



Via electronic submission

June 30, 2023

President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders
U.S. Department of Health and Human Services
Office of the Secretary, Office for Civil Rights
Hubert H. Humphrey Building, Room 515F
200 Independence Ave. SW
Washington, DC 20201
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RE: Response to meeting and solicitation for written and oral comments (Language Access Subcommittee and Immigration and Citizenship Status Subcommittees' Questions)

Asian Americans Advancing Justice | AAJC ("Advancing Justice | AAJC") submits the following comment in response to the Department of Health and Human Services' Announcement of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders ("Commission") Meeting and Solicitation for Written and Oral Comments. We are submitting responses to questions from the Language Access Subcommittee and Immigration and Citizenship Status Subcommittee.

Advancing Justice | AAJC is a national, non-profit, non-partisan organization that was founded in 1991. Our mission is to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice | AAJC is the civil rights voice of the Asian American community – the fastest-growing population in the U.S. – fighting for our civil rights through education, litigation, and public policy advocacy. We serve to empower our communities by bringing local and national constituencies together and ensuring Asian Americans are able to participate fully in our democracy.

As an organization dedicated to advancing the civil and human rights of Asian Americans, in order to answer the critical questions posed by the Commission, we must first raise the critical issue of data disaggregation that cuts across all of the policy and issue areas at Advancing Justice | AAJC. The collection of detailed data is particularly critical for Asian Americans, who are among our nation's fastest growing and most diverse racial groups.¹ Often viewed as homogenous, these communities include more than 30 detailed subgroups that can differ dramatically across key social and economic indicators.² While Indian Americans have an average poverty rate of 6%, Mongolian Americans and Burmese Americans have a poverty rate of 25%.³ Roughly 75% of Taiwanese Americans hold a bachelor's degree, yet only 14% of

¹ <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/>.

² <https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-NYCs-API-Immigrant-Population.pdf>.

³ *Id.*

Laotian Americans do.⁴ Another example can be found in health disparities. A study showed that “19.4% of Asian adults compared to 12.9% of whites report[ed] being without a usual source of health care, with Cambodian and Vietnamese [Americans] ... three times more likely to skip doctor visits due to cost compared to all Asian [Americans] or U.S. residents.”⁵ The study further found that U.S.-born Vietnamese American women represent one of the highest risk groups for breast cancer at a rate of being four times more likely to die of breast cancer than any other Asian American groups and that Korean American children are four times more likely to have no health insurance as compared to others. Finally, disaggregating data on the prevalence of smoking in New York City showed that while the prevalence in smoking was lower overall in Asian Americans compared to whites (14.1% vs. 18.6%), that was not the case for some Asian American subgroups, where the actual prevalence of smoking was much higher, such as 35.5% in Korean Americans.⁶ And while Japanese Americans, Filipino Americans, and Indian Americans all have English language proficiency at or above 80%, only 36% of Bhutanese Americans speak English proficiently.⁷ Given how little data collection, analysis, and reporting is available for AA and NHPI communities, we believe that this should be prioritized throughout the federal government.

Moreover, we reiterate the importance of requiring the collection of detailed race and ethnicity data as a default. As we outlined in our April 27, 2023 comments on the Initial Proposals for Updating OMB’s Race and Ethnicity Standards (88 FR 5375), we support the requirement that all federal departments and agencies collect, analyze, use, report, and disseminate disaggregated data as a default. It is imperative for the administration to address the rapid demographic change our country is facing by updating the standards to reflect our ever-increasing diversity. Not moving in this direction would mean that we will not have proper data to inform our civil rights enforcement, our planning, or our work to serve our vulnerable communities. We know from history and past practices that agencies usually do not disaggregate data on their own accord, even when the standards allow for such disaggregation. OMB must move the ball forward by requiring data disaggregation as a default. Failure to take action now will compromise the statistical integrity of the federal government’s data and actively undermine the civil rights of our most vulnerable—and statistically invisible—community members.

Moving from a permissive system to a mandatory one with respect to data disaggregation is of significant importance to Asian Americans and NHPIs. Standardized processes and procedures should be developed to ensure that requirements for mandatory data disaggregation and reporting are followed. Past experience has taught us that many agencies have mistakenly misinterpreted the standards as stating these categories are the only permissible reporting categories. To avoid this problem in the future, OMB should make data disaggregation the default. As part of the move to mandatory data disaggregation, OMB could implement a process by which an agency can receive an exemption from such requirement *after* demonstrating that the potential benefit of

⁴<https://theconversation.com/asians-could-opt-out-of-naming-a-country-of-origin-on-the-2020-census-a-policymakers-nightmare-92714>.

