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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

FAITH ACTION FOR COMMUNITY  
EQUITY; JOHN DOE 1 and JANE DOE 1,  
individually and on behalf of a class of  
persons in the State of Hawai'i who,  
because of their national origins, have  
limited English proficiency;

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII  
DEPARTMENT OF  
TRANSPORTATION; GLENN

Case No. **CV13-00450**

**RLP**

Civil Rights Action  
Class Action

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
DAMAGES; SUMMONS**

OKIMOTO, in his official capacity as the  
Director of the Hawai'i Department of  
Transportation,

Defendants.

## INTRODUCTION

1. Plaintiffs bring this action for relief from Defendants' violation of Plaintiffs' civil rights under the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and the Hawai'i Revised Code §321C-3, arising out of Defendants' intentional discrimination against people residing in the State of Hawai'i who, because of their national origin, have limited English proficiency.

2. Plaintiffs JOHN DOE 1 and JANE DOE 1, and the class of persons whose interests they represent, are people of various nationalities who have been unable to obtain a driver's license because of Defendants' refusal to provide translations or allow interpretation of the exam, which is currently only available in English.

3. Plaintiff FAITH ACTION FOR COMMUNITY EQUITY ("FACE") is an Internal Revenue Code 501(c)(3) non-profit corporation whose members have been advocating for multi-lingual driver's license examinations since 2001, devoting significant resources to that effort.

4. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF TRANSPORTATION ("HDOT"), and GLENN OKIMOTO are responsible for administering the drivers' licensing program.

5. Plaintiffs have filed this suit as a last resort. For years, Plaintiffs have been attempting to get Defendants to permit translation and interpretation of the

examination for the benefit of non-English speaking people in Hawai`i. Representatives of Plaintiff FACE have met with HDOT officials, submitted petitions, issued a report on the issue, and even offered to arrange for the translations to be done at no cost to Defendants. In spite of these efforts, the Defendants have, despite requests and demands, have failed to provide translated versions of the drivers' examination materials or to otherwise enable otherwise qualified persons who speak languages ways to obtain licenses in their native languages.

6. As a result, many people with limited English proficiency are unable to obtain a driver's license. Having a driver's license is critical to self-sufficiency, especially for those residing in areas where bus service is non-existent or limited. The inability to drive limits access to employment, school, medical services, cultural and church activities, and even getting to classes to learn English. Some members of the class have felt compelled to drive without a license because they have no other viable means of getting to work and supporting their families. Some have been unable to obtain insurance without a license, and others have been cited for driving without a license, an offense that subjects them to fines or jail time.

7. Defendants' own policies acknowledge that Hawai`i has an increasingly diverse population, and that more than 25% of its households speak a language other than English at home. Although translations of the exam had already been in use, Defendants withdrew them, so the test is currently only available in English. Further, Defendants do not allow the use of interpreters.

8. Defendants' deliberate refusal to provide the translations or allow interpretation of the written drivers' exam in spite of the clear need amounts to intentional discrimination against people of the nationalities that speak languages other than English.

9. Plaintiffs seek injunctive and declaratory relief, damages, attorney's fees and costs, and additional relief as may be just and proper.

### **PARTIES**

10. Plaintiff JOHN DOE 1 is Chuukese and a citizen of the Federated States of Micronesia ("FSM"). JOHN DOE 1 moved from Chuuk to Maui in 2007. In spite of his efforts to learn English by taking classes, he has had difficulty with the vocabulary and idioms on the exam, which includes words like "inadvertently" and "abreast," and phrases like "ride up." He took and failed the test three times in 2008, after which, pursuant to DOT policy, he was banned from retaking the test for a year. He made a fourth attempt at the test in 2012, but again failed. At no point during his four trips to the Kahului drivers licensing office was he offered a translated exam, and he was never notified of his right to an interpreter. In fact, he brought a court certified interpreter with him to the office, but office staff informed him that he was forbidden from using an interpreter because he needed to be able to read road signs like the word "stop" on stop signs. As a result, JOHN DOE 1 was injured, and he is continuing to be injured, by the violations of his civil rights alleged herein. Plaintiff JOHN DOE I sues anonymously because he is on occasion driving without a license and disclosure of his name may expose him to retaliatory criminal proceedings and fines or incarceration.

11. Plaintiff JANE DOE 1 is Marshallese and a citizen of the Republic of the Marshall Islands (“RMI”). JANE DOE 1 had driven for nearly ten years while residing in RMI, prior to moving to Maui in 1999. JANE DOE 1 has failed the written drivers’ exam twice because of her difficulty with the English language. Like JOHN DOE 1, she has never been offered a translated exam and was never notified of her right to an interpreter. As a result, JANE DOE 1 was injured by the violations of his civil rights alleged herein. Plaintiff JANE DOE I sues anonymously because she is on occasion driving without a license and disclosure of his name may expose her to retaliatory criminal proceedings and fines or incarceration.

