



June 11, 2024

*Via electronic submission*

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**Re: Samba Niang (A# [REDACTED])  
Egregious Language Access Violations & Attorney Access Issues  
Related to Complaint No. [REDACTED]-ICE**

Dear Officer Wadhia:

We write to follow up regarding Samba Niang (A# [REDACTED]), who is a Mauritanian asylum seeker and rare language speaker whose treatment both in ICE detention and throughout his immigration proceedings has threatened his ability to access to the “full and fair” process to which he is entitled under both the Constitution and the immigration statute. Both the American Civil Liberties Union (“ACLU”) and Nationalities Service Center (“NSC”) have been in contact with the Department of Homeland Security (“DHS”) Office for Civil Rights and Civil Liberties (“CRCL”) regarding Mr. Niang’s case and previously requested a non-judicial stay/z-hold during the time his removal became imminent.<sup>1</sup>

On March 18, 2024, CRCL sent a letter to Nationalities Service Center in response to information shared by email on January 26, 2024.<sup>2</sup> Ex. AA. The letter assigned the complaint

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<sup>1</sup> See *infra*, Section I.D. (summarizing the communications between the ACLU, ACLU of Pennsylvania, Nationalities Service Center, and CRCL about the language access issues faced by Mauritanian asylum seekers generally, and Mr. Niang specifically).

<sup>2</sup> The case closure letter references email outreach by Ms. Thompson on January 26, 2024. But as discussed in *infra*, Section I.D., the outreach to CRCL regarding Mr. Niang began prior to January 26 and continued after that date. Also, until the March 18, 2024 letter, it was not clear whether Mr.

[REDACTED]-ICE and indicated that CRCL would be closing the case after conducting an investigation. Because the undersigned counsel have both new and more robust information regarding the numerous rights violations Mr. Niang has suffered since his initial detention by immigration officials on July 9, 2023, we write to ask that CRCL either open a new investigation or reopen [REDACTED]-ICE.

Mr. Niang has faced a myriad of language access issues. As a result of the Executive Office for Immigration Review's ("EOIR") failure to consider Mr. Niang's language access needs and DHS's utter lack of language services in detention, Mr. Niang was nearly removed back to a country where he suffered persecution and articulated his fear of future persecution. Mr. Niang fled Mauritania after [REDACTED].

Although Mr. Niang's case has now been reopened before EOIR, he faced egregious language access and access to counsel violations while in custody of U.S. Immigration and Customs Enforcement ("ICE"). ICE repeatedly sought to remove him based on proceedings that violated his civil and constitutional rights, and ICE repeatedly violated the Performance Based National Detention Standards ("PBNDS") and his statutory and regulatory rights during his detention and near-removal.

**Given these repeated violations we respectfully renew the request that DHS Office of Civil Rights and Civil Liberties ("CRCL") thoroughly investigate ICE and DHS's actions that allowed these violations to occur and examine whether other rare language<sup>3</sup> speakers have faced or are facing similar circumstances. We further request that CRCL recommend and put into place safeguards for rare language speakers so that no other rare language speaker experiences the egregious violations suffered by Mr. Niang.**

## **I. FACTUAL BACKGROUND**

### **A. Mr. Niang Fled Mauritania to Seek Asylum in The United States.**

Samba Niang is a native and citizen of Mauritania. He is a Limited English Proficient ("LEP") individual and fluent in only Mauritanian Pulaar. He has never attended formal schooling and cannot read or write in any language. Mr. Niang came to the United States on or about July 9, 2023, to apply for asylum [REDACTED].

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Niang's complaint was under [REDACTED]-24, which is the complaint number issued in response to email outreach by the ACLU of Pennsylvania.

<sup>3</sup> For the purpose of this complaint, "rare language" refers to a language endemic to a discrete geographical or political region or regions, spoken fluently only by a small number of people; a language not widely spoken or encountered in the United States.

[REDACTED]

[REDACTED]

**B. Mr. Niang Arrived to the United States at the Border, But was Not Provided an Interpreter and Was Detained for 41 Days Before Seeing an Immigration Judge**

Seeking protection from the United States, Mr. Niang fled Mauritania and arrived in the United States on or about July 9, 2023. In seeking entry, Mr. Niang attempted to explain his fear to immigration officers at the border. Immigration officials did not provide him with an interpreter, but Mr. Niang was able to convey to the officers that he intended to seek refuge in the United States through another individual traveling with him (who also did not speak English fluently). He was not provided an interpreter to discuss his fear of returning to Mauritania any further. Instead, Mr. Niang was given forms he could not read and which were not explained to him, detained, and taken to Winn County Correctional Facility in Louisiana.

DHS issued him a Notice to Appear (“NTA”) on July 11, 2023, which he could not read, and which placed him into removal proceedings before the immigration court in Oakdale, Louisiana. Though DHS issued Mr. Niang an NTA on July 11, 2023, DHS did not file the NTA with the Immigration Court until 10 days later, on July 21, 2023, during which time Mr. Niang remained detained. After the NTA was filed and removal proceedings were finally initiated, Mr. Niang was provided with several notices of hearing, one addressed to him at Oakdale, Louisiana, ordering him to appear for an in-person hearing August 1, 2023, and then another addressed to him in Winnfield, Louisiana correcting the first. This hearing did not go forward, and instead, on August 1, 2023, DHS issued Mr. Niang yet another hearing notice, ordering him to appear on August 15, 2023. On August 14, this hearing was continued to August 21, 2023.

After being held for 41 days without being presented for a hearing, Mr. Niang was finally produced for a group master calendar hearing before the Immigration Court on August 21, 2023. During those 41 days, no one from ICE or anyone at the detention facility explained anything to him in a language that he understood. Indeed, no one from ICE explained to Mr. Niang why he was being detained, what papers he had received, or even asked him whether he could read the paperwork.

Mr. Niang was not afforded an interpreter at any point until produced for his first hearing before the immigration court.

### C. Despite Federal Obligations, Mr. Niang Was Denied an Opportunity to Seek Asylum.

Mr. Niang has been detained for the entirety of his immigration proceedings. Pursuant to Executive Orders 13166 and 14091, all federal agencies—including EOIR, encompassing immigration courts and the Board of Immigration Appeals (“BIA”), as well as DHS, including U.S. Immigration and Customs Enforcement (“ICE”)—must provide all LEP individuals like Mr. Niang with “meaningful access” to federally conducted activities, programs and operations.<sup>4</sup> These obligations are echoed in the Department of Justice (“DOJ”) and DHS’s language access plans.<sup>5</sup> ICE’s own detention standards require the agency to provide LEP detainees with language assistance, including bilingual staff or professional interpretation and translation services in the law library—and also provide oral interpretation where the detainee is not literate. *See, e.g.*, PBNDS 2011 § 6.3; National Detention Standards (“NDS”) 2019 Forward § 6.3.

