

**BEFORE THE UNITED STATES DEPARTMENT OF LABOR
CIVIL RIGHTS CENTER**

Hispanic Liaison of Chatham County,)	
Complainant)	
)	
v.)	Complaint Under Title VI
)	of the Civil Rights Act of 1964
The North Carolina Department of)	
Commerce, Division of)	
Employment Security,)	
Respondent)	
)	

I. Introduction

1. The Hispanic Liaison of Chatham County/El Vinculo Hispano (“the Liaison”) is a non-profit organization serving the Hispanic communities of Chatham, Lee, Alamance, and Randolph counties. Many, if not most, of the Liaison’s clients speak Spanish as a first language, and most do not speak English with sufficient fluency to be able to navigate the unemployment process in English. The Liaison brings this complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (West), against the North Carolina Department of Commerce, Division of Employment Security (DES) because DES has used criteria and methods of administration of its unemployment insurance programs that restrict and disadvantage Limited English Proficient (LEP) persons from receiving services and benefits.

2. DES’s failure to provide LEP North Carolinians—the large majority of whom are Mexican—meaningful access to its federally funded services violates Title VI’s prohibitions on national origin-based discrimination. *See Lau v. Nichols*, 414 U.S. 563, 568 (1974), *abrogation recognized by Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *see also Jones v. Gusman*, 296 F.R.D. 416, 454 (E.D. La. 2013) (“[L]ongstanding case law, federal regulations and agency interpretation of those regulations hold language-based discrimination constitutes a form of

national origin discrimination under Title VI.”) (citation and internal quotation marks omitted); *Asian Am. Bus. Grp. v. City of Pomona*, 716 F. Supp. 1328, 1330 (C.D. Cal. 1989) (“A person’s primary language is an important part of and flows from his/her national origin.”).

3. Specifically, DES has utilized criteria or methods of administration which have the effect of subjecting LEP persons to discrimination and to defeating or substantially impairing the accomplishment of the objectives of the unemployment insurance programs for LEP persons. Among other things, in violation of Title VI of the Civil Rights Act of 1964 (Title VI) and the policy guidance promulgated by the Secretary of Labor at 68 F.R. 32290 (May 29, 2003) (Secretary's guidance), DES has:

- a) failed to provide a mechanism for LEP applicants to identify their primary language spoken at the initiation of the claim;
- b) failed to translate its online system that is used for applying for benefits, completing the dynamic fact-finding process, maintaining work history information, submitting weekly certifications of work searches, requesting an alternate base period, requesting backdating of a claim, accessing documents related to claims and appeals, filing appeals, and more;
- c) failed to provide full written translations of certain vital documents to LEP applicants in their own language, including, but not limited to:
 - initial monetary wage determinations;
 - separation from work determinations;
 - determinations related to ongoing eligibility;

- overpayment notices;
- employer's statement; and
- appeals decisions.

- d) instituted processes that require LEP applicants to use the DES telephone line to access language assistance, where those processes result in significant delays in LEP applicants' ability to apply for benefits, make weekly certifications, receive vital documents translated into their language, and request a hearing;
- e) failed to provide the same options to LEP claimants through its automated telephone system as it provides to English speaking claimants; and
- f) failed to train its call center on how to identify and offer language assistance to LEP applicants and claimants.

4. DES was previously the subject of a Title VI complaint and investigation involving similar allegations. DES initially made changes to its policies and procedures; however, it failed to ensure that it continued to provide adequate language access to LEP individuals after its transition to a new online portal and the outsourcing of its call center. More recently, advocates have made detailed suggestions and offered assistance for implementing policies and procedures to ensure DES complies with its obligations under Title VI, to little effect. While DES has applied for funding that could be used to improve language access, it has not secured such funding to date. Even if such funding were obtained, it is not clear that all the issues raised in this complaint would be addressed. DES has, by its actions and inaction, discouraged LEP applicants from using its services and discriminated against them. As a result, the complainant submits this complaint to the Office of Civil Rights.

