

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF CIVIL RIGHTS**

200 Independence Ave S.W.
Washington D.C. 20201

ADMINISTRATIVE COMPLAINT

COMPLAINANT

Cristina Nuñez

c/o

If/When/How: Lawyering for Reproductive Justice
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RECIPIENTS

The Hospitals of Providence – East Campus
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El Paso, TX 79938

The Hospitals of Providence – Memorial Campus
2001 N. Oregon Street
El Paso, TX 79902

The Hospitals of Providence – Transmountain Campus
2000 Transmountain Road
El Paso, TX 79911

Preliminary Statement

1. This Complaint is filed by If/When/How: Lawyering for Reproductive Justice (“If/When/How”), The Center for Health Law and Policy Innovation at Harvard Law School, and Shailey Gupta-Brietzke on behalf of Cristina Nuñez (“Ms. Nuñez) pursuant to Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. 18116 (“Section 1557”).
2. Section 1557 prohibits discrimination on the basis of race, color, national origin, age, disability, or sex (including pregnancy, sexual orientation, gender identity, and sex characteristics), in covered health programs or activities. Discrimination on the basis of national origin encompasses discrimination based on limited English proficiency (LEP).¹
3. Ms. Nuñez is a monolingual Spanish speaker with several chronic medical conditions, including diabetes, hypertension, end-stage renal disease, diabetic chronic kidney disease, and renal failure.
4. On June 12, 2023, Ms. Nuñez was admitted to the Hospitals of Providence Health System. She remained in that Health System’s care until her discharge on June 27, 2023. Over the course of those 16 days, she received care at three separate hospital campuses—East, Memorial, and Transmountain. All three hospital campuses are located in El Paso, a city with one of the largest Spanish-speaking populations in the United States.² Not one of the three hospital campuses offered or provided Spanish language access services to Ms. Nuñez.
5. This experience exemplifies the discrimination that Section 1557 forbids. Language access services are critical to providing any type of health care. They are particularly crucial for someone in a life-threatening situation like Ms. Nuñez. The complete absence of Spanish language services increased her confusion, isolation, and fear about her own morbidity and mortality. At a time when she should have felt safe, well-informed, and cared for, the Hospitals of Providence turned an already terrifying scenario into a nightmare.

¹ 45 CFR §92.101(a) (2023) (“Any entity operating or administering a health program or activity subject to this part shall take reasonable steps to ensure meaningful access to such programs or activities by limited English proficient individuals.”).

²See U.S. CENSUS BUREAU, *Types of Language Spoken at Home, El Paso city, Texas*, <https://perma.cc/8XP4-R9HW>; Allana Akhtar & Andy Kiersz, *Here are the 22 US cities and towns with more Spanish than English speakers*, BUSINESS INSIDER (2019), <https://www.businessinsider.com/us-cities-and-towns-with-more-spanish-than-english-speakers-2019-6>.

Discriminatory denials of language access services leave patients like Ms. Nuñez in the lurch, and here, the Hospitals of Providence failed in its obligations to its patient again and again, over the course of 16 days, 3 campuses, and countless health care providers.

6. Complainant and her Counsel request that the Department of Health and Human Services' (HHS) Office of Civil Rights (OCR) investigate Cristina Nuñez's claims of discrimination on the basis of national origin by the Hospitals of Providence Health System located in El Paso, Texas, in violation of Section 1557.

Jurisdiction

7. The Department of Health and Human Services (HHS) is responsible for implementing Section 1557, and the Office for Civil Rights (OCR) is responsible for ensuring compliance with Section 1557 and for receiving information about, investigating, and remedying violations of Section 1557.

Factual Allegations

8. Cristina Nuñez is a 37-year-old monolingual Spanish speaker who lives in El Paso, Texas. She is from Mexico and has been living in Texas for over a decade.
9. Ms. Nuñez has several chronic medical conditions, including diabetes, hypertension, end-stage renal disease, diabetic chronic kidney disease, and renal failure.
10. In May 2023, Ms. Nuñez was alarmed and terrified to learn she was pregnant, as her doctors had advised her that she should never get pregnant because of the severe risk to her health. When Ms. Nuñez informed her obstetrician-gynecologist that she wanted an abortion, her doctor told her that Texas prohibits abortion except when a patient's life is at risk. She never heard back from her obstetrician-gynecologist about whether she qualified for this exception.
11. As Ms. Nuñez remained trapped in legal limbo, awaiting the abortion she needed, her health declined rapidly until she felt like she was slowly dying.
12. On June 5, 2023, Ms. Nuñez entered the Hospitals of Providence network ("the Hospital") because her health was deteriorating due to the dangerous interaction between her end-stage renal disease and her pregnancy.

13. Ms. Nuñez spent that day at the Hospital's East Campus undergoing medical tests. The Hospital knew about her language needs from the start, as her admission record from June 5 explicitly lists her language preference as Spanish. *See Exhibit A (highlighted).*
14. On that same date, after receiving a Maternal Fetal Medicine Evaluation in which Dr. Harlan Giles recommended termination of the pregnancy due to the threat to her health and life, Ms. Nuñez was released and sent home. But as her condition materially worsened, she returned to the emergency room at the Hospital's East Campus on June 12, 2023.
15. Over the course of the next 16 days—while the abortion that had been medically recommended was delayed, and as her condition worsened—Ms. Nuñez's desperation and fear increased with each passing day in the hospital without interpretation, never fully understanding why she wasn't receiving the life-saving care she needed.
16. Ms. Nuñez would be shuffled among three campuses of the Hospital: East, Memorial, and Transmountain, all of which failed to offer or provide her with required Spanish language assistance services. Because her healthcare providers largely did not speak Spanish, and Ms. Nuñez was not provided with interpreters, she received spotty, limited information from medical providers, assistants, and associated staff. Her care team did not have a consistent team member who spoke Spanish fluently or had sufficient training in medical Spanish to convey the specialized information Ms. Nuñez needed to understand her serious medical situation. Ms. Nuñez felt neglected by her medical team as she struggled to get updates about her care and the status of whether she would receive an abortion.
17. On June 12, 2023, Ms. Nuñez went to the emergency room at East Campus. Her arm was turning black due to painful blood clots. She was diagnosed with deep vein thrombosis, eclampsia, and an embolism. After a full day in the emergency room, she was admitted to the Hospital.
18. On June 12, Ms. Nuñez was supposed to be provided with initial patient information, including patient education instructions about X-rays and lab tests. The forms and instructions were all in English only and the form indicating receipt and understanding was unsigned. The forms were not explained or translated into Spanish.
19. East Campus often provided Ms. Nuñez with some English-language forms and some Spanish-language forms at the same time. For example, on June 13, East Campus provided Ms. Nuñez with a Patient Safety Information form with English and Spanish side by side

but then an English-only form about fall prevention. Ms. Nuñez signed both forms. *See* Exhibit B. That same day, Ms. Nuñez signed two more Spanish-language forms and a different English-language form.

20. Throughout her stay at East Campus, there were numerous instances where Ms. Nuñez was given Patient Education sessions by her healthcare providers, but the language of this education is unclear. In some instances, nurses recorded a language barrier. In others, they wrote that there was no barrier. *See* Exhibit C (highlighted). One record indicates that Patient Education was given to Ms. Nuñez and “parent(s)”. Ms. Nuñez did not have a parent with her at the Hospital. While Ms. Nuñez’s aunt was present in the evenings, she is not proficient in English and was not equipped to act as de facto interpreter at any point. At no point did Ms. Nuñez consent to her aunt serving as an interpreter in lieu of one being provided to her by the Hospital.
21. In the instances when nurses recorded no language barrier in the Patient Education records, Ms. Nuñez’s language preference had already been recorded as Spanish at least two times and she had been provided numerous forms in Spanish. The Hospital had been on notice about her language access needs since her admission.
22. On June 16, 2023, after the abortion she needed to save her life and health was finally approved, East Campus discharged Ms. Nuñez in preparation for her transfer to Memorial Campus to receive the abortion care. The Consent to Transfer form was in English.
23. The discharge paperwork contained English-language medication instructions and Patient Education materials about IUD devices, common emergencies awareness tips, signs of a heart attack, and suicide risk awareness. Knowing that Ms. Nuñez only spoke Spanish, East Campus gave her critical health and safety information in English only.
24. On June 16, 2023, Ms. Nuñez was transferred to the Hospital’s Memorial Campus.
25. Like at East Campus, Ms. Nuñez signed a Patient Safety Information form with English and Spanish side by side, but a fall prevention form in English only during her first day at Memorial Campus. Again, Memorial Campus knew from day one about Ms. Nuñez’s language needs.
26. Like at East Campus, Memorial Campus frequently gave Ms. Nuñez some forms in English and different forms in Spanish at the same time, even though they knew she needed Spanish-language forms. For example, on June 19, the Hospital provided Ms. Nuñez with

an Electronic Signature Agreement and a Medicaid form about her rights as a patient in English, but a consent form, a billing disclosure, and a Fall Risk Assessment in Spanish. All of those forms list “verbal consent,” in lieu of signature, but with no information about whether the forms were explained in English or Spanish.

27. Like at East Campus, nurses provided Ms. Nuñez with many instances of Patient Education, but the education was not given to her fully in Spanish and she did not have a full-time qualified interpreter. At Memorial Campus, one nurse recorded a language barrier, but others wrote that there was no barrier. Where a nurse listed a language barrier, the topics included what to do if symptoms get worse, emotional needs, infection prevention, and injury precautions, in addition to numerous other topics. The record does not indicate the language of these important instructions, which could have had consequences for Ms. Nuñez’s health if she did not understand them. The record describes Ms. Nuñez as “anxious” and requiring more teaching, practice, and supervision. Most of the records similarly indicate a need for further teaching and reinforcement, suggesting that instruction may have been in English in at least some instances. As at East Campus, a nurse at Memorial Campus reported teaching “Patient” and “Family”, again suggesting that Ms. Nuñez’s aunt, with limited English proficiency, may have had to step in as de facto interpreter to fill the void left by the Hospital.
28. Throughout her stay at Memorial Campus, daily Patient Assessments were conducted by many different nurses that would require them to ask Ms. Nuñez questions. However, the language of these encounters is not listed and there was no qualified interpreter present to interpret the daily assessment questions. This persistent absence from the records raises concerns about whether Ms. Nuñez even understood what the nurses asked, let alone whether they were accurate.
29. Beginning on June 21, 2023, Alexis Akle, an advocate volunteering with If/When/How, interpreted when possible, but assistance was intermittent and necessarily insufficient to replace a hospital-provided interpreter. Moreover, Ms. Nuñez’s attorneys secured this assistance, not the Hospital.
30. Ms. Akle visited Ms. Nuñez daily, from June 21st thru June 23rd, to provide interpretation services, stepping into the void left by the Hospital. Ms. Akle reported that some members of Ms. Nuñez’s care team spoke varying levels of Spanish but could not communicate the

medical information effectively and Ms. Nuñez struggled to understand them. When Ms. Akle would attempt to translate for Ms. Nuñez, she would sometimes be interrupted and asked why she was there. When Ms. Akle visited Ms. Nuñez, she heard other nurses in the hallways who appeared to be fluent in Spanish but were not assigned to Ms. Nuñez's care team despite her known and documented language needs. At least one time, Ms. Nuñez requested to speak with Ms. Akle in private so Ms. Akle asked her aunt to leave the room.

31. On June 22, 2023, Ms. Nuñez was transferred yet again, this time to the Hospital's Transmountain Campus. When Ms. Nuñez was transferred from East Campus to Memorial Campus a week prior, she was supposed to receive abortion care. But now she was being transferred again because the anesthesiologist at Memorial Campus was unwilling to assist with the procedure. The hospital records show frequent communications among hospital staff about challenges in finding a willing anesthesiologist and a hospital with available beds. Staff failed to communicate these developments adequately, in Spanish, to Ms. Nuñez. She was left confused and traumatized as she was transferred among hospitals despite her precarious and worsening medical condition.
32. Ms. Nuñez's Transmountain Campus admission report again listed her language preference as Spanish, meaning that Transmountain Campus was on notice from the beginning about her language needs. *See Exhibit D (highlighted).*
33. Despite this awareness, Transmountain Campus, like East and Memorial Campuses, provided Ms. Nuñez with some English-language forms and other Spanish-language forms at the same time. She was not offered or provided with a Spanish-speaking translator.
34. After Ms. Nuñez received her abortion, Transmountain provided her with discharge instructions, including medication instructions, with some components in English and other components in Spanish. The discharge instructions with information about follow-up appointments and medications, including dosage and timing, were in English. The Patient Education materials about the abortion procedure were in Spanish, but the materials about common emergency awareness tips, heart attack signs, and suicide awareness were in English.
35. On June 23, 2023, she was transferred back to Memorial Campus, where she recovered until she was discharged on June 27, 2023.

36. Back at Memorial Campus, Hospital staff entered orders for mandatory Anticoagulant Education because Ms. Nuñez was taking multiple blood-thinner medications. The records do not indicate the language of this required education. Patient education about blood-thinners is extremely important because such medications involve a risk of severe side effects and education plays an important role in preventing complications.³ So while the lack of documentation regarding the language used with Ms. Nuñez in all instances creates a sense of disquietude, the language of instruction and education about this medication raises particularly serious concerns.
37. From Ms. Nuñez’s medical records, it appears that she and her healthcare providers at Memorial Campus had a series of conversations about her dietary preferences, needs, and goals. Because of Ms. Nuñez’s diabetes and her persistent nausea during her hospital stay, it was critically important for her to be able to communicate with her healthcare providers about the amount of food she needed to maintain appropriate glucose levels and which foods she could tolerate without nausea or vomiting. Ms. Nuñez would have needed to call to order her meals, but the language barrier made it difficult for her to do so. In conversations with her attorney throughout the course of her hospitalization, Ms. Nuñez shared that her anxiety and fear increased because she did not know when her next meal would arrive, whether the portions would be sufficient, and whether it would contain food she could tolerate. Ms. Akle had to serve as an intermediary and interpreter to convey this important information. Ms. Nuñez asked Ms. Akle to bring her food because the Hospital was not providing her with adequate nutrition to maintain her blood sugar at a healthy level and she was rationing her food as a result. The role of Ms. Akle as an interpreter is invisible in the medical records, making it seem as if Memorial Campus met Ms. Nuñez’s needs when, in reality, they did not.
38. As Ms. Nuñez recovered, she requested help with grief. One of her doctors ordered a consultation about postpartum depression. On June 27, shortly before Ms. Nuñez was discharged, she had a psychiatric consultation. The record of the consultation states: “Spanish interpretation was utilized, family at bedside”. This note is the only explicit notation in Ms. Nuñez’s medical records that interpretation took place. But the linkage of

³ See Emily M. Hawes, *Patient Education on Oral Anticoagulation*, 6(2), 34 PHARMACY (Basel) (2018), <https://perma.cc/GK34-YAVM>.

using “Spanish interpretation” and “family at bedside” suggests that the hospital inappropriately relied on her aunt—someone who is neither fluent in English nor qualified to serve as an interpreter. A psychiatric consultation is an especially sensitive interaction. While some patients may prefer a family member rather than a stranger to serve as interpreter in such a conversation, others may prefer the reverse. Ms. Nuñez, like all patients, deserved the choice.

39. On June 27, 2023, Memorial Campus discharged Ms. Nuñez. She signed a form in Spanish attesting that she had received Patient Education materials and verbalized understanding. However, the discharge instructions and Patient Education materials for Ms. Nuñez were in a mix of Spanish and English. The discharge instructions had headings in Spanish but the information below the headings was in English. For example, the headings about follow-up visits and medications were in Spanish but the actual information below, including the vitally important list of medications, was in English only. *See Exhibit E.* Parts of the Patient Education materials were in Spanish (for example, instructions about diabetes, anticoagulants, and deep vein thrombosis), but with English sentences scattered throughout. Instructions about a specific anticoagulant drug, Eliquis, were in English only.
40. The Nursing Discharge Summary indicates that Ms. Nuñez was accompanied by her aunt and the list of medications was explained to “patient/caregiver,” raising the question of whether the medications were explained to Ms. Nuñez’s aunt in English, a language in which she is not fluent, instead of in Spanish to Ms. Nuñez. Neither is appropriate nor fulfills the Hospital’s obligations to its patient. The nurse also provided Ms. Nuñez with a prescription for Eliquis with a handwritten message in Spanish instructing her to call a specific doctor if she encountered difficulties with insurance coverage. Her patient education instructions about Eliquis were in English while the note on her prescription was in Spanish.
41. At this point, the Hospital had been on notice since at least June 5, 2023 about Ms. Nuñez’s language needs. Yet even at the point of discharge, the Hospital gave her important medical instructions in English. From admission to discharge, the East, Memorial, and Transmountain Campuses all failed to provide her with adequate language assistance. These failures made Ms. Nuñez’s already harrowing medical ordeal even more confusing and traumatizing.

42. As a consequence of her protracted wait for the life-saving abortion she sought, Ms. Nuñez still experienced blood clots and needed surgery in August 2023 to treat them. Knowing that the care she received was inappropriate, she became a named plaintiff in the lawsuit, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Tex. Dist. Ct. Aug. 4, 2023), *vacated*, 67 TEX. SUP. J. 843 (Tex. May 31, 2024), seeking clarification of the medical exception to Texas’s abortion ban. Due to her long and difficult physical and emotional recovery, as well as her status as a named plaintiff in a high-profile case, she was unable to file an HHS OCR complaint within 180 days of the discrimination she experienced.

Legal Allegations

43. The Hospitals of Providence are recipients of federal financial assistance subject to Section 1557 of the Affordable Care Act, which applies to “any health program or activity, any part of which is receiving Federal financial assistance.”⁴ Section 1557 forbids discrimination based on national origin, which encompasses discrimination based on limited English proficiency (LEP).⁵

a. The Hospitals of Providence participate in Medicare and Medicaid and accept insurance sold through the Health Insurance Exchange.⁶

44. By failing to have adequate Spanish language systems in place, the Hospitals of Providence violated their duties under Section 1557. Specifically, the Hospitals of Providence violated current regulations mandating that covered entities “take reasonable steps to ensure meaningful access to such programs or activities by limited English proficient individuals.”⁷

a. To assess whether a covered entity has taken those reasonable steps, OCR “may assess how an entity balances” these four-factors: “(i) [t]he number or proportion of limited English proficient individuals eligible to be served or likely to be encountered in the eligible service population; (ii) [t]he frequency with which LEP individuals come in contact with the entity’s health program, activity, or service;

⁴ 42 USC 18116.

⁵ 45 CFR §92.101 (2023).

⁶ THE HOSPITALS OF PROVIDENCE, *Insurances Accepted*, <https://perma.cc/Z4HG-9GVG>.

⁷ 45 CFR §92.101(a) (2023).

- (iii) [t]he nature and importance of the entity’s health program, activity, or service; and (iv) [t]he resources available to the entity and costs.”⁸
- b. Under this four-factor, “flexible and fact-dependent”⁹ standard, the Hospitals’ compliance with Section 1557 is insufficient.
- i. First, “[t]he number or proportion of limited English proficient individuals eligible to be served or likely to be encountered in the eligible service population”¹⁰: The Hospitals of Providence serve El Paso, Texas, a community along the U.S./Mexico border¹¹ with a high number and proportion of individuals with LEP both eligible and likely to be served. According to the U.S. Census Bureau, 64.2% of El Paso residents speak Spanish at home.¹²
 - ii. Second, “[t]he frequency with which LEP individuals come in contact with the entity’s health program, activity, or service”¹³: The Hospitals of Providence frequently come into contact with LEP individuals. In acknowledgement of the need for Spanish-language services, the Hospitals offer a button that translates their website to Spanish, and have posted notice of “Spanish-speaking staff” and 24-hour language services in both English and Spanish.¹⁴ These were not sufficient to provide meaningful access, however.

⁸ 45 CFR §92.101(b)(1) (2023).

⁹ Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37160 (June 19, 2020) (codified at 45 C.F.R. 92.101). <https://www.federalregister.gov/d/2020-11758/p-843> (citation omitted).

¹⁰ 45 CFR §92.101(b)(1)(i) (2023).

¹¹ TEXAS DEPARTMENT OF STATE HEALTH SERVICES *The Texas Portion of the U.S. – México Border* (2024), <https://perma.cc/T6NK-EFBX>.

¹² U.S. CENSUS BUREAU, *Types of Language Spoken at Home, El Paso city, Texas*, <https://perma.cc/8XP4-R9HW>.

¹³ 45 CFR §92.101(b)(1)(ii) (2023).

¹⁴ THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence Memorial Campus Nondiscrimination Notice*, <https://www.thehospitalsofprovidence.com/nondiscrimination-notice/the-hospitals-of-providence-memorial-campus>; THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence Transmountain Campus Nondiscrimination Notice*, <https://www.thehospitalsofprovidence.com/nondiscrimination-notice/the-hospitals-of-providence-transmountain-campus>; THE HOSPITALS OF PROVIDENCE, *Interpreter Services Americans with Disabilities Act Compliance*, <https://www.thehospitalsofprovidence.com/patients/interpretive-language-service>.

- iii. Third, “[t]he nature and importance of the entity’s health program, activity, or service”¹⁵: The Hospitals of Providence deliver life-saving, critical care for their community, where the necessity of patients being able to make fully informed medical decisions is crucial. The three campuses provide critical medical services including emergency services and medicine, trauma care, maternity wards, cancer treatment, surgical centers, and wound care.¹⁶ As described on their website, “[t]he East Campus is the only full-service hospital located in one of the most densely populated zip codes in the United States.”¹⁷
- iv. Fourth, “[t]he resources available to the entity and costs”¹⁸: The Hospitals of Providence have significant resources for which to administer language access services. In 2022, the Hospitals of Providence celebrated a spending milestone of \$2 billion in capital investments.¹⁹ In 2022, the East Campus unveiled a \$20 million expansion project.²⁰ From the federal CARES Act, the Hospitals at Providence’s parent company, Tenet Healthcare, received over \$1.5 billion in Medicare Advance Payments and payroll tax match deferrals.²¹

45. The Hospitals of Providence failed to comply with current regulations mandating that, where the “individualized assessment of the four factors,” generates a finding that language access services are required, the provision of these language access services “be accurate

¹⁵ 45 CFR §92.101(b)(1)(iii) (2023).

¹⁶ THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence - East Campus*, <https://www.thehospitalsofprovidence.com/locations/detail/east-campus>; THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence – Memorial Campus*, <https://www.thehospitalsofprovidence.com/locations/detail/memorial-campus>; THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence – Transmountain Campus*, <https://www.thehospitalsofprovidence.com/locations/detail/transmountain-campus>.

¹⁷ THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence - East Campus*, <https://www.thehospitalsofprovidence.com/locations/detail/east-campus>.

¹⁸ 45 CFR §92.101(b)(1)(iv) (2023).

¹⁹ THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence \$2 Billion Dollars of Investments To Continually Expand Healthcare Access*, [https://www.thehospitalsofprovidence.com/home/newsroom/the-hospitals-of-providence-\\$2-billion-dollars-of-investments-to-continually-expand-healthcare-access](https://www.thehospitalsofprovidence.com/home/newsroom/the-hospitals-of-providence-$2-billion-dollars-of-investments-to-continually-expand-healthcare-access).

²⁰ THE HOSPITALS OF PROVIDENCE, *The Hospitals of Providence Unveils \$20 Million Expansion Project in East El Paso*, [https://www.thehospitalsofprovidence.com/home/newsroom/the-hospitals-of-providence-unveils-\\$20-million-expansion-project-in-east-el-paso](https://www.thehospitalsofprovidence.com/home/newsroom/the-hospitals-of-providence-unveils-$20-million-expansion-project-in-east-el-paso).

²¹ Ryan Basen, *Tenet Gets Big Federal \$\$\$ but Still Cuts Employees*, MEDPAGE TODAY (July 9, 2020), <https://perma.cc/JF3Y-N2AE>; Warren, Markey, McGovern, Trahan Call Out Tenet's Corporate Greed During COVID-19 Pandemic, SENATOR ELIZABETH WARREN (2021) <https://perma.cc/R8QS-T2KY>.

and timely, and protect the privacy and independence of the individual with limited English proficiency.”²²

- a. The Hospitals of Providence failed to offer or provide Ms. Nuñez with accurate and timely translation services. She was forced to rely on her aunt (who was not qualified to be an interpreter) and an array of Hospital staff members with widely varying levels of Spanish proficiency and medical Spanish knowledge as de facto interpreters, as well as an outside interpreter that she had to procure herself. Despite knowing Spanish was her language of preference, the Hospitals provided Ms. Nuñez important health information in English, including Patient Education sessions, medication lists and instructions, consultations regarding sensitive health information, forms requiring her signature, and discharge instructions. Ms. Nuñez’s privacy and independence were repeatedly jeopardized; she was forced to rely on unqualified individuals to interpret during conversations about sensitive, personal topics, and she was forced to ration her food at times because the language barrier prevented her from being able to ask for more without assistance.

46. The Hospitals of Providence failed to adhere to regulations that require that, where the “individualized assessment of the four factors,” generates a finding that interpreter services are required, the interpreter must possess “demonstrated proficiency in speaking and understanding at least spoken English and the spoken language in need of interpretation” and be “able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.”²³

- a. The Hospitals of Providence failed to offer or provide Ms. Nuñez with an interpreter, forcing her to rely on her aunt (who was not fluent in English) and an array of staff members with widely varying levels of Spanish-language proficiency and widely varying knowledge of medical Spanish terminology so that they were unable to “interpret effectively, accurately, and impartially, both receptively and expressly, to and from [Spanish] and English, using any necessary specialized

²² 45 CFR §92.101(b)(2) (2023).

²³ 45 CFR §92.101(b)(3) (2023).

vocabulary, terminology and phraseology.”²⁴ As a result, Ms. Nuñez struggled to understand what was going on as she was repeatedly transferred among hospital campuses, missed crucial Patient Education and other medical instructions, and rationed her food due to not being able to communicate about the insufficient nutrition she was receiving. She was eventually forced to procure her own outside volunteer interpreter to provide intermittent translation.

47. The Hospitals of Providence failed to adhere to requirements that require that, where the “individualized assessment of the four factors,” generates a finding that where the “provision of translation services for written content (in paper or electronic form)” are required, they be provided by a translator who “[h]as demonstrated proficiency in writing and understanding at least written English and the written language in need of translation” and “[i]s able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.”²⁵

- a. Despite knowing her language of preference was Spanish, the Hospitals of Providence provided Ms. Nuñez with numerous important health information in English only, including Patient Education instructions, medication lists and instructions, forms requiring a signature, and discharge instructions. Some forms primarily in Spanish still included important information about medications in English and thus are not effective translations of written content.

48. The Hospitals of Providence violated the requirement that, where the “individualized assessment of the four factors,” generates a finding that interpretation services must be provided, covered entities “shall not” require an individual with LEP to “provide his or her own interpreter” or “[r]ely on an adult accompanying an individual with limited English proficiency to interpret or facilitate communication” or “[r]ely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with limited English proficiency.”²⁶

²⁴ 45 CFR §92.101(b)(3)(i)(C) (2023).

²⁵ 45 CFR §92.101(b)(3)(ii) (2023).

²⁶ 45 CFR §92.101(b)(4) (2023).

- a. The Hospitals of Providence failed to offer or provide Ms. Nuñez with an interpreter at each campus where she stayed. She was thus forced to rely on her aunt (who was not qualified to be an interpreter), a variety of staff members with widely varying levels of Spanish fluency, and later, by an outside volunteer interpreter who she had to procure on her own and who was not able to stay with her full time.
 - b. Section 1557 regulations allow an accompanying adult to interpret or facilitate communication where there is an “imminent threat” or there is “no qualified interpreter available.”²⁷ This emergency exception does not apply to the weeks under which Ms. Nuñez was in the Hospitals of Providence where she should have been offered and provided a qualified interpreter at any time.
49. The Hospitals of Providence is also subject to Title VI, which requires that any program or activity that receives federal funding cannot discriminate on the basis of national origin.²⁸ As with Section 1557, courts and federal agencies have interpreted the term “national origin” to encompass English language proficiency.²⁹ Executive Order 13166 directs federal agencies to ensure that federal funding recipients provide individuals with limited English proficiency “meaningful access” to services provided.³⁰ The Department of Justice released guidance in 2002 outlining compliance standards for language access under Title VI, the same four-factor test for measuring compliance that was adopted in 2020 for Section 1557 regulations.³¹

²⁷ 45 CFR §92.101(b)(4)(ii)(A) (2023).

²⁸ 42 U.S.C §§ 2000d - 2000d-7.

²⁹ See, e.g., *Serna v. Portales Municipal Schools*, 499 F.2d 1147, 1153 (10th Cir. 1974); *Colwell v. Dep’t of Health & Human Servs.*, 558 F.3d 1112, 1116-17 (9th Cir. 2009); *United States v. Maricopa Cnty., Ariz.*, 915 F.Supp.2d 1073, 1079 (D. Ariz. 2012); DOJ Office for Civil Rights, *Limited English Proficient (LEP)*, OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF JUSTICE (2023) <https://perma.cc/H39U-UCTX>.

³⁰ Exec. Order No. 13166, 65 FR 50121 (2000), <https://perma.cc/9TQ9-42AB>.

³¹ U.S. DEP’T OF JUST., 67 FR 41455, GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE RECIPIENTS REGARDING TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS, (2002) <https://perma.cc/ZTS5-TTV4>; Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37160 (June 19, 2020) (codified at 45 C.F.R. 92.101). <https://www.federalregister.gov/d/2020-11758/p-254> (“Title VI enforcement mechanisms are broadly known to the regulated community, and the HHS LEP Guidance has been effective in helping covered entities comply with the statute and implementing regulations. The Department regards the four-factor test, employed since 2003, as the best way of balancing the relevant factors in ensuring nondiscrimination on the basis of national origin.”)

