

DEPORTATION BY LANGUAGE

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ABSTRACT

Access to asylum depends on language access. When governments return asylum seekers without providing adequate language services, they risk committing refoulement in contravention of international law.

The principle of non-refoulement undergirds international and U.S. refugee law, mandating that governments refrain from returning people to situations where they are likely to face certain harms. This Article introduces linguistic refoulement as a tool for understanding the complex interaction between language and refugee law. When a person is forced to return to a dangerous situation in their home country due to the language they speak, the expelling country has committed linguistic refoulement. Governments contravene critical protections for asylum seekers when they fail to recognize and mitigate the multiple ways in which language functions as a nexus of direct or constructive refoulement.

To develop this linguistic-refoulement framework, this Article employs a case study: monolingual speakers of Mexican, Central American, and South American Indigenous languages seeking asylum in the United States. Reports from the border suggest that this population represents between 10% and 44% of new arrivals to the U.S.-Mexico border. As this Article documents, many of these migrants are deported on account of the languages they speak, leading to their disproportionate refoulement to situations of persecution and torture. Through this mixed-methods case study, the Article develops a taxonomy of five mechanisms of linguistic refoulement that lead to the disproportionate return of minority-language speakers: neglect (failing to provide appropriate language services), erasure (failing to collect and record language data), illegibility (failing to comprehend or credit a manner of communicating), punishment (penalizing asylum seekers for language differences), and isolation (detaining or segregating people away from others who speak their languages).

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Scholars of refugee law and language access focus primarily on one mechanism of linguistic refoulement: the failure to provide interpreters during asylum hearings. This focus, while important, has overshadowed the other ways in which language functions as a nexus of refoulement. Only by understanding the varied ways in which unmet language needs produce refoulement can governments and advocates meaningfully identify and protect refugees, preventing their return to situations of persecution, torture, and death.

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INTRODUCTION

Imagine an Indigenous woman fleeing life-threatening persecution in her home country of Guatemala. She speaks her native language, the Mayan language K'iche', and only a few words of Spanish. She arrives at the U.S.-Mexico border, where she uses her limited Spanish to tell a border patrol officer that she is seeking asylum.

When the woman requests an interpreter who speaks her language, officials pressure her to proceed in Spanish.¹ When she insists, she waits many months to find an interpreter.² She remains detained without contact with anyone who speaks her language.³ She cannot access medical care because she cannot communicate with detention-center personnel or doctors.⁴ She considers giving up, going home, and facing the dangers that await her there.⁵

The government eventually secures an interpreter. But during her asylum hearing, an immigration judge finds the woman “not credible” because the conventions of storytelling in her language do not follow the structured question-and-answer format of court testimony,⁶ and because the interpreter speaks a slightly different variant of the woman’s language, leading to minor mistranslations.⁷ She is deported to her home country, where she faces ongoing threats. Throughout the process, every government record denotes her as a Spanish speaker, obfuscating the multiple linguistic forces that led to her wrongful deportation.⁸

She is not alone. Reports from the border suggest that between 10% and 44% of recent arrivals to the U.S.-Mexico border speak Indigenous languages from Mexico, Central America, and South America.⁹ As this Article shows, at nearly

1. See *infra* notes 270–272 and accompanying text.

2. See *infra* notes 306–311 and accompanying text.

3. See *infra* notes 318–325 and accompanying text.

4. See *infra* notes 327–329 and accompanying text.

5. See *infra* notes 330–331 and accompanying text.

6. See *infra* notes 245–250 and accompanying text.

7. See *infra* notes 140–143 and accompanying text.

8. See *infra* notes 181–234 and accompanying text.

9. Adolfo Flores, *A Woman Facing Deportation Says She Was Denied Justice Because She Speaks An Indigenous Language*, BUZZFEED NEWS (Dec. 30, 2018, 4:33 PM), <https://www.buzzfeednews.com/article/adolfoflores/woman-deportation-asylum-rape-language> [<https://perma.cc/KW2N-442V>] (“About 10% of the people [the Dilley Pro Bono Project in South Texas] work[s] with speak an indigenous language”); Victoria Stunt & Megan Janetsky, *The Translators Giving Indigenous Migrants a Voice*, BBC (Apr. 19, 2020), <https://www.bbc.com/news/world-latin-america-52268386> [<https://perma.cc/Q4HY-TNLA>] (“In about 10 to 15% of cases, Mr. Reyes [an Arizona-based immigration lawyer] says, the migrant he is working with does not speak English or Spanish.”); ANA ARBOLEDA & DORIEN EDIGER-SETO, FLORENCE IMMIGRANT & REFUGEE RTS. PROJECT, SEEKING PROTECTION, ENDURING PROSECUTION: THE TREATMENT AND ABUSE OF UNACCOMPANIED UNDOCUMENTED CHILDREN IN SHORT-TERM IMMIGRATION DETENTION 10 (2009), <https://firrp.org/media/BPAbuseReport.pdf> [<https://perma.cc/SM74-VU6U>] (finding that 26% of children whom the authors interviewed in short-term Office of Refugee Resettlement shelters in 2009 spoke Mayan languages); Blake Gentry, Marianne Richardson, Diego Piña Lopez & Joseph Watkins, *Indigenous Language Migration Along the U.S. Southwestern Border—the View from Arizona*, 34 CHANCE 47, 50 (2021) (finding that 19–

every moment in their asylum processes—from their first interactions with border officials to their eventual hearings and appeals—the fact that they speak these non-dominant languages undermines their chances of receiving the protection they seek.

Nationwide, speakers of many Indigenous languages lose their asylum cases at rates that exceed both the overall denial rate and the denial rate for Spanish speakers. According to immigration court data covering 2000 to mid-2025,¹⁰ 83% of recorded speakers of K'iche',¹¹ 86% of speakers of K'anjob'al,¹² and 87% of speakers of Q'eqchi' lost their asylum cases.¹³ In contrast, 58% of all asylum

29% of adults in Arizona border region migrant shelters were Indigenous-language speakers); BLAKE GENTRY, GUAT. ACUPUNCTURE & MED. AID PROJECT, DEPRIVATION NOT DETERRENCE: A REPORT ON HUMAN RIGHTS VIOLATIONS OF IMMIGRANTS HELD IN THE DEPARTMENT OF HOMELAND SECURITY'S SHORT TERM DETENTION FACILITIES IN SOUTHERN ARIZONA 2 (2014) ("Speakers of indigenous languages comprised 29% of adult migrants [in DHS short-term facilities in Southern Arizona]."); INDIGENOUS ALL. WITHOUT BORDERS & INT'L MAYA LEAGUE, INDIGENOUS PEOPLES' RIGHTS TO EXIST, SELF DETERMINATION, LANGUAGE AND DUE PROCESS IN MIGRATION 12 (2020), https://www.researchgate.net/publication/337681894_Indigenous_Peoples'_Rights_to_Exist_Self_Determination_Language_and_Due_Process_in_Migration [<https://perma.cc/2W4M-Q4NF>] ("Of the thirty-nine participants interviewed [by the International Maya League] in two shelters . . . 43.6% of the total respondents spoke an Indigenous language."); see also Rachel Nolan, *A Translation Crisis at the Border*, NEW YORKER (Dec. 30, 2019), <https://www.newyorker.com/magazine/2020/01/06/a-translation-crisis-at-the-border> [<https://perma.cc/5H3Z-YJV8>] ("[The ACLU] team found that half [of parents separated from children] were Guatemalan, and that 'ten to twenty per cent' were from indigenous-majority departments, such as San Marcos, Huehuetenango, and Quiché.").

10. This data was reported by the Executive Office for Immigration Review ("EOIR") between 2000 and 2025. During this time period, EOIR's practices in data reporting have shifted, complicating the analysis of asylum grant and denial decisions over time. For background on these changes, see *About the Data on Asylum*, TRAC IMMIGR. (Nov. 16, 2022), https://tracreports.org/phptools/immigration/asylum/about_data.html [<https://perma.cc/3LPU-QDJH>]. Furthermore, 17,706 asylum applications are missing from EOIR data during the period from FY2019 to FY2022, and EOIR has declined to explain why. *Id.*

I provide permalinked screenshots for all references to TRAC data that depend on specific queries.

11. See *Asylum Decisions*, TRAC IMMIGR. (Sep. 2025), <https://tracreports.org/phptools/immigration/asylum> [<https://perma.cc/S8XG-DXZH>] (select "Language" from the dropdown menu on the left-hand side; select "Quiche" from the list that appears below the dropdown; then select "Decision" from the dropdown menu in the center).