⁵https://www.pfizer.com/news/articles/health_disparities_among_asian_americans_and_pacific_islanders#:~:text=In%20fact%2C%2019.4%25%20of%20Asian.all%20Asians%20or%20U.S.%20residents.

⁶ *Id.*

⁷ <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/>.

the detailed data would not justify the additional burden to the agency and the public or the additional risk to privacy or confidentiality. The burden should be on the agency to explain why the “additional burden” outweighs the important benefits to government programs, communities, researchers, and advocates collecting, analyzing, using, reporting, and disseminating detailed data.

Moreover, agencies themselves should not make the determination as to whether the potential benefit of the detailed data would not justify the additional burden to the agency. Instead, we propose an adjudication process where a third party makes the final decision about whether or not to grant the requested exemption. Above all, this process must allow for public input and transparency. Only after completing this process would agencies be allowed to “opt-out” and use the proposed example for self-response data collections: combined question with minimum categories.

While we recognize agencies may be prevented from immediately releasing all the data they collect when such data cannot be responsibly reported due to statistical reliability and/or confidentiality concerns, we believe that federal agencies should be required to collect detailed race and ethnicity data. Ensuring collection of that data, even if not reportable in the moment, allows for the option to aggregate the data across time for the same group. This can address statistical reliability and confidentiality concerns while still providing the granular data needed.

Language Access Subcommittee Questions:

- a) *Are there any programs you recommend the Commission examine that provide meaningful language access to government benefits and services to persons with limited English proficiency?*

Last year, when Advancing Justice | AAJC joined with fellow Asian American-serving advocacy organizations through the National Council of Asian Pacific Americans to offer language access recommendations to the Biden Administration and WHIAANHPI,⁸ we expressed that language access should be considered regular business for federal agencies. Today, we offer an additional recommendation to make it easier to identify much-needed best practices for providing meaningful language access to government benefits and services. It would be helpful to have a resource that indexes all language access practices, including translated materials and websites, that are currently available across the federal government. If an inventory of this nature does not already exist, it would be an excellent place to start to find programs and resources to emulate, as well as weak points where there is the most need for improvement.

As we have shared in written comments to the Commission before, when examining existing programs that attempt to expand language access or when envisioning new practices, the following considerations should be taken into account.

Allocation of proper resources for meaningful access by federal agencies is overdue. This includes process – having designated language access coordinators, regularly updating language

⁸ Available at <https://www.ncapaonline.org/wp-content/uploads/2022/03/3.28-NCAPA-POTUS-Language-Access-Recommendations-Letter.pdf>.

access plans, and establishing and maintaining measures for quality control and accountability. Advancing Justice | AAJC was pleased when Attorney General Garland called upon federal agencies to review their language access procedures and update their language access plans, and we look forward to receiving additional information from this review and will take the opportunity to provide feedback on updated plans as they become available.

When it comes to serving the public, while we understand that there will be practical limitations on which languages can be covered for translated materials, language access cannot be limited to only the most-commonly spoken languages. Agencies and federally-funded entities must also provide oral language assistance, particularly for smaller language populations and those who do not have access to the internet. Furthermore, agencies must be proactive about informing individuals with limited English proficiency (LEP) about the availability of language assistance. Civil rights do not flow only to LEP individuals whose language needs happen to correlate to a handful of more commonly-spoken languages.

In order to ensure accountability, we encourage establishing regular review and proactively educating the public about their language access rights, including how to complain when these rights are violated. Complaint processes must be accessible and transparent.

While federal agencies should lead the way, we expect that recipients of federal financial assistance are implementing practices that could be good models to be expanded upon.

When it comes to federal grant-making, we would like to see the ability to serve different language groups be made a requirement for grant applicants, or at least some incentive/recognition given to grant applicants that demonstrate that they have the language capacity and cultural competency to effectively serve target populations. Grant applicants that have no ability to effectively serve LEP individuals ought not be awarded federal funding that is intended to reach the general public.

