID SOCIETY OF SAN DIEGO, INC.
3 964 Fifth Avenue
4 San Diego, CA 92101
5 Telephone: (714) 239-9611
6
7 DIANE S. GREENBERG
8 CALIFORNIA RURAL LEGAL ASSISTANCE
9 COOPERATIVE LEGAL SERVICES CENTER
10 1212 Market Street
11 San Francisco, CA 94102
12 Telephone: (415) 864-2752
13
14

15 Attorneys for Plaintiffs
16
17

18
19 IN THE UNITED STATES DISTRICT COURT FOR THE
20
21 SOUTHERN DISTRICT OF CALIFORNIA
22

23 LOUIS O. LOPEZ; CASA JUSTICIA,) Civil Action No. 75-0219-GT
24 individually and on behalf of)
25 all persons similarly situated,) PLAINTIFF'S MEMORANDUM OF
26) POINTS AND AUTHORITIES IN
27 Plaintiff,) OPPOSITION TO DEFENDANTS'
28) MOTION TO DISMISS THE SECOND
29 vs.) AMENDED COMPLAINT AND TO
30) DISMISS INDIVIDUAL DEFENDANTS
31 JOHN DUFFY, individually and as)
32 Sheriff of San Diego County;)
33 SHERIFF'S DEPARTMENT OF SAN DIEGO)
34 COUNTY; C. HUGH FRIEDMAN, TROY)
35 MOORE, CHARLOTTE ROBERTS, KING)
36 TAYLOR, TIMOTHY CONSIDINE,)
37 individually and as members of the)
38 San Diego County Civil Service)
39 Commission,)
40)
41 Defendants.)

42
43 INTRODUCTION

44 Plaintiffs submit this Memorandum in opposition to
45 defendants' following motions made pursuant to Rule 12(b), Federal
46 Rules of Civil Procedure: (1) to dismiss the Second Amended
47 Complaint on the ground that plaintiffs have failed to state a
48 claim upon which relief may be granted; and (2) to dismiss
49 individual defendants from particular claims for lack of juris-
50 diction. Plaintiffs respond to defendants' contentions in the
51 order they have been raised.

52

53

FILED

JUL 3 - 1975

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

1 I

2 PLAINTIFFS HAVE STATED CLAIMS UPON
3 WHICH RELIEF CAN BE GRANTED UNDER
4 42 U.S.C. §§1981 AND 1983, THE FOURTEENTH
5 AMENDMENT TO THE UNITED STATES CONSTITUTION
6 AND TITLES VI AND VII OF THE 1964
7 CIVIL RIGHTS ACT

8 In determining whether to dismiss a complaint pursuant to
9 Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court
10 must not only assume that the facts set forth in the claim are
11 true, Conley v. Gibson, 355 U.S. 41, 45-46 (1957), but must resolve
12 all doubts in favor of the plaintiff. E.g., Supchak v. United
13 States, 365 F.2d 844, 845 (3rd Cir. 1966). It is well settled
14 that a case, such as the one at bar, brought pursuant to the Civil
15 Rights Acts should not be dismissed at the pleading stage, unless
16 it appears to a certainty that the plaintiff would be entitled to
17 no relief under any state of facts which could be proved in
18 support of his claim. Scher v. Board of Education of West
19 Orange, 424 F.2d 741, 744 (3rd Cir. 1970); Marlowe v. Fisher
20 Body, 489 F.2d 1057, 1066 (6th Cir. 1973).

21 Thus, defendants carry a heavy burden on this motion which
22 they have clearly not met.

23 A. Plaintiffs Have Stated A Claim For
24 Relief Under Title VII Of The 1964
25 Civil Rights Act

26 In the Second Amended Complaint, plaintiffs allege
27 numerous facts under which they can establish a prima facie case
28 of employment discrimination by each of the two methods recognized
29 by the United States Supreme Court. See Alvarez-Ugarte v. City of
30 New York, 391 F.Supp. 1223, 1226 (S.D.N.Y. 1975).

31 First, pursuant to the Supreme Court decision in McDonnell
32 Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), a plaintiff may
establish a prima facie case by showing (1) that he belongs to
a racial minority, (2) that he applied for and was qualified
for a job for which the employer was seeking applicants, (3) that

1 despite his qualifications he was rejected, and (4) that the
2 employer continued to seek applicants of plaintiff's qualifica-
3 tions. The Ninth Circuit Court of Appeals applied this standard
4 in Gates v. Georgia-Pacific Corp., 492 F.2d 292, 295 (9th Cir.
5 1974). The Second Amended Complaint contains sufficient
6 allegations under each of the four elements stated in McDonnell
7 Douglas. In Paragraph 6, plaintiff Lopez alleges he is a
8 Mexican-American. In Paragraphs 6 and 12 through 14, plaintiff
9 alleges he was qualified for the Deputy Sheriff position, but
10 was rejected despite his qualifications. Finally,
11 Paragraph 6 alleges that a less qualified individual was
12 selected. Therefore, the Second Amended Complaint states
13 a claim upon which relief can be granted under 42 U.S.C. §2000e
14 et seq., pursuant to McDonnell-Douglas guidelines.^{1/}

15 Moreover, the Second Amended Complaint goes beyond McDonnell
16 Douglas by satisfying the approach outlined in Griggs v. Duke
17 Power Co., 401 U.S. 424, 430-32 (1971), and applied in its
18 progeny. According to Griggs, a plaintiff establishes a prima
19 facie case if he demonstrates that the selection criteria
20 utilized by the employer have an adverse impact on the minority
21 group. The burden then shifts to the employer to demonstrate
22 that the challenged criteria are closely related to job per-
23 formance. See, e.g., Castro v. Beecher, 459 F.2d 725, 732 (1st
24 Cir. 1972); Bridgeport Guardians, Inc. v. Members of the Bridge-
25 port Civil Service Comm'n, 482 F.2d 1333, 1337 (2nd Cir. 1973);
26 Arnold v. Ballard, 6 EPD ¶8675 at 5020 (N.D. Ohio 1973);^{2/} Western

27
28 ^{1/} In light of the controlling decisions in McDonnell Douglas
29 and Gates, plaintiff is not required to identify the individual who
30 was hired by defendants, as apparently was thought necessary in
Nishiyama v. North American Rockwell Corp., 49 F.R.D. 288 (C.D.
Cal.1970), relied upon by defendants.

31 ^{2/} When judicial decisions are not yet officially reported,
32 plaintiffs refer the Court to the citation in the Commerce
Clearinghouse publication "Employment Practices Decisions" (EPD).

1 Addition Community Organization v. Alioto, 330 F.Supp. 536, 539-40
2 (N.D. Cal. 1971).

3 Pursuant to the principles stated in the foregoing and
4 similar cases, the instant complaint alleges facts which make out
5 a prima facie case of employment discrimination. The statistics
6 alone referred to in Paragraph 17 have been held sufficient to
7 satisfy plaintiff's burden. See, e.g., EEOC v. Detroit Edison
8 Co., 9 EPD ¶9997 at 7157 (6th Cir. 1975); Carter v. Gallagher,
9 452 F.2d 315, 323 (8th Cir. 1971), cert. denied, 406 U.S. 950
10 (1972); Western Addition Community Organization v. Alioto, supra,
11 330 F.Supp. at 539; Officers For Justice v. Civil Service
12 Comm'n, C & C of San Francisco, 371 F.Supp. 1328, 1332 (N.D. Cal.
13 1973).^{3/} At the very least, such statistics are sufficient to
14 survive a motion to dismiss. See, e.g., Jackson v. Sargent,
15 9 EPD ¶10,083 at 7423-24 (D. Mass. 1975); Nowlin v. Pruitt, 62
16 F.R.D. 121,123 (N.D. Ind. 1974).

17 Also following the Griggs model, plaintiffs allege that the
18 selection criteria set forth in Paragraph 18 have an adverse,
19 disproportionate impact on Mexican-Americans and are not
20 sufficiently job related. Contrary to defendants' contention
21 (Def.Mem., pp.2-3), Paragraph 18 expressly incorporates the
22 allegations of plaintiff Lopez' individual discrimination set
23 forth in Paragraphs 13 through 16 (see Affidavit of Louis Lopez
24 attached hereto as Exhibit I). And, it is important to note that
25 other federal courts have invalidated similar selection criteria
26 where their use results in gross under-representation of minority
27 groups. See, e.g., Wallace v. Debron Corp., 494 F.2d 674

28
29 ^{3/} As the Ninth Circuit Court of Appeals recognized in
30 United States v. Ironworkers Local 86, 443 F.2d 544, 551 (9th
31 Cir.), cert. denied, 404 U.S. 984 (1971),

32 In many cases the only available avenue
of proof is the use of statistics to un-
cover clandestine and covert discrimination
by the employer . . .

1 (8th Cir. 1974) (invalidating wage garnishment criterion);
2 Arnold v. Ballard, 390 F.Supp. 723, 728-29 (N.D. Ohio 1975)
3 (invalidating written examinations, credit ratings and neighbor-
4 hood references); United States v. City of Chicago, 385 F.Supp.
5 543, 556-557 (N.D. Ill. 1974) (invalidating subjective interview
6 criteria which considered credit rating and neighborhood
7 references); Officers For Justice v. Civil Service Comm'n, C & C
8 San Francisco, supra, 371 F.Supp. at 1336-39 (invalidating
9 examinations).

10 For the foregoing reasons, plaintiffs have stated a claim
11 upon which relief can be granted under Title VII of the 1964
12 Civil Rights Act, 42 U.S.C. §2000e et seq.

13 B. Plaintiffs Have Stated Claims
14 For Relief From Employment
15 Discrimination Under The Fourteenth
16 Amendment And 42 U.S.C. §§1981 And
17 1983

18 Although both Griggs and McDonnell Douglas were Title VII
19 suits, charging violations of the 1964 Civil Rights Act, the
20 courts have uniformly applied their reasoning to employment
21 discrimination suits predicated upon the Equal Protection
22 Clause and 42 U.S.C. §§1981 and 1983. See, e.g., Castro v.
23 Beecher, supra, 459 F.2d at 733; Vulcan Society of the New York
24 City Fire Dept., Inc. v. Civil Service Comm'n, 490 F.2d 387, 394
25 n. 9 (2nd Cir. 1973); Officers For Justice v. Civil Service
26 Comm'n, C & C of San Francisco, supra, 371 F.Supp. at 1335-37;
27 Crockett v. Green, 9 EPD ¶10,029 at 7257 (E.D. Wis. 1975).
28 Therefore, since the Second Amended Complaint states a proper
29 claim under 42 U.S.C. §2000e et seq., it also states proper
30 claims under the Equal Protection Clause and 42 U.S.C. §§1981
31 and 1983.^{4/}

31 ^{4/} Plaintiff Lopez' individual claim of retaliatory-racial re-
32 jection for employment, set forth at Paragraphs 25 through 27,
is also adequate under 42 U.S.C. §§1981 and 1983. See, e.g.,
Hudson v. International Business Machines, 9 EPD ¶9991 (S.D.N.Y.
1975); See also Johnson v. Branch, 364 F.2d 177, 182 (5th Cir.
1966); Porcelli v. Titus 302 F.Supp. 726, 736 (D. N.J. 1969).

1 C. Plaintiffs Have Stated A Claim For
2 Relief From The Unequal Provision Of
3 Sheriff's Department Services Under The
4 Equal Protection Clause Of The Fourteenth
5 Amendment And 42 U.S.C. §1983.

