

June 2, 2010

Mr. Frank Padilla
HUD Regional Office
625 Silver SW Suite 100
Albuquerque NM 87102

Dear Mr. Padilla

Thank you so much for setting up and facilitating the meeting on May 28th among members of your team, SAFE House, Catholic Charities, the City of Albuquerque and Enlace Comunitario.

As you requested during that meeting, I am writing to ask you to please help us clarify the two concerns that Enlace Comunitario raised at the time regarding unequal treatment that undocumented immigrant victims of domestic violence and other members of the Spanish-speaking community face at the RISE and La Luz transitional housing programs run respectively by SAFE House (SH) and Catholic Charities (CC). The following is a summary of our concerns as presented during the meeting:

1. Possible discrimination against Spanish speaking clients by SAFE House- RISE Program:

As was established during the meeting, RISE program coordinator Amanda Valencia, wrote an E-mail to Enlace on March 16 to inform us and other providers that “Although RISE does still have openings for housing, we are not accepting Spanish Speaking only applicants. RISE has only one bilingual case manager”

In my opinion this decision by RISE to deny services to people of limited English proficiency (“LEP’s”) violates Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

Section 602 of the Civil Rights Act authorizes agencies “to effectuate the provisions of [Section 601] ... by issuing rules, regulations or orders of general applicability.” 42 U.S.C. § 2000d-1. Numerous regulations have been implemented pursuant to Section 602 in order to enforce Title VI. “These regulations prohibit recipients from restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program and utilizing criteria or methods or administration which

have the effect of subjecting individuals to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of particular race, color or national origin.” 65 F.R. 50123 (citations omitted).

The Department of Justice, in an exercise of its authority under Section 602, “promulgated a regulation forbidding funding recipients to ‘utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin ...’ 28 C.F.R. 42.104(b)(2)(1999). See also 49 C.F.R. § 21.5(b)(2) (2000) (similar DOT regulation).” *Alabama v. Sandoval*, 532 U.S. 275, 278 (2001). In certain circumstances, “failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d and Title VI regulations against national origin discrimination.” DOJ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (6/18/02), 67 F.R. 41457.

Mr. Padilla, as you know SAFE House receives federal funding from HUD and other federal agencies, and consequently, in my opinion, it is obligated to provide services to LEP individuals. Please clarify if my understanding is correct.

2) Possible Discrimination against undocumented victims of domestic violence by both SH-RISE Program and CC- La Luz Program:

Both La Luz and RISE are programs funded by a HUD grant for “Supportive Housing Programs” and have the goal of helping homeless families achieve self-sufficiency through housing, case management, job development and other assistance. All the clients from RISE and the majority of the participants of la Luz are victims of domestic violence. Yet, the programs have their own internal regulations that have rejected clients from Enlace (or have the potential to reject clients from Enlace) because clients are not considered to be “homeless” according to their definition or because they are undocumented immigrants who do not have pending immigration petitions (such as a VAWA petitions or U-visa applications).

During our meeting on the 28th the directors of SH and CC identified four reasons why undocumented immigrants have been excluded from the transitional housing services: 1) Participants are required to concurrently apply for long-term Section 8 housing, a federal benefit for which undocumented immigrants are ineligible; 2) The program provides job development assistance and thus requires all participants to be eligible for employment authorization; 3) The program requires that participants are homeless and defines homelessness in such a narrow way that prevents victims of domestic violence from applying for the program; and 4) The program assumes undocumented immigrants are unable to produce income verification for the purpose of determining rent calculations. All of these requirements have been placed upon participants by CC and SH, and are not technically required by HUD guidelines, although they may flow from programmatic objectives of the federal program

The transitional housing programs offered by CC and SH are funded through the “Supportive Housing Program” by the Department of Housing and Urban Development (HUD).

This is the main federal program that directly funds non-profits or other community agencies to provide two-year transitional housing.

The Supportive Housing Program has the purpose of assisting homeless individuals to transition from homelessness and to enable them “to live as independently as possible” It includes transitional housing for up to two years,¹ as well as “support services” such as assistance with obtaining permanent housing, employment, child care, health care, etc.² Each community-based provider sets its own objectives in a grant application that describes how its project will help homeless participants achieve independent living. HUD reviews the applications and selects grant recipients in a competitive process. Projects that receive funding must then supply HUD with annual progress reports.³

Although undocumented immigrants generally are not eligible for most federal benefits programs, we believe that victims of domestic violence are eligible for transitional housing assistance through the Supportive Housing Program regardless of their immigration status.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), an immigrant who is not a “qualified alien” is generally ineligible for any “federal public benefit” .⁴ These benefits includes grants, payments or assistance given by the U.S. government to individuals, households, or family eligibility units, as well appropriated funds of the United States for public or assisted housing.⁵

Despite this provision, there are two possible exceptions that allow for all victims of domestic violence to obtain transitional housing assistance. First, the law explicitly exempts any “nonprofit charitable organization” that provides federal public benefits from requiring verification of immigrant status for their programs.⁶ The statutory provision states that “...a nonprofit charitable organization, in providing any Federal public benefit (as defined in...8 USCS § 1611(c)) or any State or local public benefit...is not required under this title to determine verify, or otherwise require proof of eligibility of any applicant for such benefits”.⁷ Although the Attorney General has not adopted a final regulation in the Federal Register to further interpret the statute, the department issued a “proposed rule” in 1998, stating:

“absent any further regulatory action by the Attorney General, nonprofit charitable organizations are therefore not required, under PRWORA and this rule, to verify an

¹ See 42 U.S.C. § 11384 (defining the term “transitional housing” to mean housing which has the purpose “to facilitate the movement of homeless individuals and families to permanent housing within 24 months or such longer period as the Secretary determines necessary”).