II. Limited English Proficient (LEP) Persons in North Carolina

5. According to the most recent U.S. Census Bureau American Community Survey estimates¹ for 2020, more than 1,155,636 persons, or 11.8% of all North Carolinians over the age of five, speak a language other than English at home.²

6. As of 2020, nearly 434,577, or 4.4% of North Carolina's total population over the age of five, not only spoke a language other than English at home, but would also be categorized as LEP, in that they speak English less than "very well."³ As of the filing of this Complaint, the relevant LEP population in North Carolina is almost certainly larger than noted by the 2020 data. Many of these 434,577 or more North Carolinians who are LEP adults have attempted or need to access services provided by the DES and need language assistance to do so. The majority of the state's LEP population, or at least approximately 299,813 people, are of Mexican national origin.⁴

7. Underlying this growth in the LEP population whose primary language is Spanish is the growth of the Latinx⁵ population in North Carolina overall. As of 2020, 991,051 Hispanic and Latinx people resided in North Carolina,⁶ an increase of 40% since 2010.⁷ According to 2020 U.S.

¹ While Complainant necessarily relies on U.S. Census figures, the 2022 Census vastly undercounted minority communities like the LEP speaking populations affected here, including an estimated 5% undercount of Latinos. See U.S. Census Bureau, *Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census* (March 10, 2022), available at

<https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html#:~:text=National%20Coverage%20Results,not%20statistically%20different%20from%20zero; U.S. Census Produced a Huge Undercount of Latino population in 2020>, available at

<https://www.theguardian.com/us-news/2022/mar/10/us-2020-census-huge-undercount-latino-population>.

Thus, demographic estimates cited in this complaint reflect an artificially lower population of individuals affected by the state's failure to provide necessary language access services.

² U.S. Census Bureau, American Community Survey: [DP02: Census Bureau Table](#), accessed June 6, 2022.

³ *Id.*

⁴ *Id.* The next most populous categories of LEP individuals are people of: Indian national origin (25,411)—with Gujarati speakers as the largest LEP subgroup; Chinese national origin (16,473); and Vietnamese national origin (15,562). See Migration Policy Institute, *State Immigration Data Profiles: North Carolina*, www.migrationpolicy.org/data/state-profiles/state/language/NC, accessed June 6, 2022.

⁵ In many contexts, the demographic group formerly referred to as "Hispanic" is now referred to as "Latino" or by the gender-neutral term "Latinx." In this Complaint, we use the terms Hispanic and Latinx interchangeably.

⁶ U.S. Census Bureau American Community Survey: [DP02: Census Bureau Table](#), accessed June 6, 2022.

⁷ Tippett, Rebecca. [North Carolina's Hispanic Community: 2021 Snapshot | Carolina Demography \(ncdemography.org\)](http://ncdemography.org) Accessed June 6, 2022.

Census figures, Hispanic and Latinx individuals comprise 9.5% of the state’s population.⁸ Additionally, North Carolina’s Asian population has grown 65% since 2010,⁹ and now comprises 3.6% of all North Carolinians.¹⁰

8. Available data shows at least six counties in North Carolina where more than 5% of persons over age five speak English less than “very well”: Durham (11.2%), Mecklenburg (12.3%), Forsyth (8.6%), Wake (10.8%), Orange (7.4%), and Guilford (8.7%).¹¹ In addition, some more rural counties—particularly those with large populations of farmworkers and food processing workers, such as Duplin and Sampson counties—have proportionately large LEP populations, as suggested by data from the U.S. Census Bureau and the North Carolina Department of Agriculture and Consumer Services.¹²

III. Complainant Hispanic Liaison of Chatham County/El Vinculo Hispano

9. The Liaison is a non-profit organization founded in 1995 to serve the needs of the Hispanic community and facilitate access to services and resources. The Liaison has assisted thousands of adults, youth, and children with adjusting to life in the U.S., accessing services, and affirming their rights. June 27, 2022 Declaration of Ilana Dubester (“Dubester Dec.,” attached) ¶¶

2. They service the Rural Central Piedmont area of North Carolina, including Chatham, Alamance, Randolph, and Lee counties. *Id.*

⁸ U.S. Census Bureau American Community Survey: [DP02: Census Bureau Table](#), accessed June 6, 2022.