6 In arguing that plaintiffs have not stated a claim because
7 "there is no right . . . that a public entity must employ persons
8 who are 'bilingual-bicultural'," (Def.Mem., p.4), defendants
9 misconstrue the Fifth Cause of Action.

10 Plaintiffs make numerous allegations in Paragraphs 28 through
11 31 which, taken together, demonstrate that the defendants have
12 failed to deliver County Sheriff's Department services to
13 plaintiffs on a basis equal to that on which they deliver such
14 services to English speakers. The Second Amended Complaint alleges
15 that the employment actions and inactions of defendants have
16 created significant language barriers for plaintiffs and those
17 similarly situated, thus creating two classes of recipients of
18 services: first, persons who can effectively communicate in
19 English with Deputy Sheriffs and other Sheriff's Department
20 personnel thus enabling them to receive the full panoply of
21 services to which they are entitled; and second those, like
22 plaintiffs and their class, who are unable to communicate
23 effectively with Sheriff's Department personnel and who, as a
24 result, are denied equal access to such services. This
25 classification is arbitrary and denies plaintiffs equal protection
26 of the law in violation of the Fourteenth Amendment to the
27 United States Constitution. The classification is particularly
28 invidious in that it discriminates against plaintiffs and their
29 class on the basis of race or national origin.

30 In cases involving possible discrimination based on race or
31 national origin, disparity in treatment is subject to great
32 scrutiny under the equal protection clause. E.g., Graham v.
Richardson, 403 U.S. 365,372 (1971). The facts here compel
application of the strict scrutiny test. That Mexican-Americans

1 (or Spanish-Surnamed Americans) constitute an identifiable
2 ethnic or national origin minority group for purposes of equal
3 protection, or for purposes of enforcing statutory rights, is
4 settled law. Serna v. Portales, 499 F.2d 1147 (10th Cir. 1974);
5 Cisneros v. Corpus Christi Independent School District, 324 F.
6 Supp. 599, 606-08 (S.D. Tex. 1970); Penn v. Stumpf, 308 F.Supp.
7 1238, 1239 (N.D. Cal. 1970). In the instant case, defendants
8 have constructed a classification based upon one of the prime
9 characteristics of Mexican-Americans, their Spanish language. See
10 Cisneros v. Corpus Christi Independent School District, supra,
11 324 F.Supp. at 608. And, when a significant disparity exists
12 in public services delivered to the members of different races,
13 Courts hold such disparity unconstitutional. Hawkins v. Town of
14 Shaw, Mississippi, 437 F.2d 1286, 1288 (5th Cir. 1971), aff'd en
15 banc, 461 F.2d 1171 (1972); Selmont v. Improvement Ass'n v. Dallas
16 County Comm'n, 339 F.Supp. 477, 481 (S.D. Ala. 1972).

17 Several federal courts have recently refused to dismiss
18 complaints by Spanish-speaking plaintiffs making allegations
19 almost identical to those set forth in the Second Amended
20 Complaint. E.g., Association Mixta Progresista v. United States
21 Department of Health, Education and Welfare, Civ. No. C-72-882
22 (N.D. Cal. August 13, 1973) (Copies of the Court's Order and
23 Stipulated Dismissal are attached hereto as Exhibit II).

24 In Sanchez v. Norton, Civ. No. 15732 (D. Conn.), Spanish-
25 speaking welfare recipients and applicants, alleged facts and
26 sought relief which is almost identical to that set forth by
27 plaintiffs in this action. The Sanchez Court denied defendants'
28 motion to dismiss, stating:

29 Whether viewed in the context
30 of an "invidious classification" under
31 the Equal Protection Clause, see,
32 e.g., Shapiro v. Thompson, 394 U.S.
618, 633 (1969); Oyama v. California,
332 U.S. 633, 644-46 (1948); Koremastu
v. United States, 323 U.S. 214, 216

1 (1944); Chance v. Board of Examiners,
2 458 F.2d 1167, 1175-1178 (2nd Cir. 1972);
3 Norwalk Core v. Norwalk Redevelopment
4 Agency, 395 F.2d 920, 931-932 (2nd Cir. 1972),
or as viable causes of action under Title VI
of the Civil Rights Act, see Lau v. Nichols,
[414 U.S. 563 (1974)], the plaintiffs' allega-
tions are sufficient to survive pretrial dismissal.

5 A copy of the Sanchez order is attached to this Memorandum as
6 Exhibit III.

7 Spanish-speaking plaintiffs in Aspira of New York, Inc. v.
8 Bd. of Education of the City of New York, 58 F.R.D. 62 (S.D.N.Y.
9 1973), sought more bilingual school teachers and curriculum on
10 Equal Protection and Title VI grounds. Judge Frankel denied
11 defendants' motion to dismiss, stating in part,

12 The motion [to dismiss] is not
13 meritorious. Without attempting to
14 foretell the outcome, we find it
15 sufficient to say that "novel issues"^{5/}
16 of such apparent difficulty ought not
17 to be resolved in the broad and relatively
18 abstract terms of the complaint considered
19 by itself. We may be permitted to wonder
20 why the concerned legal officers of the city
21 should choose to leave the plaintiffs'
22 allegations unexplored and unanswered,
23 cutting off at this threshold stage
the possibility that such efforts could
promote resolutions by means short of -
but very possibly preferable to - the
constitutional pronouncements of judges.
Having ventured that dictum, and
intending it as a suggestion, the court's
formal office remains to say that the
complaint should not be, and will not be
dismissed on motion, 58 F.R.D. at 64-65 (emphasis added).

24 Officials of Yolo County, California, perhaps followed the
25 suggestion in Aspira by stipulating to a Consent Decree providing,
26 inter alia, for the hiring of bilingual-bicultural Deputy Sheriffs.
27 Mexican-American Concilio v. County of Yolo, Civ. No. S74-371
28 (E.D. Cal. April 2, 1975).

29 In urging this Court to dismiss the Fifth Cause of Action,
30 defendants rely upon Carmona v. Sheffield, 475 F.2d 738 (9th Cir.

31 ^{5/} See 5 Wright & Miller, Federal Practice And Procedure §1357
32 at 603 (1969), noting that courts "should be extremely reluctant
to dismiss on the basis of the pleadings when the asserted theory
of liability is novel. . . ."

1 1973), Kuri v. Edelman 491 F.2d 684, (7th Cir. 1974) and Guerrero
2 v. Carleson, 9 Cal. 3d 808, cert. denied, 414 U.S. 1137 (1973).
3 None of these cases is wholly dispositive. Defendants ignore
4 Association Mixta Progresista v. United States Department of
5 Health, Education and Welfare, another federal California case
6 cited above in which a motion to dismiss was denied. Defendants
7 also omit the Sanchez and Aspira cases discussed above. The
8 Guerrero and Kuri decisions dealt exclusively with the question
9 of bilingual notices, not the primary issue in this action--the
10 delivery of equal services.^{6/} Moreover, Kuri merely denied an
11 injunction pending appeal, not the more drastic dismissal action
12 defendants seek here. The Carmona decision is a cursory affirmance
13 of a district court opinion, which speaks of the burdens which
14 bilingualism might place on defendant state unemployment insurance
15 agency. Finally, it is not clear whether plaintiffs in Carmona
16 alleged the unequal distribution of services as set forth in
17 Paragraph 29 of the Second Amended Complaint.

18 In sum, plaintiffs have stated claims under the Equal Protection
19 Clause and 42 U.S.C. §1983 by alleging facts showing the
20 discriminatory impact on Mexican-Americans of defendants'
21 failure to employ sufficient Sheriff's Department personnel
22 fluent in Spanish and English. This claim is directly supported
23 by the Association Mixta, Sanchez, and Aspira decisions discussed
24 above.

25 D. Plaintiffs Have Stated A Claim
26 For Relief Under Title VI Of The
27 1964 Civil Rights Act, 42 U.S.C.
§2000d, et seq.

28 Section 601 of the 1964 Civil Rights Act, 42 U.S.C. §2000d,

29 _____
30 ^{6/} Indeed, as Justice Tobriner noted in dissent, 9 Cal. 3d at
31 820, "the defendant departments have already seen fit to identify
32 Spanish speaking recipients who are illiterate in English, to
assign caseworkers fluent in Spanish to those recipients, and to
furnish welfare forms [other than the termination notice] in
Spanish.

1 provides,

2 No person in the United States shall,
3 on the ground of race, color or national
4 origin, be excluded from participation in,
5 be denied the benefits of, or be subjected
6 to discrimination under any program or
7 activity receiving Federal financial
8 assistance.

9 In their Sixth Cause of Action, plaintiffs allege that the
10 challenged practices and policies of the Sheriff's Department
11 of San Diego County discriminate against Mexican-American
12 job applicants and effectively deny plaintiffs the full benefits
13 of the Sheriff's Department programs. The plain words of the
14 statute, when applied to the facts alleged, lead to the con-
15 clusion that defendant Sheriff's Department has violated Title VI.
16 This conclusion is strengthened by the regulations promulgated by
17 the Justice Department, since said defendant is alleged to be
18 receiving federal funds from the Law Enforcement Assistance
19 Administration, 23 C.F.R. §42.104.

20 Although written in equal protection terms, Title VI is
21 neither dependent upon nor necessarily coincident with the
22 Equal Protection Clause of the Fourteenth Amendment. Rather it is
23 grounded on the general authority of the federal government
24 to place reasonable restrictions upon the use of federal funds
25 by the recipients. See Lau v. Nichols, 414 U.S. 563, 569; 94
26 S.Ct. 786 (1974); United States v. Frazer, 297 F.Supp. 319, 322
27 (M.D. Ala. 1968). Thus, Guerrera, Carmona, and Kuri, cited by
28 defendants are clearly inapposite to plaintiffs' Title VI claim.

29 Moreover, many courts have held that employment discrimination
30 and failure to provide equal services to foreign language speakers
31 by agencies receiving federal funds establish violations of
32 Title VI. Lau v. Nichols, supra, (education; Chinese speaking
33 students); Serna v. Portales Municipal Schools, supra, (education;
34 Spanish speaking students); Sanchez v. Norton, supra, (welfare,
35 Spanish speaking recipients) United States v. Frazer, supra (hospital

1 employment). These are precisely the violations of Title VI
2 alleged by plaintiffs in the Second Amended Complaint.

3 Therefore, plaintiffs have stated a claim under Title VI of
4 the 1964 Civil Rights Act.

5 E. Plaintiffs Have Standing To
6 Litigate All Claims Raised

7 1. The Standing of Plaintiff Lopez. Defendants first
8 argue that plaintiff Lopez has been injured only by defendants'
9 actions taken after certification to the Sheriff's Department.
10 Therefore, they conclude, he lacks standing to challenge the
11 employment criteria described in Sub-paragraphs 18(c) and (d).
12 (Def.Mem., pp. 5-6). Defendants' contentions lack merit.

13 Plaintiff Lopez clearly has standing to challenge the
14 Sheriff's Department interview described in Sub-paragraph 18(d),
15 even according to defendants' view of the case. Defendants
16 conducted this interview after plaintiff's certification
17 to the Department, and plaintiff alleges that he was denied
18 employment "as a result of said interview", "during which
19 he was subjected to racial slurs . . ." (see Paragraph 13,
20 Second Amended Complaint). Moreover, Paragraphs 13 through
21 15, incorporated in Paragraph 18, allege that defendants
22 applied the post-certification interview to him in a
23 discriminatory manner. Thus, plaintiff may challenge the
24 interview, since he suffered "actual [economic] injury"
25 from its application to him. Linda R.S. v. Richard D.,
26 410 U.S. 614, 617 (1973).