Because ICE has routinely failed to comply with these requirements,<sup>6</sup> EOIR Director David Neal issued guidance to immigration judges (“IJs”) on language access in immigration courts in June 2023, underscoring that IJs should grant continuances where LEP noncitizens have made diligent efforts but are unable to access language services, and must take into account the lack of adequate language services at the detention facility, as well as how speakers of certain languages may require more time to find language assistance.<sup>7</sup>

Despite these obligations, prior to the reopening his case, Mr. Niang’s entire removal proceedings before the immigration court consisted of only two hearings, at both of which he proceeded *pro se*. He appeared for his first group master calendar hearing from detention at the Winn Correctional Center in Winnfield, Louisiana on August 21, 2023. Ex. B. Though his NTA was issued on July 11, 2023, DHS failed to file the NTA until July 21, 2023, causing undue delay in the initiation of his proceedings. Mr. Niang was then scheduled for hearings on August 1, 2023, and August 15, 2023, but both hearings were canceled without explanation. He was finally

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<sup>4</sup> Exec. Order No. 13,166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (Aug. 11, 2000); Exec. Order 14,091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 Fed. Reg. 10825 (Feb. 16, 2023).

<sup>5</sup> U.S. Dep’t Justice, Language Access Plan (Aug. 15, 2023), <https://www.justice.gov/d9/2023-08/DOJ-Language-Access-Plan-August-2023.pdf>; U.S. Dep’t Homeland Sec., Language Access Plan (Nov. 2023), [https://www.dhs.gov/sites/default/files/2023-11/23\\_1115\\_dhs\\_updated-language-access-plan.pdf](https://www.dhs.gov/sites/default/files/2023-11/23_1115_dhs_updated-language-access-plan.pdf).

<sup>6</sup> ICE’s failure to comply with its own detention standards, particularly on language access, has been consistently reported. *See* Zefitret Abera Molla, *Improving Language Access in the U.S. Asylum System*, Ctr. Am. Progress (May 25, 2023), <https://www.americanprogress.org/article/improving-language-access-in-the-u-s-asylum-system/>.

<sup>7</sup> Exec. Off. Immigr. Rev., DM 23-02, *Language Access in Immigration Court*, 3-4 (June 6, 2023), <https://www.justice.gov/eoir/book/file/1586686/download> [hereinafter EOIR Memo].

presented for his first master calendar hearing on August 21, 2023. The IJ, appearing via video teleconference from a different location, generally advised the group of their rights. *Id.* The IJ then spoke to Mr. Niang individually for about 10 minutes. *Id.* Mr. Niang affirmed that he spoke only Pulaar. *Id.* When asked if he was afraid of being physically harmed if returned to Mauritania, he stated, via interpreter, “Yeah, I’m afraid to go back. . . . and that’s the reason why I came here, to seek some kind of refugee [sic].” *Id.* He also relayed that he had been harmed several times. *Id.*

Because Mr. Niang expressed a clear fear of return to Mauritania [REDACTED], the IJ provided Mr. Niang with an I-589 (asylum application) form and scheduled him for his next master calendar hearing on September 7, 2023. *Id.* Notably, the IJ did not indicate that September 7 was a strict deadline for submitting the asylum application, nor did he mention any consequences for failing to file the I-589 by that date. *Id.* The IJ did not inform Mr. Niang of any resources he could utilize in detention to aid in filling out his I-589 form in English. The IJ also did not ask Mr. Niang if he could read or write in any language.

Shortly after the Master Calendar hearing, Mr. Niang and another Pulaar-speaking asylum seeker had a custody redetermination (bond) hearing. Both men appeared *pro se*. At the hearing, Mr. Niang explained that his father-in-law’s friend would sponsor him if he were released from detention. Because Mr. Niang cannot read or write, a guard tried to read the address and phone number of his sponsor to the IJ from a piece of paper Mr. Niang carried with him. That guard was unable to make sense of the address so another guard stepped in to help her. They, along with the Pulaar interpreter, determined that the address was written in French; it is unclear whether either guard or the interpreter spoke any French. The IJ asked Mr. Niang a few questions about his relationship to his potential sponsor and determined that Mr. Niang was a flight risk. Mr. Niang noted his disagreement with this decision and the IJ provided him with an appeal packet. The IJ told him he would need to complete the appeal packet in English, and Mr. Niang said, “I don’t know how to do it, and I do not have the means to do that.”<sup>8</sup> The IJ reiterated that Mr. Niang needed to submit the appeal in English and adjourned the hearing shortly thereafter.

In advance of his second hearing on September 7, Mr. Niang made his best effort to fill out the I-589 despite the lack of language services in detention. Ex. A. Because he lacks English proficiency and cannot read or write in any language, he could not understand, read, or fill out the I-589 form by himself. *Id.* Using his limited French, he asked another French-speaking detainee, who also lacked English proficiency but could write in French, to help him complete the I-589. *Id.* Mr. Niang relayed his fear of return [REDACTED]. *Id.* The other detained individual did his best to record Mr. Niang’s oral statement onto the I-589 in French. *Id.* Mr. Niang was never provided access to the law library while in detention, or to any other staff, resources, or individuals to aid him in filling out the application. *Id.* Indeed, he does not know if Winn Correctional Center in Louisiana even has a law library. *Id.* Mr. Niang made his best efforts, while *pro se* and detained, to fill out his application form with partial answers written in French and took that I-589 to his next hearing.

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<sup>8</sup> The digital audio recording or a transcript of this proceeding can be provided upon request.

At his second and final hearing on September 7, 2023—which took place just 17 days (12 business days) after his first—Mr. Niang tried to explain these difficulties to the IJ (a different IJ from the first hearing), showing him the I-589 form that he completed in French. Ex. B. When asked if he had his I-589 application ready to present, Mr. Niang twice informed the IJ that he had not finished the application because he was having a “problem” with translating documents from his native language into English. *Id.* Instead of engaging with Mr. Niang about these language difficulties or asking what resources Mr. Niang could access while *pro se* and detained—as recommended by the recent EOIR language access memo in effect at the time—the IJ swiftly ordered him removed. *Id.* The entire hearing lasted a total of three minutes and 40 seconds. *Id.*

The digital audio recording (“DAR”) of this hearing reveals the IJ’s scant consideration of Mr. Niang’s strong rationale for additional time to complete the I-589 due to the unavailability of translation resources:

IJ: Sir, do you have your asylum application ready to present?  
Mr. Niang: My asylum application is not finished yet. I am still working on it.  
IJ: Why haven’t you finished your application?  
Mr. Niang: I couldn’t find a translator to translate the documents from the language that the application was written in into English. That is the problem right now.  
IJ: Sir, you were told you had to have your application today. You were also told it was your responsibility to have this application.  
Mr. Niang: The only obstacle is I couldn’t find a translator to translate the documents from a foreign language into English. That is the problem.  
IJ: Sir, because you do not have your application drafted today, I am going to deem it abandoned, and you are going to be ordered removed to Mauritania. Do you understand?  
Mr. Niang: I disagree with the decision. I do not want to be deported.  
IJ: Okay, I am going to reserve your right to appeal. You have 30 days to file your appeal before the Board of Immigration Appeals. Your appeal is due on or before October the 10th, 2023. Your appeal must be in writing, and it must be in English. You must pay an appellate fee or seek a waiver of that fee. Do you understand?  
Mr. Niang: Yes, I understand.  
IJ: We will adjourn.