⁹ Tippett, Rebecca. [First look at 2020 Census for North Carolina | Carolina Demography \(ncdemography.org\)](#). Accessed June 6, 2022.

¹⁰ U.S. Census Bureau American Community Survey: [DP02: Census Bureau Table](#), accessed June 6, 2022.

¹¹ See U.S. Census Bureau, 2010 American Community Survey 1-Year Estimates, Selected Social Characteristics in the United States, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_DP02&prodType=table (accessed May 11, 2012).

¹² See N.C. Dep’t of Agric. and Consumer Servs. and U.S. Dep’t of Agriculture, 2021 North Carolina Agricultural Statistics, County Summaries (2021). https://www.nass.usda.gov/Statistics_by_State/North_Carolina/Publications/Annual_Statistical_Bulletin/AgStat/Section06.pdf (accessed June 29, 2022). See also U.S. Census Bureau, People that Speak English Less Than “Very Well” in the United States data visualization by county (2020).

10. Before the COVID-19 pandemic, staff at the Liaison assisted approximately one to two people with the intake process for unemployment benefits or weekly certifications each year. Dubester Dec. ¶ 3. The Liaison staff would show those clients how to access DES's Spanish-speaking telephone line. *Id.* When the pandemic started in 2020, demand for assistance with unemployment benefits increased dramatically. Dubester Dec. ¶ 4. Because claims and weekly certifications in any language other than English cannot be filed through the DES online system, the number of clients who needed the Liaison's help increased to about 10 to 18 per week as the pandemic continued. Dubester Dec. ¶ 6. Those clients returned every week for help. *Id.* In addition to assisting clients with completing the online process of filing for benefits and weekly certifications, the Liaison staff interpreted and explained the contents of letters and notices that only came in English, even though clients notified DES that Spanish was their language of choice. Dubester Dec. ¶ 5-6.

11. The Liaison staff assisted clients with navigating the English online process rather than using the telephone system because of the lengthy wait time for phone assistance during the pandemic. Dubester Dec. ¶ 8. When clients select the Spanish option during phone calls, the call typically reroutes to an English-speaking representative. Dubester Dec. ¶ 7. On one occasion, the DES representative gave a client a number for a contracted company that provides translation services to set up an appointment. Dubester Dec. ¶ 8. Translation services were only readily available for two clients' initial calls. Dubester Dec. ¶ 7.

12. When clients are finally able to speak to a Spanish interpreter, clients often experienced confusion as to what they were being asked since translations by the interpreter were not always accurate. Dubester Dec. ¶ 9. Interpreters often provided very literal translations of words which resulted in miscommunication, when they should have been providing meaningful interpretation

that conveys the purpose of the question. *Id.* This caused intakes or weekly certifications to be denied or delayed. *Id.*

13. During one call, a Liaison client said in Spanish, “I was laid off.” Dubester Dec. ¶ 10. The interpreter incorrectly translated this to, “I was fired.” *Id.* When a Liaison staff member intervened to correct the mistake, the interpreter changed it to, “I was rested from my job.” *Id.* These errors caused confusion and miscommunication between the DES representative and the client, and could have led to a claim denial if Liaison staff had not intervened. *Id.*

14. Additionally, the Liaison clients experienced a lot of difficulty with weekly certifications because they are expected to complete them online in English. Dubester Dec. ¶ 12. The Liaison staff helps clients with their weekly certifications by translating the online questions approximately twice a week. *Id.* When the Liaison staff tried to help clients complete weekly certifications by phone, the weekly certifications phone line often disconnects, gives a busy signal, or rings endlessly due to high demand of services. *Id.*

IV. Past History of Non-Compliance

15. In 2016, the U.S. Department of Labor (USDOL) conducted a compliance review of the DES and the Division of Workforce Services (DWS) and found that DES and DWS were not in compliance with their obligations under Title VI.

