



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

May 6, 2011

*Washington, D.C. 20531*

VIA CERTIFIED MAIL

Rafael Rivera Cruz  
Auxiliary Secretary of Management  
and Administration  
Puerto Rico Department of Justice  
P.O. Box 9020192  
San Juan, PR 00902-0192

Re: Supplemental Compliance Review Report of Puerto Rico Dep't of Justice  
Docket No. 09-OCR-0482

Dear Mr. Rivera:

On February 9, 2011, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ or Department) issued a compliance review report regarding the Puerto Rico Department of Justice's (PRDOJ) compliance with applicable federal civil rights laws as a State Administering Agency for certain DOJ programs. *See* Puerto Rico Dep't of Justice, No. 09-OCR-0482, Office for Civ. Rts. Compl. Rev. Rep. (U.S. Dep't of Justice Feb. 9, 2011). In the report, the OCR specifically evaluated the PRDOJ's monitoring procedures for ensuring the compliance of subrecipients with these laws, including the PRDOJ's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations or Regulations].

During its compliance review, the OCR conducted onsite visits to Hogar Santísima Trinidad (HST) and Casa de Niños Manuel Fernández Juncos (Casa de Niños), which are faith-based, nonprofit organizations based in Toa Alta and Miramar Santurce, respectively. HST receives \$103,373 from the Bureau of Justice Assistance's Edward Byrne Memorial Justice Assistance Grants (JAG) program, which provides formula funding to states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system. Casa de Niños receives a total of \$139,576 from the JAG program and OJP's Victims of Crime Act (VOCA) program, which supports activities serving crime victims.

As a follow-up to its January 2011 report, the OCR issues the instant Supplemental Compliance Review Report regarding the HST and Casa de Niños programs.<sup>1</sup> Based on its site visits, which

---

<sup>1</sup> In the February 2011 report, the OCR noted that it would issue a supplemental report regarding these programs.

included interviews with subrecipient leadership and program staff representatives, and its review of pertinent program materials, the OCR concludes that neither federally funded program is in compliance with the Department's Equal Treatment Regulations because (1) HST discriminates against prospective program participants based on religion and (2) each program uses federal resources for inherently religious purposes.<sup>2</sup> The PRDOJ should take corrective action to improve its monitoring of HST and Casa de Niños and to ensure that, going forward, these subrecipients use their federal financial assistance in ways that comport with the Regulations' requirements.

## **I. Monitoring Compliance with Faith-Based Regulations**

The Equal Treatment Regulations require State Administering Agencies, like the PRDOJ, to recognize that "religious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible." 28 C.F.R. § 38.2(a). As discussed in the OCR's February 2011 Compliance Review Report, the PRDOJ has taken several measures to include faith-based organizations in the award process for pertinent DOJ grant programs. The Regulations also circumscribe how faith-based subrecipients may use federal financial assistance. Specifically, such subgrantees may not engage in inherently religious activities with federal funds; nor can they discriminate against potential or actual program beneficiaries on the basis of religion or religious belief. *Id.* §§ 38.2(b)(1), (d). In administering their federally funded programs, HST and Casa de Niños are not in substantial compliance with these identified restrictions.

### **A. Overview of HST**

HST, which was founded in 1993 by a group of volunteers sponsored by the Trinitarians, a Roman Catholic religious order, is a residential treatment and rehabilitation center that offers services to twenty-seven male young adults who are affected by drug and/or alcohol abuse. The center primarily provides the following services: (1) temporary housing, (2) meals prepared by a licensed nutritionist, (3) transportation for participants to pertinent appointments, (4) recreation and cultural activities, (5) orientation and counseling, (6) medical and infirmary services,

---

Compl. Rev. Rep. at 8.

<sup>2</sup> Because HST and Casa de Niños receive JAG funds, they are also subject to Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Safe Streets Act), 42 U.S.C. § 3789d(c), which prohibits discrimination on the basis of race, color, national origin, religion, or sex in pertinent federally funded programs or activities. *See also* 28 C.F.R. §§ 42.201-.214. Casa de Niños, as a subrecipient of VOCA funds, is also subject to Section 1407(e) of the Victims of Crime Act of 1984, as amended, 42 U.S.C. § 10604(e), which prohibits discrimination on the basis of race, color, religion, national origin, handicap, or sex in any pertinent federally funded undertaking. In addition to breaching the requirements of the Equal Treatment Regulations, HST and Casa de Niños collectively violate the prohibitions against religious-based discrimination contained in the Safe Streets Act and the Victims of Crime Act.