Advancing Justice | AAJC offers the following recommendations for how the Federal Government can better conduct outreach to and address the needs of AA and NHPI LEP communities:

1. The Federal Government can better conduct outreach to and address the needs of AA and NHPI LEP communities by working with and through community-based organizations that have earned the trust of the communities they serve. Additional considerations include:
 - a. These organizations should not, however, be called upon to donate their time and expertise; their language skills, experience, and community connections should be valued and, as such, community-based organizations should be compensated for their services.
 - b. It is important to note that government grants are notoriously challenging to administer, so effort must be made to lower barriers to entry and engagement, especially for smaller organizations with limited capacity that still provide vital

assistance to the communities that they serve – the communities that are often those considered by the Federal Government to be hard-to-reach/hard-to-serve populations.

As one example, Advancing Justice | AAJC has been engaged in intensive outreach and education campaigns through several cycles of the decennial Census. It has been our practice to draw on our policy expertise to develop community education materials, which we, working together with community partner organizations, then translate into multiple Asian and Pacific Islander languages – 15 Asian languages and 8 Native Hawaiian and Pacific Islander languages for Census 2020.⁹ Advancing Justice | AAJC subgranted to community-based organizations across the country to support our outreach and education efforts, and we leaned on subgrantee organizations to help distribute materials and deepen our reach into different segments of AA and NHPI populations nationwide.

We have also seen interesting examples of engaging and equipping community members to assist with outreach and education and support access to services, such as health promotor programs and Affordable Care Act navigators.¹⁰

In addition to working with and through community-based organizations, faith communities can also be of great assistance in reaching particular communities.

2. The Federal Government can better conduct outreach to and address the needs of AA and NHPI LEP communities by researching the ways that different communities access information and developing outreach tools accordingly: community news outlets (print and online), community radio and television programs/stations, social media (including platforms such as WeChat and others that serve different immigrant populations), podcasts, etc. With community media, many of these outlets are local rather than national in scope, so efforts will need to be localized, and key resources should also be made available on agency websites so that they are accessible by those who need them.

Since many of these resources will be distributed and housed online, the Federal Government should do more to support and fund programs to equip low-income individuals and communities with free or low-cost broadband access. We also recommend greater investment in libraries and community centers to facilitate and increase access to information that will increasingly be made available online.

3. The Federal Government can create a multi-lingual directory for government services and programs. In order to facilitate access to services, particularly in response to the increased anti-Asian hate our communities have experienced during the COVID-19 pandemic, Advancing Justice | AAJC recently launched a pilot of its [Asian Resource Hub](#), a searchable directory of service providers that focus on Asian American communities. This directory, which is currently populated with the information of organizations working with Asian Americans Advancing Justice on anti-hate efforts, is searchable by

⁹ As two examples, see <https://www.advancingjustice-ajc.org/census> and <https://www.countusin2020.org>.

¹⁰ <https://www.cdc.gov/minorityhealth/promotores/index.html>.

type of service (social services, legal services, mental health services, etc.), language need, and location. As we move beyond the pilot phase of this project, we will add more organizations to the directory and aim to make it accessible in multiple Asian languages. While we recognize that a great deal of information already exists regarding government programs and services, building a similar basic multi-lingual directory for government services and programs could be an important step forward in creating an accessible starting point for LEP individuals interested in learning more about what assistance may be available to them.

4. In terms of its own capacity, the Federal Government should assess the language capacity of staff members in public contact positions across agencies and consider creating or increasing outreach specialist positions within agencies and prioritizing the hiring of bilingual staff representing underserved populations. As part of this effort, the Federal Government will need to ensure funding for the creation of multilingual materials and the means to distribute them.
5. In order to effectively reach and serve AA and NHPI LEP communities, the Federal Government will need to assure immigrant communities that accessing services and benefits to which they are entitled will not jeopardize their immigration status or continued ability to legally remain in the United States. Developing clear and transparent messaging on who is eligible for service and benefits will be vital to this effort. Again, community-based organizations can be important partners to this effort.

To provide meaningful access, Advancing Justice | AAJC calls for larger structural change in how the federal government handles language access. Providing language support for individuals with limited proficiency in English cannot be an afterthought; language access should be built into service delivery at all stages – on program planning and design, budgeting, and all phases of implementation.