27 For the same reason, plaintiff Lopez may challenge the
28 written examination described in Sub-paragraph 18(c). In his
29 Affidavit attached to this Memorandum as Exhibit I, plaintiff
30 states that although he may have passed the examination, his
31 combined score of 92 placed him lower on the eligibility list
32 compiled by defendant Civil Service members than if the

1 examination had not been discriminatory.^{7/} Plaintiff's Affidavit
2 is consistent with his allegations in Sub-paragraph 18(d), and
3 certainly shows that he suffered injury as a result of the alleged
4 examination.^{8/}

5 Finally, plaintiff Lopez may litigate the Title VI claim. In
6 Paragraph 35 of the Second Amended Complaint, plaintiff alleges
7 that the discriminatory employment practices which injured him
8 violated his rights under Title VI. And federal courts have not
9 questioned the standing of a rejected job applicant to raise
10 Title VI claims. E.g., Wade v. Mississippi Cooperative Extension
11 Service, 378 F.Supp. 126, 129 n.1 (N.D. Miss. 1974).

12 2. The Standing of Plaintiff Casa Justicia. Defendants
13 attack the standing of plaintiff Casa Justicia (CASA), apparently
14 on the ground that CASA has merely a "special interest" in the
15 subject matter of this case (Def.Mem., p.6). Defendants' argument
16 is inaccurate and incorrect.

17 Plaintiff CASA has standing to represent its members who have
18 been injured by defendants' discriminatory employment practices
19 and unequal provision of Sheriff's Department services. In
20 Paragraph 7 of the Second Amended Complaint, CASA alleges, in part:

21
22 ^{7/} Plaintiffs' affidavits, Exhibits I, IV and V, are submitted
23 solely for the purpose of supporting allegations of standing, as
24 suggested by the Supreme Court in Warth v. Seldin, 43 U.S.L.W.
25 4906, 4909 (U.S., June 24, 1975). See also Robinson v. Conlisk
385 F. Supp. 529, 537 (N.D. Ill. 1974) (employment discrimination
case in which court relied upon plaintiff's affidavit to support
standing).

26 ^{8/} Even if plaintiff Lopez had not received a lower ranking as a
27 result of the examination, he would nevertheless have standing to
28 represent the members of his Mexican-American class who had either
29 failed or scored very low on the examination. See, e.g., Long v.
30 Sapp, 502 F.2d 34, 42 (5th Cir. 1974); Huff v. N.D. Cass Co., 485
31 F.2d 710 (5th Cir. 1973). These decisions hold that where the
32 suit is an "across the board" attack on unequal employment
practices, the named plaintiff need only show that he belongs to
the class adversely affected by the practices. In this case,
plaintiff attacks defendants' practices "across the board" and
Lopez is a member of the adversely affected class--rejected
Mexican-American applicants.

1 Members of CASA, who desire employment
2 in the Sheriff's Department of San Diego
3 County, and who need effective services
4 from said Department, have been or will
be denied such services and equal employment
opportunity in a discriminatory manner as
described more fully below.

5 Moreover, CASA alleges further injury in fact to its members
6 in the provision of Sheriff's Department services (see Paragraphs
7 31 and 36 of Second Amended Complaint). Finally, affidavits of
8 CASA members, attached hereto as Exhibits IV and V, detail
9 specific injuries suffered as the result of defendants' challenged
10 actions.

11 The controlling Supreme Court decisions recognize that the
12 allegations and supporting materials discussed above are sufficient
13 to confer standing on plaintiff CASA. In United States v. SCRAP,
14 412 U.S. 669, 685 (1973), the Supreme Court held that an organ-
15 ization of law students had standing to challenge actions taken
16 by the Interstate Commerce Commission based on allegations of
17 non-economic injury to organization members. The Court distin-
18 guished SCRAP from Sierra Club v. Morton, 405 U.S. 727 (1972),
19 relied upon by defendants, reasoning that while the Sierra Club
20 alleged only a special interest in the problem being litigated,
21 SCRAP alleged injury to its members. The Court's recent decision
22 in Warth v. Seldin, supra, 43 U.S.L.W. at 4912, also recognized
23 that associations have standing to represent its members if

24 [t]he association . . . allege[s] that its
25 members, or any one of them, are suffering
26 immediate or threatened injury as a result
of the challenged action . . .

27 Decisions of lower federal courts following the SCRAP
28 approach in the employment discrimination context also support
29 CASA's standing. These decisions hold that allegations of injury
30 to organization members are sufficient to confer standing on the
31 organizational plaintiff to challenge the employment practices
32 which harmed its members. E.g., Oakland Federation of Teachers v.

1 Oakland Unified School District, 9 EPD ¶10,079 (N.D. Cal. 1975);
2 Robinson v. Conlisk, supra, 385 F.Supp. at 537-39.

3 It is also settled that since individual recipients of
4 public services alleging constitutional and Title VI violations
5 have standing to litigate those claims, so do their organizational
6 representatives. E.g., Lau v. Nichols, supra; Asociacion Mixta
7 Progresista v. United States Department of Health, Education and
8 Welfare, supra (see Exhibit II); Coleman v. Humphreys County
9 Memorial Hospitals, 55 F.R.D. 507, 510 (N.D. Miss. 1972); Marable
10 v. Alabama Mental Health Bd., 297 F. Supp. 291, 297 (M.D. Ala.
11 1969).

12 For all the foregoing reasons, plaintiff CASA has standing
13 to litigate this action.

14 II

15 THIS COURT HAS JURISDICTION
16 OVER EACH DEFENDANT

17 A. Jurisdiction Exists Over Each Defendant Pursuant
18 To The Claim Based On Title VII Of The 1964 Civil
Rights Act.

19 Plaintiff Lopez concedes that prior to invoking this
20 Court's jurisdiction for violations of 42 U.S.C. §2000e et seq.,
21 he must have filed a charge with the Equal Employment Opportunity
22 Commission naming each defendant sought to be sued. 42 U.S.C.,
23 §2000e-5(e). See, e.g., Bowe v. Colgate-Palmolive Co., 416
24 F.2d 711, 719 (7th Cir. 1969). Plaintiff has fully complied with
25 this requirement. While his original charge named only the
26 Sheriff's Department of San Diego County as respondent,
27 his amended charge filed with the EEOC on or about
28 October 23, 1974, pursuant to 29 C.F.R. §1601.11(b), named
29 every other defendant sued herein. The Affidavit of Dorothy
30 Mead, EEOC Deputy Director, attached hereto as Exhibit VI, attests

31 ...

32 ...

1 to the fact that plaintiff's amended charge is on file with
2 EEOC.^{9/} By filing charges conforming with Title VII
3 requirements and by obtaining his suit letter, plaintiff Lopez
4 has done all that can be expected of him prior to bring this
5 action. See, McDonnell Douglas Corp. v. Green, 411 U.S. 792,
6 798 (1973); cf. Sanchez v. Standard Brands, Inc. 431 F.2d
7 455, 460-67 (5th Cir. 1970). Thus, jurisdiction exists
8 over each defendant named in the Second Amended Complaint.^{10/}

9 B. Jurisdiction Exists Over The San Diego
10 Sheriff's Department Under Titles VI And VII Of
The 1964 Civil Rights Act, 42 U.S.C. §1981, and 28 U.S.C.
§1331(a).

11 Although citing the wrong decision, defendants are correct
12 in asserting the Sheriff's Department is not a "person" within
13 the meaning of 42 U.S.C. §1983 and may not be sued under that
14 statute. City of Kenosha v. Bruno, 412 U.S. 507 (1973). In any
15 case, the point is immaterial. Since the Sheriff's Department
16 is an "employer" within the meaning of 42 U.S.C. §2000e (see
17 Paragraph 9 of the Second Amended Complaint) and is a recipient
18 of federal financial assistance under 42 U.S.C. §2000d (see
19 Paragraph 33 of the Second Amended Complaint), the Department
20 may be sued under those statutes. Moreover, the Sheriff's
21 Department is subject to suit for violations of 42 U.S.C. §1981 under
22 28 U.S.C. §1343 and for violations of the Fourteenth Amendment
23

24 ^{9/} Ms. Mead's Affidavit readily distinguishes the instant case
25 from Mickel v. South Carolina State Employment Service, 377 F.2d
26 239, 241 (4th Cir. 1967), relied upon by defendants, in which
the Court attached significance to an Affidavit from the EEOC
27 indicating that a particular charge was not on file.

28 ^{10/} Although either the United States Attorney General or the
EEOC may have erred in issuing the "Right to Sue" letter
29 without naming each individual charged, Courts refuse to penalize
Title VII litigants for mistakes committed by such administrative
30 personnel. See, e.g., McDonald v. General Mills, Inc., 9 EPD
§19868 at 6608 (E.D. Cal. 1974); Shaffield v. Northrop Worldwide
31 Aircraft, Inc. 373 F.Supp. 937, 940 (M.D. Ala. 1974). Similar
sentiments have been expressed by this Court in giving Title VII
32 a liberal application. See, Slack v. Havens, 8 EPD §19491
(S.D. Cal. 1973).

1 under 28 U.S.C. §1331. Skehan v. Board of Trustees of Bloomsburg
2 State College, 501 F.2d 31, 44 (3rd Cir. 1974); Robinson v.
3 Conlisk, supra, 385 F.Supp., at 536 (N.D. Ill. 1974); Maybanks v.
4 Ingraham, supra 378 F.Supp. 913, 918 (E.D. Pa. 1974). Since
5 these provisions have been pleaded (see Paragraphs 2 and 3 of the
6 Second Amended Complaint), this Court has jurisdiction over the
7 Sheriff's Department under these statutes as well.

8 III

9 CONCLUSION

10 For all the foregoing reasons, defendants' motion to dismiss
11 should be denied.

12 Respectfully submitted,

13 DIANE GREENBERG
14 VICTOR HARRIS

15 Dated: July 3, 1975

16 By

Victor Harris
17 VICTOR HARRIS
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

ADDENDUM

1 VICTOR HARRIS
2 LEGAL AID SOCIETY OF SAN DIEGO, INC.
3 964 Fifth Avenue, Room 400
4 San Diego, CA 92101
5 Telephone: (714) 239-9611

6 DIANE S. GREENBERG
7 CALIFORNIA RURAL LEGAL ASSISTANCE
8 COOPERATIVE LEGAL SERVICES CENTER
9 1212 Market Street
10 San Francisco, CA 94102
11 Telephone: (714) 864-2752

12 Attorneys for Plaintiffs

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

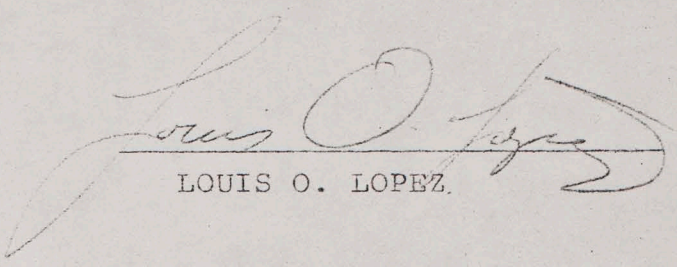
12 LOUIS O. LOPEZ, et al.,)
13 Plaintiffs,) Civil Action No. 75-0219-GT
14 vs.) AFFIDAVIT OF LOUIS O. LOPEZ
15 JOHN DUFFY, et al.,)
16 Defendants.)
17

18 I, Louis O. Lopez, being duly sworn, depose and say:
19 1. I am the individual plaintiff in the instant action.
20 2. I have been subjected to all discriminatory employment
21 policies and practices alleged in Paragraph 18 of the Second
22 Amended Complaint on file herein.
23 3. I believe the combined score I received on the com-
24 petitive examination and interview, alleged in Paragraph 12 of
25 the Second Amended Complaint, would have been greater, if said
26 examination were not discriminatory and otherwise invalid as
27 alleged in Paragraph 18. As a result of said examination, I
28 received a lower ranking among those who applied to be Deputy
29 Sheriffs in the Sheriff's Department of San Diego County.

