

April 21, 2020

Office of Governor Ron DeSantis
State of Florida
The Capitol
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Via Email Only

Dear Governor DeSantis:

You are receiving this letter because the majority of state agencies that you oversee are recipients of federal financial assistance, administering federally funded programs and/or activities that provide essential benefits and/or services to Florida communities. We, the undersigned, are concerned that during this time of urgency and distress caused by the COVID-19 pandemic, these state agencies are not presently in compliance with the language access obligations of Title VI of the 1964 Civil Rights Act, and its implementing regulations, including Executive Order 13166,¹ requiring that they provide vital information to limited-English proficient (LEP) individuals in a language that they can understand, to ensure their meaningful access to federally-funded emergency aid, programs, benefits, and assistance.

The COVID-19 Pandemic and Florida's Large LEP Population

¹ Executive Order 13166 of August 11, 2000, Improving Access to Services for Persons with Limited English Proficiency, F.R. Vol. 65, No. 159; <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/eolep.pdf>

The COVID-19 pandemic is ravaging the State of Florida, inflicting unspeakable and unprecedented harm to its residents. While COVID-19 does not discriminate in its path of illness and death, we are witnessing communities of color, and linguistically-isolated communities in particular, suffering disproportionately from its harmful effects and consequences. Statistics from the U.S. Census Bureau’s 5-year estimates from the 2014-2018 American Community Survey (ACS) show that almost 20.5 percent of Floridians are foreign born; 29.1 percent speak a language other than English at home, with Spanish (20%) and Haitian Creole (2%) the most prevalent; and 43 percent² of Spanish speakers are LEP (speak English less than very well). Given the significant percentage of LEP Floridians, it is crucial that state, county, and local agencies that are recipients of federally-funded emergency aid, programs, and benefits fulfill their responsibilities under Title VI, and ensure that LEP individuals have access to vital information, and emergency aid, services, programs, and assistance, as this pandemic rages.

Federal Law Requires Recipients of Federal Assistance to Ensure that LEP Individuals Have Meaningful Access to Federally-Funded Aid, Services, Programs, and Activities During Emergencies

Title VI specifically protects against discrimination based on national origin. As set forth in Executive Order 13166, Title VI’s national origin protections include providing LEP individuals with meaningful access to essential services, benefits, and programs: “recipients [of federal financial assistance] must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, . . . and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP

²<https://statisticalatlas.com/state/Florida/Languages>.

persons” (emphasis added). *Exec. Ord. 13166* at 1. In short, “Title VI’s plain text and agency regulations clarify that discrimination based on race, color, or national origin (including limited English proficiency) is prohibited.” *See Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964*, at 3.³

There is not a more important time for recipients of federal financial assistance to comply with the anti-discrimination requirements of Title VI, and to ensure meaningful and equitable access to vital emergency information and federally-funded aid, programs, services, and benefits, than during a time of crisis. After the tragedies of Hurricanes Katrina and Rita, a consortium of federal agencies, including the Departments of Homeland Security (DHS), Justice (DOJ), Transportation (DOT), and Housing and Urban Development (HUD), issued “Joint Guidance” to recipients of federal assistance, affirming the importance of compliance with Title VI’s language access requirements during emergencies, including recipients’ responsibility to ensure that LEP communities have meaningful access to vital emergency information, aid, services, programs, and activities during disasters. *Id.*

This Joint Guidance recognizes that “Title VI and its implementing regulations obligate recipients of federal financial assistance to ensure nondiscrimination in federally-assisted emergency preparedness, response, mitigation, and recovery programs and activities.” *Id.* Further, “[a]ll recipients must comply with Title VI, as well as other antidiscrimination laws, *at all times* including during emergencies” (emphasis added). *Id.* The federal agencies that came together to promulgate the Joint Guidance emphasized that

³ <https://www.justice.gov/crt/file/885401/download>.

during times of crisis, “[t]he prohibition against discrimination on the basis of race, color, and national origin can never be waived.” *Id.* at 6.

The Joint Guidance acknowledges that during public emergencies, there are certain federally-funded activities, services, and programs where compliance with the language access requirements of Title VI must take precedence: “[r]ecipients of federal financial assistance engaged in emergency management activities, as well as recipients that provide emergency-related services, such as health providers, and law enforcement agencies, must comply with Title VI at all times”. *Id.* at 3.