In fact, due to the brevity of the hearing, Mr. Niang did not even understand at the time that he had been ordered removed. Ex. C. He believed that the IJ instructed him to find help and submit something by October 10, 2023. *Id.* Mr. Niang thought that the IJ scheduled him for another hearing on that date, thus allowing him time to obtain language services or an attorney that could help him fill out the I-589. *Id.* Mr. Niang did not understand that the IJ had denied him a continuance to seek resources to aid him in completing the application, had ignored his attempts to explain the difficulties he was having as a rare language speaker in detention who had been given no resources to aid in completing his application, and had ordered him removed for failure to present his asylum application. *Id.*

When October 10, 2023 came and went, and Mr. Niang was not brought before the immigration court, he had no idea how to proceed. *Id.* He did not know he could appeal the IJ's decision because he was not even aware he had been ordered removed. *Id.*

**D. Mr. Niang Diligently Seeks to Reopen His Proceedings, Despite ICE's Interference with Access to Counsel, but He Faces Imminent Deportation.**

Mr. Niang did not realize that he had a final order of removal until December 1, 2023, when, for the first time, he was able to speak to an immigration attorney while detained at Pike County Correctional Facility in Pennsylvania. *Id.* By phone, with the help of a Pulaar interpreter, the attorney was able to explain to him the gravity of his situation. *Id.*

Prior to this time, the circumstances of Mr. Niang's detention – repeated transfers between facilities and the lack of language services to assist him – had made it nearly impossible for him to consult with counsel or understand what had occurred in his proceedings. *Id.* ICE had transferred Mr. Niang at least four times in the space of less than three months – first from Winn Correctional Facility to Moshannon Valley Processing Center (“MVPC”) in Philipsburg, PA, and thereafter to Pike County Correctional Facility (“Pike”) in Hawley, PA, Elizabeth Detention Center in Elizabeth, NJ, and then back to Pike. *Id.* While detained at Pike, Mr. Niang was able to retain immigration counsel.<sup>9</sup> However, barely a few days after retaining counsel in December, Mr. Niang was transferred again, this time to Jena, Louisiana for deportation. Ex. D. After an emergency stay granted by the immigration court halted his deportation, Mr. Niang was transferred at least four more times. Ex. E. On no occasion did ICE explain where it was transferring Mr. Niang, or why, in a language he understood.

Given these transfers and the lack of attorney access at the facilities where he was held, even once Mr. Niang had obtained an attorney, he still had difficulty communicating with counsel. For example, his attorney and others on his legal team had problems scheduling legal telephone calls at Pike. Exs. C, K, BB.<sup>10</sup> Given the need for a rare language interpreter and extreme connectivity issues, counsel could not reliably speak with Mr. Niang over the phone to work on the motion to reopen his proceedings and instead had to arrange to meet with him in person at

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<sup>9</sup> The ACLU and partner organizations identified Mr. Niang and referred him to *pro bono* counsel as part of their work understanding and addressing the language access issues faced by a group of Mauritanians detained at MVPC.

<sup>10</sup> One paralegal with the ACLU described the numerous attempts she and her colleague had to make to even reach facility staff at Pike to schedule a call. *See* Ex. BB, Declaration of Talia Roma (“Jennifer Reyes, another paralegal at IRP, called Pike around 22 times on November 29 and November 30[, 2023] to try to schedule a legal intake [with Mr. Niang]. Even when she was able to set up a call at 4:00 pm on November 29, [2023,] the call kept being dropped due to what seemed to be technical issues. She was able to speak with Mr. Niang for only approximately four minutes . . . .”). This declaration lists numerous additional barriers preventing Mr. Niang's legal team from communicating with him during his detention at Pike.

Pike.<sup>11</sup> *Id.* As a result, counsel drove over three hours to meet with Mr. Niang at Pike on December 5, 2023—only to be informed by ICE officers that he was being imminently moved to Louisiana for deportation. *Id.* ICE ERO knew counsel was traveling to meet with Mr. Niang because counsel had reached out to the facility to request an attorney-client room at Pike that could support use of a phone to dial-in a Pulaar interpreter. Indeed, counsel and ICE officers at the facility had already exchanged several emails that morning confirming the time of the meeting. At no point during this exchange did ICE ERO inform counsel of their plans to move Mr. Niang to Louisiana until Counsel had already arrived at the facility to meet Mr. Niang. *See* Nguyen Declaration, Ex. N.<sup>12</sup> Upon arrival, counsel had to insist on meeting to Mr. Niang, despite ICE officers stating it was not possible because they had already placed him on the bus for transport. After approximately 30 minutes, facility staff at Pike ultimately gave counsel 21 minutes to speak with Mr. Niang, in a public space without confidentiality. Exs. C, K. Pro bono counsel requested a private space to speak with Mr. Niang, but ICE officers denied this request. Instead, a guard from the facility stood by for the entire meeting and Deportation Officer Mike Loesch walked in and out of the meeting area, repeatedly interrupting to tell counsel that the time for meeting Mr. Niang was almost up. Furthermore, security cameras pointed at Mr. Niang and his counsel during this meeting.<sup>13</sup> During this meeting, Mr. Niang’s hands and feet were shackled, making it difficult for him to sign documents. Ex. N.

Despite these substantial obstacles, Mr. Niang timely filed a motion to reopen with the immigration court on December 6, 2023, as well as a motion for an emergency stay of removal.

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<sup>11</sup> Several immigrants’ rights organizations submitted a complaint on telephone and attorney access issues at Pike to CRCL, which is currently subject to investigation. *See* Complaint Regarding Telephone Access and Access to Counsel at the Pike County Correctional Facility (June 20, 2023), <https://www.law.upenn.edu/live/files/12627-complaint-regarding-telephone-access-and-access-to> (hereinafter “Pike Telephone Access Complaint.”).

<sup>12</sup> Attorney Som-Mai Nguyen, one of Mr. Niang’s pro bono counsel, describes the various efforts she and Attorney Lilah Thompson undertook to request an in-person meeting with Mr. Niang, and the numerous contacts they had with ICE in advance of the meeting. Attorney Nguyen describes sending an email to AFOD Joshua Reid the day before the scheduled meeting, and receiving confirmation both from AFOD Reid and SDDO Jason Madrigal the following morning. Ex. N at ¶¶ 14-16; *see also* Ex. K at pp. 7-8 (relevant portion of the email exchange). However, despite this advance notice, “At 11:17 AM [minutes after the attorneys arrived at Pike – in line with the arrival time they had previously confirmed with ICE], Attorney Thompson received a phone call from Officer Madrigal, stating that Mr. Niang was being transferred to Louisiana and may or may not have already left Pike.” Ex. N at ¶ 17. Despite the previous email confirmation from Officer Madrigal from just three hours prior, Office Madrigal later “denied any knowledge about our scheduled meeting with Mr. Niang, stating that no one at ICE, including himself and AFOD Reid, had any notice of our arrival.” *Id.* at ¶ 27.