Immigration and Citizenship Status Subcommittee Questions:

- a) *As immigration-related agencies within the U.S. Department of Homeland Security (DHS) like the U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP), work to expand language services, how should they decide which languages and which processes should be prioritized for implementation? Are there specific forms or processes that DHS agencies should prioritize providing language services for immediately? If so, which forms and language translations should be prioritized?*

In the most recent Language Access Plan currently available on their website, USCIS says in their Policy Statement that it will take “...reasonable steps to provide meaningful access for individuals with limited English proficiency to its services, resources, activities, and programs, consistent with, *and without unduly burdening*, the agency’s fundamental mission.”¹¹ This statement falsely assumes a tension between USCIS’s “fundamental mission” and language

¹¹ Department of Homeland Security, U.S. Citizenship and Immigration Services, Language Access Plan 2 (2019) (emphasis added), <https://www.dhs.gov/sites/default/files/publications/uscisc-updated-language-access-plan-2020.pdf>.

access. We reject the idea that USCIS could fulfill its fundamental mission without taking language access into account.

USCIS is tasked with administering our immigration system and its benefits in a fair and efficient manner. As such, USCIS must take language access into account. To do otherwise would be to center immigration from countries where English is more prevalent.¹² This would neither be fair nor efficient, especially given the demographic trends in immigration today,¹³ and given the fact that 65% of noncitizens age 5 and above in the U.S. have limited English proficiency (LEP).¹⁴

Turning to what information USCIS should prioritize for translation, Advancing Justice | AAJC would suggest that USCIS translate, at minimum, the instructions for all forms and accompanying forms related to naturalization, family-sponsored immigration, and humanitarian programs (including TPS and VAWA-related applications). This would help improve access to these immigration benefits for most Asian immigrants, and specifically help vulnerable immigrants in our communities. In fiscal year 2020, for example, family-sponsored immigrants (including immediate relatives) made up about 56 percent of all green cards issued to immigrants from Asia.¹⁵ If Diversity Visa winners and refugees and asylees are included, about 66 percent of immigrants from Asia fall within this category.¹⁶

While USCIS has taken good steps in translating certain supporting materials (for example, the translations of the “10 Steps to Naturalization” brochure)¹⁷ these materials run into an immediate issue. Those materials include a good amount of information, but then direct individuals to refer to other forms and instructions only available in English.¹⁸ This incomplete consideration of the needs of USCIS’s clients may be why some non-profit organizations haven taken on the expense of translation of certain forms (including Form N-400) to help individuals with LEP understand the form and its contents.¹⁹

As to ICE, the primary modes of interaction between ICE and our communities are arrest, detention, and deportation. These practices have caused enormous harm to our communities. As the Defund Hate coalition has noted, ICE’s detention has included widespread abuse, including medical neglect, sexual abuse, torture and inhumane treatment, scarcity of basic necessities,

¹² English proficiency is not a requirement for many immigration benefits. And while English proficiency is a requirement for some immigrants looking to naturalize, many immigrants are exempt based on age or disability.

¹³ DHS’s own statistics show that immigrants from Asia make up a significant proportion of all legal immigration to the U.S. <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration>.

¹⁴ ACS 1-Year Estimates Public Use Microdata Sample (2021).

¹⁵ Department of Homeland Security, Office of Immigration Statistics, 2020 Yearbook of Immigration Statistics 27, https://www.dhs.gov/sites/default/files/2022-07/2022_0308_plcy_yearbook_immigration_statistics_fy2020_v2.pdf.

¹⁶ *Id.*

¹⁷ <https://www.uscis.gov/citizenship/learn-about-citizenship/10-steps-to-naturalization>

¹⁸ As one example, see the English Version of the “10 Steps to Naturalization Brochure,” which explicitly states that for further information about naturalization, and applicant should “[r]ead *Form N-400, Instructions for Application for Naturalization* available at [uscis.gov/n-400](https://www.uscis.gov/n-400) to learn more about naturalization and eligibility requirements.” <https://www.uscis.gov/sites/default/files/document/brochures/M-1051.pdf>.

¹⁹ <https://www.ilrc.org/n-400-translations-spanish-other-languages>.

violent retaliation by guards, and death.²⁰ Advancing Justice | AAJC has previously provided testimony to the U.S. Senate Committee on the Judiciary that highlighted the inhumane use of detention centers against Asian immigrants.²¹ In that testimony, we noted the historical criminalization and detention of Asian immigrants and the children of immigrants, including the incarceration of 120,000 Americans of Japanese ancestry during World War II. Given this historical context, and the ongoing harm that immigration enforcement is causing in our communities, we recommended budget cuts to ICE and Customs and Border Patrol. Cultural sensitivity, equity, and language access cannot end the harm inflicted by ICE practices. They can only alleviate some of these harms.

