

## **Federal Agency's Use of Border Patrol for Interpretation Assistance Violates Civil Rights**

*"It is axiomatic that a policy that causes individuals to actually flee from the service being provided does not provide meaningful access." OASCR, Complaint No. FS-11-5171, p. 28.*

May 31, 2012 - The U.S. Department of Agriculture's Office of the Assistant Secretary for Civil Rights (OASCR) issued an [order and findings](#) in a complaint filed by Northwest Immigrant Rights Project (NWIRP) on behalf one of its clients. Specifically, OASCR found that the U.S. Forest Service discriminated against the complainant on the bases of her race (Latina), and national origin (Guatemalan), when the Forest Service subjected her to immigration enforcement action by calling the U.S. Border Patrol with the pretext that the official was seeking interpretation assistance and/or law enforcement backup. In addition, OASCR found that the U.S. Forest Service discriminated against the complainant by failing to provide adequate service to a Limited English Proficient (LEP) individual.

The 39-page ruling by the federal agency came in response to an incident that tragically resulted in the death of one individual. NWIRP's client was stopped along with her partner by a Forest Service officer in the Olympic Peninsula in May 2011. The Forest Service officer made the traffic stop presumably to investigate whether the occupants of the vehicle had a permit to harvest salal. However, the Forest Service officer had called Border Patrol agents before even interacting with the occupants of the vehicle. NWIRP's client and the driver of the vehicle both answered the Forest Service officer's questions, but both fled their vehicle on foot when a Border Patrol car pulled up to the scene shortly thereafter. The driver of the vehicle died after running from the scene and getting swept into a nearby river. NWIRP's client was detained by the Forest Service officer, cited for "interfering and resisting a law enforcement officer" and then turned over to Border Patrol agents, who placed her in deportation proceedings. Federal officials later agreed to release her from immigration detention and dropped the deportation case against her.

OASCR reviewed the complaint under the terms of 7 C.F.R. § 15d, prohibiting discrimination based on membership in a protected class. The agency clarified that in evaluating a claim of disparate treatment based on membership in a protected class, it relies on the burden shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

In addition, OASCR found that 28 C.F.R. § 42.405(d)(1) and Executive Order 13166 establish ample authority that "the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations." (p. 20-21, *citing* 65 Fed.Reg. 50123, 50124 (Aug. 11, 2000). OASCR concluded, "similar to the fact that the right to LEP access derives from Title VI, the right to LEP access in conducted programs derives

from 7 C.F.R. § 15d. Accordingly, failure to provide meaningful access can also be construed as national origin discrimination under 7 C.F.R. § 15d.” (p. 21.)

Accordingly the agency reviewed the evidence to determine whether the Forest Service discriminated against NWIRP’s client based on race and national origin by subjecting her to immigration enforcement action and by failing to provide meaningful access to an LEP individual.

OASCR’s decision made a number of important findings:

- OASCR found that the use by Forest Service officers of Border Patrol agents for interpretation assistance is “discriminatory on its face, and not solely in the circumstances of this case.” (p. 29)
- OASCR found that the use of Border Patrol agents for interpretation violates applicable civil rights policies and regulations because “Spanish-speaking visitors are entitled not to experience an escalation in their interaction with law enforcement that their English-proficient counterparts would not experience.” (p. 22)
- OASCR concluded that the use of Border Patrol (“BP”) agents for interpretation violates applicable civil rights policies and regulations because it “does not provide meaningful access, as the increased threat associated with BP interaction, for both Hispanic lawful residents and undocumented individuals, discourages LEP individuals from accessing [Forest Service] services, and may actively harm them when BP interpretation services are utilized.” (p. 24) (see also p. 31 “this argument holds true for all Latino individuals, regardless of their immigration status. A citizen or other lawful resident still runs the risk of an interrogation into their status, which OASCR notes could quickly turn into a humiliating experience. This humiliation goes beyond whatever general embarrassment an individual feels during a custodial stop. . . and is a result of a person’s membership in a protected class.”)
- OASCR found that the complainant “was not afforded the opportunity to (1) communicate effectively with [the Forest Service Officer (FSO)] during the stop, and (2) undergo a law enforcement stop without the escalated threat of BP involvement.” (p.23) (see also p. 23 “Specifically, Hispanic individuals subjected to a law enforcement stop by FSO experienced the additional threat of BP involvement. This involvement is inconsistent with the perceived penalty associated with potential FS law enforcement stops.”)
- OASCR found that “[t]he use of BP for interpretation assistance escalates the fear, distrust, and risk of a law enforcement stop.” (p. 28)
- OASCR also held that the “interpretation services” provided by the Border Patrol “do not satisfy the ethical standards of interpretation services; they are not impartial, or confidential, nor do they advise individuals of the potential conflicts of interest and risks.” (p. 28).
- “Given the availability of other low-cost alternatives, such as Language Line, other radio or telephone interpretation services, community volunteers, training and education for

current staff, and hiring a bilingual staff, OASCR does not find FS's budgetary arguments compelling. We find Complainant has established that FS failed to provide her with interpretation assistance, and concur that FS's arguments that BP is used due to budgetary and resource restrictions is insufficient to justify a policy that has a discriminatory effect on individuals based on their race and national origin." (p. 28)

- OASCR found that the Forest Service officer in question called Border Patrol for "backup" only when the individuals stopped were Latino, and concluded that the assertions that Border Patrol was needed for interpretation and backup assistance were "merely an excuse to target Latino individuals for immigration enforcement." (p. 32-33) (see also p. 28, "The implication of this email was that the practice of requesting interpretation assistance is a guise for initiating an immigration enforcement action").
- OASCR held that "[b]ecause the interaction with BP often arises in the context of a traffic stop, Complainant, and other Latino individuals, are not free to simply disengage or walk away from the situation. Under traditional circumstances, the frustration and embarrassment visited on LEP individuals where there is a lack of LEP access is limited to an inability to get a question answered, engage in a business transaction, or otherwise persist in a consensual encounter." (p. 27) (emphasis in original)
- "OASCR finds FS's statement, that BP was called for 'backup assistance' for safety reasons to be not credible." (p. 32)

OASCR is ordering the Forest Service to take substantial actions to remedy its discriminatory policies and practices:

- At the national level, the Forest Service will be required to develop and implement a language access policy that provides meaningful access to Limited English Proficient (LEP) individuals;
- Also nationally, the Forest Service will be required to develop and implement a policy on law enforcement data collection to reduce instances of racial profiling;
- At the local level, the Forest Service offices in the Olympic National Forest will be required to post notices informing the public that it has been found to have discriminated on the basis of national origin and providing information on how to file civil rights complaints;
- The Forest Service officer who stopped M.N. and his direct supervisor will be required to complete 40 hours of civil rights training within 60 days of the ruling.

The decision by OASCR in this case comes less than a month after NWIRP filed a separate complaint with the U.S. Departments of Justice and Homeland Security regarding the use of Border Patrol agents by other law enforcement agencies throughout Washington State. That complaint remains pending.