(7) psychological treatment, (8) academic courses, (9) vocational education, (10) kitchen and storage room facilities, and (11) family support programs. To provide these services and to treat an individual's substance abuse addiction, the program relies on a sixteen-member treatment team that includes medical personnel, addiction specialists, psychologists, social workers, and therapists. The program, as designed, provides services to a client for one year, although the treatment length varies for individual residents.

1. Admission Process for HST Participants

HST receives resident referrals from federal, state, and local criminal justice agencies, as well as local social service agencies. Pursuant to a contract with the U.S. Probation and Pretrial Services System (U.S. Probation), U.S. Probation refers between ten and fourteen federal offenders to the program each month; HST must provide services to these individuals. In contrast to the automatic admission of individuals referred by U.S. Probation, the program has the discretion to evaluate and select individuals who are referred to it through state or local agencies, such as courts and social service entities. During the application process for these potential participants, the program director, who is a priest, interviews the candidates and describes the applicable program rules. According to information received by the OCR during its onsite visit, these interviews do not elicit details about an applicant's religion. Moreover, the program does not make admission decisions based on religion. At the same time, as a condition of entering HST, the beneficiary must agree to participate in inherently religious activities. Under the terms of HST's treatment authorization and acceptance form, each client agrees to participate actively in all activities that are part of the individual's treatment and recovery program, including specific elements that relate to spiritual guidance.

2. Substance Abuse Program

In providing substance abuse services to clients, the subrecipient emphasizes the biological, social, psychological, and spiritual development of each individual. In addition to offering clinical and therapeutic services, HST conducts several religious activities. Program leaders actively encourage clients to participate in these activities in an effort to, as one representative described it, ground the young men spiritually. Several of these activities occur in a chapel on the HST grounds; this sanctuary is separate from the program's other activity spaces, such as its residential buildings. Each morning, according to program representatives, all of the clients go to the chapel to say the Lord's Prayer. Once each week, the program also leads all beneficiaries to the church to attend mass.<sup>3</sup> The program also relies on volunteers, representing different religious denominations, to provide treatment and support group assistance through Alcoholics Anonymous, Narcotics Anonymous, and similar programs. According to HST, these volunteer-

---

<sup>3</sup> A program representative noted to the OCR that he would like to distribute Bibles to the clients; however, he (correctly) recognizes that such a practice would be problematic given the ways in which HST receives and uses federal financial assistance.

sponsored programs focus on spirituality and address issues involving morality and personal growth. Despite the language in the commitment agreement requiring participation in religious aspects of the program, administrators suggest that clients are, in fact, not required to participate in any of the program's religious activities. For instance, if residents wish to abstain from attending a prayer or worship service during those designated meeting times, they can engage in other activities in a gym adjacent to the chapel. According to program administrators, a client's failure to participate in a religious activity does not adversely impact his ability to participate in or complete the program. As a practical matter, however, an HST representative noted that clients usually do not resist participating in religious activities.

### 3. HST Use of DOJ JAG Funds

JAG funds compensate a psychologist, addiction specialist, educational specialist, physician, and nurse who collectively provide various services aimed at addressing resident substance abuse problems. The organization does not appear to make hiring decisions for these positions based on religious considerations. While the organization states that it does not use faith-based criteria in selecting successful employment candidates, it does presume that, at least in the case of the psychologist, the employee will support those program goals that expressly relate to advocacy of religion as a treatment component. When the OCR initially discussed the program with HST personnel during its onsite visit, a representative suggested that the individuals holding JAG-funded positions do not discuss religion with the clients. In later discussions about the program during that same visit, however, a representative noted that the psychologist recommends to clients that they either participate in Alcoholics Anonymous or Narcotics Anonymous meetings or attend church services. According to program representatives, the psychologist also encourages each client to attend church after he completes the program.

## **B. Overview of Casa de Niños**

Casa de Niños, which is administered by the Roman Catholic order of Brothers Tertiary Capuchins, provides shelter services for approximately forty abused and neglected male youth between the ages of eight and twenty-one. The program includes secular and religious personnel, including a director, educators, a social worker, school tutors, a psychologist, and mentors.<sup>4</sup> Clients may stay at the shelter between twenty-four and thirty months.