Because the access to information related to emergency orders, aid, services, programs, and assistance is essential and vital during a public emergency, recipients of federal assistance also have an affirmative duty to keep LEP communities well informed: “Title VI requires recipients to ensure that LEP persons have meaningful access to vital information, programs or activities, benefits, services. To *avoid violations of federal law*, recipients must ensure that their actions do not exclude individuals because of their race, color, or national origin, *including limited English proficiency*” (emphasis added). *Id.*

As LEP Floridians can attest, compliance with Title VI’s language access requirements is even more important during the COVID-19 pandemic, “in order to ensure that no one is unjustly denied the services and support they need during times of crisis, when their physical safety or well-being are often at greatest risk, and when many of the resources they might otherwise have drawn upon for support may not be available.” *Id.* at 6. In times of crisis, as Florida is currently experiencing, providing language assistance to LEP communities may mark the difference between life and death.

Areas of Need for Language Assistance

With COVID-19 outbreaks reported throughout the state, in North, Central, and South Florida, it is important for those providing emergency aid, services, and assistance to partner with their local communities to assess the community's particular language access needs, and fulfill their legal obligations under Title VI. It is important for state agencies to recognize that language access needs may vary depending on the region, and for recipients at state, county, and local levels to consult with local community organizations to identify areas of need.

The statewide need for language assistance during this pandemic is great. For example, there is a need for translation of vital information (including those displayed on websites) on a statewide, county, and local level; a need to staff hotlines or telephonic assistance with interpreters in languages other than English; and to conduct language-based outreach to rural communities that are primarily comprised of LEP individuals. We have included a few discrete examples of areas of non-compliance:

- **Florida Department of Health:** The DOH has a statewide website containing essential, life-saving information for the public. While the website contains information in languages other than English, it is practically impossible for LEP individuals seeking to access this crucial information in their native language to find the information, because the links to translations are placed at the very bottom of the English-language page. Further, assuming that non-English speakers understand how to find a translation icon on any website is unrealistic, especially with the high rate of lower literacy and low technology literacy of many hard to serve LEP immigrant community members.
- **County Health Departments:** County Health Departments' after-hours COVID-19 Help Lines should render assistance to LEP callers in their language. For example, in

Alachua County, after-hours callers will hear an English-only message stating that the health department is closed. LEP callers in Alachua will not know that there is after-hours assistance from a triage nurse, because the message is only in English.

- **State of Florida COVID-19 Information-Line:** The State of Florida has created a statewide COVID-19 Information-Line with information in multiple languages. As the only State-provided opportunity to speak live with English, Spanish and Kreyol representatives, the Hotline, does not provide information on testing locations or the requisites for COVID-19 testing to LEP callers. This lack of language assistance and access to essential COVID-19 testing and other emergency medical service information is further exacerbated for LEP individuals residing in rural counties, as is the case in North and rural Florida, where many local health departments do not provide language assistance. Without access to the emergency medical information that state and local authorities disseminate to the public, LEP individuals residing in rural communities face a higher risk of contracting this potentially deadly virus. State, county and local authorities must comply with Title VI's language access requirements to ensure that LEP individuals have meaningful access to vital information pertaining to public health, medical assistance, and other emergency aid and services during this pandemic. Failure to do otherwise would violate the anti-discrimination provisions of Title VI.
- **State, County, and Local Governments Need to Recognize that the Majority of Essential Workers (Farm, Service, Food Staff, and Home Health Care Workers) Are LEP Individuals Needing Language Assistance:** LEP individuals comprise a significant majority of Florida's essential workers: farmworkers, service, food staff, and home health care workers. It behooves state, county, and local recipients of federal financial assistance to ensure that these LEP workers have meaningful access

(in a language they understand) to vital emergency information, aid, services, and programs during this pandemic, as they keep Florida's economy moving forward. Yet, anecdotal information indicates that recipients are far from compliant with Title VI's language access mandate pertaining to these LEP communities, failing to provide them with vital emergency information, aid, and services in languages other than English. As Surgeon General Jerome Adams recently noted, only one in five African Americans and one in six Hispanics has a job that lets them work from home.⁴ State, county, and local officials must do better to comply with Title VI's language access requirements, as the well-being of these essential workers depends on it.

The above are just a few examples of the areas where state, county, and local recipients of federal assistance are failing to meet their language access obligations and responsibilities. Title VI clearly requires that these entities meet their anti-discrimination obligations to ensure that Florida's LEP communities have meaningful access to vital emergency information, aid, services, and programs, as delineated in the Joint Guidance.