16. USDOL, DES, and DWS entered into a settlement agreement on September 22, 2016, CRC Case no. 13 NC-012, which required DES and DWS to take a number of steps, including:

- assessment of the language needs of the LEP populations they serve, to include a plan for adequately tracking and reporting future encounters with LEP individuals;
- development and implementation of a language access plan;

- correction of deficiencies in translation of written materials, including translation of web pages and online filing systems;
- correction of deficiencies with the provision of interpretation services to LEP individuals;
- providing training for all staff on language access obligations;
- publicizing the availability of language assistance; and
- notifying LEP individuals of the right to file claims of delay and/or denial of services because of language access issues.

17. In compliance with the settlement agreement, DES and the Division of Workforce Solutions created a Limited English Proficiency Plan). That plan instituted a system for identifying the preferred language for LEP persons, provided for the translation of vital documents, designated certain people as Language Access Coordinators and set up a Language Access Work Group to meet quarterly, and required DES and DWS to regularly assess the efficacy of the procedures outlined in the plan (including an annual review).

V. Respondent is Violating Title VI and Secretary's Guidance

18. In September 2018, DES began using a new integrated web-based system for processing online unemployment claims. Along with South Carolina and Georgia, DES received grant funding from USDOL to replace the decades-old legacy system. The new system, known as the Southeast Consortium for Unemployment Benefits Integration (“SCUBI”), is intended to be the primary mechanism by which UI claimants file claims, make weekly certifications, receive correspondence from DES, and file appeals. Employers also used the SCUBI system to submit documents or appeals.

19. The SCUBI system was meant to improve efficiency within the state agencies by creating an enhanced electronic workflow and facilitating quick implementation of new unemployment benefits programs.¹³ Technical vendors were selected as early as 2013 Capgemini Government Solutions LLC announced its \$60 million contract to launch its Acuity Unemployment Insurance Benefits portal with North Carolina, South Carolina, and Georgia unemployment insurance agencies in December 2013.¹⁴

20. DES anticipated and provided for the launch of SCUBI in its Language Access Plan (“Plan”). The Plan called for implementation of fully online translations within a year after SCUBI went live. The Plan stated, “After system implementation, we begin work with the vendors on how to provide instant translation of the Spanish language within the SCUBI system, just like NCWORKS Online ... [W]e are immediately implementing translations of screenshots of SCUBI and NCWORKS in the top four languages as an alternative to instant translation.” North Carolina Department of Commerce, Division of Employment Security & Division of Workforce Solutions Limited English Proficiency Plan, Page 13.

21. Despite planning for a transition to at least a bilingual version of SCUBI within a year, more than three years after launching the SCUBI system in 2018, DES still has not translated SCUBI into any additional languages.

22. Unemployment claimants are expected to file initial claims through the online SCUBI system and continue using the Self-Service online portal to file weekly certifications, manage their

¹³ North Carolina Department of Commerce Division of Employment Security, *SCUBI Program Review*, April 5, 2018, available at [https://www.ncleg.gov/DocumentSites/committees/JLOCIT/04-05-2018/JLOC%20IT%20\(SCUBI%20Presentation\)%20April%205%202018%20v1.pdf](https://www.ncleg.gov/DocumentSites/committees/JLOCIT/04-05-2018/JLOC%20IT%20(SCUBI%20Presentation)%20April%205%202018%20v1.pdf).

¹⁴ Capgemini Group, Press Release: *Capgemini Selected by the Southeast Consortium in the US to Implement a single Unemployment Insurance Benefit System across Three States: South Carolina, North Carolina Division and Georgia*, December 19, 2013, available at https://www.capgemini.com/us-en/wp-content/uploads/sites/4/2017/08/12_19_pr_scubi_0.pdf.

claims, and communicate with DES staff. However, it is only possible to file an initial claim and weekly certifications through the online system in English.