### 1. Admission Process for Casa de Niños Participants

According to a program administrator, Casa de Niños makes admission decisions based primarily on whether the shelter has space available for a particular youth. Based on other information provided to the OCR during its onsite visit, this explanation appears to be overly

---

<sup>4</sup> The boys in the shelter are divided into three groups based on their age and educational levels. Each group has a mentor who lives with the boys; the children in each group can also seek assistance from a second program mentor.

simplistic. In practice, the subrecipient interviews boys to determine whether they are eligible to participate in the program. During the course of this assessment, the interviewer elicits information about various aspects of an applicant's background, including whether the youth has received Catholic sacraments of initiation. Specifically, the organization's application form includes questions about whether a child was baptized, received first communion, and was confirmed. Despite these questions, according to Casa de Niños, an applicant's religion does not influence the group's decision whether to admit the child into the program. While all of the participants are Christian, many of the youth are non-Catholic.

## 2. Shelter Program

Casa de Niños' shelter program emphasizes a psycho-educative philosophy that the subrecipient calls the Amigonian Psicopedagogical Applied System (APAS). Under APAS, personnel seek to nurture children by emphasizing the following seven core areas of development: self-knowledge, interpersonal relationships, vocational skills, academic achievements, moral aspects, spiritual aspects, and decision-making. Several of the subrecipient's program materials highlight the religious aspects of APAS. In describing the educative function of its program, Casa de Niños states that it is motivated, in part, by "[t]he conception of man as a human being Christian, . . . spiritual and transcendent." Casa de Niños Program Overview 4 (2009). When a client enters the shelter, he receives a handbook that, in describing the program, heavily emphasizes its religious character and content. Throughout the program, personnel "teach children a more spiritual aspect of life." Casa de Niños Internal Regulation 2. The program emphasizes that it is "interested in [the youth's] spiritual health and development." *Id.*; *see also id.* at 22 (explaining that the program "seeks the spiritual growth of each and every one of those making up its micro-community"). It also encourages each client to recognize himself as being "a good child of God," *id.* at 4; *see also id.* at 12 ("Every child has a super right to get to know Jesus, to love him and to feel loved by Him."); *id.* ("Every child has a super right to know that God is his/her father."); *id.* at 25 (encouraging youth to "place [his] trust in God").

To emphasize the spiritual aspect of the program, which, according to one program administrator, is a significant part of the shelter's activities, boys participate in activities of a religious nature. In a professed effort to encourage spiritual development among participating youth, the program has "activities and times when we share our faith, such as: during prayer, religious instruction, masses and other times." *Id.* at 4. The formal program schedule for a typical week includes a fifteen-minute block of time for morning prayer from Monday through Friday. At the end of each workday, the schedule also allocates time for evening prayer. In addition, program personnel encourage the boys to pray during meal periods. On Sunday evening, the program schedule includes a one-hour mass.<sup>5</sup> The program may also share

---

<sup>5</sup> Each weekend, to the extent feasible, boys spend time with their families away from the shelter. To foster involvement in religious activities during that time period, Casa de Niños tries to establish connections between youth and specific churches. During a boy's weekend visit with his family members, the group encourages him to

catechetical information with youth. The program actively seeks reverential client participation in these spiritual events, *id.* at 22, although a program representative asserts that participation in religious activities is voluntary. Occasionally, a boy may decide not to participate in one of the program's religious activities; in that instance, the program does not discipline the child. While Casa de Niños does not penalize a youth for opting out of religious aspects of the program, a program representative acknowledges that administrators want shelter clients to display an interest in and to become involved with religion. The subrecipient can remove a client from the program, although a program administrator suggests that the program does not consider the degree of a child's assessed spiritual development in making a removal decision.

3. Casa de Niños Use of JAG and VOCA Funds

Casa de Niños uses its JAG and VOCA funds to compensate mentor, social worker, and psychologist staff members who collectively coordinate services for the shelter clients and provide counseling, intervention, and psychological services to help the youth cope with traumas and emotional problems. The subrecipient does not appear to make hiring decisions for these federally funded positions based on religious considerations. At the same time, the organization expects staff members, including those whose positions are funded with federal financial assistance, to support the faith-based mission and core APAS goals of the program, including prayer, religious instruction, and worship.