Maya K'anjob'al linguist B'alam Mateo-Toledo notes that publications often list the Q'eqchi' language as "Kekchi"; and the Kaqchikel language as "Cakchikel," "Cakchiquel," or "Kakchikel." B'alam Mateo-Toledo, *The Use of Languages' Names: The Mayan Case*, 69 INT'L J. AM. LINGUISTICS 151, 152 (2003). Unless directly quoting a source that uses other spelling, this Article defers to the spellings adopted by the *Academia de Lenguas Mayas de Guatemala* [Academy of Mayan Languages of Guatemala] for Mayan languages spoken in Guatemala and the *Instituto Nacional de Lenguas Indígenas* [National Institute of Indigenous Languages] for Indigenous languages spoken in Mexico. *Comunidades Lingüísticas* [*Language Communities*], K'ULB'IL YOL TWITZ PAXIL [ACAD. OF MAYAN LANGUAGES OF GUATEMALA], <https://almg.org.gt/comunidades-linguisticas> [<https://perma.cc/8KCV-NCC6>]; *Catálogo de las Lenguas Indígenas Nacionales* [*Catalogue of National Indigenous Languages*], INSTITUTO NACIONAL DE LENGUAS INDÍGENAS [NAT'L INST. OF INDIGENOUS LANGUAGES], <https://www.inali.gob.mx/clin-inali> [<https://perma.cc/T4WF-9HMP>].

12. See *Asylum Decisions*, *supra* note 11 [<https://perma.cc/BYM7-ZNQQ>].

13. See *Asylum Decisions*, *supra* note 11 [<https://perma.cc/Y5B8-VKGV>]. Note that these

seekers¹⁴ and 74% of all Spanish speakers lost their cases.¹⁵ And these denial rates for Indigenous-language speakers do not include the possible thousands who lost their cases because officials never realized they could not communicate effectively in Spanish.¹⁶

This state of affairs reflects more than a mere failure to translate during hearings. It instead reflects a disregard for these asylum seekers' language needs at every step in the asylum-seeking process.

Researchers have long recognized that language access and access to asylum are linked.¹⁷ Legal scholars have tended to focus on the importance of access to interpreters during hearings, arguing that failing to provide asylum seekers with

estimates likely undercount the number of Indigenous-language speakers appearing before the court, because many are likely erroneously classified as Spanish speakers. *See infra* notes 230–234 and accompanying text (discussing linguistic erasure of Indigenous-language speakers); *see also* María Luz García, *Mayan Languages in the United States*, in *HANDBOOK OF THE CHANGING WORLD LANGUAGE MAP* 791, 796 (Stanley D. Brunn & Roland Kehrein, eds., 2020) (discussing the erasure of Indigenous identities and languages).

One prominent exception to the pattern of Indigenous-language speakers losing their cases at rates that exceed those of Spanish speakers is Mam speakers, who, since 2000 have lost 50% of their asylum cases heard in immigration court. *Asylum Decisions*, *supra* note 11 [<https://perma.cc/G8GV-ZUEL>]. There is a very prominent Mam community in Oakland. *See, e.g.*, Farida Jhabvala Romero, *Do You Speak Mam? Growth of Oakland's Guatemalan Community Sparks Interest in Indigenous Language*, KQED (July 25, 2019), <https://www.kqed.org/news/11763374/do-you-speak-mam-growth-of-oaklands-guatemalan-community-sparks-interest-in-indigenous-language> [<https://perma.cc/X5BK-VJHW>]. Because of that community's presence in Oakland, many Mam speakers pursue their cases in the unusually friendly San Francisco Immigration Court. *Asylum Decisions*, *supra* note 11 [<https://perma.cc/JU3G-BN35>] (showing that the most common immigration court location for Mam speakers is San Francisco). In 2023, the San Francisco Immigration Court asylum denial rate (19%) was 29 percentage points lower than the national average of 48%. *Compare Asylum Decisions*, *supra* note 11 [<https://perma.cc/9EGK-WZAX>] (showing San Francisco denial rate), *with Asylum Decisions*, *supra* note 11 [<https://perma.cc/DDL8-5AJA>] (showing nationwide denial rate).

14. *See Asylum Decisions*, *supra* note 11 [<https://perma.cc/324L-9EER>].

15. *Id.* [<https://perma.cc/THR2-HG56>]. These trends do not seem to be explained by changes in different language groups' migration rates over time; for instance, looking only at FY 2023, speakers of these three languages had higher denial rates than all asylum seekers and Spanish speakers. *Compare id.* [<https://perma.cc/P2B5-8ASM>] (showing a 2023 denial rate of 75% for K'iche' speakers), *id.* [<https://perma.cc/A6A2-RZBF>] (showing a 2023 denial rate of 79% for K'anjob'al speakers), *and id.* [<https://perma.cc/TKX7-KMMX>] (showing a 2023 denial rate of 73% for Q'eqchi' speakers), *with id.* [<https://perma.cc/BW8K-TQX8>] (showing a 2023 denial rate of 59% for Spanish speakers), *and id.* [<https://perma.cc/YQ7T-9QUV>] (showing a 2023 denial rate of 48% for all asylum seekers).

16. *See infra* Section III.B (explaining how linguistic erasure produces refolement).

17. *See generally* Walter Kalin, *Troubled Communication: Cross-Cultural Misunderstandings in the Asylum Hearing*, 20 INT'L MIGRATION REV. 230 (1986); Robert F. Barsky, *The Interpreter as Intercultural Agent in Convention Refugee Hearings*, 2 TRANSLATOR 45 (1996); Sonja Pöllabauer, *Interpreting in Asylum Hearings: Issues of Role, Responsibility and Power*, 6 INTERPRETING 143 (2004); Sonja Pöllabauer, "Translation Culture" in *Interpreted Asylum Hearings*, in *SOCIOCULTURAL ASPECTS OF TRANSLATING AND INTERPRETING* 151 (Anthony Pym, Miriam Shlesinger & Zuzana Jettmarová eds., 2006).

interpreters violates those asylum seekers' rights to fair procedures.¹⁸ After all, asylum decisions hinge on people's ability to convey what happened to them in their home countries, why it happened, and why they are afraid to return.¹⁹ Asylum seekers often cannot offer any evidence beyond their own word,²⁰ making their oral testimonies the "critical core" of their cases.²¹ Interpreters thus serve a key function during hearings: they make testimony accessible to immigration officers and judges. The stakes of this access are enormous. People's cases for asylum—and, by extension, their lives—often depend on access to appropriate interpreters who speak their languages.²²

But scholars' focus on access to interpreters during formal legal proceedings has overshadowed other linguistic forces that cause people to lose or abandon meritorious asylum cases. This focus risks producing an overly narrow assessment of the risks created by unmet language-access needs throughout an asylum-adjudication system.

This Article introduces a novel concept—linguistic refoulement—as a theoretical framework for understanding the complex role of language in asylum and refugee contexts. Linguistic refoulement refers to situations where unmet language needs lead a government to return asylum seekers to countries where they face harm or induce those asylum seekers to so return. This happens in obvious ways—such as when a government does not provide an asylum seeker with any interpreter during a hearing. But linguistic refoulement also exposes the subtle ways this happens. Those subtleties are the primary focus and contribution of this Article.

The term linguistic refoulement references the international legal principle of non-refoulement.²³ In brief, non-refoulement forbids states from returning

18. See generally Maya P. Barak, *Can You Hear Me Now? Attorney Perceptions of Interpretation, Technology, and Power in Immigration Court*, 9 J. ON MIGRATION & HUMAN SEC. 207 (2021); Hillary Mellinger, *Interpretation at the Asylum Office*, 44 LAW & POL'Y 230 (2022); Grace Benton, "Speak English": *Language Access and Due Process in Asylum Proceedings*, 34 GEO. IMMIGR. L.J. 453 (2020); Pooja R. Dadhanian, *Language Access and Due Process in Asylum Interviews*, 97 DENV. L. REV. 707 (2020).

19. Jane Herlihy & Stuart Turner, *Memory and Seeking Asylum*, 9 EUR. J. PSYCHOTHERAPY & COUNSELING 267, 268 (2007); see *In re S-M-J-*, 21 I. & N. Dec. 722, 730 (B.I.A. 1997) (denying a respondent's asylum claim because she failed to offer sufficient details to "provide a coherent account of the basis of her fear").

20. See, e.g., *Carvajal-Munoz v. INS*, 743 F.2d 562, 574 (7th Cir. 1984) ("Sometimes, however, the applicant's own testimony will be all that is available regarding past persecution or the reasonable possibility of persecution."); Barak, *supra* note 18, at 208 ("An immigrant's voice is often the only evidence they can provide."); Ilene Durst, *Lost in Translation: Why Due Process Demands Deference to the Refugee's Narrative*, 53 RUTGERS L. REV. 127, 135 (2000) ("Nonetheless, because objective evidence is so rare, the applicant's testimony will be essential to these determinations.").

21. DEBORAH E. ANKER, *LAW OF ASYLUM IN THE UNITED STATES* 150 (3d ed. 1999).

22. Barak, *supra* note 18, at 208; Sonja Pöllabauer, *Interpreting in Asylum Proceedings*, in *THE ROUTLEDGE HANDBOOK OF INTERPRETING* 202, 206 (Holly Mikkelsen & Renée Jourdenais eds., 2015).

23. "Refoulement" comes from the French *refouler*, which means "to drive back or expel." Guy S. Goodwin-Gill, *Introductory Note to The Convention Relating to the Status of Refugees and*

refugees and asylum seekers to situations where they are likely to face torture or persecution.²⁴ The “foundation stone” of refugee law,²⁵ non-refoulement language undergirds both international and U.S. law, as explained in Part I. Increasingly, scholars and multilateral organizations are highlighting the importance of understanding not just direct forms of refoulement but also “constructive” or “disguised” refoulement.²⁶ In developing this theoretical framework, this Article invokes both direct and constructive concepts of “refoulement.”

