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Robin Dunn Marcos
Director, Office of Refugee Resettlement (ORR)
Administration for Children and Families
Mary E. Switzer Building
330 C ST SW, Room 5123
Washington, DC 20201
Robin.Dunnmarcos@acf.hhs.gov

Dear ORR Director Dunn Marcos, Assistant Attorney General Clarke, and Director Fontes Rainer:

We are legal services providers and advocates who work with unaccompanied immigrant children (UCs) in removal proceedings. Many of the undersigned organizations provide legal orientation services for detained UCs in Office of Refugee Resettlement (ORR) funded shelters throughout the United States. We write to express our concern about language access rights of UCs in ORR care. We believe that, largely due to misidentification of the child's best and primary language by ORR-funded shelter staff, many children are not being provided with meaningful language services while in ORR custody. This delays critical and time-sensitive legal orientation services and thus prevents children from fully understanding their legal options and the process for participation in removal proceedings post-release. It also delays the child's placement in the least restrictive

setting that is in the best interest of the child, a right protected under the Trafficking Victims Protection Reauthorization Act.¹

As legal services providers and child advocates, we have seen first-hand the difference that access to appropriate language services can make for all children in ORR care: not only does language access relieve stress and anxiety by allowing children to communicate openly, but children can also fully engage in their reunification and legal cases, thus reducing unnecessary time in government custody and increasing the likelihood that the child can actively participate in removal proceedings and obtain legal status. While the issue of language access has been widely discussed with regard to unaccompanied children from Afghanistan in ORR shelters,² barriers to appropriate language access services impact a significant number of all children in ORR custody.

Timely and appropriate language identification, followed by provision of necessary language access services including interpretation and translation, is required by Title VI of the Civil Rights Act and accompanying regulations and guidance documents, Executive Order 13166, and HHS's implementing Language Access Plan (HHS LAP).³ Language access and the ability to actively participate in and understand legal proceedings affecting an individual's liberty is also a fundamental underpinning of basic due process rights, especially necessary for detained and vulnerable populations like unaccompanied children. Title VI guidance instructs

¹ See 8 U.S.C. § 1232(c)(2)(A); see also *Flores Settlement Agreement*, at pgh. 11.

² Melissa Sanchez, *Dozens of Traumatized Afghan Kids Struggle Inside a Shelter That's Ill-Equipped to Care for Them*, PRO PUBLICA (Oct. 28, 2021) <https://www.Propublica.Org/Article/Dozens-Of-Traumatized-Afghan-Kids-Struggle-Inside-A-Shelter-Thats-Ill-Equipped-To-Care-For-Them>

³ Title VI of the Civil Rights Act of 1964 requires federally funded programs to provide equal access to individuals with limited English proficiency. 42 U.S.C. § 2000d; 28 C.F.R. § 42.101 et seq.; 28 C.F.R. § 42.401 et seq.; 45 C.F.R. Part 80. The failure to provide bilingual services is national origin discrimination. See *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that a food stamp program's failure to provide bilingual translation of materials could constitute intentional discrimination on the basis of national origin under Title VI); *Lau v. Nichols*, 414 U.S. 563, 568 (1974) (establishing the denial of services to non-English speaking groups as national origin discrimination under Title VI). As a recipient of federal funding through the Department of Health and Human Services, ORR funded shelters are subject to the Department's *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*. 68 Fed. Reg. 47311 (2003), <https://www.govinfo.gov/content/pkg/FR-2003-08-08/pdf/03-20179.pdf>. See also Health and Human Svcs., *Language Access Plan* at pp. 7 (2013) <https://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf> [hereinafter HHS LAP].

recipients of federal funding, which include ORR funded shelters, to “take reasonable steps to ensure meaningful access to their programs and activities by [limited English proficient] persons.” Language assistance services directed under Title VI and its regulations and guidance include but are not limited to:

- early and accurate identification of language needs;
- data collection of spoken/signed and written language preferences;
- free interpreting services in hearings, administrative proceedings, and during any interaction where agency staff are providing important information;
- written translation of vital documents and other materials using qualified translators;
- posting of signs notifying users of the availability of interpreters;
- translation of key content on the website; training of staff; and
- oversight and monitoring of complaints.