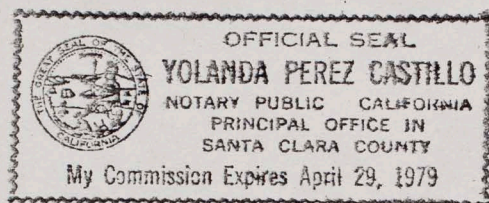
30 . .
31 . .
32 . .

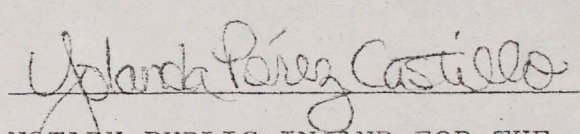
1 4. I have personal knowledge of the foregoing paragraphs
2 numbered 1 through 3.

3
4 Dated: June 30, 1975


LOUIS O. LOPEZ.

5
6
7 Subscribed and sworn to before me this 6/30/75
8 YOLANDA PEREZ CASTILLO.




NOTARY PUBLIC IN AND FOR THE
SAID COUNTY AND STATE

AUG 13 1973

CLERK, U. S. DIST. COURT
SAN FRANCISCO

GILBERT M. DORAME
ROBERT GONZALES
CALIFORNIA RURAL LEGAL
ASSISTANCE
422 Healdsburg Avenue
Healdsburg, CA 95440
Telephone: (707) 433-4429

ROBERT T. OLMOS
RICHARD PAEZ
CALIFORNIA RURAL LEGAL
ASSISTANCE
335 Perkins Street
McFarland, CA 93250
Telephone: (805) 792-2157

JOSE L. MARTINEZ
CALIFORNIA RURAL LEGAL
ASSISTANCE
1212 Market Street
San Francisco, CA 94102
Telephone: (415) 863-4911

MARIO OBLEDO
MICHAEL MENDELSON
ALAN EXELROD
MEXICAN-AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
145 Ninth Street
San Francisco, CA 94103
Telephone: (415) 626-6196

Attorneys for the Plaintiffs

ROBERT GNAIZDA
ALBERT F. MORENO
PUBLIC ADVOCATES, INC.
433 Turk Street
San Francisco, CA 94102
Telephone: (415) 441-8850

KENNETH HECHT
MICHAEL TOBRINER
EMPLOYMENT LAW CENTER
795 Turk Street
San Francisco, CA 94102
Telephone: (415) 474-5865

CHARLES P. GILLET
LEGAL AID SOCIETY OF SAN
MATEO COUNTY
2221 Broadway
Redwood City, California
Telephone: (415) 365-8411

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ASOCIACION MIXTA PROGRESISTA, a non-
profit corporation, et al.,

Plaintiffs,

vs.

THE UNITED STATES DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE, et al.,

Defendants.

CIVIL ACTION NO.
C-72-882-SAW

ORDER DENYING MOTION
TO DISMISS AND GRANTING
MOTION TO DISMISS IN
PART

Defendants, the San Mateo County Social Service Depart-
ment, Robert Ripetto, individually and in his officially
capacity as Director, the San Mateo County Social Service
Department; the Tulare County Welfare Department; Hilmi Faud,
individually, and in his official capacity as Director of the

1 Tulare County Welfare Department, having moved this Court for an
2 order dismissing this action said motion having been filed on
3 June 28th, 1973, and the same having come before this Court for
4 hearing on August 2nd, 1973; James A. Aiello, Assistant District
5 Attorney appearing for the San Mateo county defendants; Walter
6 L. McArthur, Deputy County Counsel, appearing for the Tulare
7 County defendants; Richard F. Locke, Assistant United States
8 Attorney, appearing for the federal defendants; Jose L. Martinez,
9 Robert T. Olmos, Richard A. Paez, California Rural Legal
10 Assistance, and Don B. Kates, Legal Aid Society of San Mateo
11 County, appearing for plaintiffs, and the Court having consi-
12 dered the legal memoranda submitted and oral arguments by
13 counsel, and the same having been submitted to the Court for
14 decision:

15 IT IS HEREBY ORDERED that said Motion to Dismiss by
16 moving defendants be, and the same is hereby denied in all
17 respects, except as ordered below,

18 IT IS FURTHER ORDERED, that pursuant to the stipulation
19 of plaintiffs and moving defendants, said Motion to Dismiss be,
20 and hereby is granted as to defendants the San Mateo County
21 Social Service Department and the Tulare County Welfare Department

22 / / / /

23 / / / /

24 / / / /

25 / / / /

26 / / / /

27 / / / /

28 / / / /

29 / / / /

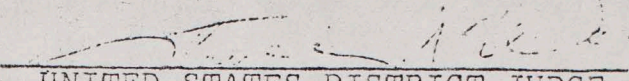
30 / / / /

31 / / / /

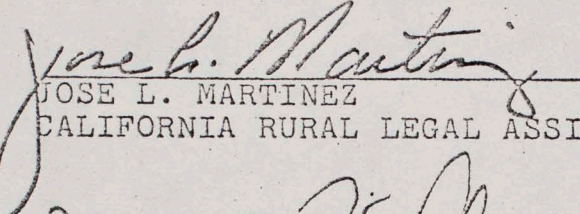
32 / / / /

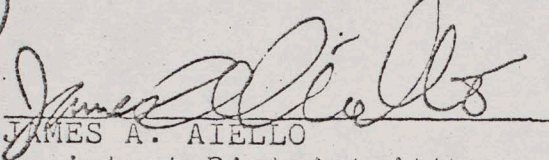
1 insofar as plaintiffs complaint purports to state a claim for
2 relief against these two counties under 42 U.S.C. 1983, for the
3 reason that said counties are not "persons" within the meaning
4 of 42 U.S.C. 1983.

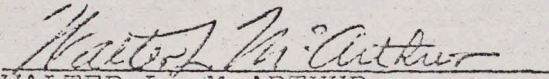
5 DATED: August 2nd, 1973, and
6 presented for signature
7 and signed 8/13/73

8
9 
UNITED STATES DISTRICT JUDGE

10 Approved as to form:

11 
12 JOSE L. MARTINEZ
13 CALIFORNIA RURAL LEGAL ASSISTANCE

14 
15 JAMES A. AIELLO
16 Assistant District Attorney for the County of San Mateo

17 
18 WALTER L. MCARTHUR
19 Deputy County Counsel for the County of Tulare
20
21
22
23
24
25
26
27
28
29
30
31
32

CHARLES P. GILLET
DON B. KATES, JR.
TOM POMERO
San Mateo County
Legal Aid Society
2271 Broadway
Redwood City, CA 94063

Telephone: (415) 365-8411

Attorneys for Plaintiffs FRANCISCO MACIEL
and HERMELINDA LOPEZ, and the class they
represent

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ASOCIACION MIXTA PROGRESISTA,
a nonprofit corporation, et al.,

Plaintiffs,

vs.

THE UNITED STATES DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE,
et al.,

Defendants.

CIVIL ACTION
NO. C-72 802 SAW

SETTLEMENT AND STIPULATION
TO DISMISSAL

Plaintiffs FRANCISCO MACIEL and HERMELINDA LOPEZ brought
the above-entitled action on their own behalf and on behalf of
all primarily Spanish speaking persons who are eligible for
participation in the public social services programs in the
County of San Mateo, State of California, pursuant to Title VI
of the Civil Rights Act of 1964, the Equal Protection Clause of
the Fourteenth Amendment to the Constitution of the United States,
and Section 1983 of the Civil Rights Act of 1871, 42 U.S.C.
Section 1983, alleging that the San Mateo Social Service Depart-
ment had failed to deliver social service benefits to primarily
Spanish speaking persons on an equal basis, or in the same manner
or extent that such benefits are delivered to non-primarily Spanish
speaking persons.

After extensive negotiations between the parties herein-
above referred to, and in light of ongoing progress by the
defendant SAN MATEO COUNTY SOCIAL SERVICE DEPARTMENT and the

ORIGINAL
FILED

OCT 29 1974

CLERK, U. S. DISTRICT COURT
S. MATEO, CALIF.

defendant ROBERT RIPPETO, Director of the San Mateo County Social
Service Division of the San Mateo County Department of Public
Health and Welfare (sued herein as "Robert Rippeto"), in providing
more adequate bilingual (Spanish-English) staffing, the above-
mentioned parties hereby agree to settle this action insofar as
it concerns the San Mateo County plaintiffs and defendants by means
of the following stipulation. The parties hereto further agree
that upon execution of the following stipulation, and the filing
thereof with the Court, that this action shall be dismissed without
prejudice as to the San Mateo County defendants above named.

STIPULATION

The parties hereto hereby stipulate as follows:

1. Definitions:

- (a) The San Mateo County Social Services
Division of the San Mateo County Department
of Public Health and Welfare shall herein-
after be referred to as "the Department".
- (b) The word "bilingual" as applied to employees
of the Department herein shall mean tested
fluency in both Spanish and English.
- (c) The words "primarily Spanish speaking" as
applied to recipients of or applicants for
aid from the Department herein shall mean
that Spanish is the language primarily relied
on or preferred for oral and/or written
communication.

2. That the Department does now have and will continue
in the future to have a number of Spanish-English bilingual
social workers and eligibility workers sufficient to
assign every primarily Spanish speaking recipient of benefits

1 from the Department with one such social worker and eligibility
2 worker; that each said bilingual social worker and eligibility
3 worker has and will in the future continue to have a normal case-
4 load in relation to the average caseload of non-bilingual social
5 workers in the Department; and in addition that the Department
6 will insure that all specialized eligibility and social service
7 units that have substantial contact with primarily Spanish speaking
8 claimants (e.g., in Eligibility; intake and continuing units,
9 Food Stamps, MediCal; in Service: Public Assistance Referral, Child
10 and Adult Protective Services, Medical Social Services, Day Care,
11 etc.) are adequately staffed with sufficient bilingual employees
12 or have immediate access to bilingual interpreters in order to meet
13 the specialized service needs of all primarily Spanish speaking
14 recipients.

15 3. That the Department will establish procedures for
16 identifying all primarily Spanish speaking recipients in all case-
17 loads at the earliest possible time to the end that they might
18 benefit from the agreements and stipulations contained herein
19 without undue delay. In particular, said procedures will provide
20 for prompt identification of primarily Spanish speaking applicants
21 so that immediate assistance can be rendered in Spanish with
22 forms, application procedure, etc.

23 4. That the Department does now and will continue to
24 utilize San Mateo County Civil Service bilingual job classifications
25 as a means of obtaining employees with tested fluency in Spanish
26 so that the result referred to in paragraph (1) above can be
27 adequately fulfilled in an ongoing fashion.

28 5. That the Department now has and will continue to
29 have procedures with adequate personnel to implement them that
30 insure prompt fluent bilingual response to primarily Spanish
31 speaking recipients and applicants who contact any of the Depart-
32 ment's offices either in person or by telephone.