ICE has long used language and lack of English proficiency as a cudgel against immigrant populations. When ICE officers speak other languages, that proficiency is not used to serve our communities, but rather to enhance ICE's enforcement capabilities, often using ruses.²² Other times, ICE has used an individual's lack of English proficiency to trick them into signing away their rights.²³ Advancing Justice | AAJC urges ICE to cease those practices as a minimum first step in improving cultural sensitivity, equity, and language access in their interactions with the AAPI community.

Finally, when it comes to CBP, there is an urgent and ongoing need for greater language access for those seeking to enter the U.S. at the southern border. The process for seeking asylum, which was already complicated, has only become more restrictive and difficult because of the Biden Administration's asylum ban, which Advancing Justice | AAJC opposes alongside over 200 other civil, human rights, and immigrant rights groups.²⁴ The ban *requires* the use of CBP One (a mobile application) to reserve an appointment before entering at a Port of Entry.²⁵ However, the app is currently only available in English, Spanish, and Haitian Creole,²⁶ which poses serious barriers to access for those who do not speak those languages. Over the past few months, there has been an increase in the number of Chinese migrants at the southern border, for example.²⁷

²⁰ DEFUND HATE, BEYOND THE ENFORCEMENT PARADIGM: A VISION FOR A TRANSFORMATIVE BUDGET FOR U.S. IMMIGRATION 10 (2022), https://defundhate.org/wp-content/uploads/2022/05/DH-Beyond-the-Enforcement-Paradigm_2022.pdf.

²¹ <https://www.advancingjustice-aajc.org/publication/senate-testimony-examining-best-practices-incarceration-and-detention-during-covid-19>.

²² See, e.g., Felipe De La Hoz, *The ICE Ruse: How Agents Impersonate Local Law Enforcement and Lie to Make Arrests*, Documented, June 18, 2018, <https://documentedny.com/2018/06/18/the-ice-ruse-how-agents-impersonate-local-law-enforcement-and-lie-to-make-arrests/> (last visited Nov 30, 2022) (noting that ICE agents called an individual in Spanish, posing as that individual's probation officer).

²³ ERICA BRYANT, VERA INSTITUTE, SEEKING HELP, INSTEAD IMPRISONED-UNTIL THEY FOUND REPRESENTATION (2022), <https://www.vera.org/news/seeking-help-instead-imprisoned-until-they-found-representation> (last visited Nov 30, 2022).

²⁴ AMNESTY INTERNATIONAL, USA: MANDATORY USE OF CBP ONE APPLICATION VIOLATES THE RIGHT TO SEEK ASYLUM 4-5 (2023), <https://www.amnesty.org/en/documents/amr51/6754/2023/en/>; Letter to President Biden Opposing Asylum Ban, <https://www.advancingjustice-aajc.org/publication/letter-president-biden-opposing-asylum-ban>.

²⁵ *Id.* at 5.

²⁶ U.S. Customs and Border Protection, "CBP One™ Mobile Application", <https://www.cbp.gov/about/mobile-apps-directory/cbpone> (last visited June 30, 2022).

²⁷ Han Chen, Stef W. Kight, Inside the boom in Chinese migrants at the Southern Border, Axios <https://www.axios.com/2023/03/29/uptick-chinese-migrants-southern-border> (last visited Jun 30, 2023).

For these reasons, Advancing Justice | AAJC urges CBP to prioritize the process for asylum-seekers in terms of language services.

In terms of what languages should be prioritized for DHS agencies, the best practice is to consider a set of factors, not to create a static list of languages for translation. DHS and its sub-departments (including USCIS, ICE, and CBP) should consider factors such as the population size, LEP rate, and whether a particular language community has been historically underserved or disproportionately impacted. This list will change over time as these factors change.

We thank the Commission for the opportunity to write written comments ahead of the upcoming meeting of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders. Advancing Justice | AAJC has provided the above recommendations in response to the questions raised by the Commission's Language Access Subcommittee and Immigration and Citizenship Status Subcommittee with the goal of supporting the Commission's critical work in developing recommendations on ways to advance equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander Communities.

We look forward to the continued work with the Commission throughout the coming years. For further information please contact Marita Etcubanez, Vice President of Strategic Initiatives (metcubanez@advancingjustice-aaajc.org), Martin Kim, Director of Immigration Advocacy (mkim@advancingjustice-aaajc.org), and Terry Ao Minnis, Vice President of Census and Voting Programs (tminnis@advancingjustice-aaajc.org) and Kimberly Probolus, Director of Research (kprobolus@advancingjustice-aaajc.org).

Sincerely,

Asian Americans Advancing Justice | AAJC