23. Because the online system is not accessible to LEP persons for filing initial claims or weekly certifications, these individuals must use DES's telephone system. Since around the beginning of the pandemic in March 2020, DES worked with Amazon, the NC Department of Information Technology, and contractor Maximus to open a new outsourced call center staffed by 1,800 new agents.¹⁵ DES did not provide that call center with information about the need for language access, nor did it provide them with a copy of the DES language access plan. During at least the early part of the COVID-19 pandemic, the wait times for the call center were extremely long.

24. When DES began contracting with the private call center, the telephone menu options were changed and stopped including prompts for languages other than English. All LEP callers were required to communicate with DES's call center in English to receive services. In February 2021, DES indicated it was working to put prompts in place in five languages (Spanish, Mandarin Chinese, Vietnamese, and French) so a caller could reach an agent who could then connect the caller with an interpreter. At this time, it appears that speakers of Spanish, Mandarin Chinese, and French can access an automated telephone system to access some types of information and assistance.

25. Even after the telephone menu issue was partially addressed, barriers to LEP access to the telephone system remain. There is no separate phone number for non-English speakers. When calling the main number (1-888-727-0259), Spanish speakers may press 2 for Spanish and listen to a message about how to access a translation of a vital document they have received in the mail

¹⁵ NC Department of Commerce Division of Employment Security, *Biennial Report 2018-2020*, p. 31, available at https://files.nc.gov/des/documents/files/2018_2020biennial_master_ev_color_jan8.pdf.

by going to the website (the website address is spelled out in English), indicating their language, and searching for the number of the document they received in the mail. Mandarin speakers go through an identical process, with the additional issue that the end of the website address is not spelled out letter by letter.

26. If the caller is not calling seeking a translation of a mailed document, they are given the option to wait through the regular phone queue and then request to speak with an interpreter. If an interpreter is not available, someone will have to call the LEP person back—which of course may not be at a time when the person is available to answer. Callers waiting to speak with an interpreter are only given the option to choose between two options for assistance: filing a new claim or making a weekly certification. English speakers—but not LEP individuals—using the phone system are given additional options of checking the status of their claim or filing an appeal.

27. The telephone system is only available between the hours of 8:00 AM and 5:00 PM, Monday through Friday, whereas English speakers can access the online system 24 hours a day, seven days a week, to file a claim or make their weekly certification.

28. For at least the past several years, DES no longer operates local field offices where claimants can access in-person assistance, so LEP persons are solely reliant on the telephone system to receive services and information in their primary language. As set forth in the declaration of Ilana Dubester attached to this complaint, this system has been riddled with severe delays and variations in the completeness, reliability, and quality of interpretation services offered. Dubester Dec. ¶¶ 9-11.

29. Since at least the implementation of the SCUBI system, LEP individuals are mailed vital documents only in English. The only way an LEP claimant can access a vital document in another language is by logging into the online system and clicking on the document. Even

following this procedure only yields the template document translated into the appropriate language. Specific information pertaining to the claimant is not translated, such as the specific reason for the denial of benefits to that individual. In order to receive a full translation of the specific language in the notice, the LEP individual must call the phone line and wait for an available interpreter, who can then provide an oral interpretation of the personalized notice.

30. In some instances, the vital documents that can be accessed through the online system are translated through an unreliable online translator like Google Translate, rather than by a trained translator. *Cf. United States v. Ramirez-Mendoza*, No. 4:20-CR-00107, 2021 WL 4502266, at *6 (M.D. Pa. Oct. 1, 2021) (“Google Translate is a useful tool with an alarming capacity for miscommunication and error.”). The DES website in fact includes a disclaimer¹⁶ regarding the use of Google Translate:

The Department of Commerce, Division of Employment Security, and Division of Workforce Solutions websites provide a “Google Translate” option to assist you in reading the Division's website in languages other than English. Google Translate cannot translate all types of documents and may result in an inaccurate translation. Anyone who relies on information obtained by Google Translate does so at their own risk. The agency does not promise, guarantee or warrant the accuracy or correctness of the translations provided. The agency, its offices, employees and/or agents shall not be held liable for damages or losses of any kind, arising out of or related to the use and interpretation of such information, or for damages incurred by reading.