<sup>13</sup> Counsel asked whether these cameras recorded audio, as well as video. Facility staff stated that they only recorded audio, but given the other ways in which facility staff and ICE failed to provide a confidential setting for a legal meeting, pro bono counsel did not have high confidence in this assurance.



Exs. C, D. The 33-page motion to reopen was submitted along with 447 pages of evidence, including an I-589 form. Ex. C.<sup>14</sup> In the motion, Mr. Niang argued, among other things, that the IJ had abused his discretion in not considering his language access issues and providing Mr. Niang more time to work on his I-589, thus failing to comply with due process and EOIR's directive. *Id.* That directive states, in relevant part:

**In determining reasonable filing deadlines, an immigration judge should consider the noncitizen's proficiency in speaking and writing English. Where a noncitizen lacks English proficiency, the immigration judge should consider the availability of translation services to the noncitizen, including at the detention facility in cases where the noncitizen is detained. Where a noncitizen's preferred language is an Indigenous or rare language, more time may be needed to find language assistance and complete an application than in other cases. This is partly because some Indigenous languages have no written form, potentially complicating the translation process. There will sometimes be reason to extend a filing deadline where a noncitizen has made diligent efforts to prepare documents for filing but where they have been unable to access translation services or the translation process has taken longer than forecast.**<sup>15</sup>

Although the record is clear that Mr. Niang is an asylum seeker [REDACTED], the IJ denied Mr. Niang a reasonable and meaningful opportunity to effectively seek relief. He did not ask Mr. Niang a single question about his language difficulties nor how much additional time Mr. Niang needed to complete his application. Ex. B. There is no indication he considered Mr. Niang's *pro se* detained status or that he was a rare language speaker.

At the same time as *pro bono* counsel filed Mr. Niang's motion to reopen, counsel and colleagues at the ACLU alerted EOIR and CRCL about the language access issues in the immigration courts and within DHS/ICE-ERO at the facilities where Mr. Niang was detained, and asked for assistance in facilitating adequate interpretation and translation assistance. On December 8, 2023, the Immigration Court granted Mr. Niang a stay of removal while his motion to reopen was pending. Ex. E. Following the grant of the stay of removal, counsel alerted ICE-ERO and requested Mr. Niang's transfer back to Pennsylvania, and specifically to MVPC, given the language difficulties and attorney visitation limitations at Pike. ICE-ERO began his transfer back to the Philadelphia Area of Responsibility, but sent Mr. Niang back to Pike.

DHS did not respond to Mr. Niang's motion to reopen, rendering it unopposed. Nevertheless, the IJ denied the motion to reopen on December 14, 2023, in a short decision devoid of substantial reasoning. Ex. F. The decision failed to address most of Mr. Niang's arguments, including his claims based on constitutional due process and the clear violations of EOIR's language-access policy. *Id.* Mr. Niang was deprived of access to his counsel during this entire

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<sup>14</sup> Counsel have attached the motion to reopen to this Complaint, but for the sake of brevity, have not included the 447 pages of evidence. Should CRCL wish to see any of the documents entered into evidence with the motion to reopen, counsel can provide it upon request.

<sup>15</sup> EOIR Memo, *supra* note 7, at 3-4 (emphasis added).

period. During the interval between Mr. Niang's transfer to Louisiana and return to Pike, counsel was unable to locate Mr. Niang and ICE did not disclose where he was being detained. After being informed on Friday, December 8, 2023, that Mr. Niang was being returned to the Philadelphia AOR, counsel diligently attempted to make contact with Mr. Niang at Pike by phone, but was only able to speak to him for two minutes on one occasion before the call dropped. This contact was insufficient for adequate representation, as the interpreter had not been able to connect, and therefore on December 15, 2023, counsel contacted DO Michael Loesch and SDDO Jason Madrigal to explain these difficulties and to request ICE's assistance.

In response to this email, ICE-ERO at Pike informed counsel on December 22, 2023, that Mr. Niang would be transferred to MVPC. During this period, counsel was unable to meaningfully communicate with Mr. Niang, absent a brief two-minute conversation by phone facilitated by Lieutenant Kumburis, a facility staff person at Pike. ICE did not provide any meaningful assistance in ensuring attorney access.

On December 18, 2023, Mr. Niang, through counsel, appealed the IJ's decision to the BIA. Ex. G. Two days later, he also filed an emergency motion for a stay of removal with the BIA.<sup>16</sup> Ex. H. On January 4, 2024, the BIA issued a briefing schedule to address Mr. Niang's appeal of the denial of his motion to reopen, directing the parties to submit briefs by January 25, 2024. Ex. I.

During this time, ICE transferred Mr. Niang from Pike to MVPC on December 22, 2023. ICE then abruptly moved for deportation on January 23, 2024, the same date he had a call scheduled with counsel – and two days before his briefing deadline. This transfer again prevented counsel from communicating with Mr. Niang to discuss his case. Ex. K. When counsel inquired as to where he had been sent, ICE incorrectly and repeatedly informed counsel that it transferred him to Louisiana, when it had in fact sent him to Texas. *Id.* This misinformation obstructed counsel's ability to communicate with Mr. Niang. Furthermore, as counsel contacted ICE to attempt to speak with Mr. Niang. Furthermore, on the morning of his transfer, MVPC AFOD Francis Kemp copied GEO staff on an email to counsel, exposing Mr. Niang's confidential information to individuals for whom it was not intended. *Id.* In addition to violating Mr. Niang's confidentiality by copying GEO staff, AFOD Kemp did not answer any of the questions that counsel asked, despite numerous GEO staff members responding to the email thread and pointing out the questions counsel had posed.

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<sup>16</sup> The BIA Emergency Stay Unit (ESU) only adjudicates stays on an emergency basis when a noncitizen's removal is imminent. *See* U.S. Dep't of Justice, EOIR, Fact Sheet: BIA Emergency Stay Requests (Mar. 2018), <https://www.justice.gov/eoir/page/file/1043831/dl?inline>. Removal is imminent only two or three days prior to the scheduled deportation. Because Mr. Niang's deportation was not considered imminent on December 20, 2023, when the emergency motion to stay was filed with the BIA, the ESU informed Mr. Niang's counsel it would adjudicate the stay when the ICE Field Office responsible for Mr. Niang's removal informed the ESU that deportation was imminent.

As with Mr. Niang’s other transfers, ICE did not explain to him where it was taking him in a language he understood.

Because ICE abruptly moved Mr. Niang in anticipation of his removal just two days before his motion to reopen brief was due, counsel contacted the BIA ESU to inform them of his impending removal before he had even been able to complete his briefing – let alone receive a final adjudication from the BIA. Mr. Niang, through counsel, also supplemented the motion for an emergency stay of removal on January 23, 2024. Less than three days later, on January 26, 2024, a single BIA member, Judge Sirce E. Owen, denied the motion for an emergency stay without addressing the merits of the pending appeal of the motion to reopen. Ex. O. The one-page order denying the stay included boilerplate language and did not substantively engage with the merits of his claims. *Id.* (“After consideration of all information,<sup>17</sup> the Board has concluded that a stay of removal is not warranted.”).

