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Legal Services of New Jersey

RE: DHS DOCKET NO. DHS-2009-0032

We write on behalf of Legal Services of New Jersey to comment on the Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties' Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, which was published in the Federal Register on June 17, 2010.

New Jersey has a million LEP individuals, exceeding the national average by 3%. In New Jersey, 27.8% of residents speak a language other than English and of that population, 42.5% speak English less than very well and require some form of language assistance.¹ New Jersey also has one of the more linguistically diverse immigrant populations in the country. While half of the New Jersey LEP population speaks Spanish, there are more than 75 other languages spoken by LEP persons in the State.² The most predominant languages include Portuguese, Chinese, Korean, Gujarati, Arabic, and Hindi.³

Legal Services of New Jersey provides services to low-income individuals throughout the state of New Jersey who fall below the 200% poverty threshold. Because of the strong correlation between limited English proficiency and poverty, LSNJ serves a significant number of LEP individuals in each of its representation projects, specifically in the areas of domestic violence, immigration, and healthcare. We also have a Language Access Rights Project (LARP) to address the barriers that LEP individuals face in accessing services.

* Pursuant to R.1:21-3(c)

¹ Legal Services of New Jersey, Poverty Research Institute Data, November 2008.

² Nicholas V. Montalto, *Meeting the Challenge of Linguistic Diversity: New Jersey Municipalities*, March 2009.

³ Legal Services of New Jersey, Poverty Research Institute, November 2008 LEP data.

The DHS Guidance affects critical interactions, particularly involving law enforcement, correction, and detention centers. While the proposed Guidance promises to be a valuable tool for educating state and local government agencies and other recipients of DHS funding about their obligations to provide language assistance pursuant to Title VI of the Civil Rights Act of 1964 (“Title VI”), we submit these comments in light of our experiences in serving and responding to the needs of the local LEP population.

Courts Should be Included as Covered Recipients

As entities that receive federal funding from DHS, we request that state, county, and municipal courts be explicitly added to the list of covered recipients. The Department of Justice (“DOJ”) has determined that LEP individuals must have access to competent, free interpreters in all court proceedings and important court-related activities.⁴ New Jersey courts require improvement in meeting their Title VI obligations, particularly in the municipal court context. The DHS Guidance should affirm the court system’s obligation to ensure language access is provided to LEP litigants.

State Motor Vehicle Departments Should be Included as Covered Recipients

As entities that receive federal funding from DHS, we request the state motor vehicle departments be explicitly added to the list of covered recipients. LEP individuals frequently come into contact with state motor vehicle departments for activities such as issuing driver’s licenses, non-driver identification cards, and vehicle registration.⁵ It’s inappropriate in these contexts for LEP individuals to rely upon family members, friends, and others in the waiting room for assistance with an application. The DHS Guidance should also further emphasize the importance of the services provided by state motor vehicle departments and mass transit agencies which LEP individuals frequently rely upon.

Language Access Obligations regarding Law Enforcement Should be Clarified

From our experiences serving immigrant clients, LEP individuals have frequent contact with law enforcement. More recently, law enforcement agencies operating under 287(g) agreements with ICE have high rates of contact with LEP individuals.⁶ Clear guidance regarding the language access obligations of law enforcement agencies is particularly important because such agencies frequently do not provide adequate language access.⁷ The DHS Guidance should offer specific examples and critical interactions where law enforcement should ensure interpretation is provided to LEP individuals in a similar manner to the DOJ Guidance.⁸ The DOJ Guidance suggests that law enforcement agencies identify commonly

⁴ See DOJ Coordination & Review Section, Commonly Asked Questions About Executive Order 13166 (Oct. 2008).

⁵ See Zach Patberg, *Certifying a birth a mother’s ordeal: U.S.-born girl waits to start school*, Asbury Park Press August 17, 2008 discussing the difficulties of LEP individuals in accessing services at local agencies.

⁶ Jamie Duffy, *New Jersey Pro-Immigration Leaders Call for a Stop to 287(g) on the Steps of Town Hall*, New Jersey Star Ledger, October 8, 2009.

⁷ See ACLU of NJ, *The Crisis Inside Police Internal Affairs* (June 2009), pg 14. finding that a telephone survey of 112 local police departments service for LEP individuals, 34 % stated that they could not provide accommodations or interpreters for the foreign language requested, often responding with indifference, impatience and even ridicule. See also Samantha Henry, *2nd Language Big Weapon in Police Arsenal*, Northjersey.com, February 22, 2008.

⁸ DOJ, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002).

distributed documents and then arrange for advance translation of these documents into languages commonly spoken in the relevant community.⁹ DHS' Guidance should incorporate these suggestions.

Frequently, LEP victims of domestic violence are unable to seek protection from local police stations, or are charged with domestic violence while their abusers go free because of the victims' inability to communicate with law enforcement. We offer the following examples of recent client experiences from our Domestic Violence Representation Project (DVRP) to illustrate the gravity of the situation:

Mrs. Lin was forced to rely on her immigration attorney to serve as an interpreter when she applied for a temporary restraining order at the local police station.

Mrs. Lin had been abused by her husband who repeatedly threatened to cut her 'into nine pieces.' Mrs. Lin had a limited proficiency in English and spoke primarily in Mandarin. Mrs. Lin managed to arrive at the police station accompanied by her immigration attorney to serve as an interpreter. Mrs. Lin was able to file a temporary restraining order but the police station did not make any provision for independent interpretation, making one wonder what would have happened to Ms. Lin if her immigration attorney was not able to go with her to the police station.