**C. Subrecipient Noncompliance with the Department's Equal Treatment Regulations**

Based on its site visits and its review of pertinent program materials, the OCR concludes that HST and Casa de Niños administer their federally funded programs in ways that are inconsistent with the Regulations' requirements. HST improperly (1) screens beneficiaries based on religion and (2) uses federal funds for inherently religious activities; Casa de Niños (1) asks applicants irrelevant religious-based questions and (2) improperly engages in inherently religious activities with federal funds.

1. The subrecipients' reliance on religious-based tools to determine who is eligible to receive federally funded services

Under the Equal Treatment Regulations, a recipient of federal financial assistance "shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief." 28 C.F.R. § 38.2(d); *see also* Exec. Order No. 13,559, 75 Fed. Reg. 71,319, 71,320 (Nov. 17, 2010). When a subrecipient elects to receive federal funding, the Regulations prohibit it from using any religion-based criteria to

---

attend church services with his family. Ultimately, however, because a family may not be interested in attending church-related activities, program administrators view church attendance by youth as a voluntary activity.

exclude potential beneficiaries. This safeguard protects all program applicants, regardless of their religious beliefs. Indeed, the Regulations protect applicants who belong to no religion as much as those who adhere to a non-Christian faith. Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of All Justice Department Program Participants, 69 Fed. Reg. 2832, 2837 (Feb. 20, 2004) (noting that the “language prohibiting faith-based organizations from discriminating against program beneficiaries on the basis of ‘religion or religious belief’ is sufficiently explicit to include beneficiaries who hold no religious belief”); *see also* Exec. Order No. 13,559, 75 Fed. Reg. at 71,320 (explaining that recipients “should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice”).

a. *HST*

The HST program, as described in its treatment authorization and acceptance form, requires prospective beneficiaries – all of whom would receive services from JAG-funded personnel – to actively participate in religious activities; such a condition violates the Equal Treatment Regulations. In providing federally funded services to beneficiaries, a subrecipient may not, consistent with the Regulations, require candidates to agree to engage in religious conduct. By insisting that beneficiaries agree to participate in the faith-based aspects of its rehabilitation program, HST presents a prospective beneficiary who does not share the subrecipient’s belief system with a false choice – (1) decline to participate in the program and risk significant, adverse criminal justice consequences, such as secure confinement or (2) agree to enter the program, knowing that it requires his participation in religious activities with which he disagrees. Because HST relies on faith-based admission criteria, it fails to provide the same level of services to individuals without regard to religion and violates the Equal Treatment Regulations.<sup>6</sup>

b. *Casa de Niños*

The Casa de Niños program elicits religious information about prospective beneficiaries in determining who will receive federally funded services. As explained above, a potential beneficiary’s religion should play no role in determining whether he receives federally funded services. Despite this restriction, the subrecipient includes questions on its interview form that directly relate to an applicant’s history of receiving sacraments in the Catholic Church. Because the subrecipient emphasizes that these questions do not influence its admission decisions, and given that there are non-Catholic program participants, we do not conclude that Casa de Niños

---

<sup>6</sup> An HST program administrator represented to the OCR that, in practice, the program is open to and has accepted clients who belong to various religious faiths, including Catholicism, Islam, and Santería. Clients have also been agnostic. While the program may, in practice, include clients regardless of their faith backgrounds, the OCR remains troubled that the subrecipient has a facially discriminatory policy that excludes persons who do not agree to participate in inherently religious activities.

uses religious-based screening criteria in violation of the Regulations. At the same time, to ensure that program administrators make admission decisions that are not influenced by improper, religious-based factors, Casa de Niños should remove these questions from its application form.

2. The subrecipients' improper use of federal funds for inherently religious activities

In evaluating whether HST and Casa de Niños use federal funds to engage in inherently religious activities, the OCR relies on the Equal Treatment Regulations. The Regulations provide examples of inherently religious activities and state the conditions under which a funded faith-based organization may engage in them:

Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

28 C.F.R. § 38.2(b)(1); *see also* Exec. Order No. 13,559, 75 Fed. Reg. at 71,320.<sup>7</sup> Thus, a subrecipient may only conduct inherently religious activities when it receives federal financial assistance if it satisfies the following two elements: (1) such activities are offered separately, in

---

<sup>7</sup> The Equal Treatment Regulations contemplate that a religious organization can, in certain circumstances, engage in inherently religious activities with federal funds it receives indirectly from beneficiaries; however, because HST and Casa de Niños are direct subrecipients of federal financial assistance, they cannot avail themselves of that provision. The Regulations clearly distinguish the obligations a faith-based organization has depending on whether it receives direct or indirect funding:

To the extent otherwise permitted under Federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

28 C.F.R. § 38.2(i). Because HST and Casa de Niños collectively receive federal funds directly through the JAG and VOCA grant award processes, and not indirectly from beneficiaries, they must refrain from using federal financial assistance for inherently religious activities.



time or location, from the programs or services provided with federal aid, and (2) participation in such activities is voluntary for program beneficiaries. 28 C.F.R. § 38.2(b)(1). HST and Casa de Niños use federal resources in ways that are inconsistent with these requirements; stated differently, each subrecipient uses federal financial assistance to engage in prohibited religious conduct.

a. *HST*

As discussed below, the HST program engages in several inherently religious activities. While most of these activities are appropriately separated from the federally funded aspects of the program, the subrecipient may be improperly using direct federal financial assistance to proselytize or advance religion. If established, such conduct would alone constitute a violation of the Equal Treatment Regulations. Moreover, HST requires beneficiaries to expressly agree to participate in each religious aspect of its program, which clearly contravenes the Regulations' requirements.

i. The substance abuse treatment program includes inherently religious activities

HST's substance abuse treatment program appears to include the following inherently religious activities, as contemplated by the Equal Treatment Regulations: (1) prayer, (2) worship, (3) participation in Alcoholics Anonymous and Narcotics Anonymous, and (4) proselytization or advancement of religion. In discussing the Regulations, the DOJ reiterates that inherently religious activities include prayer meetings, worship services, and proselytization or advancement of religion. *See* Participation in Justice Department Programs by Religious Organizations, 69 Fed. Reg. at 2833-34. In addition, it is well-settled under federal law that Alcoholics Anonymous and Narcotics Anonymous are inherently religious programs. *See, e.g., Cox v. Miller*, 296 F.3d 89, 107-10 (2d Cir. 2002); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7th Cir. 1996).<sup>8</sup>

a. Several of the program's inherently religious activities occur separate from federally funded services

To evaluate the separateness prong of the inherently religious activities test, as applied to HST, we assess the context of each religious activity to determine whether it occurs separately, in time

---

<sup>8</sup> In crafting the Regulations, DOJ declined "to establish an acceptable list of all inherently religious activities" but explained that Establishment Clause precedent should inform decisions about which additional conduct is inherently religious. Participation in Justice Department Programs by Religious Organizations, 69 Fed. Reg. at 2834. Consistent with this approach, and after carefully considering pertinent caselaw, the OCR concludes that the Alcoholics Anonymous and Narcotics Anonymous programs providing services to HST clients constitute inherently religious activities under the Equal Treatment Regulations.

or location, from those services that the subrecipient provides with JAG funds. The program conducts its prayer and worship sessions at its chapel, which is in a separate location from the areas used by those JAG-funded personnel who provide treatment services. Similarly, the volunteer-led Alcoholics Anonymous and Narcotics Anonymous sessions are held in meeting spaces apart from those areas used by the subrecipient's federally funded staff persons. As such, HST satisfies the separateness requirement as to its prayer, worship, and faith-based substance abuse treatment activities.

- b. HST's federally funded psychologist may be engaging in improper proselytization or advancement of religion

HST uses direct federal aid to compensate a psychologist who, in interacting with clients, may be engaging in proselytization or advancement of theism, both of which are inherently religious activities under the Regulations. *See* Participation in Justice Department Programs by Religious Organizations, 69 Fed. Reg. at 2833-34. In providing federally funded counseling services to beneficiaries, the psychologist occasionally may not limit her communications to the secular realm. During the OCR's onsite visit, program representatives acknowledged the possibility that the psychologist does not merely play a neutral role in providing counseling services to each beneficiary. Instead, in interacting with individual clients, the psychologist may periodically advocate religion as an aspect of effective treatment and encourage clients to attend church after they finish the program. If the psychologist prefers religious activities over other, sectarian treatment options or emphasizes certain religions over others, the psychologist would be improperly using her federally funded position to proselytize or advance religion.<sup>9</sup>

- ii. Beneficiary participation in inherently religious activities is not voluntary

HST wholly fails to satisfy the Regulations' voluntariness requirement. As discussed above, as a condition of entering the program, a participant must sign an agreement that includes a specific provision requiring him to participate actively in all aspects of the program. This commitment document is adequate evidence that clients, each of whom ostensibly faces the prospect of revocation of probation for failing to comply with the terms of that agreement, would feel coerced into participating in religious activities. HST asserts that beneficiaries may forgo participation in its inherently religious activities; however, based on an express commitment agreement that states otherwise, we are not persuaded that participation in inherently religious activities is truly voluntary for program clients.