Any facilities that may be run directly by ORR are subject to HHS’s LAP, which requires that “[e]ach HHS agency will have in place processes to regularly identify and assess the language assistance needs of its current and potential customers, as well as the processes to assess the agency’s capacity to meet these needs according to the elements of this plan.”⁴

The ORR policy references language identification and access several times:

- Section 3.3 requires that “[c]are providers must deliver services in a manner that is sensitive to the age, culture, native language, and needs of each child.”⁵
- As required under Section 3.2.2, the ORR-mandated orientation must be provided within 48 hours of a child’s admission to a shelter in a manner “that is appropriate for the age, culture, and language of the child or youth. The orientation must be provided in formats that are accessible to unaccompanied alien children who are limited English proficient, deaf, visually impaired or otherwise disabled, as well as those who have limited reading skills.”

⁴ *Id.*

⁵ The *Flores* Settlement Agreement contains similar language within its Minimum Standards for Licensed Programs, Exh. 1, at B. (“Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.”).

- Section 3.3.7 further requires that “[c]are providers must make every effort possible to provide comprehensive services and literature in the native language of each unaccompanied alien child; provide on-site staff or interpreters as needed; and allow unaccompanied alien children to communicate in their preferred language when they choose. All ORR-required documents provided to unaccompanied alien children must be translated in the unaccompanied alien child’s preferred language, either written or verbally. Translation services should be used when no written translation (assuming the child is literate) or on-site staff or interpreters are available.”

Though ORR has protections for language access in policy, the broad strokes of these documents are insufficient to guarantee meaningful services on the ground. These are critical services that require directives and specific requirements for programs to follow. We reach out to share serious concerns and request solutions to reduce gaps in meaningful language access services that many unaccompanied children face during their time in ORR custody.

We respectfully request that ORR:

- Form a working group with stakeholders including language experts, interpreters and translators, child advocates, and legal services providers to develop and issue specific contractor guidance for language identification that is aligned with best practices.
- Develop and issue guidance for contractors as to basic language access obligations and best practices for working with interpreters.
- Finally, we request that this guidance be made publicly available so that legal services providers and child advocates can most effectively partner with ORR and ORR-funded providers to ensure that children receive appropriate access.

Without these measures in place, we are concerned that many of the most common problems that our organizations have observed will continue, as detailed below.

Most Common Grievances

1. The Shelters Frequently Fail To Properly And Timely Identify The Child’s Best Language, Which Delays The Provision Of Legal Services

Legal services providers (LSPs) rely on shelter rosters to schedule our Know Your Rights (KYR) legal orientations. We conduct separate presentations for Spanish-speakers and speakers of other languages. Shelters provide LSPs with names of

children as well as their primary language, which we use to schedule KYR presentations. However, shelters frequently mis-identify children's primary languages, often assuming that all children from Mexico and Central America speak Spanish. The Florence Project recently reviewed a snapshot of data from one week of KYR presentations and found that shelter staff assigned the wrong language to about 25% of children on the roster.

There is a misconception that individuals who speak an Indigenous language from Latin America are fluent in Spanish. Spanish is a distinctly different language, and whether a Spanish speaker can converse with an Indigenous language speaker entirely depends on the Indigenous language speaker's fluency in the Spanish language. While many Indigenous languages have adapted some Spanish words for concepts that do not exist in their language, Spanish has no linguistic connection to the Indigenous languages found in Mexico and Central America and should not be referred to as "dialects" of Spanish. Many Indigenous language speakers know a small amount of Spanish, but a significant number do not. Many Indigenous languages are part of language families with many distinct linguistic variants (also known as "dialects") that may be used in the same country of origin but are frequently not mutually intelligible.