12. Plaintiff FACE is a faith-based grassroots non-profit organization, incorporated in the State of Hawai`i on June 10, 1998. FACE’s mission is to allow its members to live out their common, faith-based values by engaging in actions that challenges the systems that perpetuate poverty and injustice. FACE’s membership comprises of over 25 institutions located in Hawai`i. One of FACE’s primary areas of advocacy is seeking to address and remedy problems faced by recent immigrants to Hawai`i. One of the issues FACE has focused on is advocating on behalf of persons of certain nationalities who have been unable to obtain a driver’s license due to the lack of translations and interpreter services. FACE recognizes that lack of a driver’s license has significant impact on a person’s ability to become self-sufficient, and has invested substantial resources on this issue.

13. Defendant HDOT is a public entity created by the Legislature of the State of Hawai`i. Defendant HDOT is a state agency, and receives federal financial

assistance, including money from the U.S. Department of Homeland Security. Defendant HDOT is charged with administering the written driver's license exam.

14. Defendant STATE OF HAWAII oversees the HDOT and is responsible for ensuring compliance with federal nondiscrimination laws in its departments. Defendant HAWAII receives federal assistance, including money from the U.S. Department of Homeland Security.

15. Defendant GLENN OKIMOTO is the Director of the HDOT and is sued in his official capacity. He is responsible for ensuring the HDOT's compliance with federal nondiscrimination laws.

#### **CLASS ACTION ALLEGATIONS**

16. Plaintiffs JOHN DOE 1 and JANE DOE 1 bring this action on behalf of themselves and on behalf of a class of all those individuals similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedures ("Rule").

17. Plaintiffs represent all residents of Hawai'i who are eligible for drivers' licenses and who, because of their national origins, need to take the driver's license examination in a language other than English through translations, interpreters, and other language access services ("the class").

18. Plaintiffs and their counsel will adequately represent the class. Plaintiffs are represented by counsel experienced in federal civil rights litigation and class actions, including litigation against state defendants based upon violations of federal law.

19. Membership of the class is so numerous in number that joinder of all members is impractical. There are thousands of persons who have limited English

proficiency due to their national origins, and are being denied meaningful access to driver's licenses due to the Defendants' practices.

20. Common questions of law and fact exist, including whether Defendants are discriminating against the members of the class by refusing to allow translation and interpretation of the driver's license exam into languages other than English.

21. The claims of the named Plaintiffs are typical of the claims of the other members of the proposed class in that they have been denied meaningful access to a driver's license and are otherwise discriminated against on the basis of their national origins. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs intend to prosecute this rigorously in order to secure remedies for the entire class.

22. A class action is appropriate in this case for one or more of the following reasons:

a. The prosecution of separate actions by individual members of the class would create a risk of adjudications which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

b. Defendants have acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.

c. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

### **JURISDICTION**

23. The Court has jurisdiction under 28 U.S.C. §§1331, 1343, and 1367. This action is brought pursuant to the Fourteenth Amendment to the United States Constitution, 24 U.S.C. § 2000d (“Title VI”), as well as 42 USC §§1983.

24. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs’ State law claims.

25. Defendants’ sovereign immunity, if any, has been explicitly abrogated in suits brought in federal court to enforce Title VI.

26. Venue is proper to the District of Hawai’i pursuant to 28 U.S.C. §1391(b) because the events giving rise to Plaintiffs’ claims occurred in this District.

### **STATUTORY FRAMEWORK**

27. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 USC §1983, provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. The conduct of Defendants violates Plaintiffs’ right to equal protection of the laws by discriminating impermissibly on the basis of national origin.

28. Section 601 of Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin by programs or agencies that



receive federal funding. 45 U.S.C.A. §2000d. The protection of national origin includes nondiscrimination in regards to services to people who have little or no proficiency in English (hereinafter, “Limited English-Proficient Persons”).

29. Presidential Executive Order 13166 directs recipients of federal funds to implement a system by which Limited English-Proficient Persons can meaningfully access the services provided by the recipients. 65 FR 50121 (August 16, 2000).

30. Under the HRS §321C-3, each state agency and covered entities is required to translate documents for the benefit of Limited English-Proficient Persons who seek access. The policy is subject to a balancing test, which considers:

- a. Number or proportion of Limited English-Proficient Persons served or encountered in the eligible service populations (5% or 1,000 of the population eligible to be served, likely to be affected, or likely to be encountered, whichever is less);
- b. Frequency with which Limited English-Proficient Persons come in contact with the service, programs, or activities;
- c. Nature/importance of the service, programs, or activities; and
- d. Resources available to the State agency or covered entity and the cost of providing translation.