---

<sup>9</sup> Because of confidentiality concerns, the OCR did not observe counseling sessions between the psychologist and any client. As a result, in discussing the types of religious messages that may be conveyed from the psychologist to a client, the OCR is unable to conclude that the psychologist engages in communications that unequivocally constitute proselytization or advancement of religion.

b. *Casa de Niños*

Casa de Niños' shelter program includes the following inherently religious activities, as contemplated by the Equal Treatment Regulations: (1) prayer, (2) religious instruction, (3) worship, and (4) proselytization or advancement of religion. In engaging in these activities, the subrecipient is not in substantial compliance with the Regulations' restrictions because it directly uses JAG and VOCA funds to foster its sectarian objectives and provides insufficient evidence to the OCR that participation in such religious conduct is voluntary.

As a threshold matter, Casa de Niños fails to offer its religious programming in a way that satisfies the separate-in-time-or-location requirement. Indeed, in providing services to youth, Casa de Niños neither acknowledges the applicability of the Equal Treatment Regulations nor endeavors to ensure that it appropriately separates sectarian activities from secular services. The subrecipient receives JAG and VOCA funds to support mentor, social worker, and psychologist positions. These employees' responsibilities include encouraging youth at the shelter to comply with all aspects of the subrecipient's program, including its inherently religious components that pervade the program. Thus, the subrecipient use its federally funded personnel to support the core faith-based goals of the program and to foster spiritual development of youth through prayer, religious instruction, and worship. By encouraging beneficiaries to participate in inherently religious activities, these staff members also proselytize or advance the religious objectives of the program.

Moreover, even if the OCR concluded that Casa de Niños appropriately separated its religious activities from other, permissible activities funded by the DOJ, we have strong reservations about whether participation in the organization's inherently religious activities is voluntary. As an initial matter, we note that the subrecipient provides its services to a captive audience of youth and young adults, which automatically raises heightened concerns about whether such clients have the ability to make truly voluntary decisions about participating in certain religious activities. *See Teen Ranch v. Udow*, 389 F. Supp. 2d 827, 846 (W.D. Mich. 2005), *aff'd*, 479 F.3d 403 (6th Cir. 2007). In connection with its onsite review of Casa de Niños, the OCR found absolutely no safeguards to ensure that the youth in the subrecipient's care understand their ability to opt out of inherently religious activities. Rather than recognizing the unique vulnerabilities of these shelter residents and exercising caution in conveying religious messages to them, the subrecipient, through its program materials and objectives, actively seeks to inculcate its faith-based views and to encourage participation in its religious activities. Such overt and repeated efforts to engage in religious indoctrination are impermissible under the Regulations.

Rafael Rivera Cruz, Auxiliary Secretary of Management and Administration  
Puerto Rico Dep't of Justice  
May 6, 2011  
Page 12 of 12

## **II. Recommendations**

As discussed in Section I.C. of the Supplemental Compliance Review Report, HST and Casa de Niños, in administering their federal financial assistance, are not in compliance with the Equal Treatment Regulations. Because of its role as a State Administering Agency, the PRDOJ must take corrective action to remedy administrative violations of the Department's regulations by subrecipients, including faith-based organizations. To ensure that DOJ funds are used properly, the PRDOJ should take appropriate measures to address the concerns we raise in the Supplemental Compliance Review Report and to secure the voluntary compliance of HST and Casa de Niños with the Regulations' restrictions.

## **III. Conclusion**

We find that the PRDOJ should implement the OCR's recommendations to ensure compliance with the Equal Treatment Regulations. No later than thirty days after receipt of this Supplemental Compliance Review Report, please provide a written status report to the OCR about the steps the PRDOJ has taken to ensure that HST and Casa de Niños comply with their legal obligations. On request, the OCR is available to provide technical assistance to the PRDOJ in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible PRDOJ official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff during the compliance review process. If you have any questions, please contact Mr. Zubowicz at [REDACTED]

Sincerely,

/s/ Michael L. Alston

Michael L. Alston  
Director

cc: Ms. Carmen Torres  
External Resources Division  
Puerto Rico Department of Justice