This Article develops the theory of linguistic refoulement by considering monolingual Indigenous-language speakers seeking asylum. Part II explains this case study’s method, which relies on semi-structured interviews with advocates, a systematic review of government policy documents, and an analysis of government data and its limitations. It also presents relevant background to the Indigenous-language case study.

In analyzing the complex dynamics of the Indigenous-language case study, Part III develops a taxonomy of five related mechanisms that produce refoulement on the basis of language: neglect, erasure, illegibility, punishment, and isolation. The first mechanism of refoulement, linguistic neglect, describes the failure to provide an appropriate translator or interpreter to someone who needs one, leading to the denial of meritorious asylum claims. This practice is often justified by the purported “rare” or “special” nature of Indigenous languages.²⁷ These characterizations stem from linguistic erasure, which occurs when data about non-dominant languages is absent from official counts and records. Decisionmakers’ assessments of asylum seekers’ claims can be affected by linguistic illegibility—a failure to understand or credit the ways of speaking and storytelling associated with

The Protocol Relating to the Status of Refugees, U.N. AUDIOVISUAL LIBR. OF INT’L L. 4 (2008), https://legal.un.org/avl/pdf/ha/prsr/prsr_e.pdf [<https://perma.cc/D3Q4-3V3B>].

24. Goodwin-Gill, *supra* note 23, at 4.

25. Guy S. Goodwin-Gill, *Entry and Exclusion of Refugees: The Obligations of States and the Protection Function of the Office of the United Nations High Commissioner for Refugees*, 3 MICH. J. INT’L L. 291, 296 (1982); *see also* GUY S. GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 300–06 (4th ed. 2021) (identifying non-refoulement as customary international law).

26. *See infra* notes 57–61 and accompanying text.

27. *See, e.g.*, Manuel Valdes & The Associated Press, *Language, Laws a Challenge for Indigenous Migrants*, N.Y. DAILY NEWS (Jan. 11, 2019 4:04 PM ET), <https://www.nydailynews.com/2009/03/17/language-laws-a-challenge-for-indigenous-migrants> [<https://perma.cc/7WK9-F7KU>] (quoting statement from Mark Krikorian, former executive director of the anti-immigrant group Center for Immigration Studies: “To think it’s a right, our responsibility, to help you avoid being deported, it’s kind of silly. If we don’t have a translator in your obscure language, well, that’s too bad.”).

The Indigenous languages considered in this case study are sometimes categorized as “rare languages” or “languages of limited diffusion.” *See, e.g.*, Anita Snow, *Family Separations Bring Call for Rare Language Interpreters*, AP (June 26, 2018, 8:02 PM ET), <https://apnews.com/general-news-ff140d3396e64a9ba83485ddea776be> [<https://perma.cc/VLU5-KT3D>]; Holly Mikkelson, *Relay Interpreting: A Solution for Languages of Limited Diffusion?*, 5 TRANSLATOR 361 (2014). Some nonprofits call them “special languages.” Remote Video Interview with Legal Advocate B (Aug. 12, 2021). All interviewees participated on the condition of anonymity, as described in Section II. Interview notes are on file with the author.

a language—and linguistic punishment—frustration and animus directed at non-dominant language speakers and their interpreters. Finally, linguistic isolation describes the forced separation of asylum seekers from others who speak their languages. Such isolation induces people to refool themselves in a manner that may appear voluntary but is nonetheless coercive and can amount to constructive refolement.²⁸

This Article’s analysis of how language shapes the asylum process assumes a functioning asylum system. Right now, the very existence of an asylum system in the United States is in peril.²⁹ Still, I remain hopeful that this framework can inform scholarship and policy interventions elsewhere. And I am also hopeful that the linguistic refolement framework can offer advocates in the United States a roadmap for identifying—and resisting—the ways in which linguistically vulnerable people are also disproportionately vulnerable to forced return on account of the languages they speak and how they speak them.

I.

NON-REFOLEMENT AND LANGUAGE

A linchpin of international human rights law and U.S. refugee law is “non-refoulement,” which prohibits the return or rejection of a person to a country where they are likely to face persecution or torture.³⁰ Widespread acceptance of non-refoulement emerged in the aftermath of World War II, during which the United States and other countries deported Jewish refugees to near-certain deaths in Nazi Germany.³¹ Non-refoulement now undergirds many aspects of contemporary international refugee law. Crucial international-human-rights instruments like the 1951 Convention Relating to the Status of Refugees and the

28. Scholars studying this dynamic in other contexts use the term “soft deportation.” See Arjen Leerkes, Rianne van Os & Eline Boersema, *What Drives ‘Soft Deportation’? Understanding the Rise in Assisted Voluntary Return Among Rejected Asylum Seekers in the Netherlands*, 23 *POPULATION, SPACE & PLACE* 1, 2 (2017).

29. See Sergio Martínez-Beltrán, *President Trump’s Suspension of Asylum Marks a Break from U.S. Past*, NPR (Jan. 23, 2025, 12:14 PM ET), <https://www.npr.org/2025/01/23/nx-s1-5272406/trump-suspends-asylum> [<https://perma.cc/9DDF-T4PL>].

30. GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 78 (1983) (explaining that the concept of non-refoulement “encompasses both non-return and non-rejection”).

31. *U.S. and International Policy to Protect Refugees: A Timeline*, COUNCIL ON FOREIGN RELS. (Feb. 1, 2017), <https://www.cfr.org/blog/us-and-international-policy-protect-refugees-timeline> [<https://perma.cc/Y6AV-KNFM>]. In 1939, U.S. and Canadian officials declined to admit most refugees aboard the *St. Louis*, and many of those refugees died in the Nazi death camps after being returned to Europe. IRVING ABELLA & HAROLD TROPER, *NONE IS TOO MANY: CANADA AND THE JEWS OF EUROPE 1933–1948*, at 64 (1992).

1985 Convention Against Torture include non-refoulement provisions.³² The 1951 Convention provides:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.³³

When the United States adopted the 1967 Protocol Relating to the Status of Refugees, it “incorporate[d] by reference” the substantive provisions of the 1951 Convention³⁴—including the non-refoulement provision. Congress reaffirmed the United States’ commitment to this principle by including an explicit non-refoulement provision in the Refugee Act of 1980:

[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.³⁵

Congress further incorporated non-refoulement into U.S. immigration law through the Foreign Affairs Reform and Restructuring Act of 1998, which implemented non-refoulement language from the 1985 Convention Against Torture (CAT).³⁶

Domestic law provides three primary forms of protection against refoulement: asylum, withholding of removal, and relief under the Convention Against Torture. Two of these—withholding of removal and relief under the CAT—are mandatory protections against refoulement.³⁷ Asylum seekers in

32. See Convention Relating to the Status of Refugees art. 33, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, S. TREATY DOC. 100-20 (1988), 1465 U.N.T.S. 113.

33. Convention Relating to the Status of Refugees, *supra* note 32, art. 33.

34. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999); see also Protocol Relating to the Status of Refugees art. 1, ¶ 1, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

35. Refugee Act of 1980, 8 U.S.C. § 1231(b)(3)(A).

36. Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, Div. G, Title XXII, 112 Stat. 2681-822 (codified as 8 U.S.C. § 1231 note).

37. Compare 8 U.S.C. § 1158(b)(1)(A) (asylum), with 8 U.S.C. § 1231(b)(3)(A) (withholding of removal), and Pub. L. No. 105-277, Div. G, Title XXII, 112 Stat. 2681-822 (codified as 8 U.S.C. § 1231 note) (CAT). The 1980 Act made withholding mandatory. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 429 (1987).

Withholding and relief under CAT impose a higher evidentiary standard than asylum. To win asylum, an applicant generally need only show that they face a ten percent chance of persecution if deported. *Cardoza-Fonseca*, 480 U.S. at 440 (holding that an asylum applicant who faces a ten-percent chance of suffering persecution likely has a “well-founded fear”); see also *INS v. Stevic*, 467 U.S. 407, 424 (1984) (finding that the “clear probability” standard required to be granted withholding of removal requires someone to demonstrate that it is “more likely than not” they would suffer persecution); 8 C.F.R. § 1208.16(c)(2) (2026) (establishing the “more likely than not” test for either of the two forms of protection under CAT).

removal proceedings in the United States typically apply for all three protections at the same time.³⁸

Beyond these treaty and legislative references to non-refoulement, some scholars argue that non-refoulement should be understood as customary international law³⁹—that is, a general state practice accepted as law independent of treaty obligations.⁴⁰ The United States, too, has recognized non-refoulement as customary: as a state party to the 1967 Protocol Relating to the Status of Refugees, the United States in 2002 reaffirmed its commitment to the “core” principle of non-refoulement, which the reaffirmation document described as “embedded in customary international law.”⁴¹

38. *An Overview of Withholding of Removal*, MICH. LEGAL HELP, <https://michiganlegalhelp.org/self-help-tools/immigration/overview-of-withholding-of-removal> [<https://perma.cc/RQG4-VL8V>] (“Typically, people ask for withholding of removal under U.S. immigration law and CAT at the same time they apply for asylum.”).