Request for Compliance

One of the principal objectives of this letter is to engage recipients at the state, county, and local levels in a dialogue that can help them identify areas of Title VI non-compliance and need, so that these are immediately addressed.

Specifically, we request the following:

- That you fully comply with the language access requirements of Title VI and its implementing regulations and ensure that Floridians who are LEP have meaningful

⁴ <https://abcnews.go.com/Politics/cdc-issue-specific-guidance-black-communities-disproportionately-suffering/story?id=70085580>.

access to the vital emergency information, aid, programs, and services that you provide.

- In order to ensure full compliance with Title VI, you must immediately assess and identify the language access needs of the LEP communities that you serve. The Joint Guidance provides a useful framework for identifying and assessing the language access needs of LEP communities during emergencies, and encourages dialogue between recipients and the LEP communities they serve.
- Recognition that Google translate is not an acceptable form of translation, especially for information related to health and safety of Florida residents (e.g., Emergency Orders and regional updates).⁵ Florida agencies must properly translate documents using qualified translators, and provide oral language assistance through qualified interpreters.
- For example, ensure meaningful access to vital emergency information by observing the following guidelines throughout the State:
 - When posting messages on social media in English related to COVID-19, the message must also be translated into Spanish and in other languages predominant in the service area.
 - Written or oral messaging related to any disruptions of services due to COVID-19, public notices or Emergency Orders, such as public schooling, food distribution or transportation, must be translated or interpreted into Spanish and other languages predominant in the services area.

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4266233/>. <https://psychcentral.com/blog/the-3-parts-of-your-brain-affected-by-trauma/>

- Any pre-recorded phone message, or any answering service (either live or recorded) providing COVID-19 testing or information related to testing services must be provided in Spanish and other languages predominant in the service area.
- COVID-19 related press conferences or public statements must have simultaneous interpretation in Spanish and other languages predominant in the service area, either with live interpreter or closed captioning.
- Public COVID-19 testing sites must have signage and service in Spanish and other languages predominant in the service area.
- Public announcements need to be provided in Spanish (or closed-captioned) and in other languages predominant in the service area.
- Any messages in reference to the role of law enforcement actions to assure emergency measures must be translated or interpreted into Spanish and other languages predominant in the service area.

Conclusion

The federal government recognizes the importance of compliance with federal anti-discrimination laws in general, and during times of emergency in particular. Recipients of federal assistance – which include most state, county, and local governments – *must* comply with their Title VI obligations to disseminate vital emergency information and administer federally-assisted aid, programs, and services to LEP communities; the fact that Florida is in a state of emergency heightens this responsibility. Recipients are obligated to ensure that LEP communities have meaningful access to vital emergency information, aid, services, and programs, at all times, including during emergencies.

We, the undersigned, hope that as the executive responsible for the administration of hundreds of millions of dollars in federal assistance, you will ensure immediate compliance with the requirements of Title VI to provide meaningful access and language assistance to the hundreds of thousands of LEP individuals in Florida that you serve. The needs of Florida's LEP communities are great; we all must quickly act or risk the lives of many. We, the undersigned, look forward to working with you to identify and address existing needs, but we will not hesitate to pursue other avenues of redress available under Title VI to ensure that every Floridian, regardless of English-language fluency, receives meaningful access to vital emergency information, aid, services, and programs. Thank you and be well.

Respectfully,

SPLC Action Fund
Florida Legal Services
Rural Women's Health Project
Church World Service
LULAC Florida
New Florida Majority
American Civil Liberties Union Foundation of Florida
Americans for Immigrant Justice
Alianza Americas
Mexican American Council
Redlands Christian Migrant Association [RCMA]
Justice for Migrant Women
Equal Voice Coalition for Rural Families
East Coast Migrant Head Start Project
Human Rights Coalition of Alachua County
Positive Women's Network - USA
Interfaith Alliance for Immigrant Justice
Baker Interfaith Friends
Orlando Center for Justice
North Central Florida Social Service / Hispanic Alliance [NCFSS/HA]
UnidosNow
Family Action Network Movement (FANM)
LULAC- NCFL
Fair Food Standards Council
Hope Community Center

Madres Sin Fronteras

Putnam County Farmworker Career Development

WeCount!

Florida People's Advocacy Center

Coalition of Immokalee Workers (CIW)

Alliance for Fair Food (AFF)

Farmworker Association of Florida

Organize Florida

Community Justice Project

Emmanuel Mennonite Church

The Black Collective

National Farm Worker Ministry

Trinity Metropolitan Community Church of Gainesville