Meanwhile, Mr. Niang filed a brief in support of his BIA appeal on January 25, 2024. DHS did not file a brief by the filing deadline, again rendering Mr. Niang’s request unopposed. Ex. J. Mr. Niang’s appeal to the BIA was predicated on a denial of due process. *Id.* Despite a pending appeal to the BIA that could result in Mr. Niang’s case being reopened in immigration court, this time with *pro bono* counsel and language services—to which Mr. Niang is statutorily and constitutionally entitled—ICE attempted to quickly deport Mr. Niang to a country where he fears serious harm or death, putting him at risk of the precise dangers that these procedures are meant to protect against. During this time, counsel repeatedly informed CRCL of the policy and rights violations Mr. Niang was suffering. *See infra*, Section I.F.

Left in a dangerous legal limbo, Mr. Niang filed an emergency action seeking declaratory, injunctive and mandamus relief. The action asked the Eastern District of Pennsylvania to issue a temporary stay of removal and to direct the BIA to adjudicate his pending Motion to Reopen. *Niang v. Garland et. al.*, 2:24-cv-401 (E.D.PA). On January 28, 2024, the district court entered a Temporary Restraining Order (TRO) Until February 16, 2024. *See Exs. L, M.* A hearing on whether to convert the TRO to a preliminary injunction occurred on Wednesday, February 14, 2024, and the court took the matter under advisement.

Meanwhile, on February 9, 2024, Mr. Niang filed a request for a Form I-246, Application for Stay of Removal, with ICE’s Philadelphia Field Office. Ex. CC. He asked ICE-ERO to stay his removal to prevent irreparable harm as his case is reviewed by the BIA and so that he could participate in a CRCL complaint based on deprivation of language access and access to counsel while in ICE detention. ICE never adjudicated this Stay of Removal.

On February 14, 2024, the BIA *sua sponte* reconsidered its January 26, 2024, denial of a stay of removal, stating that it received new evidence. Ex. DD. The BIA vacated its prior decision and entered an order staying Mr. Niang’s removal pending adjudication of his appeal. *Id.*

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<sup>17</sup> The BIA did not state what information it had reviewed in making its decision and it is unclear whether the agency considered the supplement to the stay submitted on January 23, 2024, or the briefing on the merits of the appeal submitted on January 25, 2024.

Mr. Niang’s counsel then informed the Eastern District of Pennsylvania of the BIA stay, and on February 15, 2024, the court vacated the stay it had imposed, which was set to expire the next day. Ex. EE.

On February 20, 2024, the BIA issued a decision granting Mr. Niang’s appeal and reopening his proceedings. *See* Ex. FF. The decision took notice of the EOIR Memo and its guidance that IJs “must use the powers at their disposal to facilitate access to [translation/interpretation] services.” *Id.* Based on this memo, and “in an abundance of caution,” the BIA sustained the appeal, reopened Mr. Niang’s proceedings, and remanded the matter to the Immigration Court so that Mr. Niang can have an opportunity to file an asylum application. Mr. Niang’s proceedings were remanded to the Immigration Court in Oakdale, Louisiana, and thereafter, venue was changed to the immigration court in Elizabeth, New Jersey, where his proceedings remain pending.

### **E. Lack of Language Access in ICE Detention**

Mr. Niang has faced a systemic lack of language access while detained by ICE. Indeed, to the present day, he has not been afforded language access. His orientations at Winn, MVPC, and Pike were not provided in Pulaar. During the entirety of his detention, when he has required medical or had to interact with facility staff about his basic needs, he has either been forced to communicate with hand gestures or find another detainee to provide basic interpretation. He often needs to work through a chain of individuals in order to convey even basic points to facility staff: he described speaking to a detained man from Guinea who speaks Pulaar, French, and limited English, who can then convey what Mr. Niang says to a Nigerian man who speaks better English.

At no facility where he was detained did he receive a detainee handbook in a language he understood (or, because he is illiterate, have a staff member explain the rules to him in Pulaar via an interpreter).

Furthermore, despite numerous transfers, he was never informed in a language he understood that he could have a free three-minute telephone call upon arrival to a new facility.<sup>18</sup> And, contrary to the conclusions stated in CRCL’s March 18, 2024 closure letter, Ex. AA, he was only offered Pulaar interpretation during his immigration court hearings – never by ICE at any point in his detention. Indeed, as explained above in, Sections I.A. – I.D., ICE failed completely to provide him with language access.

### **F. Summary of Correspondence with CRCL about Mauritanian Asylum Seekers’ Language Access issues and Mr. Niang’s case**

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<sup>18</sup> Mr. Niang recalls that he was handed a telephone following a transfer to Louisiana on or about November 13, 2024, but that the person on the other end was a French interpreter – a language which Mr. Niang only speaks at a basic level – and the French interpreter asked a few questions about his general well-being but did not inform him of his rights or tell him he could make a phone call.

Over the past seven months, the ACLU Immigrants' Rights Project, the ACLU of Pennsylvania, and Nationalities Service Center ("NSC") have repeatedly raised concerns about language access issues facing Mauritanian asylum seekers in ICE detention generally, and Mr. Niang specifically.

On November 15, 2023, Vanessa Stine of the ACLU of Pennsylvania sent an email to Dana Salvano-Dunn, Stephanie Fell, Elena Feroz, and Anna Hinken of CRCL regarding the language access issues faced by a group of approximately 60 Mauritanian asylum seekers who had recently been transferred to MVPC. Ex. P. In this email, the ACLU of Pennsylvania noted that "the vast majority of these detained asylum seekers speak rare languages," including Pulaar (the language spoken by Mr. Niang), Soninke, and Hassaniya. The ACLU of Pennsylvania asked CRCL to request that ICE temporarily halt the removal of this group of Mauritians in order to better understand the significant due process and language access issues they faced.

This email also referenced, and included as an attachment, a letter that a number of civil and immigrants' rights groups<sup>19</sup> sent to DHS Secretary Alejandro Mayorkas, which highlighted issues that Mauritanian asylum seekers faced, including a lack of language access during their Credible Fear Interviews and in detention. Ex. Q. Because of these threats to the asylum seekers' civil rights, the co-signing organizations urged the government to release them on parole immediately, place a temporary stay on the deportation of individuals with removal orders, and dismiss the notices to appear for the asylum seekers still in removal proceedings in order to permit them to affirmatively apply for asylum.

The following week, on November 21, 2023, CRCL followed up with Ms. Stine about her email, assigning it the reference number [REDACTED]-24, and requesting additional information. Ex. S. CRCL wrote, "In order to assist us, please send us the full names of the noncitizens referenced in the correspondence and, if known, their A-number(s)."

On November 27, 2023, Anna Hinken, Senior Policy Advisor for Community Engagement, CRCL, emailed Ms. Stine, requesting a phone call. Ex. T. After speaking with Ms. Hinken and Ms. Fell, Ms. Stine agreed to follow up with CRCL with additional details regarding the language access challenges of the Mauritanian group at MVPC.