31. When a claimant is approved for benefits and selects to receive those benefits via a debit card, the debit card fee schedule is only available in English.

VI. Efforts to Obtain Compliance Before Filing This Complaint

32. Dating back to at least early 2021, a group of legal services attorneys in North Carolina contacted DES on numerous occasions in an attempt to reach an agency-wide solution with the

¹⁶ N.C. Dep’t of Com. Employment Sec., Terms, [DES: Terms \(nc.gov\)](#) (accessed June 7, 2022).

Respondent. The agency appears to have focused its efforts on an application for funding from USDOL, which would provide resources that could be used to address some of the issues raised above. Unfortunately, as of the date of this complaint, the Department has not been awarded a grant, and the issues have not been resolved.

33. On March 8, 2021, attorneys from the North Carolina Justice Center, Legal Aid of North Carolina, and the Charlotte Center for Legal Advocacy wrote to DES to share their concerns about language access problems at DES and to request a meeting (all correspondence is attached as Exhibit 1).

34. The organizations met with DES on April 22, 2021. Following that meeting, at DES's request, on April 30, 2021, they provided a detailed list of language access issues.

35. DES General Counsel R. Glen Peterson responded to the April 30 letter by email on June 4, 2021. In that email, he acknowledged many of the concerns. He admitted that "[I]t is true that the online system is only available in English, thus making it difficult for LEP individuals to utilize it to file claims or make weekly certifications."

36. The organizations and DES continued to correspond and to meet periodically. DES did make some improvements to the telephone menu. DES did not provide a timeline for the other changes it promised to the online or telephone systems. It also did not commit to developing a more robust telephone system for LEP individuals until the online system could be made fully functional in languages other than English, nor to mailing vital documents (which have already been translated) to LEP individuals in the language they designate.

37. DES appears to indicate in correspondence dated October 7, 2021 that it is relying on a favorable decision on its grant application in order to create an automated telephone system for

LEP persons to file initial claims and weekly certifications and to send vital documents by mail in the correct language.

VI. Requested Relief

Complainant respectfully requests that the Office of Civil Rights require the Respondent to:

1. Conduct a new assessment of the language needs of the LEP populations they serve;
2. Based on the results of the assessments, update its Language Access Plan;
3. Develop and implement a process by which all claimants identify their primary language in their first interaction with DES;
4. Mail personalized, translated vital documents in the language identified by the claimant as their primary language during their first encounter with DES;
5. Translate the online portal into the identified high frequency languages so that speakers of those languages can file claims, make weekly certifications, and perform the same functions as English speakers using the online portal;
6. Immediately implement a statewide 800 number, with sufficient roll-over capacity, staffed by Spanish-speaking DES staff, to assist Spanish-speaking applicants to access DES's services, including filing applications for Unemployment Insurance, reporting work searches, and appealing UI determinations;
7. Train all outsourced providers of DES services on language access and the updated Language Access Plan.

This, the 29th day of June, 2022.

Respectfully submitted,

/s/ Carol L. Brooke

Carol L. Brooke
Carlene McNulty
Sarah Laws
North Carolina Justice Center
P.O. Box 28068
Raleigh, NC 27611
(919) 856-2144
carol@ncjustice.org
carlene@ncjustice.org
sarahl@ncjustice.org

/s/ Michele Delgado

Michele Delgado
Kristi Graunke
ACLU of North Carolina
Legal Foundation
P.O. Box 28004
Raleigh, NC 27611-8004
(919) 256-5891
mdelgado@acluofnc.org
kgraunke@acluofnc.org

/s/ Meghan Lucas

Meghan Lucas
Karen Fisher Moskowitz
Charlotte Center for Legal Advocacy
PO Box 25558
Charlotte, NC 28229
(980) 265-3231
meghanl@charlottelegaladvocacy.org
karenm@charlottelegaladvocacy.org