31. Pursuant to HRS § 321C-4, each Hawai‘i state agency is required to establish a plan for language access. The HDOT’s Language Access Plan defines “vital documents” as “printed documents that provide important information necessary to participate in services, programs, and activities.” It defines “the most common languages

encountered” as “Tagalog, Japanese, Ilocano, Chinese, Spanish, Hawaiian, Korean, Other Pacific Island Languages (Chuukese, Marshallese, Yapese), Samoan, and Vietnamese.” “Limited English proficient person” is defined as “an individual who, on account of national origin, does not speak English as the person’s primary language and self identifies as having a limited ability to read, write, speak, or understand the English language.” HRS §321C-2.

## **FACTS**

### **History of the HDOT’s Position on Translations**

32. Defendant HDOT is charged with administering the written driver’s license exam.

33. Prior to 2001, translations of the exam were not available. However, after FACE engaged in a considerable advocacy effort with the City and County of Honolulu Licensing and Permits Division, translations were implemented for Japanese, Mandarin, Korean, Samoan, Tagalog, Vietnamese, Laotian, and Tongan.

34. FACE helped to get the translations completed for minimal costs by recruiting university professors and consulates do the translations. As a result of FACE’s work, the total costs to translate and print the exams was around \$2,000.

35. For years, the translations remained in place and provided an effective means of accessing the exam for persons of the various nationalities for which translations were offered.

36. However, in 2010, after a mere three new questions were added to the exam, the HDOT stopped using translated materials for the examination.

37. Thereafter, FACE renewed its advocacy for multi-lingual examinations. In addition to raising the need to reinstitute the old translations, FACE has repeatedly informed the HDOT of the translation needs of people speaking other languages such as Ilocano, Chuukese, Marshallese, and Spanish, and has requested such translations of the exam.

38. In April 2013, FACE members submitted a petition to a local drivers licensing office which included more than 300 signatures requesting translations.

39. In May 2013, at the request of FACE, a meeting was held with HDOT to discuss the translation issue. FACE members flew in from Maui for the meeting, at which FACE explained the high level of need for translations of the exam.

40. In July 2013, FACE presented HDOT a letter signed by 40 clergy and 20 Hawai'i agency and organization directors urging Defendant Okimoto to agree to translations.

41. In addition to the above activities, FACE also drafted and submitted to HDOT a report on the need for translations of the driver's exam.

42. FACE has also offered to translate the exam through its members who are professors and clergy to help keep the cost of implementing the translations low, as was previously done in 2001.

43. Despite the above efforts, the exam is still only available in English, and interpreters are not allowed.

44. The lack of a driver's license limits access to employment, school, medical services, cultural and church activities, and even learning English.

45. Especially in Hawai`i, where the public transportation system does not always offer full coverage, driving is vital.

46. The written driver's exam, passage of which is required to obtain a driver's license, constitutes a "vital document" within the meaning of HRS §321C-3 and the HDOT's Language Access Plan.

47. HDOT's refusal to provide translations of the exams also creates significant hidden costs to the counties. Because of necessity, such as driving to and from work, a growing number of people are driving without a driver's license or insurance. This creates a risk to public safety and drains judiciary and police resources.

48. With the possible exception of Laotian, there are over 1,000 people in Hawai`i from each language group for which FACE has requested translations who have limited competency in English and who would benefit from testing in their native languages.

**Defendants' Failure to Provide Translations of the Driver's Exam has Caused Plaintiffs Significant Harm**

49. While FACE has accrued significant expense in its efforts to get Defendants to comply with the law, Defendants have inflicted even greater harms on the individual named Plaintiffs and the class of persons whom they seek to represent.

50. Plaintiff John Doe 1 resides on Maui, where bus service is limited and irregular. He currently works the graveyard shift at work because it is the only one available to him without a driver's license. If he travels to work by bus, it takes him up to seven hours a day to commute to and from his workplace because the bus schedule

does not align well with his work schedule. While he would prefer a job that is closer to home, he has been unable to find one, in large part because his options are limited by not having a license.

51. Because he needs to support his family and a daily seven-hour commute is unsustainable, John Doe 1 frequently drives himself to and from work. He is a good driver, has never been in an accident, and drove for years in his homeland of Chuuk prior to moving to Hawai`i. Yet because he has repeatedly been refused translations of the exam and use of an interpreter, he is unable to pass the written exam and as a result does not have a license.

52. Though John Doe 1 is paying for the car that he drives, without a license he is unable to put the car in his own name, and he cannot build up his credit despite his timely payments. Also, he has been unable to obtain insurance for himself in spite of his desire to do so. Though he drives out of necessity, he does so in constant fear of being pulled over and fined or jailed for driving without a license. The situation is incredibly stressful on him and his family.