Establishing trust with a child is one of the most important things in being able to assess their legal claims, as well as help refer them for critical services. Whether or not Indigenous speakers are provided appropriate services in their language can often quickly dictate how much trust and how quickly this trust can be built with a child. Advocates have worked with children who primarily speak Indigenous languages that have cited commonality and their identity being based as a speaker of their Indigenous language, and not based on their country of birth, race, or nationality. This is particularly important given that many children in ORR custody speak Indigenous languages and have been discriminated against, mistreated, and placed into vulnerable situations because of their indigeneity in their home country, or during their journey to the United States in other countries. As a result of language misidentification, a significant number of children present for the Spanish-language KYR presentations and legal intake do not speak Spanish. The KYR presentations are interactive workshops that educate children about their rights and obligations, the EOIR hearing process, and the most common forms of relief. These are complex legal concepts to teach young people. Children then role-play EOIR hearings by assuming the role of the judge, ICE attorney, the interpreter and respondent. We then meet with each child individually after the presentation to provide a legal intake and identify if the child is eligible for legal relief. We inform

the child of that eligibility and explain that we will refer the child to a local LSP post-reunification.

However, if a child's language has been incorrectly identified, many of the children miss critical information because they are reunified before we can schedule the child for a KYR presentation in their best language. Because they have not established a relationship with their legal services provider while in ORR custody, they are less likely to engage in services after release including referrals to local pro bono attorneys.

ORR funded shelter staff must have protocols in place requiring proactive identification of the needs of children who do not use English as their primary language. The burden of acquiring language services should not fall on the children who do not use English as their primary language. To ensure this happens, staff must proactively approach children, who may feel intimidated by the process or unaware of their language rights and options to seek language services, such as having qualified interpreters without delay and written translations of vital information. This should be done at the earliest point of contact and evaluated throughout the duration of the child's care and time in the ORR funded shelter.

Current practices place undue burdens on children, resulting in disastrous consequences, delays and misunderstandings, and are clear violations of the ORR funded shelters obligations under legal civil rights mandates, as well as ORR's own policy. ORR funded shelters should engage in formal data collection and have a record of the child's language preference and schedule interpreters in advance of each interaction to provide meaningful and timely language support. Staff should also be trained on how to make an accurate language match for Indigenous languages, which require collecting geographical information about the child's place of origin and verifying language at the beginning of each interaction.

2. Shelters Often Pressure Children To Interact In Languages In Which They Are Not Fully Fluent, Slowing Reunification, Interfering With The Child's Right To Be Placed In The Least Restrictive Setting, And Harming The Child's Physical And Mental Well-Being

Because shelters frequently misidentify primary languages, many of the interactions with shelter staff, case managers, and clinicians are conducted in a language the child does not fully understand. In our experience, if a child can

provide basic biographic information in Spanish or in English, the shelter generally proceeds in those languages. Shelters sometimes adopt the attitude that even if the child might speak another language with more fluency, proceeding in the language that requires less interpretation is “good for the child” because the child will learn that language faster. Clients who speak Indigenous languages have also told us that they have felt pressure to speak in Spanish because they are afraid to be left out or bullied by the other children at the shelter. Many of our clients want to please adults and incorrectly state that they understand so as not to seem like a bother. That burden should be on adults to double check whether a child really understands what is happening and if it is the preferred language, even if children say they understand Spanish.

However, many children cannot understand basic instructions or information without an interpreter. This not only causes misunderstandings, but also stress and anxiety. As Representative Rush noted when advocating for language access for Afghan children in ORR custody, “the language barrier hindering communication between [the children] and the staff...is only compounding that trauma and confusion.”⁶ Senator Durbin, also advocating for more complete language access for Afghan UCs, correctly stated that lack of language access contributes to lack of adequate mental health services to support children while they are detained.⁷

In our experience, these barriers go beyond Afghan children to almost all speakers of languages of lesser diffusion. For example, the Florence Project recently worked with one child who speaks an indigenous Mayan language. He had been at the shelter for 25 days without ever receiving interpreter services in his language. When the Florence Project provided an interpreter in his language, the child expressed that he did not understand why he was at the shelter, did not understand that he would be reunified, and did not understand why shelter staff were asking about his contacts in the U.S.