On December 5, 2023, My Khanh Ngo of the ACLU Immigrants' Rights Project sent a follow-up email to Anna Hinken, Stephanie Fell, Dana Salvano-Dunn, Elena Feroz, and Kathryn Shepherd of CRCL from Ms. Stine's initial email to CRCL, alerting them to the imminent deportation of Mr. Niang. Ex. U. In this email, Ms. Ngo requested that CRCL intervene in Mr. Niang's urgent situation. Ms. Ngo explained the details outlined above, including that an immigration judge ordered Mr. Niang removed on September 7, 2023, after deeming his asylum application abandoned without considering Mr. Niang's *pro se*, detained, and LEP status, or the lack of language services in detention. Ms. Ngo further wrote that *pro bono* counsel had attempted to speak with Mr. Niang at Pike between November 29 and December 1, 2023, but had been unable

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<sup>19</sup> The organizations that co-signed this letter were the ACLU, Communities United for Status and Protection, Haitian Bridge Alliance, Mauritanian Network for Human Rights in the U.S., Ohio Immigrant Alliance, and UndocuBlack Network.

to reach him telephonically. As a result, his counsel scheduled an in-person meeting – but upon arrival at Pike, was notified of his imminent transfer. Ms. Ngo flagged the due process and access to counsel issues implicated by this situation and asked CRCL to intervene.

Later that same afternoon, Ms. Ngo sent a follow-up email to CRCL with additional information about Mr. Niang’s situation. Ex. V. She explained that ICE ultimately provided counsel with only a 21-minute meeting with Mr. Niang, before transferring him to another facility in preparation for his removal. During this brief meeting, Mr. Niang’s hands and feet were shackled, impeding his ability to sign documents. A facility guard stood by for the entire meeting and interrupted several times during the brief meeting to inform them that their time was limited; no confidential room was provided, despite one being requested. Ms. Ngo explained that because ICE only made Mr. Niang available for a few minutes, at a different time than scheduled, the Pulaar interpreter arranged by counsel could not initially be reached – and counsel had to work to find a last-minute replacement. Despite these difficulties caused by ICE and its contractors, Mr. Niang was able to explain to counsel that he faced [REDACTED]

[REDACTED] He also explained that he cannot read or write in any language, so he sought the assistance of another asylum seeker who filled out his I-589 in French. The immigration judge assigned to Mr. Niang’s case told him that the I-589 was incomplete and ordered him removed in a hearing that lasted only three minutes and 40 seconds. Mr. Niang told his counsel did not understand that he had been ordered removed. Again, based on these facts, Ms. Ngo asked CRCL to intervene given the significant due process violations, access to counsel issues, and language access issues.<sup>20</sup>

Ms. Ngo followed up again the next day, December 6, 2023, sharing with CRCL a copy of Mr. Niang’s motion to reopen and motion for an emergency stay of removal, filed with the Immigration Court. Ex. X. Ms. Ngo then spoke with Ms. Fell on December 7, 2023 about the language access issues, Ms. Fell stated that she had referred Mr. Niang’s situation to the compliance division.

Later that week, on December 8, 2023, Ms. Stine again emailed CRCL, highlighting the language access issues faced by the group of Mauritanian asylum seekers currently detained at MVPC – one of the facilities where Mr. Niang had been detained. Ex. Y. The issues Ms. Stine raised fell into two categories: CFI interpretation issues and lack of language access services at the facility’s law library. On the first issue, Ms. Stine shared the account of one Mauritanian asylum seeker who spoke Arabic and Hassaniya, but was forced to do his CFI in “broken English” (his own words) when interpretation was not provided. Ms. Stine provided a list of six Mauritanian asylum seekers who had been removed after the CFI process and requested that CRCL look into the language in which their CFI was conducted – and if interpretation was provided, whether it was provided in the proper dialect of that language.<sup>21</sup> On the second issue, Ms. Stine explained

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<sup>20</sup> See Nguyen Declaration (attesting to this attorney-access issue), which was provided to Ms. Hinken on January 26, 2024, and is re-attached here as Ex. N.

<sup>21</sup> Based on conversations that the ACLU has had with speakers and interpreters of Hassaniya, Pulaar, and Soninke, the three rare languages spoken by Mauritanian asylum seekers, each

that a Mauritanian asylum seeker who had been detained at MVPC for three months was unaware that the facility even had a law library because he had not been provided with sufficient language access to ask even basic questions about his detention.<sup>22</sup> Another Mauritanian asylum seeker lamented that the law library at MVPC did not provide access to Google Translate, which he had been able to use while detained at another facility.

On January 26, 2024, Lilah Thompson of NSC, Mr. Niang's *pro bono* immigration counsel, emailed Anna Hinken and Stephanie Fell at CRCL regarding Mr. Niang's situation, flagging numerous language access issues she had experienced with DHS. Ex. Z. First, Ms. Thompson reiterated the language access and attorney access issues, which are particularly severe at Pike, where Mr. Niang had been detained when counsel first began representing him on December 1, 2023. She noted that NSC previously submitted a CRCL complaint about telephone access and access to counsel at Pike.<sup>23</sup> In Mr. Niang's case, DHS refused to facilitate phone calls at a scheduled time, which has prevented NSC from scheduling a Pulaar interpreter in advance. Indeed, she explained, DHS never once granted a pre-scheduled phone call with Mr. Niang despite numerous attempts. Furthermore, Officers at Pike have stated that they cannot facilitate phone calls to add an interpreter because the calls would drop. Attempts at in-person meetings also proved near-futile: when Ms. Thompson gave ICE notice that she would meet in-person with Mr. Niang and had arranged for a rare language interpreter to be available by phone within Pike, ICE decided to transfer him the morning of the visit. Ms. Thompson was only able to have a phone call with Mr. Niang and an interpreter upon his transfer to MVPC on December 22, 2023. On this call, Mr. Niang explained that he had never been provided a Pulaar interpreter during his time in detention, meaning that he had not been unable to communicate any health concerns, language access concerns, or attorney access to ICE or GEO – or to understand where or why he was being transferred. Ms. Thompson included several attachments corroborating or expanding on each of these points. Due to these severe concerns, Ms. Thompson requested a Z-hold for Mr. Niang while CRCL investigates the complaint.

On January 30, 2024, Ms. Thompson followed up with Anna Hinken of CRCL to provide an update about Mr. Niang's situation. Ex. *Id.* Ms. Thompson explained that ICE was holding Mr. Niang at Prairieland Detention Center in Alvarado, Texas, rather than in Louisiana, as the agency had previously asserted. Rather than assisting Ms. Thompson in connecting with her client, ICE had provided incorrect information about his location. Ms. Thompson informed CRCL that NSC and the ACLU filed a federal lawsuit to halt Mr. Niang's deportation, and had received a Temporary Restraining Order. However, "Because this order is limited and is only temporary, we request that urgent action continue to be taken in Mr. Niang's case regarding his complaints of language access and attorney access," and that CRCL takes all efforts be made to halt his deportation while it investigates the situation. Ms. Thompson shared some additional concerning language access issues that she learned from Mr. Niang: Over the course of nine transfers while in

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language has regional dialects, and speakers of one dialect do not necessarily understand every word spoken in another dialect.

<sup>22</sup> This account tracks Mr. Niang's experience described above. *See supra*, Section I.B.