53. Jane Doe 1's experience has been similar. She drove for nearly ten years prior to coming from RMI to Hawai`i to care for her parents, who were both having serious medical problems. She is a good driver and has never been in an accident, yet she has been unable to obtain a Hawai`i license because of her difficulty with the language used on the written exam. She has been pulled over twice and ticketed for not having a license. After the most recent incident the judge told her she will go to jail if she drives

again without a license. Yet she drives out of necessity so she can get to work to support her family.

54. Other members of the Plaintiff class are suffering significant irreparable harm, including the following:

a. They are disadvantaged at finding employment and at work once they do find employment. They may be turned down because of their lack of driver's license, or be forced to drive without a license.

b. They suffer from disadvantages, such as the inability to build credit despite timely payments and honest work, the inability to spend quality time with family and growing children, and the inability to increase their opportunities for self-sufficiency. They may even find themselves at risk during medical emergencies.

c. They are insulted and degraded when they visit drivers licensing offices to seek a license, for example, John Doe 1's experience of being told he needed to take the test in English to confirm he could understand what a stop sign said.

d. If they do choose to drive without a license out of necessity, such as work or medical emergencies, they face citations, hefty fines, and even misinformed threats of deportation.

55. All injuries mentioned above are inflicted upon the Plaintiff class because of their national origin and ethnicity.

**FIRST CLAIM FOR RELIEF: VIOLATION OF EQUAL PROTECTION UNDER  
THE FOURTEENTH AMENDMENT PURSUANT TO 42 U.S.C. §1983**

56. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

57. Plaintiffs are entitled to the equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States.

58. Defendants refuse to offer languages services to the people of various origins because of their national and ethnic origins, despite knowing that the refusal has an adverse impact on the people of a protected class.

59. Defendants' conduct constitutes intentional discrimination and violates Plaintiff's constitutional right to equal protection under the Fourteenth Amendment.

60. Plaintiffs have suffered and will continue to suffer irreparable harm from the lack of language access to the written driver's license exam for no reason other than their national and ethnic origins.

61. As a result of these violations, Plaintiffs are entitled to declaratory and injunctive relief and damages.

**SECOND CLAIM FOR RELIEF: VIOLATION OF SECTION 601 OF TITLE VI  
OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000d.**

62. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

63. Defendants refuse to offer translations and interpretations to the people of various origins because of their national and ethnic origins, despite knowing that the refusal has an adverse impact on the people of a protected class.

64. Defendants are recipients of federal funds.

65. Defendants' conduct constitutes intentional discrimination, a violation of Plaintiffs' civil rights under Title VI of the Civil Rights Act of 1964.

66. Plaintiffs have suffered and will continue to suffer irreparable harm from the lack of language access to the written driver's license exam for no reason other than their national and ethnic origins.

67. As a result of these violations, Plaintiffs are entitled to declaratory and injunctive relief and damages.

**THIRD CLAIM FOR RELIEF: VIOLATION OF HAWAII REVISED STATUTE § 321C-3 AND HAWAII ADMINISTRATIVE RULE § 19-122-10.**

68. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

69. Pursuant to Haw. Rev. Stat. § 321C-3, Defendants were required to take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons.

70. Defendants failed to take reasonable steps to provide language services sufficient to access Defendants' services, programs, or activities in violation of Haw. Rev. Stat. § 321C-3(b).



71. As a result of these violations, Plaintiffs are entitled to declaratory and injunctive relief and damages.

### **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

72. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

73. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have failed and continue to fail to comply with the provisions of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 for at least the reasons set forth herein.

74. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendants will continue to infringe Plaintiffs' statutorily and constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires preliminary and permanent injunctive relief.

### **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all persons similarly situated, respectfully request that this Court:

- a. Assume jurisdiction over this action;
- b. Issue a declaratory judgment stating that Defendants Hawai'i and HDOT have violated the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and Haw. Rev. Stat. § 321C-3 and its implementing administrative rules;

c. Grant all injunctive relief necessary to bring Defendants into compliance with the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and Haw. Rev. Stat. § 321C-3 and its implementing administrative rules;

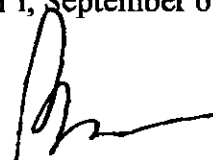
d. Grant such other declaratory and injunctive relief as may be appropriate;

e. Order Defendants to pay compensatory damages to compensate for the economic harm caused by the Defendants' intentional discrimination, as may be justified by the evidence at trial;

f. Award Plaintiffs reasonable attorney's fees, and other costs of the action pursuant to 42 U.S.C. §1988 and other applicable laws; and

g. Order such other relief as the court may deem just and proper.

DATED: Honolulu, Hawai'i, September 6, 2013.



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RAUL ALSTON  
J. BLAINE ROGERS  
CLAIRE WONG BLACK



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VICTOR GEMINIANI  
GAVIN THORNTON  
Attorneys for Plaintiffs



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: