

May 31, 2023

Ms. Shoba Sivaprasad Wadhia  
Office for Civil Rights and Civil Liberties  
U.S. Department of Homeland Security  
2707 Martin Luther King, Jr. Avenue, SE  
Washington, DC 20528

RE: U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Draft  
Indigenous Languages Plan, February 2023

Dear Ms. Wadhia:

On behalf of the American Bar Association (ABA), I submit the following comments in response to the Department of Homeland Security's Draft Indigenous Languages Plan, February 2023 (hereinafter, the "Proposed Plan")<sup>1</sup> informal comment period. The ABA urges the Department of Homeland Security (DHS) to strengthen the Proposed Plan as described below.

The ABA is the largest voluntary association of lawyers and legal professionals in the world. Working with and through its Commission on Immigration, the ABA advocates for improvements to immigration law and policy and operates pro bono legal representation programs for immigrants and asylum seekers, with a special emphasis on the needs of the most vulnerable. Our views are informed by our experience in operating two direct representation immigration projects at the border (the Pro Bono Asylum Representation Project in Harlingen, Texas and the Immigration Justice Project in San Diego, California) that serve detained and non-detained adults and unaccompanied minor immigrants; the Children's Immigration Law Academy, a legal resource center in Houston that serves children's immigration legal services programs across the country; and the Detention & Legal Orientation Program Information Line that provides telephonic orientations to individuals in immigration detention throughout the United States.

The ABA's policy work in the immigration field is concentrated primarily on ensuring fair treatment and due process rights for asylum seekers and other immigrants from the time of their arrival at the U.S. border through the final adjudication of their cases. We have issued policy recommendations advocating for access to legal information and legal counsel for immigrants in removal proceedings; compliance with standards relating to the custody, care and adjudication of

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<sup>1</sup> U.S. Department of Homeland Security, Office of Civil Rights and Civil Liberties, [Draft DHS Indigenous Languages Plan CRCL \(Revisions 2.14.23\) \(Final Draft 2.23.23\)](#).

unaccompanied children; improvements to the immigration adjudication process; the preservation and amplification of fair asylum laws and procedures; and compliance with standards relating to the civil detention of non-citizens in immigration proceedings.

The ABA Civil Immigration Detention Standards<sup>2</sup> (ABA Standards) call for DHS/ICE and facility administrators to provide specialized training to staff who work with specific types of residents to address their physical, social, and psychological needs, including persons who face language or communication barriers, and for DHS/ICE and facility administrators to provide residents with the DHS/ICE Handbook and a facility-specific handbook that describe rules and procedures as well as resident rights under these standards, each in a language the resident understands. Likewise, in-person assistance should be provided to persons who are illiterate or have disabilities, and in addition to written materials, residents should be instructed on key points in the handbooks in a language they can understand. The ABA Standards also state that access to interpreters, translators or other services required to provide meaningful access to legal services should be provided on the same basis as access to legal personnel. Telephonic and video access to interpreters should be permitted for residents who speak less-common languages and for whom local interpretation services are not readily available. In addition, the ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States<sup>3</sup> provide that children have the right to language access by means of an interpreter and translated documents through all stages of custody and proceedings.

While the ABA is heartened that DHS acknowledges the need to strengthen its provision of Indigenous language services, the Proposed Plan is not fully consistent with the best practices outlined in the ABA Standards nor does it appear to lay out a clear plan to provide truly meaningful access for persons with limited English proficiency as required under Executive Order 13166.<sup>4</sup> The Proposed Plan also lacks sufficient detail regarding how it will be tailored to best serve children, including unaccompanied children, who come into contact with DHS programs.

The Proposed Plan states that DHS will develop improved protocols for identifying the language of Indigenous migrants as soon as practical during the first encounter but does not clearly describe the methodology it will use or the concrete steps that it will take during the next fiscal year to do so. As noted in the Proposed Plan, many individuals have experienced exploitation and violence for being Indigenous or speaking an Indigenous language. The ability to

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<sup>2</sup> American Bar Association Civil Immigration Detention Standards, as amended August 2014, [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/abaimmdetstds.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/abaimmdetstds.pdf).

<sup>3</sup> American Bar Association Standards for the Custody, Placement and Care; Legal Representation and Adjudication of Unaccompanied Alien Children in the United States, as amended August 2018, [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/2018\\_standards\\_for\\_childr\\_en.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2018_standards_for_childr_en.pdf).

<sup>4</sup> Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 11, 2000) (Meaningful access is language assistance services that result in accurate, timely, and effective communication at no cost to the limited English proficient person), <https://www.justice.gov/crt/executive-order-13166>.

communicate this information can be critical when individuals are seeking protection, including in identifying individuals who may meet an exception to the new asylum rule.<sup>5</sup> Additionally, the Proposed Plan does not explain how DHS will ensure that immigration documentation, such as a Notice to Appear, will reflect an individual's primary language and not the dominant language of their country of origin; this is important as it can impact proceedings before the immigration court.

It is vital for all DHS Components and staff interacting with migrants to recognize that Indigenous migrants will sometimes refuse an interpreter because in their home country they are expected to speak the dominant language even if they are not proficient in it. Indigenous migrants also may fear identifying themselves as such to U.S. immigration officers due to past experiences of persecution by government authorities in their home countries. DHS should recognize and address these potential issues when developing and implementing training programs for staff. Likewise, it is important that DHS Components and staff working with migrants receive training on sensitivity to the needs of those with varied education levels, those with no literacy in any language, and those with languages that do not have a written form.

In examining barriers to accessing qualified Indigenous language interpreters, DHS Components should be aware of and understand the importance of working with interpreters who understand the nuances and differences in Indigenous languages from one area to another and the culture related to Indigenous languages. The Proposed Plan notes the development of virtual or on-line training modules. However, as practicable, we recommend these trainings should be live, required for all staff, repeated annually, and incorporate Indigenous migrant organizations. Review of any tools and job aids should be included in trainings. Competency on Indigenous language access issues also should be incorporated into employee evaluation processes.

The ABA encourages DHS to establish a formal language access advisory committee that includes Indigenous migrant individuals and organizations and utilize them as a resource in the DHS Language Access Working Group and its committee on Indigenous languages. DHS should also take steps to increase recruitment efforts for Indigenous language interpreters, in consultation with the advisory committee. The advisory committee should be included and consulted for continued monitoring and review of the Proposed Plan.

The ABA recommends that DHS implement robust training for Indigenous language interpreters that instructs on interpretation ethics, techniques, standards, and relevant terminology through the lens of Indigenous history, identity, and culture. Concurrently, DHS should implement a quality control or monitoring procedure to ensure that accurate Indigenous language interpretations are taking place. In addition to examining the language skills available within DHS' workforce, DHS should increase efforts to hire more staff with relevant language skills or experience. Lastly, the ABA encourages DHS to create and incorporate additional resources for

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<sup>5</sup> Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314 (May 16, 2023) (to be codified at 8 C.F.R. pts. 208; 1003; 1208), <https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways>.

people with language access needs, in consultation with the advisory committee recommended above.

We appreciate DHS' ongoing commitment to improving language services for Indigenous migrants. The ABA hopes to work with DHS to strengthen and meaningfully implement the Proposed Plan.

Thank you for considering our views. If you have any questions or need additional information, please contact Kristi Gaines in our Governmental Affairs Office at 202-662-1763 or [kristi.gaines@americanbar.org](mailto:kristi.gaines@americanbar.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Enix-Ross", with a stylized flourish at the end.

Deborah Enix-Ross  
President