<sup>23</sup> *See Pike Telephone Access Complaint, supra* note 11.

ICE detention, not once had ICE ever communicated what was happening to him in Pulaar – or even in French, which Mr. Niang speaks at a basic level. Furthermore, Mr. Niang has been unable to communicate regarding any of his needs, including medical needs, at any facility at which he has been held. Instead, he has had to use hand signals or rely on other Mauritanian asylum seekers who speak some English. Ms. Thompson closed by asking “that urgent action be taken to investigate fully the treatment of Mauritians in detention, like Mr. Niang, and that his deportation be halted until a resolution of these issues is achieved.”

Ms. Thompson sent Ms. Hinken two subsequent emails on February 6, 2024, and February 8, 2024, seeking updates on CRCL’s investigation. Ms. Hinken did not respond to these emails.

On March 18, 2024, CRCL sent Ms. Thompson a letter referencing Complaint No. 008656-24-ICE<sup>24</sup> in regard to Mr. Niang. Ex. AA. In this letter, CRCL stated that it undertook an investigation into the allegations made by Mr. Niang. Based on this review, CRCL wrote, “ICE is aware of Mr. Niang’s language needs and has used a language line interpreter to communicate with him in Pulaar. In addition, CRCL found that ICE ensured that Mr. Niang was able to meet with counsel, and that on February 6, 2024, ICE complied with your request that Mr. Niang be transferred back to the Moshannon Valley Processing Center to be closer to his attorney of record.” Additionally, CRCL found no evidence that ICE’s numerous transfers of Mr. Niang violated policy. Based on these findings, CRCL closed the complaint.

## II. RIGHTS VIOLATIONS

The issues Mr. Niang has faced with language access and access to counsel amount to violations of his constitutional right to due process. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). Mr. Niang’s due process rights have been violated in a number of ways:

First, as Mr. Niang argued both in his motion to reopen and his appeal to the Board of Immigration Appeals, EOIR’s denial of language access to Mr. Niang in his immigration proceedings amounts to a violation of due process. *See* Motion to Reopen, Ex. C, at 10-13; Brief in Support of Appeal, Ex. J, at 10-20. ICE’s removal of Mr. Niang based on these inadequate proceedings would dramatically compound this violation and put his life at risk if he is returned to Mauritania.

Second, while in detention, both ICE and facility staff interfered with Mr. Niang’s ability to meet with his counsel in numerous ways: by failing to permit him to schedule telephonic meetings; by running phone systems at Pike that cannot accommodate the addition of an interpreter; by transferring Mr. Niang on the day he had a pre-arranged in-person meeting with counsel; by failing to notify his attorney of his location after a transfer or incorrectly advising

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<sup>24</sup> None of the correspondence between CRCL and the NSC, ACLU, or ACLU of Pennsylvania includes this complaint number, so Mr. Niang’s counsel is unclear about which specific allegations CRCL investigated, or if it opened multiple inquiries into Mr. Niang’s situation.



counsel of his location; and by allowing a guard and ICE personnel to be present during an in-person meeting with counsel and otherwise violating attorney-client confidentiality. ICE and facility staff's interference with attorney-client interactions deprived Mr. Niang of his ability to mount a full and fair defense against his removal.<sup>25</sup>

Third, the lack of language access both in the law library and in everyday interactions with staff amount to a due process violation. The immigration judge ordered Mr. Niang, an illiterate, detained asylum seeker, to fill out his I-589 in English. However, ICE failed to explain to Mr. Niang that the detention centers at which he was detained even had a law library, let alone explain to Mr. Niang that ICE is supposed to provide translation or interpretation that would permit him to avail himself of the resources it contained. Furthermore, Mr. Niang has been unable to interact with facility staff adequately, including medical staff. He has had to use body language or attempt to speak a few words of French, which he does not speak fluently, in order to meet his basic daily needs, or communicate by having other detained individuals interpret for him.

EOIR's recently issued language access memorandum along with recently issued Executive Orders and DHS's memorandum on language access also make it clear Mr. Niang was not afforded language access in compliance with those memorandums.

EOIR's memorandum affirmed the immigration judge's obligation to ensure that every noncitizen has a "full and fair opportunity to present their case," including where LEP noncitizens require out-of-court document translation.<sup>26</sup> Additionally, Executive Orders 13166 and 14091 require that DHS and its components, including ICE, provide LEP individuals such as Mr. Niang with meaningful access to federally conducted activities, programs and operations; the lack of meaningful access constitutes discrimination on the basis of national origin.<sup>27</sup>

These obligations are echoed in DHS's language access plan ("DHS LAP").<sup>28</sup> The DHS LAP makes clear that it is DHS policy to provide "meaningful access for individuals with limited English proficiency to operations, services, activities, and programs that support each Homeland Security mission area by providing quality language assistance services in a timely manner."<sup>29</sup> The DHS LAP reiterates that "regardless of the frequency or number of contacts with populations speaking a certain language, in matters related to rights, safety, and health, DHS Components must translate corresponding vital documents, or vital information found in the document, into the primary language of a person who is LEP or obtain a qualified interpreter to communicate all of

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<sup>25</sup> Additionally, the First Amendment protects Mr. Niang's counsel's ability to advise and represent Mr. Niang because such activities are modes of expression and association. ICE has interfered with and obstructed Mr. Niang's counsel's ability to engage in these activities.

<sup>26</sup> EOIR Memo, *supra* note 7.

<sup>27</sup> See Exec. Order No. 13,166; Exec. Order 14,091, *supra* note 4.

<sup>28</sup> See DHS Language Access Plan, *supra* note 5.

<sup>29</sup> *Id.* at 5.

the vital information in the document.”<sup>30</sup> Further, in order to comply with the DHS LAP, ICE must review internal language access plans, at minimum, every two years, to include a number of elements, one of which is to “describe steps to ensure that its policies and practices consider the language needs of Indigenous and rare language speakers.”<sup>31</sup>

Prior to the promulgation of the DHS LAP, ICE’s Language Access Plan (“ICE LAP”) laid out similar obligations.<sup>32</sup> The ICE LAP applies to “LEP individuals subject to ICE enforcement actions” and “LEP individuals in ICE custody.”<sup>33</sup> Similar to the DHS LAP, ICE must provide “meaningful access to its programs, services, and activities” to LEP individuals by identifying “LEP individuals in custody for whom language services are not readily available, as well as [at] the points of interaction requiring language services.”<sup>34</sup> Additionally, while an individual is in detention, the ICE LAP also requires that “ERO personnel will use telephonic interpretation for routine conversations with LEP detainees and develop an LEP assessment tool to assess language access procedures as well as the effectiveness of LEP interventions for the detainee.”<sup>35</sup>

Unfortunately, ICE has not provided Mr. Niang with “meaningful access” to “operations, services, activities, and programs” as required by the both the DHS and ICE LAPs. While in ICE custody, Mr. Niang has not been provided with Pulaar interpretation or translation at any point. Though ICE held Mr. Niang for 41 days before he was presented for his first hearing before the immigration court, no one from the facility or ICE took this time to explain the documents Mr. Niang had been given – such as his notice to appear and charging documents – or why his process had been delayed. He was given vital documents only in English and was expected to complete an I-589 in English, as well. Throughout his time at multiple ICE facilities, Mr. Niang was never provided with language assistance or law library resources to help him complete his asylum application. Furthermore, neither ICE nor the IJ ever provided him information in a language he understands on how to obtain legal services or contact his own attorneys. Instead, ICE restricted his ability to pursue his legal claim.