² See 42 U.S.C. § 11385 (requiring projects to provide supportive services that address the special needs of individuals that are intended to be served by the project).

³ See Annual Progress Report (APR) for Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation for Single Occupancy Dwellings (SRO) Program, HUD Form 40118, available at: <http://www.hud.gov/offices/adm/hudclips/forms/files/40118.doc> (hereinafter “HUD APR Form 40118”).

⁴ See 8 U.S.C. § 1611(a) and referring to the term “qualified alien” as defined in 8 USCS § 1641.

⁵ 8 U.S.C. § 1611(c). See also 42 U.S.C. § 1436a, which specifically restricts undocumented immigrants from some types of federal housing assistance (such as Section 8 housing), but does not include transitional housing programs.

⁶ 8 U.S.C. § 1642(d) (codifying PRWORA § 432(d) and specifically referring to the provisions in 8 U.S.C. § 1611(c) that requires verification of immigrant eligibility for most federal benefits.)

⁷ 8 U.S.C. § 1642(d).

applicant's immigration or citizenship status before providing Federal, State, or local public benefits. Moreover, State and local governments may not impose any verification requirements upon nonprofit charitable organizations pursuant to Title IV of PRWORA for Federal, State or local benefits".⁸

Second, regardless of whether the service is provided through a non-profit agency, transitional housing programs for domestic violence victims also fall under an exception in the law that allows for any person to obtain a service, program or assistance that is "necessary for protection of life or safety".⁹ The relevant statutory authority is found in the PRWORA, which gives the Attorney General authority to specify and exempt from immigration eligibility requirements:

"Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter)... which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety".¹⁰

The Attorney General did exercise its authority to issue a final order that specifically deems "short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused or abandoned children" as being necessary programs for the protection of life or safety.¹¹

The former Secretary of the Department of Housing and Urban Development, Andrew Cuomo, also sent a letter to funding recipients clarifying that transitional housing programs for battered women are exempt from immigrant eligibility requirements. The letter, sent in 2001, reiterated that emergency shelter and transitional housing are types of short-term housing that are necessary for the protection of life and safety.¹² The letter then specifies that "programs that provide emergency shelter and transitional housing for up to two years are to make these services equally available to all needy persons including aliens who are not qualified immigrants".¹³ The letter warns that programs which disregard the rights of battered immigrants to gain access to emergency shelter and transitional housing may be subject to sanctions,¹⁴ and notes that community agencies that previously denied transitional housing services to battered immigrants have misinterpreted national policies.¹⁵

⁸ AG Order No. 2170-98, Department of Justice, Proposed Rules, *Verification of Eligibility for Public Benefits*, 63 FR 41662, 41664 (Aug. 4, 1998).

⁹ See 8 USC § 1611(b)(1)(D).

¹⁰ 8 U.S.C. § 1611(b)(1)(D).

¹¹ See A.G. Final Order Number 2353-2001, *Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 66 Fed. Reg. 3613-3616 (1/16/01), Specification 4(b) at p.5.

¹² U.S. Department of Housing and Urban Development, The Secretary, Washington D.C., *Letter from HUD Secretary Andrew Cuomo to HUD Funds Recipients*, issued January 19, 2001, p. 2. (hereinafter "HUD Letter"),

¹³ HUD Letter, p. 2.

¹⁴ HUD Letter, p. 3.

¹⁵ HUD Letter, p. 1.

The Supportive Housing Program offered by CC and SH would appear to qualify as the type of transitional housing referred to by the HUD letter. The letter recognizes that transitional housing for up to two years gives battered immigrants the ability to safely transition to freedom from their abusers and is “by nature short-term and intended to be a step from emergency shelter to permanent housing”. The Supportive Housing Program provides exactly that kind of short-term assistance.

Thus, we believe that battered immigrant women would therefore be eligible for CC and SH transitional housing programs under the law, regardless of whether they are undocumented immigrants who do not have pending petitions for immigration status.

Mr. Padilla, please help us clarify if in fact SH and CC need to comply with the 2001 directive from Andrew Cuomo which is the current national policy or if their own internal regulations allow them to disregard it and consequently make undocumented immigrant victims of domestic violence ineligible to obtain assistance through their transitional housing programs.

In addition, please assist us deciding if SH has discriminated against Spanish speaking clients based on the information provided at the beginning of this letter. I look forward to hearing from you soon. Please do not hesitate to call should you have any questions at 246-8972 ext 23.

Respectfully,

A handwritten signature in cursive script that reads "Claudia Medina".

Claudia Medina
Executive Director