1 6. That the Department now and in the future will continue
2 to provide for translation into Spanish, all materials relating
3 to available services provided by the Department, as well as all
4 general notices sent to recipients. It is acknowledged that the
5 Department now has available for recipients brochures, pamphlets,
6 notices and other materials translated into Spanish. As to
7 individualized notices sent to recipients, the Department is now
8 and will continue to stamp on all such notices a statement in
9 Spanish that if they need assistance in translating, they should
10 contact their bilingual social worker for a translation and explan-
11 ation in Spanish. In addition, in all individualized notices sent
12 to recipients relating to reduction or termination of assistance
13 from the Department, all of the general information relating to
14 fair hearings and requests for them shall be both in English and
15 Spanish, as to the G.A. Notices, immediately, and as to the cate-
16 gorical recipients, as soon as state approval is obtained.

17 7. That the Department will designate a bilingual high-level
18 employee to receive, investigate, and respond to any complaints
19 that may arise from primarily Spanish speaking recipients relating
20 to problems they have in communicating or dealing with the Depart-
21 ment; that the Department will issue a notice to this effect in
22 Spanish.

23 8. That the Department will continue to fulfill its commit-
24 ment to the objectives of employment of persons from racial and
25 ethnic minority groups as set forth in the official San Mateo County
26 Affirmative Action Program for County employment, by achieving
27 parity, in accordance with the terms and conditions thereof, be-
28 tween the ethnic composition of the employees of the Department
29 and that of the population of the County, as well as by achieving
30 an appropriate ratio of minority persons employed in positions re-
31 quiring personal contact or delivery of human services to minority
32 persons.

9. That the San Mateo County plaintiffs, in consideration

1 of the foregoing, shall dismiss the instant complaint and
2 attendant causes of action against the San Mateo County defendants
3 above named.

4 DATED: October 16 1974.

5
6 For the San Mateo County Plaintiffs
7 FRANCISCO MACIEL and HERMELINDA LOPEZ,
8 and the class they represent:

9 By Francisco Maciel
FRANCISCO MACIEL

10 By Hermelinda Lopez
HERMELINDA LOPEZ

11 By Charles P. Gillet

12 CHARLES P. GILLET-Attorney for Plaintiffs

13 For the San Mateo County Defendants,
14 the SAN MATEO COUNTY SOCIAL SERVICE
DEPARTMENT and ROBERT D. RIPPETO,
15 individually and in his official
capacity as Director, the San Mateo
County Social Service Department:

16 KEITH C. SORENSON, DISTRICT ATTORNEY

17
18 DATED: October 17,
19 1974.

20 By James A. Aiello
JAMES A. AIELLO, Assistant
21 District Attorney, County
of San Mateo, State of
California

22 BY THE COURT:

23 Based upon the above Stipulation, and by reason of the
24 contents thereof, it is hereby ORDERED, ADJUDGED AND DECREED that
25 the complaint, and attendant causes of action be, and the same
26 are hereby, DISMISSED as to the County of San Mateo, THE SAN MATEO
27 COUNTY SOCIAL SERVICE DEPARTMENT and ROBERT D. RIPPETO, individu-
28 ally, and in his official capacity as Director, the San Mateo
29 County Social Service Department.

30 Dated: Oct 20 1974

31 STANLEY A. WEISS

32 UNITED STATES DISTRICT
JUDGE

MICROFILM

JUN 4 1974

NEW HAVEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

JUN 5 4 22 PM '74

U.S. DISTRICT COURT
NEW HAVEN, CONN.

ADRIANA SANCHEZ, ET AL. :

v. : CIVIL NO. 15732

NICHOLAS NORTON, ET AL. :

RULING ON STATE DEFENDANTS' MOTION
TO DISMISS

This class action brought by non-English speaking Puerto Ricans and other Spanish-speaking persons eligible to receive welfare benefits seeks relief against unequal welfare services and benefits which are alleged to violate the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d). In effect, the plaintiffs claim they are being subjected to discrimination by the state defendants in two major respects: 1) by the failure to provide application forms, informational brochures, fair hearing summaries and decisions and other written documents in Spanish; and 2) by the failure to hire an adequate staff of Spanish-speaking welfare workers.

The plaintiffs' detailed factual allegations must, for the purposes of a motion to dismiss, be accepted as true; the complaint should not be dismissed unless it appears beyond doubt that the plaintiffs are entitled to no relief

under any state of facts which could be proved in support of their claims. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Escalera v. New York City Housing Authority, 425 F.2d 853, 857 (2 Cir.), cert. denied, 400 U.S. 853 (1970).

The state defendants' first contention that this Court lacks jurisdiction to grant relief to the plaintiffs is without merit. The plaintiffs' claims are bottomed squarely on the grounds that the defendants have violated their constitutional and statutory rights; thus, jurisdiction pursuant to the provisions of 28 U.S.C. §§ 1343(3) and (4) is evident. Bell v. Hood, 327 U.S. 678, 681 (1946). See also Rosado v. Wyman, 397 U.S. 397, 402-403 (1970).

The Court also rejects the defendants' argument that the plaintiffs' complaint fails to state a claim upon which relief may be granted. The plaintiffs set forth manifold abuses: a denial of and delay in receiving welfare benefits; a lack of interpreters; unfair hearings; unjust penalties for failure to comply with unintelligible rules and regulations; and inadequate communication between Spanish-speaking clients and welfare personnel. In sum, the plaintiffs contend they are being deprived of income maintenance and social service benefits equal to those provided English-speaking welfare recipients, which has resulted in their exclusion from full participation in the federally assisted welfare program administered by the state defendants.

Whether viewed in the context of an "invidious classification" under the Equal Protection Clause, see, e.g.,

EXHIBIT III .

Shapiro v. Thompson, 394 U.S. 618, 633 (1969); Oyama v. California, 332 U.S. 633, 644-646 (1948); Korematsu v. United States, 323 U.S. 214, 216 (1944); Chance v. Board of Examiners, 458 F.2d 1167, 1175-1178 (2 Cir. 1972); Norwalk Core v. Norwalk Redevelopment Agency, 395 F.2d 920, 931-932 (2 Cir. 1968), or as viable causes of action under Title VI of the Civil Rights Act, see Lau v. Nichols, _____ U.S. _____ (1974), the plaintiffs' allegations are sufficient to survive pretrial dismissal.

Accordingly, the state defendants' motion to dismiss is denied.

Dated at New Haven, Connecticut, this 3rd day of June, 1974.

Robert C. Zamparo
United States District Judge

1 VICTOR HARRIS
2 LEGAL AID SOCIETY OF SAN DIEGO, INC.
3 964 Fifth Avenue
4 San Diego, CA 92101
5 Telephone: (714) 239-9611

6 DIANE S. GREENBERG
7 CALIFORNIA RURAL LEGAL ASSISTANCE
8 COOPERATIVE LEGAL SERVICES CENTER
9 1212 Market Street
10 San Francisco, CA 94102
11 Telephone: (415) 864-2752

12 Attorneys for Plaintiffs

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

12 LOUIS O. LOPEZ; CASA JUSTICIA,) Civil Action No. 75-2019-GT
13 individually and on behalf of)
14 all persons similarly situated,) AFFIDAVIT OF DANIEL MAGANA
15 Plaintiffs,)
16 vs.)
17 JOHN DUFFY, individually and as)
18 Sheriff of San Diego County;)
19 SHERIFF'S DEPARTMENT OF SAN DIEGO)
20 COUNTY; C. HUGH FRIEDMAN, TROY)
21 MOORE, CHARLOTTE ROBERTS, KING)
22 TAYLOR, TIMOTHY CONSIDINE,)
23 individually and as members of the)
24 San Diego County Civil Service)
25 Commission,)
26 Defendants.)

27 1. I, Daniel Magana, being first duly sworn, depose and
28 say:

29 1. I reside in Vista, California, within San Diego County.

30 2. I am a member of the organization Casa Justicia, and I
31 speak only Spanish.

32 3. In March, 1973, I lived at 105 Connecticut Avenue, Vista,
California. One morning during that month, at approximately
2:00 a.m., two men in plain clothes knocked on my door, identified
themselves as Border Patrol agents, and demanded entry. I was
frightened because I didn't know the true identity of these
men -- they didn't wear uniforms and they smelled of alcohol.

1 While the two men were searching the residence, I ran out to
2 look for help.

3 4. About one block away from my residence, I spotted a
4 San Diego County Sheriff's patrol car, with two uniformed
5 deputies inside. I tried to seek assistance from the deputies
6 and have them determine the actual identity and purpose of
7 the men who were searching my residence. However, because the
8 deputies spoke only English and I spoke only Spanish, I could
9 not communicate with them and they couldn't communicate with
10 me. Instead, I could only point toward my residence. Without
11 saying anything to me in Spanish, the deputy sheriffs placed
12 me in their car and drove me back to my residence, where the
13 plainclothes men were still searching.

14 5. The deputy sheriffs went into my residence while I
15 waited in the patrol car. The deputies returned shortly and
16 tried to make me go inside my residence. They did not
17 communicate why I was to go inside, and I was confused and
18 afraid to go. The deputies then tried to pull me inside my
19 residence, but I resisted and they placed me under a choke hold
20 and handcuffed me. I asked the deputies what they wanted, but
21 I spoke in Spanish and they didn't understand. They asked
22 for my identification, demanding "sus papeles". I displayed
23 my identification, and the deputies left, saying nothing more
24 and leaving me with the same problem I had when I first
25 sought their service.

26 6. I believe the San Diego County Sheriff's Department
27 provides more English-speaking personnel for each English-
28 speaking County resident than it provides Spanish-speaking,
29 Mexican-American personnel for said Spanish-speaking,
30 Mexican-American residents in the County.

31 7. I believe that if the San Diego County Sheriff's
32 Department employed more Spanish-speaking, bicultural

1 deputies and other personnel, I would have received the same type
2 of services provided to English-speaking residents. I know I
3 would have been able to communicate with Spanish-speaking,
4 Mexican-American deputies. I believe Spanish-speaking deputies
5 would have explained the identity of the plainclothes men and
6 would have described the purpose of their search.

7 8. To my knowledge, since the events described above in
8 paragraphs 3 through 7, the San Diego County Sheriff's
9 Department has not substantially increased the proportion of its
10 deputies and other personnel who are Mexican-American and speak
11 Spanish. I know that my ability to speak only Spanish has not
12 changed since those events.

13 9. As a direct result of the actions taken by the San Diego
14 County Sheriff's Department described above in paragraphs 3
15 through 7, and because I cannot communicate with the Department,
16 I have been discouraged and deterred from asking the Department
17 for services to which I am entitled and which are provided to
18 English-speaking residents of the County.

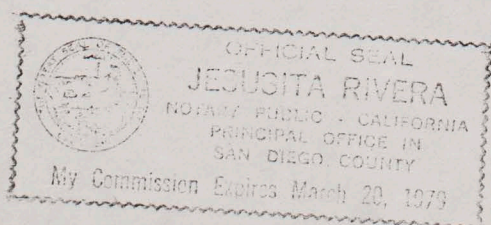
19 10. I know that if there were Mexican-American, Spanish-
20 speaking Sheriff's Department personnel provided in substantial
21 numbers to my community, I could and would call and explain
22 to them my problems and request the necessary services.

23 The foregoing was read to me in Spanish and the Spanish
24 translation is attached hereto. Esto me fue lido en Espanol
25 y la traduccion en espanol esta aqui incluida.