The police officer relied upon Ms. Rodriguez's abuser-husband to serve as an interpreter.

After an abusive domestic violence incident, Ms. Rodriguez called the police. The officer relied upon her abuser husband to serve as the interpreter who indicated that nothing was wrong. The officer then sent Ms. Rodriguez home in a car with her abuser husband, finding that there was no threat to her safety.

Language Access Obligations on Detention and Correction Facilities Should be Emphasized

Immigrant detainees are a particularly vulnerable group because they are often LEP and rely upon ICE officials and employees for vital communications regarding their legal rights and health while they are in ICE custody. We request that the DHS Guidance explicitly add "persons within the custody of Immigration and Customs Enforcement" to the examples of populations likely to include LEP persons and/or served by DHS funded recipients.

Furthermore, the DHS Guidance should highlight interactions involving the rights, safety, and health of detainees as particularly critical examples where language access must be provided. Often our clients represented by our Immigration Representation Project (IRP) remain in detention facilities for months, sometimes years.¹⁰ They face a myriad of difficulties accessing healthcare in the detention facility. These include failure to conduct medical exams, be provided with medical consent and release forms, and receive important prescriptions for physical and mental illnesses. One attorney

⁹ *Id.* 41467.

¹⁰ See Ruben Lloyo & Caroln Corrado, *Locked Up but Not Forgotten: Opening Access to Family & Community in the Immigration Detention System* (April 2008) focusing upon the difficulties faced by detainees in detention centers in New Jersey.

recently shared that she has had to follow up on behalf of a schizophrenic client who failed to receive his prescription for his mental illness upon transfer to another facility. Another client complained of making multiple requests to see a doctor but which went unheeded. The IRP attorney had to actually call the doctor to ensure a doctor's visit was arranged. LEP individuals face greater difficulties than other detainees because they are not aware of the services that exist or why they are being denied important health services. While there are some bilingual staff who speak Spanish, it is unclear the provision, if any, of competent language services for detainees who speak other languages.

Recognizing the Significance of Medical Care

The Guidance should also emphasize the importance of adequate interpretation and translation services for LEP persons receiving medical care, even outside of the detention context. The United States Department of Health and Human Services ("HHS") has determined that when a recipient of federal funding provides medical treatment, competent interpreter services are immediately necessary in urgent and important situations and informal interpreters are inappropriate in a number of circumstances.¹¹ In a 2008 study of New Jersey hospitals, it was found that most New Jersey hospitals still lack an interpreter services department, 80% provide no staff training on working with interpreters, 31% lack multilingual signs, and 19% offer no written translation services.¹² To prevent harm to LEP persons and their families, guidance about the need for timely, competent interpretation in medical situations should be clear.

Prohibition Against use of Family Members, Friends or Other Applicants, Detainees, or Inmates as Interpreters.

The proposed Guidance should be amended to mirror DOJ's position opposing the use of family member or inmate interpreters except in situations involving either an emergency or the express, informed consent of the LEP individual.¹³ While the proposed Guidance warns that the use of family, friends or detainees as interpreters "often" is inappropriate,¹⁴ DOJ and other federal agencies have identified particular circumstances in which the use of such interpreters is almost always inappropriate. These include:

- a) "[r]eliance on fellow prisoners,"¹⁵
- b) driver's license applications,¹⁶ and

¹¹ HHS, Guidance to the Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311, 47315, 47318 (Aug. 8, 2003).

¹² Glenn Flores, MD, Sylvia Torres, Linda J. Holmes, MPA, Debbie Salas-Lopez, MD, MPH, Mara K. Youdelman, JD, LL.M., Sandra C. Tomany-Korman, MS, *Access to Hospital Interpreter Services for Limited English Proficient Patients in New Jersey: A Statewide Evaluation*, Journal of Health Care for the Poor and Underserved 19 (2008): 391-415. National Immigration Forum, *Our of the Many, One: Integrating Immigrants in New Jersey*, 2008. See also, SAALT, *A Community of Contrasts: Recommendations Around Assisting South Asians Facing Linguistic and Cultural Barriers* focusing on barriers faced by South Asians in the healthcare context.

¹³ See DOJ, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41469-41471.

¹⁴ DHS, Proposed Guidance, 75 Fed. Reg. at 34471. See also *id.* (stating that "[i]n many circumstances family members, friends, inmates, detainees or other applicants "are not competent to provide quality and accurate interpretations").

¹⁵ DOJ, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. at 41469-41470.

¹⁶ DOT, Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons, 70 Fed. Reg. 74087, 74094 (Dec. 14, 2005).

c) “a courtroom or administrative hearing setting.”¹⁷

The Guidance should be amended to include similar warnings. The Guidance should also indicate that the use of family and friends for interpreting is almost never appropriate in the medical context, and may interfere with treatment.¹⁸

Requirement to Develop and Disseminate Language Access Plans

All recipients, even those with a small LEP population should be obligated to develop a language access plan. The DHS Guidance should be amended to instruct covered recipients to distribute the Language Access Plan to all staff of the recipient agency and all community organizations serving LEP populations. The written Language Access Plan should also include information and clarity on the time frame for implementation.

Thank you for your consideration of these comments.

Sincerely,

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¹⁷ DOJ, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. at 41471.

¹⁸ See Am. Med. Ass’n, Office Guide to Communicating With Limited English Proficient Patients 6, *available at* http://www.ama-assn.org/ama/pub/upload/mm/433/lep_booklet.pdf (finding that the use of family and friend interpreters correlates with a higher rate of medical errors).