50. By failing to have adequate language access systems in place, such that Ms. Nuñez was unable to receive meaningful access to language services, the Hospitals of Providence violated its Title VI obligations.

51. When such a denial of meaningful language access takes place in federally-funded health care facilities, it is a violation of Section 1557 and Title VI that OCR has both the legal authority and obligation to address.

Relief Requested

52. Ms. Nuñez requests that OCR:

- a. Investigate the Hospitals of Providence for discriminating against her on the basis of her limited English proficiency in violation of current regulations of Section 1557 and Title VI by failing to take reasonable steps to provide language access services.
- b. Take all necessary steps to secure an end to discriminatory policies or practices based on limited English proficiency in its investigation of the Hospitals of Providence, including by imposing all appropriate penalties and obtaining assurances that all entities will comply with Section 1557 and Title VI. This should include mandates to:
 - i. Use reliable data sources that can accurately determine the language needs of affected populations.
 - ii. Develop strategies to assess language needs, identify patients with limited English proficiency, and meet staff and patient technology needs.
 - iii. Implement internal policies that can accurately determine whether a staff member is qualified to “provide in-language oral language assistance as part of the person’s current, assigned job responsibilities” including whether the staff member is proficient in the non-English language and “any necessary specialized vocabulary, terminology, and phraseology”.³²

³² 45 CFR §92.4 (2024).

- iv. Publish a public directory of staff members who have been determined to be qualified bilingual or multilingual staff members able to provide effective language assistance services.³³
- v. Publish standards used to identify qualified interpreters and written translation services, including any contracts with third party organizations.³⁴
- vi. Publish an online directory of written translated materials, including patient education information and other important communications. Ensure that translated materials relevant to a patient's care plan are provided in physical, printed form as well.³⁵
- vii. Create and publish what verification procedures are in place to ensure clients' languages of preference are documented, accurate, and up to date.³⁶
- viii. Implement plan for identifying relevant non-English languages that are likely to be needed by patients and engage in level-setting and training over what policies staff must comply with.
- ix. Ensure that staff members record what languages are used in patient and caregiver interactions.
- x. Ensure that staff members do not assess a patient's language needs based on whether the individual can answer short questions by nodding or providing yes/no answers.
- xi. Place taglines at the bottom of all vital documents acknowledging the availability of free language assistance services and how to access them.

³³ 45 CFR §92.8(d) (2024).

³⁴ 45 CFR §92.4 (2024); 45 CFR §92.8(d) (2024).

³⁵ 45 CFR §92.8(d) (2024).

³⁶ HHS Press Office, *HHS OCR Secures Voluntary Resolution with Pennsylvania Department of Human Services to Strengthen Language Access for Limited English Proficiency Individuals*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (2019) <https://public3.pagefreezer.com/browse/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2019/12/19/hhs-ocr-secures-voluntary-resolution-with-padhs-to-strengthen-language-access.html>.

- xii. Inform any patient with limited English proficiency that an interpreter can be provided at no cost (even if a family member qualified to be an interpreter is present).
 - xiii. Document verbal and written offers of hospital-provided and -funded interpretation and patient rejections of such offers.³⁷
 - xiv. Ensure that when a patient requests a family member to interpret hospital interactions, the family member is competent and an appropriate person to interpret (e.g., there is no conflict of interest or confidentiality concerns).
 - xv. Remind patients at regular intervals and at the start of vital conversations that even if they elect to have a family member interpret for their hospital interactions, a professional interpreter can be requested at any time at no cost to the patient.
 - xvi. Ensure that if the Hospitals rely on a bilingual/multilingual staff member to translate, that patients are assigned a qualified bilingual/multilingual staff member to translate during their entire stay at the hospital (including when a patient transfers between different hospital campuses) and that the name and position of the designated staff member should be clearly visible to the patient and documented in medical records.
- c. Monitor resulting agreements with the Hospitals of Providence to ensure compliance with Section 1557 and Title VI; and
 - d. Provide Ms. Nuñez with such other relief as appropriate.

Respectfully submitted,

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³⁷ HHS Office for Civil Rights, *Language Assistance Services Expanded at Mee Memorial Hospital*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (2014) <https://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/mee-memorial-hospital/mee-bulletin/index.html>.

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