26 Dated: July 2, 1975

27 *Daniel Magana*
DANIEL MAGANA

28 Subscribed and sworn to before me this July 2, 1975.



Jesucita Rivera
NOTARY PUBLIC IN AND FOR THE SAID
COUNTY AND STATE

EXHIBIT IV

1 VICTOR HARRIS
2 LEGAL AID SOCIETY OF SAN DIEGO, INC.
3 964 Fifth Avenue
4 San Diego, CA 92101
5 Telephone: (714) 239-9611

6 DIANE S. GREENBERG
7 CALIFORNIA RURAL LEGAL ASSISTANCE
8 COOPERATIVE LEGAL SERVICES CENTER
9 1212 Market Street
10 San Francisco, CA 94102
11 Telephone: (415) 864-2752

12 Attorneys for Plaintiffs

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

12	LOUIS O. LOPEZ; CASA JUSTICIA,) Civil Action No. 75-0219-GT
13	individually and on behalf of)
14	all persons similarly situated,) AFFIDAVIT OF DANIEL MAGANA
15	Plaintiffs,)
16	vs.)
17	JOHN DUFFY, individually and as)
18	Sheriff of San Diego County;)
19	SHERIFF'S DEPARTMENT OF SAN DIEGO)
20	COUNTY; C. HUGH FRIEDMAN, TROY)
21	MOORE, CHARLOTTE ROBERTS, KING)
22	TAYLOR, TIMOTHY CONSIDINE,)
23	individually and as members of the)
24	San Diego County Civil Service)
25	Commission,)
26	Defendants.)

27 Yo, Daniel Magaña, ante todo formalmente jurando, declaro y
28 digo:

29 1. Resido en Vista, California, dentro del condado de San
30 Diego.

31 2. Soy miembro de la organización Casa Justicia y hablo
32 solo español.

33 3. En marzo, 1973, vivía en 105 Connecticut Avenue, Vista,
34 California. Una mañana del mismo mes aproximadamente a las
35 2:00 de la mañana dos hombres vestidos en ropa particular tocaron
36 a mi puerta, se identificaron como agentes del Departamento de
37 Inmigración y exigieron entrada a mi casa. Tenía mucho miedo

1 porque no sabía quien eran estos hombres -- no trían uniformes
2 y olían a alcohol. Mientras los dos hombres investigaban mi
3 casa, corrí yo a buscar auxilio.

4 4. Mas o menos una cuadra de mi casa vi un carro patrullero
5 del San Diego County Sheriff dentro del cual estaban dos
6 diputados en uniformes. Traté de pedir ayuda a los diputados
7 Quería que ellos determinaran la verdadera identidad y la
8 intención de los dos hombres que investigaban mi casa. Pero como
9 los diputados hablaban solo inglés y yo hablaba solo español,
10 no pude comunicar con ellos y ellos no pudieron comunicar conmigo.
11 Solo pude apuntar hacia mi casa. Sin decirme nada a mi en
12 español, los diputados me pusieron en su carro y me regresaron
13 a mi casa donde las agentes de la Inmigración todavía estaban
14 investigando mi casa.

15 5. Los diputados entraron a mi casa mientras yo esperaba
16 en el carro patrullero. Los diputados pronto regresaron y
17 trataron de hacerme entrar a mi casa, y yo estaba confuso y tenía
18 miedo entrar. Entonces los diputados trataron de forzarme
19 físicamente a entrar pero yo resistí y los diputados me
20 agarraron del cuello y me pusieron esposas. Les pregunté a los
21 diputados que querían pero no me entendieron porque yo
22 hablaba solo español. Me pidieron mi identificación,
23 exigiéndole "sus papales". Les mostré mi identificación y los
24 diputados se fueron, diciéndome nada mas y dejándome con el
25 mismo problema que tenía cuando primero busqué sus servicios.

26 6. Yo creo que el departamento del San Diego County Sheriff
27 emplea mas personas de habla-inglés para cada residente del
28 condado de habla-inglés que personas de habla-español, México
29 americanos para cada residente del condado de habla-español,
30 México-americanos.

31 7. Yo creo que si el departamento del San Diego County
32 Sheriff empleara mas personas y diputados de habla-español y

1 bi-culturales yo hubiera recibido servicios de la misma calidad
2 que reciben los residentes de habla-inglés. Yo se que yo hubiera
3 podido comunicar con diputados méxico-americanos de habla-
4 español. Yo creo que disputados de habla-español me hubieran
5 explicado la identidad de los hombres vestidos en ropa particular
6 y me hubieran explicado el propósita de su investigación.

7 8. Que yo sepa, desde los acontecimiento descritos arriba
8 en los párrafos 3 hasta 7 incluso, el departamento del San
9 Diego County Sheriff no ha aumentado substancialmente la
10 proporción de diputados y otros empleados méxico-americanos
11 de habla-español. Yo se que mi habilidad de hablar solo español
12 no ha cambiado desde esos acontecimientos.

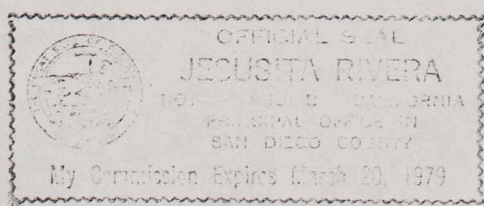
13 9. Como consecuencia directa de la acción, del departamento
14 del San Diego County Sheriff descrita arriba en los párrafos
15 3 hasta 7 incluso, y porque no puedo comunicar con el
16 departamento, me he desanimado a pedir servicios del departamento
17 a los cuales tengo derecho y a los cuales son dados a los
18 residentes de habla-inglés del condado.

19 10. Yo se que si el departamento del Sheriff aumentara
20 substancialmente el número de empleados de habla-español,
21 méxico-americanos, yo pudiera llamar y llamaría y explicaría
22 a ellos mis problemas y pediría los servicios necesarios.

23
24
25 Dated: July 2, 1975

Daniel Magana
DANIEL MAGANA

26 Subscribed and sworn to before me this July 2, 1975



Jecusita Rivera
NOTARY PUBLIC IN AND FOR THE SAID
COUNTY AND STATE

1 VICTOR HARRIS
2 LEGAL AID SOCIETY OF SAN DIEGO, INC.
3 964 Fifth Avenue, Room 400
4 San Diego, CA 92101
5 Telephone: (714) 239-9611

6 DIANE S. GREENBERG
7 CALIFORNIA RURAL LEGAL ASSISTANCE
8 COOPERATIVE LEGAL SERVICES CENTER
9 1212 Market Street
10 San Francisco, CA 94102
11 Telephone: (415) 864-2752

12 Attorneys for Plaintiffs

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

12 LOUIS O. LOPEZ; CASA JUSTICIA,) Civil Action No. 75-0219-GT
13 individually and on behalf of)
14 all persons similarly situated,) AFFIDAVIT OF ENRIQUE GARCIA
15 Plaintiffs,)
16 vs.)
17 JOHN DUFFY, individually and as)
18 Sheriff of San Diego County;)
19 SHERIFF'S DEPARTMENT OF SAN DIEGO)
20 COUNTY; C. HUGH FRIEDMAN, TROY)
21 MOORE, CHARLOTTE ROBERTS, KING)
22 TAYLOR, TIMOTHY CONSIDINE,)
23 individually and as members of the)
24 San Diego County Civil Service)
25 Commission,)
26 Defendants.)

27 I, Enrique Garcia, being first duly sworn, depose and say:

28 1. I reside at 930 B Street, National City, San Diego
29 County, California. I have resided in San Diego County since
30 1950.

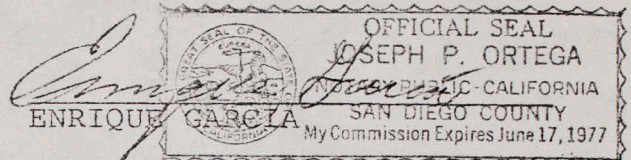
31 2. I am a Mexican-American proficient in Spanish and English,
32 and I am a member of the organization Casa Justicia.

33 3. I am 27 years old, stand 5'6" tall, and have graduated
34 from high school.

35 4. During the last three years, I have seriously considered
36 applying for a deputy sheriff position within the Sheriff's
37 Department of San Diego County. I believe I am fully qualified

1 for such a position. I would have applied for the position but
2 for my belief that the required written examination is very
3 difficult for Mexican-Americans to pass. I was also discouraged
4 from applying for such a position because of my belief that the
5 Sheriff's Department discriminates against Mexican-Americans by
6 imposing subjective background and credit checks. I live and
7 work in the Mexican-American community in San Diego County, and
8 my foregoing beliefs are based upon what I have learned and
9 experienced in this community.

10
11 Dated: July 1, 1975



12
13 Subscribed and sworn to before me this July / , 1975.

14
15 *Joseph P. Ortega*
16 NOTARY PUBLIC IN AND FOR THE
17 SAID COUNTY AND STATE

18 SUBSCRIBED AND SWORN TO BEFORE ME

19 THIS 1 DAY OF July, 1975
20 *Joseph P. Ortega*
21 NOTARY PUBLIC - CALIFORNIA
22
23
24
25
26
27
28
29
30
31
32



UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PHOENIX DISTRICT OFFICE
112 N. CENTRAL AVE., SUITE 601
PHOENIX, ARIZONA 85004

IN-REPLY REFER TO:

State of Arizona)
) SS
County of Maricopa)

AFFIDAVIT

I, DOROTHY E. MEAD, being duly sworn, depose and say:

1. I am Deputy Director and District Counsel for the Phoenix District Office of the U.S. Equal Employment Opportunity Commission.

2. In my official capacity, I have access to all files compiled by the Phoenix District Office of the U.S. Equal Employment Opportunity Commission with respect to charges of discrimination filed with that office.

3. I am responsible for processing charges of discrimination filed with the Phoenix District Office of the Equal Employment Opportunity Commission.

4. In my official capacity, I have received the administrative file compiled with respect to the charge of Louis Lopez against the San Diego County Sheriff's Department, Charge No. TPX5 0069.

5. My review indicates that the document attached hereto and marked "Exhibit A" is a true and genuine copy of a letter received by the Phoenix District Office of the U.S. Equal Employment Opportunity Commission and contained in the administrative file compiled with respect to the charge of Louis Lopez, Charge

Page 2

Affidavit of Dorothy E. Mead

No. TPX5 0069.

DATED: June 17, 1975.

Dorothy E. Mead
DOROTHY E. MEAD

Sworn to before me this 17th day of June, 1975.

Sandra L. Ertelt
NOTARY PUBLIC

My Commission expires:
June 17, 1978

LEGAL AID SOCIETY OF SAN DIEGO, INC.

OFFICE OF PUBLIC ATTORNEY

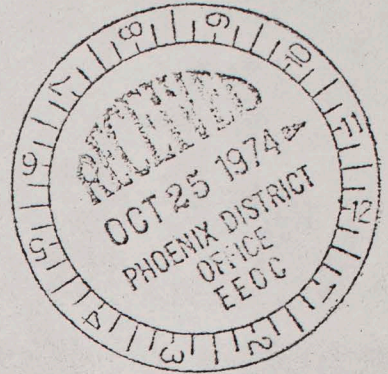
ROOM 430, GRANGER BUILDING

964 FIFTH AVENUE

SAN DIEGO, CALIFORNIA 92101

TELEPHONE: 233-1499 239-9611

October 23, 1974



Mr. Edward Valenzuela
District Director
Phoenix District Office
Equal Employment Opportunity Commission
112 N. Central Ave., Suite 601
Phoenix, Arizona 85004

Re: TPX 0069 (TLA4 0853)
Lopez v. San Diego Co.
Sheriff Dept.

Dear Sir:

This office is representing Mr. Louis O. Lopez with respect to a charge of employment discrimination under Title VII of the Civil Rights Act formally filed by him on or about June, 1974. Before proceeding any further with this case, this office would like by this letter to make an amendment of party-defendants to the complaint as originally filed.

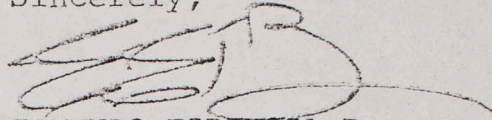
This amendment is hereby submitted for the purposes of including the following party-defendants to the complaint, thus amending the original complaint to read as follows:

County of San Diego; C. Hugh Friedman, Troy M. Moore, Charlotte E. Roberts, King O. Taylor, Timothy M. Considine, each individually and as members of the San Diego County Civil Service Commission; William D. Winterbourne, individually and as San Diego County Director of Personnel; John F. Duffy, individually and as Sheriff of San Diego County; Jack Walsh, Dick Brown, Lou Conde, Jim Bear, Lee Taylor, each individually and as members of The San Diego County Board of Supervisors; Richard Robinson, Lt. Henry Shope, each individually and in his official capacity.

The defendants herein included, impose a number of requirements which operate as barriers to the employment of Mexican-American (Spanish-Surname) citizens, including but not limited to, the barriers or requirements outlined in the original charge, and various other devices.

Our client believes the entire procedure operates to discriminate against the class of Mexican-American (Spanish-Surname) citizens of which he is a member.

Sincerely,

A handwritten signature in dark ink, appearing to be 'ESB' with a large, sweeping flourish extending to the right.

EDMUNDO ESPINOZA B.
Staff Associate

EEB/sm

cc: Mr. Louis O. Lopez
281 E. Taylor Street
San Jose, CA 95112

FILED

JUL 3 - 1975

DIANE S. GREENBERG, ESQ.
CALIFORNIA RURAL LEGAL ASSISTANCE
COOPERATIVE LEGAL SERVICES CENTER
1212 Market Street
San Francisco, CA 94102
Telephone: (415) 864-2752

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

LOUIS O. LOPEZ; CASA JUSTICIA,
individually and on behalf of
all persons similarly situated,

Plaintiffs,

VS.

JOHN DUFFY, individually and as Sheriff of San Diego County; SHERIFF'S DEPARTMENT OF SAN DIEGO COUNTY; C. HUGH FRIEDMAN, TROY MOORE, CHARLOTTE ROBERTS, KING TAYLOR, TIMOTHY CONSIDINE, individually and as members of the San Diego County Civil Service Commission,

Defendants.

Civil Action No. 75-0219-GT

SECOND AMENDED CIVIL RIGHTS
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I.

INTRODUCTION

1. Plaintiffs bring this action on their behalf and on behalf of the persons they represent to redress the injuries suffered by them as a result of defendants' policies and practices of employment discrimination, as set forth more fully herein, which operate to deny plaintiffs equal opportunity for employment and advancement in the Sheriff's Department of San Diego County because of their race and national origin. Plaintiffs also bring this action to redress the injuries they have suffered as a result of defendants' failure to provide meaningful and effective

1 services to Mexican-American residents of San Diego County.

2 II

3 JURISDICTION

4 2. This action is brought pursuant to 42 U.S.C. §§1981,
5 1983, 2000d, and 2000e et. seq., and 28 U.S.C. §§2201-2202.

6 3. Jurisdiction is conferred on this Court by each of the
7 following statutes: 28 U.S.C. §§1343(3)(4); 42 U.S.C. §2000e-
8 5(f)(3); and 28 U.S.C. §1331. The amount of damages suffered by
9 each plaintiff exceeds \$10,000, exclusive of interest.

10 III

11 VENUE

12 4. For the cause of action based upon 42 U.S.C. §2000e
13 et. seq., venue in this Court is proper pursuant to 42 U.S.C.
14 §2000e-5(f)(3), since the discriminatory employment practices
15 complained of herein occurred in San Diego County, California,
16 which is situated within the Southern District of California.

17 IV

18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

19 5. For the cause of action based upon 42 U.S.C. §2000e,
20 et. seq., plaintiff Lopez exhausted his administrative remedies
21 by filing complaints with the California Fair Employment Practices
22 Commission and the United States Equal Employment Opportunities
23 Commission. The commencement of this action has been authorized
24 by the United States Department of Justice pursuant to 42 U.S.C.
25 §2000e-5(f)(1). A copy of the letter evidencing such authoriza-
26 tion is attached hereto as Exhibit "A" and incorporated herein by
27 reference.

28

29

30

31

32

PARTIES

1
2
3 6. Plaintiff Louis O. Lopez is a 33 year-old Mexican-
4 American (Spanish-Surnamed) citizen of the United States, standing
5 six feet tall and weighing 200 lbs. At all times relevant
6 herein, he was a resident of San Diego County, California. He
7 speaks Spanish and English and is a high school graduate. In or
8 about November 1971, Plaintiff applied with the San Diego County
9 Civil Service Commission for the position of Deputy Sheriff
10 within the San Diego County Sheriff's Department. He performed
11 and passed the examinations required of applicants for said
12 position. However, despite his qualifications, he was denied
13 employment and consequent opportunity for advancement in said
14 Sheriff's Department in October, 1972 and again in early 1973.
15 Plaintiff is informed and believes and alleges thereon that some
16 or all of the applicants for said position were less qualified
17 than he, that a less qualified Anglo-American was hired for said
18 position, and that he was denied employment because of his race
19 and national origin, as described more fully below.

20 7. Plaintiff CASA JUSTICIA (hereinafter CASA) is a non-
21 profit organization whose members are Mexican-American (Spanish-
22 Surnamed) individuals residing in San Diego County, a substantial
23 number of whom speak Spanish as their sole or primary language.
24 For more than four years, two of CASA's primary purposes have been
25 the eradiction of racial discrimination in public employment and
26 the provision of effective and meaningful public services to
27 the Spanish-speaking community in San Diego County. Members
28 of CASA, who desire employment in the Sheriff's Department of
29 San Diego County, and who need effective services from said
30 Department, have been or will be denied such services and equal
31 employment opportunity in a discriminatory manner, as described
32 more fully below.

1 8. Plaintiffs bring this action pursuant to Rule 23(b)(2),
2 Federal Rules of Civil Procedure on behalf of themselves and:

3 (A) All Mexican-American (Spanish-Surnamed) individuals
4 who have applied for positions as Deputy Sheriffs in the San Diego
5 County Sheriff's Department, but who have been or will be denied
6 equal opportunity in obtaining such employment, and consequent
7 opportunity for advancement within said Department, on the basis
8 of defendants' discriminatory policies and practices complained
9 of herein;

10 (B) All Mexican-American (Spanish-Surnamed) individuals
11 residing within San Diego County who might hereafter apply for
12 Deputy Sheriff positions in the San Diego County Sheriff's
13 Department, and who will be denied equal opportunity in obtaining
14 such employment, and consequent opportunity for advancement within
15 said Department, on the basis of defendant's discriminatory
16 policies and practices complained of herein;

17 (C) All Mexican-American (Spanish-Surnamed) individuals
18 residing within San Diego County who have been discouraged from
19 applying for Deputy Sheriff positions in said Department on the
20 basis of defendants' discriminatory policies and practices
21 complained of herein; and

22 (D) All Mexican-American (Spanish-Surnamed) individuals
23 residing in San Diego County who have been or will be denied equal
24 access to effective and meaningful services from defendant
25 Sheriff's Department by reason of defendants' failure to employ
26 sufficient Mexican-American personnel proficient in both Spanish
27 and English.

28
29 The persons in each class are so numerous that joinder of
30 all members is impracticable. There are questions of law and
31 fact common to the classes. The claims of the representative
32 parties are typical of the claims presented by members of the

1 classes, and plaintiffs will fairly and adequately represent the
2 interests of the classes. The defendants have acted on grounds
3 applicable to the classes, thereby making appropriate final
4 injunctive relief or corresponding declaratory relief to the class
5 as a whole.

6 9. Defendant Sheriff's Department of San Diego County is
7 an employer within the meaning of 42 U.S.C. §2000e(b), having
8 more than fifteen employees.

9 10. Defendant John Duffy is the Sheriff of San Diego County,
10 and he is sued in his individual and official capacity. Said
11 defendant is responsible for the administration, control, hiring,
12 and personnel requirements of the Sheriff's Department of San
13 Diego County.

14 11. Defendants C. Hugh Friedman, Troy Moore, Charlotte
15 Roberts, King Taylor, and Timothy Considine are the Members of
16 the San Diego County Civil Service Commission. Said defendants
17 are responsible for prescribing, amending, enforcing, and super-
18 vising the policies and practices for the employment of in-
19 dividuals within the several Civil Service departments, including
20 said Sheriff's Department.

21 VI

22 FIRST CAUSE OF ACTION

23 12. In or about November 1971, plaintiff Lopez applied with
24 the San Diego County Civil Service Commission for the position of
25 Deputy Sheriff within the San Diego County Sheriff's Department,
26 and performed the written competitive examination. In or about
27 February, 1972, plaintiff sat for an oral interview and submitted
28 to a physical examination with said Civil Service Commission. He
29 received a combined score of 92 as a result of the written
30 examination and personal interview, passed the physical examina-
31 tion, and was certified to defendant Sheriff's Department for
32 possible employment.

1 13. On or about October 17, 1972, plaintiff Lopez received a
2 personal interview with defendant Sheriff's Department during
3 which he was subjected to racial slurs concerning his race and
4 national origin. As a result of said interview, plaintiff was
5 denied employment as a Deputy Sheriff, and consequent opportunity
6 for advancement with said employer, for the ostensible reason
7 that he possessed excessive personal debts and a poor credit
8 rating, both of which plaintiff denies.

9 14. During February, 1973, plaintiff Lopez reapplied for the
10 Deputy Sheriff's position and again was certified for possible
11 employment. However, defendant Sheriff's Department again denied
12 plaintiff employment -- this time upon an adverse personal
13 reference from his neighbor.

14 15. Plaintiff Lopez is informed and believes and thereon
15 alleges that, in fact, he was denied employment and consequent
16 opportunity for advancement primarily because of employment
17 policies and practices which have an adverse impact upon persons
18 of his race and national origin, Mexican-American.

19 16. Plaintiffs are informed and believe and thereon allege
20 that the defendants utilized employment selection devices in a
21 discriminatory fashion, applying requirements such as background
22 checks more stringently to Mexican-Americans than to Anglo-
23 Americans.