Lack of language access slows reunification. As in the example above, children who do not understand the reunification process are slower to identify potential sponsors. This results in more time in ORR custody as well as a violation of the

⁶Melissa Sanchez, *Lawmakers Call for Immediate Action at Chicago Shelter Housing Afghan Children*, PRO PUBLICA (Nov. 7, 2021) <https://www.propublica.org/article/lawmakers-call-for-immediate-action-at-chicago-shelter-housing-afghan-children>

⁷ Senator Richard J. Durbin, *Letter to Christi A. Grimm*, (Nov. 1, 2021) <https://www.durbin.senate.gov/imo/media/doc/2021-11-01%20Letter%20to%20Principal%20Deputy%20IG%20Grimm.pdf>

TVPRA's mandate that the child be placed in the least restrictive setting that is in their best interest. Misidentification of primary language and lack of interpretation with potential sponsors can lead to delays and seemingly erroneous sponsor denials, needlessly prolonging the length of stay children must endure. Kids in Need of Defense (KIND) has heard from clients that in some instances, their potential sponsors could not understand the caseworkers because they only spoke to them in Spanish – despite that not being their preferred language.

With the start of children being placed at Emergency Intake Sites (EISs) in 2021, advocates noted that misidentification of primary language is a huge challenge within the context of Emergency Intake Sites (EIS). Although there is guidance in place that non-Spanish speaking children should not be placed in emergency care settings, the high percentage misidentification of language by care providers resulted in large numbers of children in the EIS facilities who did not have meaningful access to resources in a language they best understood.

Language access challenges can also prevent timely and accurate gathering of information related to a child who has been, or has potentially been, trafficked. Obtaining information about a child's trafficking experience requires building trust with them to disclose painful and traumatic experiences. This information is also key to a child being able to apply for and obtain an Interim Assistance or Eligibility Letter from the HHS Office on Trafficking in Persons (OTIP). This OTIP letter can be crucial to a child's placement in the URM program and other least restrictive settings, referral to proper services and eligibility for benefits, and preventing their needless transfer to ICE detention. Providing children with the right language services may also be key to preventing their release or return to inappropriate or unsafe situations. Advocates know of a past example where a child who spoke Senegalese Wolof was not receiving proper interpretation in his own language and spent many days in an ORR shelter not even understanding where he was, and why he had been taken by authorities from the airport to prevent him from being trafficked at a final destination. The child was distraught and upset from suddenly being taken in by authorities with no explanation, and it took time to rebuild trust with him to understand his trafficking case, help with respond to requests from federal authorities criminally investigating the case, and help him file his T visa. In another case, a child who survived sex trafficking from Cameroon was repeatedly interviewed in English about her trafficking circumstances. Although the child could speak some English, her preferred language was French, but she never perceived requesting a French interpreter to be an option, and so had to answer many questions about her trafficking situation in English. As a result, there were many errors in the documentation of her story in

DHS and ORR records about her trafficking, particularly as related to dates. This led to delays in obtaining an OTIP letter and later in the adjudication of her T visa.

While in ORR care, the mental and physical well-being of many children has suffered due to the lack of appropriate health services in a language the child understands. The lack of mental health resources in the correct language has not only impacted well-being, but also how quickly children are reunified. In one example shared by KIND, a child's reunification out of ORR was delayed because of a lack of adequate interpretation of mental health services, resulting in her being inaccurately determined to be suicidal. In another instance, a child was institutionalized against her will because her care provider misinterpreted what she was saying in a mental health screening due to language barriers. Children's physical well-being has also been impacted when they are not adequately assessed due to language barriers. Both the Florence Project and KIND have worked with children who are hearing impaired and did not receive proper care and accommodations in ORR custody because shelter staff was assumed that their lack of understanding was due to language rather than disability.