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<sup>30</sup> *Id.* at 6.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> U.S. Immigr. & Customs Enf’t., Language Access Plan (June 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/LanguageAccessPlan.pdf> (hereinafter “ICE LAP 2015”); U.S. Immigr. & Customs Enf’t, ICE Language Access Plan: Supplemental Update Covering Fiscal Years 2019 and 2020 (July 21, 2020), [https://www.dhs.gov/sites/default/files/publications/ice\\_supplemental\\_language\\_access\\_plan\\_07-21-20\\_508.pdf](https://www.dhs.gov/sites/default/files/publications/ice_supplemental_language_access_plan_07-21-20_508.pdf).

<sup>33</sup> ICE LAP 2015 at 3.

<sup>34</sup> *Id.* at 1.

<sup>35</sup> *Id.* at 15.

Compounding these issues is Mr. Niang's inability to gain "meaningful access" to facility and ICE/ERO staff both during key interactions and during routine conversations regarding his rights and conditions of detention. Over the course of multiple transfers, ICE and its contractors never explained to Mr. Niang where he was being sent, or why. Mr. Niang faced a situation that should never have happened to a LEP individual, had ICE and its contractors properly followed the DHS and ICE LAPs.

Under ICE's own detention standards,<sup>36</sup> immigration detention centers are required to provide LEP detainees with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities. Yet, none of the language access services that ICE is supposed to provide have been available to Mr. Niang at any of the facilities where he has been detained. As a result, ICE has violated numerous detention standards, including:

- Standard that requires orientation, which explains facility policies, rules, and procedures, be conducted in a language understood by the person being detained as soon as practicable or ensure the availability of an interpreter for people who do not speak the language(s) used in the orientation video (§ 2.1 (V)(F)).
- Standard that requires the detainee handbook, which further explains detainee's rights, and various rules and procedures about the facility, be translated or interpreted for an LEP individual as soon as practicable (§ 2.1 (V)(G)(3)).
- Standard that requires people who are detained to have access to and ability to interact with key facility staff members and ICE/ERO staff in a language they understand (§ 2.13(V)(A)).
- Standard that requires facility staff provide assistance and access to the law library and relevant legal resources, beyond providing access to a set of English-language law books, to LEP and/or non-literate individuals who seek to pursue a legal claim (§ 6.3(V)(I)(3)).
- Standard which instructs a facility to ensure a person who is detained is informed, in a language they understand, that they are being transferred to another facility and are not being removed (§ 7.4(V)(B)(2)).
- Standard that requires a processing supervisor, post-transfer, to ensure that a detainee is informed promptly that they can notify interested persons of their transfer and are offered a free three minute phone call upon arrival to the new facility (§ 7.4 (V)(F)(2)).

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<sup>36</sup> Immigr. & Customs Enf't, Performance-Based National Detention Standards 2011, Rev. 2016. As described in *infra* Section I.B., Mr. Niang has been transferred a number of times. The vast majority of his time in detention has been at three detention centers: Winn Correctional Facility, Moshannon Valley Processing Center, and Pike County Correctional Facility. All three operate under the PBNDS 2011.

ICE's own detention standards also have requirements regarding attorney-client access. Yet despite these requirements, ICE violated a number of these provisions, including:

- Standard that requires the facility to provide telephone access rules in writing to each detainee in a language they can understand (§ 5.6 (V)(C)).
- Standard that makes clear that people who are detained should be provided with opportunities to communicate effectively with counsel and, where needed, provide assistance to LEP individuals who seek assistance regarding telephone access (§ 5.6 (II)(4 & 10)) and (§ 5.6(V)(D)).
- Standard that requires that a detainee should be able to communicate effectively with legal counsel and that facilities should ensure telephone access procedures foster legal access and confidential communications with attorney (§ 5.6(II)(2)(4–6)).
- Standard that prohibits a facility from limiting an individual's ability to obtain legal representation by restricting the number of calls someone who is detained can make to their attorney or limiting the duration of a legal call (§ 5.6 (V)(F)(1)).
- Standard which requires facilities to permit attorney visitation seven days a week for a minimum of eight hours per day on regular business days, and a minimum of four hours per day on weekends and holidays (§ 5.7 (V)(J)(2) at ¶ 3)) and which permits extended attorney visitation during emergencies (§ 5.7 (V)(J)(2) at ¶ 4)).
- Standard that requires private consultation rooms be available for attorney-client meetings outside of presence of facility staff (§ 5.7 (V)(J)(9)).
- Standard that makes clear that even when someone receives family or friends visitation while in in administrative or disciplinary segregation, detainees should not participate in visitation while in restraints under any circumstances (§ 5.7 (V)(I)(5)).

## **REQUESTS AND CONCLUSION**

Mr. Niang, like many other rare language speakers, was effectively precluded from meaningfully pursuing his asylum claim due to systemic language access barriers in detention. Given this, we request that your office expeditiously take the following actions:

- (1) Fully investigate the unlawful conduct described in this complaint; and
- (2) Take immediate steps to ensure that Mr. Niang and similarly situated rare language speakers, including but not limited to the group of Mauritanian asylum seekers about which the ACLU has been corresponding with CRCL since November 2023, are afforded appropriate language resources enabling their access to law libraries, phone calls, and access to counsel, and to prevent their imminent removal pursuant to IJ decisions that violate their civil rights.

Although Mr. Niang no longer faces imminent deportation as a result of the BIA's decision to reopen his case before an immigration judge, he and his counsel had to expend significant time and resources to secure this decision. During the time that his removal was imminent, ICE interfered with Mr. Niang's access to counsel, ignored clear evidence of violations of his rights that would have made his removal unlawful, failed to provide language access in his detention facility, and failed to explain anything about Mr. Niang's situation to him in a language he understood. CRCL must investigate and account for ICE's repeated violations and attempted violations of his rights and the potential rights violations of the other Mauritanian rare language speakers both currently and formerly in ICE custody – especially those who have already been removed.

To facilitate a full and fair investigation, we request that your office inform us of any interview that is anticipated or arranged in connection with this complaint. Should you need any additional information at this stage, please contact Vanessa Stine at [REDACTED] or [REDACTED], extension [REDACTED], and Lilah Thompson at [REDACTED] or [REDACTED]. Thank you.

Respectfully submitted,

/s/ Vanessa L. Stine

Vanessa L. Stine

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American Civil Liberties Foundation of  
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/s/ Lilah Thompson

Lilah Thompson

*Senior Staff Attorney, PA Immigrant*  
*Family Unity Project (PAIFUP)*  
Nationalities Service Center

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- Ex. D Emergency Motion to Stay Removal to Immigration Court, dated December 6, 2023
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