24 17. Plaintiffs are informed and believe and thereon allege
25 that defendants employ Mexican-Americans as Deputy Sheriffs and
26 as higher ranking officers at a rate substantially beneath their
27 representation in San Diego County. While Mexican-Americans
28 comprise 16% of said County's population, they constitute only
29 3.6% (18 out of 496) of the Deputy Sheriffs. More glaring are
30 the statistics for higher official positions within said
31 Sheriff's Department. Only 1 Sargeant out of 66 (or 1.5%) is
32 Mexican-American. And no Mexican-Americans hold the position of

1 Lieutenant or Captain, even though 41 such positions exist in
2 said Department.

3 18. Plaintiffs are informed and believe and thereon allege
4 that defendants' acts described in Paragraphs 13 through 16, and
5 the disparate treatment accorded to them and their classes
6 described in Paragraph 17, are due directly and proximately to
7 defendants' policies and practices of using unlawful, dis-
8 criminatory, and non-merit hiring criteria including, but not
9 limited to, the following:

- 10 (a) Utilization of credit reports and
11 debt levels as employment criteria,
12 which are neither job-related nor
13 justified by business necessity,
14 and which disqualify disproportionate
15 numbers of Mexican-American applicants;
- 16 (b) Utilization of personal references from
17 the applicant's neighborhood, which are
18 totally subjective, subject to personal
19 bias, and which do not measure job
20 performance capability, but which dis-
21 qualify disproportionately large numbers
22 of Mexican-Americans;
- 23 (c) Utilization of a written competitive
24 examination which has an adverse, dis-
25 proportionate impact on Mexican-
26 Americans and which has not been
27 demonstrated by defendant to be job-
28 related, as required by the EEOC Guidelines
29 on Employment Selection Procedures; and
- 30 (d) Utilization of a personal interview by
31 said Sheriff's Department after applicants
32 have been certified as eligible for
employment by said Civil Service Commission;
said interview disqualifies a disproportionately
large number of Mexican-American applicants
for positions in the Sheriff's Department, is
subjective, and fails to serve as a valid
predictor of job performance.

19. As a direct and proximate result of the acts, policies
and practices set forth in Paragraphs 13 through 18, defendants
have discriminated against plaintiffs and the members of their
classes on grounds of race and national origin in violation of
42 U.S.C. §2000e-2.

20. Plaintiffs and the classes they represent have no plain,
adequate or complete remedy at law to redress the discrimination

1 set forth above. This action for declaratory and injunctive
2 relief is their only means of obtaining adequate relief from
3 defendants' unlawful employment practices. Plaintiffs and the
4 classes they represent are now suffering and will continue to
5 suffer irreparable injury from defendants' unlawful employment
6 policies and practices as set forth above.

7 SECOND CAUSE OF ACTION

8 21. Plaintiffs hereby refer to and incorporate each and
9 every allegation in Paragraphs 12 through 18 and 20 of the First
10 Cause of Action.

11 22. As a direct and proximate result of the discriminatory
12 employment policies and practices set forth above, plaintiffs
13 and the members of the classes they represent are substantially
14 and effectively deprived of the equal opportunity to obtain the
15 position of Deputy Sheriff and opportunity for advancement within
16 said Sheriff's Department. Such a deprivation constitutes an
17 arbitrary and invidious discrimination within the meaning of
18 the Equal Protection Clause of the Fourteenth Amendment to the
19 United States Constitution, and is a violation of 42 U.S.C. §1983.

20 THIRD CAUSE OF ACTION

21 23. Plaintiffs hereby refer to and incorporate by reference
22 each and every allegation in Paragraphs 12 through 18 and 20 of
23 the First Cause of Action.

24 24. As a direct and proximate result of the discriminatory
25 employment practices set forth above, plaintiffs and the members
26 of their classes are substantially and effectively denied their
27 equal rights to make and enforce employment contracts enjoyed by
28 white citizens, in violation of 42 U.S.C. §1981.

29 FOURTH CAUSE OF ACTION

30 25. Plaintiff Lopez hereby refers to and incorporates by
31 reference each and every allegation in Paragraphs 12 through 18
32 of the First Cause of Action.

1 26. Plaintiff Lopez is informed and believes and thereon
2 alleges that defendants discriminated against him in violation
3 of 42 U.S.C. §§1981 and 1983 by refusing to hire him because
4 he had previously opposed unlawful employment practices of one
5 of his employers.

6 27. Plaintiff Lopez has no plain, adequate or complete
7 remedy at law to redress the discrimination set forth above. This
8 action for declaratory and injunctive relief is his only means
9 of obtaining adequate relief from defendants' unlawful employment
10 practices. Plaintiff is now suffering and will continue to
11 suffer irreparable injury from defendants' unlawful employment
12 policy and practice set forth above in Paragraph 26.

13 FIFTH CAUSE OF ACTION

14 28. Plaintiffs hereby refer to and incorporate each and
15 every allegation in Paragraphs 12 through 18 and 20 of the First
16 Cause of Action.

17 29. Plaintiffs are informed and believe and thereon allege
18 that a substantial number of Mexican-Americans, who comprise
19 16% of San Diego County's population, speak Spanish as their sole
20 or primary language and relate most closely to Mexican-American
21 culture. A substantial number of these individuals incur
22 problems which require services and information, to which they are
23 entitled, from defendant Sheriff's Department by personnel who are
24 proficient in both Spanish and English (hereinafter "bilingual")
25 and who are trained in and familiar with Mexican-American
26 culture (hereinafter "bicultural"). However such services and
27 information have not been provided to members of CASA and the
28 classes it represents because Sheriff's Department personnel are
29 not proficient in Spanish and English. As a direct result, such
30 problems have gone unresolved.

31 30. Plaintiffs are informed and believe and thereon allege
32 that the number of defendant Sheriff's Department personnel

1 who are bilingual and who possess said bicultural background is
2 substantially beneath their representation in the San Diego
3 County population. Plaintiffs are also informed and believe and
4 thereon allege that the number of defendant Sheriff's Department
5 personnel who are proficient only in English and who possess
6 only an Anglo-American background exceed their representation
7 in the San Diego County population.

8 31. As a direct result of (a) defendants' unlawful and
9 discriminatory employment practices and policies set forth above,
10 and (b) defendants' failure to employ sufficient bilingual-
11 bicultural personnel, members of plaintiff CASA and the classes
12 it represents have been injured by the denial to them of
13 Sheriff's Department services which are as effective and as
14 meaningful as those provided to the Anglo-American, English-
15 speaking population in San Diego County--all of which is known
16 to defendants and to each of them. Such a deprivation constitutes
17 an arbitrary and invidious discrimination within the meaning
18 of the Equal Protection Clause of the Fourteenth Amendment to the
19 United States Constitution, and is a violation of 42 U.S.C.
20 §1983.

21 SIXTH CAUSE OF ACTION

22 32. Plaintiffs hereby refer to and incorporate each and
23 every allegation in Paragraphs 12 through 18 and 20 of the
24 First Cause of Action and Paragraphs 28 through 31 of the Fifth
25 Cause of Action.

26 33. Defendant Sheriff's Department of San Diego County
27 receives federal financial assistance which includes, but is not
28 limited to, Law Enforcement Administration funds.

29 34. By virtue of accepting these federal funds, and pursuant
30 to Title VI of the 1964 Civil Rights Act, 42 U.S.C. §2000d,
31 Defendant Sheriff's Department is prohibited from providing
32 services, and from engaging in employment practices, in a manner

1 which discriminates on the basis of race or national origin.

2 35. In maintaining the policies and practices of employment
3 discrimination on the basis of race and national origin, as set
4 forth above, defendant Sheriff's Department is violating 42
5 U.S.C. §2000d, and depriving plaintiffs and the classes they
6 represent their rights thereunder.

7 36. In failing to employ sufficient personnel who are
8 proficient in both Spanish and English, and who are trained in
9 and familiar with Mexican-American culture, as set forth above,
10 defendant Sheriff's Department is denying members of plaintiff
11 CASA and the classes it represents equal provision of Sheriff's
12 Department services. Such denial on the basis of race and
13 national origin violates 42 U.S.C. §2000d.

14 WHEREFORE, Plaintiffs respectfully pray that this Court:

- 15 (a) Determine by order, pursuant to Rule 23,
16 Federal Rules of Civil Procedure, that
this action be maintained as a class action;
- 17 (b) Declare that the employment selection procedures
18 described above violate the federal statutory
and constitutional provisions set forth;
- 19 (c) Preliminarily and permanently enjoin each
20 defendant and successors from utilizing,
in connection with the position of Deputy
21 Sheriff and other positions within the
Sheriff's Department of San Diego County,
22 selection procedures which have an adverse
impact on Mexican-Americans and which have
23 not been and cannot be adequate predictors
of job performance;
- 24 (d) Preliminarily and permanently enjoin each
defendant and successors from discriminating
25 against plaintiff Lopez because he opposed
unlawful employment practices;
- 26 (e) Order each defendant and successors to employ
27 plaintiff Lopez as Deputy Sheriff;
- 28 (f) Award to plaintiff Lopez and to the other
29 members of the classes so entitled equitable
restitution in the form of back pay and
30 back seniority to compensate for defendants'
wrongful failure to hire plaintiff and other
members of the classes represented herein;
- 31 (g) Order each defendant and successors to engage in
32 special recruitment activities and to take other

1 remedial measures to redress the present
2 and past exclusion of Mexican-Americans
3 from the Sheriff's Department of San Diego
4 County;

5 (h) Declare that by virtue of defendants' and
6 each of their knowing denials to provide
7 Sheriff's Department services to plaintiffs
8 as effective and as meaningful as those
9 provided to the Anglo-American, English-
10 speaking population, as described above,
11 defendants and each of them are in violation
12 of federal statutory and constitutional
13 provisions set forth;

14 (i) Declare that the federal statutory and
15 constitutional provisions set forth require
16 each defendant to undertake any and all
17 necessary measures to employ a sufficient number
18 of Sheriff's Department personnel who speak
19 both Spanish and English and who are trained
20 in and familiar with the Mexican-American
21 culture, so as to provide plaintiffs with
22 Department services as effective and meaningful
23 as that provided to the Anglo-American,
24 English-Speaking population;

25 (j) Preliminarily and permanently enjoin each
26 defendant and successors from failing to employ
27 a sufficient number of Sheriff's Department
28 personnel, who speak both Spanish and English
29 and who are trained in and familiar with the
30 Mexican-American culture, so as to insure
31 the provision of services to plaintiffs as
32 effective and meaningful as those provided
to the Anglo-American, English-speaking
population;

(k) Order each defendant and successors to engage
in special recruitment activities and to
take remedial measures to insure employment
of sufficient bilingual personnel trained in
and familiar with Mexican-American culture,
in the Sheriff's Department of San Diego County;

(l) Order the defendants pay the cost of this suit
and reasonable attorney's fees; and

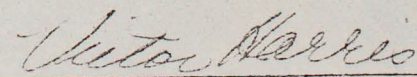
(m) Grant such other and further relief as this
Court deems just and proper.

Respectfully submitted,

DIANE GREENBERG
VICTOR HARRIS

Dated: June 19, 1975

by


VICTOR HARRIS

Attorneys for Plaintiffs



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number
JSP:RAG:msp

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

FEB 27 1976

AIR MAIL

Mr. Louis Lopez
c/o Diane S. Greenberg, Esquire
Attorney at Law
California Rural Legal Assistance
Cooperative Legal Services Center
1212 Market Street - Mezzanine
San Francisco, California 94102

Re: EEOC Charge Against San Diego County
Sheriff's Department
No. TPK5-0069

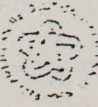
Dear Mr. Lopez:

Because you have filed a charge against the respondent named above and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

"EXHIBIT A"

1



Your attorney may inspect the investigative file pertaining to the case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 112 N. Central Avenue, Suite 601, Phoenix, Arizona 85004.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By:

Herbert A. Golesmith, Jr.
HERBERT A. GOLESMITH, JR.
Attorney
Employment Section

cc: Mr. Edward Valenzuela
District Director
Phoenix District Office
Equal Employment Opportunity
Commission
112 N. Central Avenue, Suite 601
Phoenix, Arizona 85004

Dorothy E. Mead, Esquire
District Counsel
Phoenix District Office
Equal Employment Opportunity
Commission
112 N. Central Avenue, Suite 601
Phoenix, Arizona 85004