3. Lack Of Language Access Has Contributed To Incorrect Age Redeterminations Because Children Do Not Understand Why The Shelter Believes They Are Over 18 And What Proof Is Required To Prove Age

Just as lack of language access prevents children from understanding their right be placed in the least restrictive setting, it has also contributed to confusion and delay in age determinations. ORR shelters must follow the TVPRA's mandate to hold children in separate facilities from adults as well as that law's requirements for determination of children's ages. *See* 8 U.S.C. § 1232(b). When ORR and shelter staff raise questions about whether a youth has properly been designated as an unaccompanied child, language access is critical so that the youth understands the process, the concern about age, and how to work with LSPs to provide documentation to show proof of age, if necessary. In the Florence Project's experience, the lack of language access in these circumstances has contributed to severe miscommunication and extreme anxiety for clients. For example, the Florence Project represented a young man from Bangladesh whose identity documents established that he was 17. However, shelter staff believed that he was over 18 because they did not understand that numeric writing in Bangladesh is different from the numeral system used in the U.S. They incorrectly believed that Bangladeshi numerals on identity documents established that the child had reached

the age of majority and referred him to ICE for detention with adults, not realizing that their own failure to provide language access created the misunderstanding.

This is in contravention of the federal requirements, set out in Title VI (and its regulations and guidance documents), Executive Order 13166 and HHS's implementing Language Access Plan (HHS LAP), to provide language assistance to LEP individuals participating in federally-conducted activities. Contractor noncompliance with its responsibilities to provide adequate language assistance has deeply prejudiced and injured countless LEP children, because without language access, they cannot understand or participate in their legal and reunification cases.

4. Lack Of Language Access Guidance Is A Systemic Problem Throughout Shelters That Only ORR Can Remedy.

Unaccompanied children's language access rights while in the custody of the Office of Refugee Resettlement should be an absolute priority, not only because of the government's obligations under Title VI of the Civil Rights Act and Executive Order 13166, but because failure to provide adequate language access interferes with the child's right to be placed in the least restrictive setting under 8 U.S.C. § 1232 and to understand and participate fully in removal proceedings.

We ask ORR to form a working group of ORR staff, language access experts, child advocates, Indigenous-led community-based organizations, and legal services providers to gather best practice language identification and access resources from across the federal government and require specific guidance and training for shelter staff on how to ensure meaningful language access to unaccompanied children in ORR custody.

We request that the working group be able to work with ORR to establish stronger best practices, but also written directives for care providers on language access for unaccompanied children. The directives for care providers should recommend specific requirements to complete language access trainings and utilization of the recommended best practices and language access tools and protocols, including a trauma-informed approach to interpretation.

Language access plans of other federal agencies that have wide contact with speakers of languages other than English and NGO resources could provide a valuable starting point. Some of these include:

In sum, we recognize the challenge posed by providing language access to the thousands of children who pass through ORR custody each month. We also recognize that children are sometimes ashamed of needing an interpreter and will pretend to understand even though they may not understand much at all. ORR should craft policies and training in concert with interpreters, lawyers, and cultural experts to help dispel stigma and increase client confidence in flagging language needs. We ask that all language access policies and directives to shelter staff be made available to LSPs and child advocates so that we can engage and assist shelter staff as they implement ORR's guidance.

Sincerely,

Laura Belous, Esq.
Advocacy Attorney
lbelous@firrp.org
Florence Immigrant &
Refugee Rights Project

Jane Liu, Esq.
Senior Litigation Attorney
Jliu@theyoungcenter.org
Young Center for
Immigrant Children's
Rights

Jennifer Podkul, Esq.
Vice President, Policy and
Advocacy
Jpodkul@supportkind.org
Kids in Need of Defense
(KIND)

Joann Lee, Esq.
Special Counsel
jlee@lafla.org
Legal Aid Foundation of
Los Angeles

Kate Melloy Goettel
Legal Director of
Litigation
KGoettel@immcouncil.org
American Immigration
Council

Shalyn Fluharty
Executive Director
sfluharty@aijustice.org
Americans for Immigrant
Justice

CC: Kristen Clarke
Assistant Attorney General for Civil
Rights
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Kristen.Clarke@usdoj.gov

Melanie Fontes Rainer
Director, Office for Civil Rights
Department of Health and Human
Services
200 Independence Avenue, SU
Room 509F, HHH Building
Washington, D.C. 20201
Melanie.Rainer@hhs.gov