39. See, e.g., GUY S. GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 345–54 (3d ed. 2007); Phil C.W. Chan, *The Protection of Refugees and Internally Displaced Persons: Non-Refoulement Under Customary International Law?*, 10 INT’L J. HUM. RTS. 231, 234 (2006); Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement*, in *REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR’S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION* 87, ¶¶ 196–253, at 141–64 (Erika Feller, Volker Türk & Frances Nicholson eds. 2003). *But see* James C. Hathaway, *Leveraging Asylum*, 45 TEX. INT’L L.J. 503, 506 (2010) (arguing that non-refoulement is not a customary international legal obligation).

40. Statute of the International Court of Justice art. 38, ¶ 1, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993 (“The Court . . . shall apply . . . international custom, as evidence of a general practice accepted as law . . .”).

41. U.N. High Comm’r for Refugees, *Report of the Ministerial Meeting of States Parties to the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees*, at 4, 8–9, U.N. Doc. HCR/MMSP/2001/10 (Jan. 18, 2002) (stating that the declaration was adopted “by consensus” by States Parties, including the United States).

The UNHCR and the U.N. Committee Against Torture describe non-refoulement not only as customary international law but also as a *jus cogens* or peremptory norm. See U.N. HIGH COMM’R FOR REFUGEES, CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 3 (2007), <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [<https://perma.cc/K9BB-7R7F>]; Exec. Comm. of the High Comm’r’s Programme, *General Conclusion on International Protection*, No. 79 (XLVII) (Oct. 11, 1996), <https://www.unhcr.org/excom/exconc/3ae68c430/general-conclusion-international-protection.html> [<https://perma.cc/X7VT-6EXH>]; Exec. Comm. of the High Comm’r’s Programme, *General Conclusion on International Protection*, No. 25 (XXXIII) (Oct. 20, 1982), <https://www.unhcr.org/en-us/excom/exconc/3ae68c434c/general-conclusion-international-protection.html> [<https://perma.cc/D8GA-7SAB>]; U.N. Comm. Against Torture, *General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22* (Feb. 9, 2018), <https://www.refworld.org/docid/5a903dc84.html> [<https://perma.cc/YK5Q-7TJZ>]. A *jus cogens* norm is a binding obligation from which no derogation is permitted under international law. Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331. This is not a universally accepted classification. See Aoife Duffy, *Expulsion to Face Torture? Non-Refoulement in International Law*, 20 INT’L J. REFUGEE L. 373 (2008). Nevertheless, if understood as a *jus cogens* norm, non-refoulement would be the highest form of ethical mandate in international law, alongside prohibitions against genocide and slavery. See M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 L. & CONTEMP. PROBLEMS 63, 67–68 (1996); Vincent Chetail, *Is There Any Blood on my Hands? Deportation as a Crime of International Law*, 29 LEIDEN J. INT’L L. 917, 928 (2016). *But see* Evan J. Criddle & Evan Fox-Decent, *The Authority of International Refugee Law*, 62 WM. & MARY L. REV. 1067, 1117 (2021) (noting that nonrefoulement’s “status as

Whether through its treaty obligations, its own laws, or non-refoulement's status as an international legal norm, "there is no question that the United States [must] comply with the duty of *non-refoulement*."⁴² As one scholar explains, refoulement "flies in the face of the United States' . . . treaty obligations, its moral obligations, and its projected image as the defender of democracy."⁴³

Not only does non-refoulement form the basis for certain immigration protections, but it also mandates procedural safeguards for people seeking those protections. While the 1951 Convention does not lay out any specific procedures that a state must follow,⁴⁴ states must make good-faith efforts to identify the migrants whose return is forbidden by non-refoulement.⁴⁵

Language access is among the procedural safeguards central to a good-faith effort. Scholars of refugee law recognize language access as a key procedural protection without which non-refoulement cannot be ensured.⁴⁶ Guy Goodwin-Gill, the leading scholar of non-refoulement, cites access to interpreters as a bedrock of sensible refugee protection.⁴⁷ In *Asylum*, Goodwin-Gill writes that the "integrity" of the refugee system requires, among other protections, "the assistance of appropriately qualified interpreters" to correctly identify the class of persons who cannot be refouled under international law.⁴⁸

Key international human rights bodies likewise recognize the centrality of language. The UNHCR Executive Committee issued guidance in 1977 asserting that people seeking refugee status were entitled to basic procedural protections, including "the services of a competent interpreter."⁴⁹ UNHCR gives more detail

jus cogens is not as entrenched as, for example, the prohibitions on genocide, slavery, torture, and military aggression").

42. Zora Franicevic, Ian M. Kysel & Thomas Shannan, *Salvaging US Refugee Law in 2021: The Case for Tackling the Problem of Discretionary Asylum*, JUST SEC. (Jan. 20, 2021), <https://www.justsecurity.org/74263/salvaging-us-refugee-law-in-2021-the-case-for-tackling-the-problem-of-discretionary-asylum/> [<https://perma.cc/3WNT-MF2T>].

43. Durst, *supra* note 20, at 176.

44. Ellen F. D'Angelo, *Non-Refoulement: The Search for a Consistent Interpretation of Article 33*, 42 VAND. J. TRANSNAT'L L. 279, 285 (2009).

45. *Id.* at 285 (citing Ved P. Nanda, *Refugee Law and Policy*, in REFUGEE LAW AND POLICY: INTERNATIONAL AND U.S. RESPONSES 3, 4–5 (1989)).

46. Edith Muleiro first inspired me to connect refoulement with language access when she wrote in her undergraduate honors thesis that "the omission of [language] services should be equated to a violation of non-refoulement principles as they force individuals to choose between indefinite detention and returning to a dangerous situation." Edith Muleiro, *Lost in Translation: Interpretation as a Barrier to Asylum in Texas Immigration Courts* 57 (2020) (undergraduate thesis, University of Texas at Austin) (on file with author).

47. Guy S. Goodwin-Gill, *How to End Asylum Lunacy*, GUARDIAN (Aug. 19, 2001), <https://www.theguardian.com/uk/2001/aug/19/immigration.immigrationandpublicservices3> [<https://perma.cc/NCG5-SZD9>] (citing guaranteed language interpretation as an "essential [component] of an efficient and effective refugee and protection procedure").

48. Guy S. Goodwin-Gill, *The Principles of International Refugee Law*, in ASYLUM 11, 23 (Sophie Jeffer ed., 1995).

49. Exec. Comm. of the High Comm'r's Programme, *Determination of Refugee Status*, No. 8 (XXVIII) (Oct. 12, 1977), <https://www.unhcr.org/en-us/excom/exconc/3ae68c6e4/determination-refugee-status.html> [<https://perma.cc/N4TG-8EDZ>].

in its *Handbook on Procedures and Criteria for Determining Refugee Status*, which explains how states should manage asylum claims under the 1951 Convention and 1967 Protocol.⁵⁰ Although the *Handbook* is not binding on the U.S. government, federal courts and the Board of Immigration Appeals regularly reference it.⁵¹ The *Handbook* provides guidance for identifying culturally and situationally appropriate interpreters: asylum seekers should be able to choose same-sex interpreters if that is their preference,⁵² interpreters must be “aware of and responsive to any cultural or religious sensitivities,”⁵³ interpreters must respect confidentiality,⁵⁴ interpreters must not exhibit bias against asylum seekers’ identities,⁵⁵ and authorities should consider that interpreters from similar backgrounds as the asylum applicant “may heighten the applicant’s sense of shame or hinder him or her from fully presenting all the relevant aspects of the claim.”⁵⁶ This guidance reflects the fact that when someone cannot fully present their case for asylum—whether because there is no interpreter present, because the interpreter is unqualified, or because the dynamics between the interpreter and the asylum seeker affect the latter’s testimony—the asylum seeker is put at risk of refoulement.

In recent years, human-rights bodies and scholars have turned their attention to mechanisms by which states engage in “constructive refoulement,” which a UNHCR working group defined as “creating or presenting a coercive environment through lack of protection, material destitution or the infliction of living conditions that makes return the only feasible option.”⁵⁷ The International Law Commission, International Committee of the Red Cross, the U.N. Special Rapporteur on Torture, and the European Court of Human Rights have all taken similar positions

50. OFF. OF THE U.N. HIGH COMM’R FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES 90 (reissued 2019).

51. Durst, *supra* note 20, at 129–30 (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 439 n.22 (1987); *In re Mogharrabi*, 19 I. & N. Dec. 439, 445–46 (B.I.A. 1987)).

52. OFF. OF THE U.N. HIGH COMM’R FOR REFUGEES, *supra* note 50, at 90.

53. *Id.*

54. *Id.*

55. *Id.* at 180.

56. *Id.* at 181.

57. REG’L PROT. WORKING GRP., DAKAR, TYPOLOGY OF MOVEMENTS IN THE LAKE CHAD BASIN AND VOLUNTARINESS VERIFICATION TOOL OF RETURN MOVEMENTS (2017), <https://data.unhcr.org/en/documents/details/56249> [<https://perma.cc/899L-ZXL5>] (identifying one form of “forced returns”); see Dalia Malek, *‘In Any Manner Whatsoever’: Deconstructing Indirect Violations Beyond ‘Constructive Refoulement’*, INT’L J. REFUGEE L., Nov. 4, 2025 (advance article) (identifying “a general consensus across scholarship and evolving domestic and international jurisprudence that accepts that *refoulement* can occur indirectly”). For more recent scholarship on constructive refoulement, see generally Tilman Rodenhäuser, *Pushed to Breaking Point? The Prohibition of ‘Constructive’ or ‘Disguised’ Refoulement Under International Law*, 35 INT’L J. REFUGEE L. 419 (2024); Penelope Mathew, *Constructive Refoulement*, in RESEARCH HANDBOOK ON INTERNATIONAL REFUGEE LAW 207 (Satvinder Singh Juss ed., 2019).

against constructive or “disguised” refoulement.⁵⁸ Under the International Law Commission’s definition, “constructive refoulement” occurs when the state engages in an act or omission that leaves an asylum seeker no choice but to return to a place where they are likely to face persecution or torture and the state does so to induce them to leave.⁵⁹ This can be effected, for instance, via “detention in poor conditions for indefinite periods” or an unduly prolonged adjudication process.⁶⁰ Many of the examples in this Article do not necessarily identify a deliberate intent to induce return but rather a foreseeable and persistent failure to identify and protect refugees. This Article argues that when such failures are systemic and disproportionately concentrated in an identifiable population, they too should be understood through the lens of constructive refoulement.⁶¹

U.S. immigration law and principles of procedural due process also recognize the importance of language for fair immigration proceedings.⁶² In *Hartooni v. INS*, the Ninth Circuit emphasized that “[t]he right of a person facing deportation to participate meaningfully in the deportation proceedings by having them competently translated into a language he or she can understand is fundamental.”⁶³ The Board of Immigration Appeals, whose decisions are binding on immigration judges, has held that the “fundamental fairness” of an immigration hearing relies on the participation of an interpreter.⁶⁴ Implicit in these statements is the idea that

58. Int’l Law Comm’n, *Draft Articles on the Expulsion of Aliens, with Commentaries*, art. 10(1), U.N. Doc. A/69/10 (2014), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf [<https://perma.cc/UE5R-5HPW>]; Nils Melzer (Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment), *Rep. to the Human Rights Council*, ¶ 43, U.N. Doc. A/HRC/37/50 (Feb. 26, 2018), <https://docs.un.org/en/A/HRC/37/50> [<https://perma.cc/2EJK-MNUF>]; Mathew, *supra* note 58, at 219–20 (describing and translating portions of the European Court of Human Rights’s decision in *M.S. v. Belgium*, App. No. 50012/08, Eur. Ct. H.R. (2012)); Int’l Comm. of the Red Cross, *Note on Migration and the Principle of Non-Refoulement*, 99 INT’L REV. RED CROSS 345, 353–354.

59. Int’l Law Comm’n, *supra* note 58, art. 10(2).

60. U.N. Comm. Against Torture, General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22, ¶ 14, U.N. Doc. CAT/C/GC/4 (Sept. 4, 2018).

61. *Cf. M.S.S. v. Belgium & Greece*, App. No. 30696/09, Eur. Ct. H.R. ¶¶ 358–68 (2011) (Grand Chamber) (finding that Belgium violated its implicit non-refoulement obligation under Article 3 of the European Convention on Human Rights by transferring an asylum seeker to Greece despite knowledge of systemic deficiencies in Greece’s asylum procedures and reception conditions).

62. *He v. Ashcroft*, 328 F.3d 593, 598 (9th Cir. 2003). Note, however, that the Supreme Court has not extended procedural due process rights to all migrants inside or seeking to enter the United States. See *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212–13 (1953) (suggesting that temporary harborage at Ellis Island does not confer procedural due process rights); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 139–40 (2020) (holding that a person arrested within twenty-five yards of the border less than twenty-four hours after entry without inspection is not entitled to procedural due process rights).

63. *Hartooni v. INS*, 21 F.3d 336, 340 (9th Cir. 1994).

64. *Matter of Tomas*, 19 I. & N. Dec. 464, 465 (B.I.A. 1987).

people cannot meaningfully present their cases for asylum and related protections without language access.⁶⁵

This Article theorizes that an expelling country commits linguistic refoulement whenever language-access limitations during the asylum process cause asylum seekers to be expelled, deported, or coerced into abandoning their asylum claims. Linguistic refoulement highlights both the direct and indirect ways refoulement happens through the nexus of language. For instance, and most obviously, if an asylum seeker's request for an interpreter is denied and thus she cannot tell an official why she fears returning to her country, her deportation is a clear example of linguistic refoulement. This Article calls this basic form of linguistic refoulement *linguistic neglect*.

There are many more subtle ways that the same asylum seeker may be returned on account of her language. If the government fails to identify that she needs an interpreter, and if she doesn't know that she can ask for one, the government may refool her by *linguistic erasure*. If officials discount her credibility based on the way that she speaks or the patterns of communication associated with her language, that may lead to linguistic refoulement by *linguistic illegibility*. Relatedly, if a decision-maker penalizes her for speaking a different language, that may produce linguistic refoulement by *linguistic punishment*. Finally, if the government detains her for months or years while trying to find an interpreter, she might choose to end the detention by abandoning her potentially meritorious asylum claim and returning home to face harm. That is linguistic refoulement by *linguistic isolation*.

Each of these language-related forces—individually or working in tandem—can produce the same result: a person is returned to a place where they face forms of harm that entitle them to protection under international and domestic legal regimes. For many asylum seekers, therefore, language access means the difference between refuge and persecution, between welcome and torture, between sanctuary and death.

II.

CASE STUDY: MONOLINGUAL INDIGENOUS-LANGUAGE SPEAKERS SEEKING REFUGE IN THE UNITED STATES

To understand the forces of linguistic refoulement, this Article focuses on the case study of monolingual Indigenous-language speakers seeking refuge in the

65. This Article's focus is on how language-access failures undermine the principle of non-refoulement, not on remedies available under domestic law. Noncitizens have few mechanisms to directly enforce their treaty rights. Laura Moranchek Hussain, *Enforcing the Treaty Rights of Aliens*, 117 YALE L.J. 680, 685, 695–99 (2008). However, if insufficient language-access protections lead to a wrongful deportation order, an alleged due-process violation or noncompliance with the statutory procedural safeguards may form the basis for an appeal to the Board of Immigration Appeals, motion to reconsider, or petition for review. Notably, a noncitizen may sometimes continue litigating a petition for review even after deportation. See *Nken v. Holder*, 556 U.S. 418, 424 (2009).

United States.⁶⁶ Indigenous-language speakers experience language-related challenges that tend to be more extreme extensions of the challenges faced by speakers of languages that are more common in the United States, like Spanish. As one participant in the study explained, “everything is more drastic with Indigenous languages.”⁶⁷ Indigenous-language speakers seeking asylum thus constitute an instructive case, revealing the subtle mechanisms of linguistic refoulement that likely operate in other cases but do so in ways that are less obvious or observable.

To contextualize this case study, some background is in order. Latin America’s linguistic diversity is astounding. Guatemala recognizes 22 Mayan languages and two other Indigenous languages, with up to 65% of the population identifying as Indigenous Maya.⁶⁸ Similarly, the Mexican government recognizes 68 Indigenous languages,⁶⁹ of which there are 364 variants.⁷⁰ The Peruvian government recognizes 47 Indigenous languages.⁷¹ In Paraguay, most of the population speaks the Indigenous language Guaraní, which is used by Indigenous and non-

66. A case study is “an in-depth, multifaceted investigation” that focuses on a “single social phenomenon” and “often relies on the use of several data sources,” qualitative or quantitative. Anthony M. Orum, Joe R. Feagin & Gideon Sjoberg, *Introduction: The Nature of the Case Study*, in *A CASE FOR THE CASE STUDY 2* (Joe R. Feagin, Anthony M. Orum & Gideon Sjoberg eds., 1991). Through this holistic approach, a case study can illuminate the “complex web of social interaction” implicated by the phenomenon of interest. *Id.* at 9. Of particular importance here, a single or especially extreme case can “help to illuminate how the more general social process under discussion works.” *Id.* at 16.

67. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

68. Francisco Mauricio Artíz, *Diversidad cultural: en Guatemala se hablan 25 idiomas* [*Cultural Diversity: In Guatemala, 25 Languages Are Spoken*], PRENSA LIBRE (July 26, 2015), <https://www.prensalibre.com/revista-d/linguistica-diversidad-cultural-en-guatemala-se-hablan-25-idiomias> [https://perma.cc/8JNC-M3XY].

69. *Lenguas indígenas* [*Indigenous Languages*], SISTEMA DE INFORMACIÓN CULTURAL [SYSTEM OF CULTURAL INFORMATION], SECRETARÍA DE CULTURA [SECRETARY OF CULTURE], https://sic.cultura.gob.mx/?table=inali_li&disciplina=&estado_id=0 [https://perma.cc/Q3MW-WNE8].

70. Jo Tuckman, *Language at Risk of Dying Out—The Last Two Speakers Aren’t Talking*, GUARDIAN (Apr. 13, 2011), <https://www.theguardian.com/world/2011/apr/13/mexico-language-ayapaneco-dying-out> [https://perma.cc/3PGP-2LZZ].

71. *En el Perú hay 47 lenguas originarias que son habladas por cuatro millones de personas* [*In Peru, There Are 47 Indigenous Languages Spoken by Four Million People*], MINISTERIO DE EDUCACIÓN [MINISTRY OF EDUCATION] (May 26, 2017), <http://www.minedu.gob.pe/n/noticia.php?id=42914> [https://perma.cc/C26K-DEGL].

Indigenous-language speakers to the United States to seek asylum and related protections.

Indigenous migrants' claims for asylum are varied. Some are escaping gender violence.⁷⁸ Others are seeking protection from violence by local paramilitaries, gangs, and organized criminal groups.⁷⁹ Still others are fleeing intra-community religious persecution,⁸⁰ persecution against Indigenous people,⁸¹ anti-LGBTQ violence,⁸² and retaliation for environmental or agrarian activism.⁸³ But at many moments in the lengthy process of seeking asylum in the United States, these asylum seekers may find themselves shut out due to their languages. This research sought to identify those moments within the framework of linguistic refolement. To be sure, language is entangled with other axes of disadvantage—including poverty, lack of education, race, color, and dress. The focus here is on language not because it operates independently of these forces but because language is a site through which these forces converge and become procedurally actionable. When language obligations go unmet, other disadvantages compound; when appropriate interpreters are available, the asylum seeker is more likely to be able to make their claim—which may turn on these other forces—legible to the state.

To understand how linguistic refolement operated in this case study, I relied on qualitative interviews with system actors, analysis of policy documents, and descriptive quantitative estimation. Participants in the ten semi-structured interviews were legal advocates and language professionals who work directly

<https://www.theguardian.com/world/2018/oct/30/migrant-caravan-causes-climate-change-central-america> [https://perma.cc/7CRW-88KN].

78. Lynn Stephen, *Fleeing Rural Violence: Mam Women Seeking Gendered Justice in Guatemala and the U.S.*, 46 J. PEASANT STUD. 229 (2019) [hereinafter Stephen, *Fleeing Rural Violence*]; Lynn Stephen, *Gendered Violence and Indigenous Mexican Asylum Seekers: Expert Witnessing as Ethnographic Engagement*, 91 ANTHROPOLOGICAL Q. 325, 334 (2018) [hereinafter Stephen, *Gendered Violence*]; Shannon Speed, *States of Violence: Indigenous Women Migrants in the Era of Neoliberal Multicriminalism*, 36 CRITIQUE OF ANTHROPOLOGY 280, 284–86 (2016).

79. Stephen, *Gendered Violence*, *supra* note 78, at 352; Speed, *supra* note 78, at 286–88; KATHRYN SHEPHERD & ROYCE BERNSTEIN MURRAY, AM. IMMIGR. COUNCIL, THE PERILS OF EXPEDITED REMOVAL: HOW FAST-TRACK DEPORTATIONS JEOPARDIZE ASYLUM SEEKERS 6 (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_perils_of_expedited_removal_how_fast-track_deportations_jeopardize_detained_asylum_seekers.pdf [https://perma.cc/8P3N-2CPQ].

80. Gustin Bova, *On the Translation of Fear: A Study of Ecuadorian Kichwa Speakers and the US Immigration System*, U. KAN. J. UNDERGRADUATE RSCH., Summer 2014–Spring 2015, at 5 (describing the role of Evangelical Christian missionaries in creating conflicts within Kichwa communities, leading to physical violence against other groups).

81. Riley & Carpenter, *supra* note 75, at 93; Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

82. HUM. RTS. WATCH, “EVERY DAY I LIVE IN FEAR”: VIOLENCE AND DISCRIMINATION AGAINST LGBT PEOPLE IN EL SALVADOR, GUATEMALA, AND HONDURAS, AND OBSTACLES TO ASYLUM IN THE UNITED STATES 74–77 (2020), https://www.hrw.org/sites/default/files/media_2020/10/centralamerica_lgbt1020_web_0.pdf [https://perma.cc/595E-E9J5].

83. María Inés Taracena, “*We Are Here by Force*”: Maya Ixil Activists Fight for Asylum and Justice, N. AM. CONG. ON LATIN AM. (May 13, 2021), <https://nacla.org/news/2021/05/10/maya-ixil-asylum-migration-central-america> [https://perma.cc/8QK2-ARU9].

with asylum seekers on the U.S.-Mexico border and in Guatemala.⁸⁴ Among the legal advocates were lawyers, DOJ-accredited representatives,⁸⁵ paraprofessionals, and others working for nonprofit legal organizations. Language professionals included interpreters, translators, and other staff at organizations providing interpretation and translation.⁸⁶ Participants shared detailed stories of linguistic refolement they had observed, citing both patterns and specific examples from their work. Because of the sensitive dynamics of participants' relationships with the U.S. immigration system, their names and places of work have been anonymized.⁸⁷ Future research would benefit from interviews with adjudicators and enforcement personnel to supplement the perspectives offered here. To supplement the interviews with additional data, I reviewed relevant policy documents like agencies' language-access plans, language-identification materials, and other data disclosures.⁸⁸

III.

MECHANISMS OF LINGUISTIC REFOULEMENT

When asylum seekers' language-access needs go unmet, they are at risk of linguistic refolement. This can happen through a variety of mechanisms that work together to lead officials to deport asylum seekers with meritorious cases, or that make life so unbearable for asylum seekers that they choose to abandon meritorious asylum claims. This Part details five such mechanisms.

Although these mechanisms overlap in practice, the value of taxonomizing them this way is diagnostic: each necessitates different interventions to guarantee the protections against refolement for speakers of non-dominant languages. As this Section shows, neglect calls for investments in interpreter pipelines; erasure for better language identification and data collection; illegibility for cultural-

84. The available evidence often focuses on the Guatemalan Mayan-languages case, although some examples refer the Indigenous languages of Mexico and Ecuador. Future research should examine how these mechanisms operate for speakers of Mexican and South American Indigenous languages, where the dynamics of migration and state policy differ.

85. Non-lawyers authorized by the Department of Justice to practice immigration law in and outside of immigration court. See Jean C. Han, *The Good Notario: Exploring Limited Licensure for Non-Attorney Immigration Practitioners*, 64 VILL. L. REV. 165, 186–87 (2019).

86. An interpreter converts speech or signs from one language to another, whereas a translator converts writing from one language to another. See Elvira Iannone, Emanuel Matti, Ursula Böser, Maggie Sargeant & Eloisa Monteoliva, *Unit 3: The Basic Principles of Interpreting*, in HANDBOOK FOR INTERPRETERS IN ASYLUM PROCEDURES 38, 38 (UNHCR Austria ed., 2017).

87. I carried out these interviews with human subjects with approval from the School Research Committee for the Queen's University Belfast School of History, Anthropology, Philosophy and Politics, which was my affiliation at the time of the research. All participants signed consent forms in their preferred languages.

88. Until March 2025, federal agencies in the United States were required by law to develop language-access plans explaining how they allow non-English speakers to access the agency's service. Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 16, 2000). The Trump Administration rescinded this Executive Order in March 2025. Exec. Order No. 14224, 90 Fed. Reg. 11363 (Mar. 6, 2025).

competence training and less adversarial processes; punishment for accountability and reduced caseload pressure; and isolation for an end to pushbacks and the release of linguistically vulnerable detainees.

A. Linguistic Neglect

In 2007, an immigration judge ordered Victor Garcia Garcia, a Maya K'iche' man, deported to Guatemala.⁸⁹ According to the record from later court proceedings, Mr. Garcia Garcia had grown up in a region of Guatemala where the national military and local militias committed genocide against the Maya.⁹⁰ When he was young, he and his family often fled into the mountains to avoid the army, which beat and summarily executed any Maya people who could not escape.⁹¹ Mr. Garcia Garcia became a leader in his community and suffered retaliatory beatings at the hands of a local Ladino (non-Indigenous) militia.⁹² On one occasion, the militia beat him and attacked him with a knife, leaving him unable to walk for two weeks.⁹³ On another, they hurled anti-Indigenous slurs at him.⁹⁴

Mr. Garcia Garcia later migrated to the United States to escape the violence.⁹⁵ He was apprehended by ICE in New Bedford, Massachusetts, and transferred to a detention center in Texas.⁹⁶ During his 2007 hearing, the only interpreter present spoke Spanish rather than Mr. Garcia Garcia's native K'iche'.⁹⁷ He did not ask for asylum or related protections, contest the removal order that an immigration judge entered against him, or file an appeal.⁹⁸

The First Circuit later wrote that had Mr. Garcia Garcia applied for asylum after being apprehended by immigration authorities, it "appears [he] would have been successful."⁹⁹ Instead, he was deported.

After Mr. Garcia Garcia returned to Guatemala, the abuse continued.¹⁰⁰ In 2015, he fled again and was apprehended at the U.S.-Mexico border.¹⁰¹ During a reasonable fear interview with an asylum officer and a K'iche' interpreter, he told the officer that he could not understand Spanish:

Q: Have you ever been denied anything or any rights because you are Mayan?

89. Garcia v. Sessions, 856 F.3d 27, 33, 44 (1st Cir. 2017) (Stahl, J., dissenting).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 45 (Stahl, J., dissenting).

97. *Id.*

98. *Id.*

99. *Id.* at 33.

100. *Id.* at 46 (Stahl, J., dissenting).

101. *Id.*

A: Yes a lot of things have been denied for me since I don't speak Spanish and I didn't go to school.

Q: What have you been denied since you don't speak Spanish?

A: I don't understand when people talk to me so I just remain quiet because I don't understand.¹⁰²

Eventually, with the help of K'iche' interpreters, Mr. Garcia Garcia was granted withholding of removal, preventing his return to Guatemala.¹⁰³

Years after Mr. Garcia Garcia was first deported without having had access to a suitable interpreter, many asylum seekers find themselves in similar positions—deported without really understanding what happened to them.¹⁰⁴ Unlike Mr. Garcia Garcia, though, many never have the chance to seek redress with support from appropriate interpreters.

In fiscal year 2019, ICE received 47 requests for interpreters for Garifuna,¹⁰⁵ a language spoken by Afro-Indigenous people on the Atlantic Coast of Central America.¹⁰⁶ ICE fulfilled none of them.¹⁰⁷ This likely means that 47 Garifuna speakers were detained without anyone to help them understand what was going on, communicate with officials, or access medical care. Indeed, ICE reported meeting fewer than half of all requests for Indigenous-language services in 2019.¹⁰⁸

Other agencies faced similar struggles. USCIS reported that it had “encountered challenges in finding competent translators to translate information in any of the indigenous languages of Central America.”¹⁰⁹ One legal advocate acknowledged that “when only 40,000 people speak a language, it’s not surprising that none of them work for the DOJ” or elsewhere in the government.¹¹⁰ But she was skeptical that USCIS could not find translators for “any of the indigenous

102. *Id.*

103. *Id.* at 46–47 (Stahl, J., dissenting). Mr. Garcia Garcia was ineligible to receive asylum because of his previous deportation. Withholding of removal is a less robust protection than asylum. *See supra* notes 34–38 and accompanying text.

104. *See Nolan, supra* note 9 (offering examples).

105. U.S. IMMIGR. & CUSTOMS ENF'T, ICE LANGUAGE ACCESS PLAN: SUPPLEMENTAL UPDATE COVERING FISCAL YEARS 2019 AND 2020, 12 (2020), https://www.dhs.gov/sites/default/files/publications/ice_supplemental_language_access_plan_07-21-20_508.pdf [<https://perma.cc/45T3-XMHV>].

106. Steffen Haurholm-Larsen, *A Grammar of Garifuna* 5 (2016) (Ph.D. dissertation, University of Bern), https://boris.unibe.ch/91473/1/16haurholm-larsen_s.pdf [<https://perma.cc/C4SF-8ZAT>].

107. U.S. IMMIGR. & CUSTOMS ENF'T, *supra* note 105, at 12.

108. *Id.*

109. U.S. DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., LANGUAGE ACCESS PLAN 12 (2019), <https://www.dhs.gov/sites/default/files/publications/uscisc-updated-language-access-plan-2020.pdf> [<https://perma.cc/W5XH-FPUA>].

110. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

languages,” noting that many smaller and less resourced organizations are able to find such interpreters.¹¹¹

Indeed, the apparent inability to find interpreters is not the full story. Scholar Sonya Rao observes that “interpreter shortages” are often manufactured by companies and organizations that refuse to pay market rates.¹¹² She also writes that Indigenous interpreters in the United States are becoming increasingly professionalized, and “many of these interpreters are easy to find.”¹¹³ Indeed, the U.S. government has already employed linguists for at least some Indigenous languages to record public service announcements advising Central Americans not to come to the United States.¹¹⁴ The problem appears to be not a lack of interpreters but a failure to invest in hiring the interpreters necessary to provide legally mandated language access.

Without interpreters, Indigenous asylum seekers face high risks of linguistic refolement through linguistic neglect, defined here as the failure to provide appropriate language-access services to someone who needs them. Many are deported, as in Mr. Garcia Garcia’s case. One legal advocate explained, “So many cases fall through the cracks. People get removed without even understanding why.”¹¹⁵

Some of these asylum seekers even sign papers consenting to their own deportations.¹¹⁶ According to BuzzFeed News, a woman who spoke only Jakalteq (Popti’) and a few words of Spanish entered the United States in 2007 and was apprehended.¹¹⁷ DHS attorneys instructed her to sign a document written only in Spanish.¹¹⁸ By signing, she unknowingly agreed to leave the United States and return to Guatemala, where she had been raped by members of her community.¹¹⁹ Unaware that was what she was agreeing to, she remained in the United States for

111. *Id.* I have written previously about the process of locating and hiring Indigenous-language interpreters for the nonprofit organization where I worked. Katherine M. Becker, Opinion, *Lack of Indigenous-Language Interpreters Compounds Border Tragedy*, SEATTLE TIMES (Dec. 19, 2022, 4:48 PM), <https://www.seattletimes.com/opinion/lack-of-indigenous-language-interpreters-compounds-border-tragedy/> [https://perma.cc/266R-74CJ].

112. Sonya Rao, *Privatizing Language Work: Interpreters and Access in Los Angeles Immigration Court*, 192–193 (2021) (Ph.D. dissertation, UCLA), https://escholarship.org/content/qt95v077n2/qt95v077n2_noSplash_13e8ff172f408d467a667d6b2c1f8218.pdf [https://perma.cc/6TX8-KNCZ].

113. *Id.* at 194.

114. Priscilla Alvarez, ‘Don’t Put Your Kids’ Lives at Risk’: US Ramps Up Ad Campaign in Latin America Fighting Against Disinformation, CNN (Apr. 3, 2021), <https://www.cnn.com/2021/04/03/politics/border-radio-ad-campaign-latin-america-smugglers/index.html> [https://perma.cc/Q2RY-EBQN].

115. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

116. Remote Video Interview with Language Professional B (Aug. 25, 2021).

117. Flores, *supra* note 9.

118. *Id.*

119. *Id.*

ten years before being apprehended by ICE and deported back to that community.¹²⁰

Likewise, a K'iche'-speaking man told the ACLU in 2014 that he was deported from the United States after the government failed to provide a K'iche' interpreter.¹²¹ When he reentered the country, he was told to sign documents he likely could not read or understand.¹²² He recalled agents telling him, "You've been deported, just sign. You're deported again."¹²³

This pattern extends to other instances where monolingual Indigenous-language speakers are told to read, sign, or fill out documents they have no hope of understanding. Critical documents—like lists of pro bono attorneys and notices to appear in court—are generally provided only in English, or in English and Spanish,¹²⁴ with no one to explain the documents to someone in their native language.

A case in point was the controversial "CBP One" app, introduced in 2020. Initially used in part to request humanitarian exemptions from Title 42 expulsions to Mexico,¹²⁵ the app became "the only way for asylum seekers who traveled through a third-country and arrived at a southwest border to apply for an appointment at a port of entry and maintain eligibility for asylum in the United States."¹²⁶ The app was available only in English, Spanish, and Haitian Creole and required a high degree of both literacy and digital literacy to navigate.¹²⁷ This made requesting humanitarian entry into the United States "an impossible task" for many

120. *Id.*

121. ACLU, AMERICAN EXILE: RAPID DEPORTATIONS THAT BYPASS THE COURTROOM 85 (2014), https://www.aclu.org/sites/default/files/field_document/120214-expeditedremoval_0.pdf [<https://perma.cc/T26Q-CVJ4>].

122. *Id.* at 87 (explaining that the man "spoke little English or Spanish"). He does not appear to have been given an explanation in K'iche'.

123. ACLU, *supra* note 121, at 85.

124. See Exec. Off. for Immigr. Review, *List of Pro Bono Legal Service Providers*, DEP'T OF JUST. (Mar. 6, 2023), <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> [<https://perma.cc/U65K-KVUA>] (explaining that the list, which is in English, is "provided to individuals in immigration proceedings"); U.S. CUSTOMS & BORDER PROT., MIGRANT PROTECTION PROTOCOLS PUBLIC DISCLOSURES 13 (2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/Migrant%20Protection%20Protocols%2001.pdf> [<https://perma.cc/UPH2-U9ZT>] (instructing agents to give people placed in Migrant Protection Protocols a tear sheet with court data information in "English and Spanish").

125. AM. IMMIGR. COUNCIL, CBP ONE: AN OVERVIEW 2 (2023), https://www.americanimmigrationcouncil.org/sites/default/files/research/cbp_one_an_overview_0.pdf [<https://perma.cc/ZSF7-JUWW>].

126. *Id.* at 7.

127. Letter from members of Congress to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., at 3 (Mar. 13, 2023), https://castro.house.gov/imo/media/doc/cbponeletter_final.pdf [<https://perma.cc/GST6-6HC8>] (explaining that the app is difficult for people without "high levels of technological literacy" or who cannot read in any language, and that it is only available in English, Spanish, and Haitian Creole).

Indigenous asylum seekers,¹²⁸ one of the demographic groups most likely to be the target of violence while waiting in Mexico.¹²⁹

Furthermore, without robust language services, filling out the paperwork required to request asylum can be an insurmountable barrier. To apply for asylum, applicants must complete a 12-page form, to which they are expected to attach additional declarations.¹³⁰ The form is written in English, and DOJ and DHS require that all asylum seekers complete it in English.¹³¹ During Migrant Protection Protocols, a previous border-externalization regime, asylum seekers were often given as little as two weeks to complete the form.¹³² For many Indigenous asylum seekers, a legal advocate explained, this was “impossible.”¹³³

Even when asylum seekers are given Indigenous-language interpreters, the interpreter selections are often inappropriate: they speak different language variants, rely on unreliable relay or remote interpretation, have relationships with the asylum seekers that preclude impartial interpretation, or are simply unqualified.

Credibility is foundational to asylum determinations, and asylum cases “turn on minutiae.”¹³⁴ This makes it critical to find someone who speaks the same language variant as the applicant, is properly trained, and can assist in person.

This process is complicated by the fact that many Indigenous languages have different variants. The Mam language, for instance, has three major dialects.¹³⁵ Even within each dialect, linguistic variation between townships can preclude inter-municipality communication.¹³⁶ One advocate estimated that the Mam language has 72 variants, which are not fully mutually intelligible.¹³⁷

Communication can be especially challenging when the speaker or listener has had limited prior exposure to people from other municipalities.¹³⁸ It is possible, therefore, that a professional Mam interpreter who has traveled extensively

128. Press Release, Nat'l Immigr. Project, More than 140 Non-Indigenous Allies Deliver Letter Urging Full Access to Asylum Process for Indigenous Peoples (June 5, 2023), <https://nip-nlg.org/news/press-releases/more-140-non-indigenous-allies-deliver-letter-urging-full-access-asylum-process> [<https://perma.cc/5NAR-3VCW>].

129. See *infra* notes 294–300 and accompanying text.

130. See *I-589, Application for Asylum and for Withholding of Removal*, U.S. CITIZENSHIP & IMMIGR. SERVS. & EXEC. OFF. FOR IMMIGR. REV. (Mar. 1, 2023), <https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf> [<https://perma.cc/398J-TNFL>].

131. *I-589, Instructions for Application for Asylum and for Withholding of Removal*, U.S. CITIZENSHIP & IMMIGR. SERVS. & EXEC. OFF. FOR IMMIGR. REV. 5 (Mar. 1, 2023), <https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf> [<https://perma.cc/6WAV-J5UL>] (“Your answers must be completed in English.”).

132. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

133. *Id.*

134. *B.C. v. Att’y Gen. U.S.*, 12 F.4th 306, 308 (3d Cir. 2021).

135. Nora C. England, *Mam*, in *THE MAYAN LANGUAGES* 500, 500 (Judith Aissen, Nora C. England & Roberto Zavala Maldonado eds., 2017).

136. See Sergio Romero, *The Labyrinth of Diversity: The Sociolinguistics of Mayan Languages*, in *THE MAYAN LANGUAGES*, *supra* note 135, at 379, 388, 392.

137. Remote Video Interview with Language Professional B (Aug. 25, 2021).

138. *Id.*

and met people from a variety of places might be able to understand an asylum seeker's language variant, but an asylum seeker with limited exposure to other language variants may not be able to understand that same interpreter.¹³⁹

In an interview, one language professional described a situation in which a judge found a woman not credible because of perceived inconsistencies in her description of domestic abuse.¹⁴⁰ When the woman first described her injury, the interpreter used the word "heel." When she described it later, a different interpreter, who spoke a different variant of their language, said "ankle." Even though the asylum seeker was saying the same word in Mam, the judge made an adverse credibility finding and ordered her removed to Guatemala, where she faced danger of physical harm at the hands of her ex-partner.

Another language professional described her fear of the risk of misunderstanding another variant of Mam: "I don't want to mess up this other person's life."¹⁴¹ She told a story of interpreting for an asylum seeker who was trying to explain that her husband had cut her nipple from her breast. The interpreter was not familiar with the word that the asylum seeker was using for "nipple" and said the situation was scary because "you can lose the case because you don't know what they're saying."¹⁴²

A legal advocate told of a similar case where one word in Mixtec could be used for either "uncle" or "grandfather."¹⁴³ The Mixtec interpreter said "uncle," but the attorney knew that her client meant "grandfather." Had the attorney not stepped in and objected on the record, she believes the judge would have denied asylum on credibility grounds.

Perceived inconsistencies are amplified by the use of "relay" or "chain" interpretation, often employed to translate indirectly between Indigenous languages and English by using Spanish as an intermediate step.¹⁴⁴ This style of

139. *Id.* ("Often, the interpreter can understand the [child], but the child hasn't ever left their town and does not understand the interpreter."). On the other hand, a professional Ch'ol interpreter described a case where someone who had been in the United States for some time had incorporated English loanwords like "downtown" into his Ch'ol, such that his version of Ch'ol would be unfamiliar to other speakers of the language who did not also have familiarity with English. Email from Carol Rose Little, Assistant Professor of Linguistics, U. Oklahoma, to Katherine Becker (Aug. 30, 2023, 11:45 AM ET) (on file with author).

140. Remote Video Interview with Language Professional B (Aug. 25, 2021).

141. Remote Video Interview with Language Professional C (Aug. 26, 2021).

142. *Id.* Language Professional C explained that in a situation like that, she would try to contact someone from asylum seeker's municipality or simply explain to the court that she did not know what the word meant.

143. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

144. Jennifer Medina, *Anyone Speak K'iche' or Mam? Immigration Courts Overwhelmed by Indigenous Languages*, N.Y. TIMES (Mar. 19, 2019), <https://www.nytimes.com/2019/03/19/us/translators-border-wall-immigration.html> [<https://perma.cc/H4L3-3H9B>]; MARJORY A. BANCROFT, KATHARINE ALLEN, CAROLA E. GREEN & LOIS M. FEUERLE, *Interpreting Skills and Modes*, in BREAKING SILENCE: INTERPRETING FOR VICTIM SERVICES 122 (2017); Remote Video Interview with Legal Advocate B (Aug. 12, 2021); Remote Video Interview with Legal Advocate E (Sept. 14, 2021).

interpretation is used for uncommon language pairs: two languages rarely spoken by the same person.¹⁴⁵ Indigenous migrants must often rely on relay interpreting to communicate with English speakers, using Spanish as a “pivot language.”¹⁴⁶

Consider a monolingual Ecuadorian Kichwa speaker trying to relay their asylum claim to an English-speaking official. Such communication would likely require two interpreters, who work in a relay. The Kichwa speaker would say something, the first interpreter would listen and repeat the message in Spanish, and then the second interpreter would listen and repeat the message in English for the official. The official would respond, and the chain would repeat in reverse order. Interpreting in this fashion can be an effective way of communicating, especially when the parties are accustomed to it.¹⁴⁷ But it can also resemble a dysfunctional game of telephone¹⁴⁸ that is “particularly prone to error”¹⁴⁹—and that has life-and-death stakes. As one attorney told another researcher, “there’s a certain amount of slippage” in any interpretation, and the use of relay interpretation is effectively “squar[ing]” that slippage.¹⁵⁰ Even when an asylum seeker is consistent, the use of relay interpretation may lead a judge to believe she is changing her story, resulting in a negative credibility finding and a lost case.

Remote technology complicates these dynamics even further. Indigenous language-speakers often see or hear their interpreters via only speakerphone or video because of the scarcity of Indigenous-language interpreters.¹⁵¹ The immigration courts’ video and phone systems suffer from poor sound quality, blurry images, and frequent interruptions, complicating communication.¹⁵² These shortcomings matter because interpreters rely heavily on speakers’ body language and sound cues to understand what they are saying.¹⁵³ The loss of sound quality is especially problematic for Indigenous languages; for many such languages, subtle changes in pronunciation can alter meaning.¹⁵⁴ When the interpreter cannot see or hear the

145. Mikkelson, *supra* note 27, at 363.

146. See Iannone, Matti, Böser, Sargeant & Monteoliva, *supra* note 86, at 42 (describing “pivot languages” in relay interpreting).

147. Remote video interview with Legal Advocate E (Sept. 14, 2021).

148. BANCROFT, ALLEN, GREEN & FEUERLE, *supra* note 144, at 122.

149. Iannone, Matti, Böser, Sargeant & Monteoliva, *supra* note 86, at 42.

150. Alexa Scott, *Lost in Translation: An Analysis of Access to Indigenous Language Interpreters in U.S. Immigration Proceedings* 19 (2023) (B.A. thesis, University of Oregon), <https://scholarsbank.uoregon.edu/server/api/core/bitstreams/d0d4c88b-4b6c-42de-bddf-617c473603f6/content> [<https://perma.cc/JP82-TG9W>].

151. See Medina, *supra* note 144; Nolan, *supra* note 9.

152. Joseph Darius Jaafari, *Immigration Courts Getting Lost in Translation*, MARSHALL PROJECT (Mar. 20, 2019), <https://www.themarshallproject.org/2019/03/20/immigration-courts-getting-lost-in-translation> [<https://perma.cc/Y5XQ-M88G>]; LAURA ABEL, BRENNAN CTR. FOR JUST., *LANGUAGE ACCESS IN IMMIGRATION COURTS* 8–9 (2011), https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf [<https://perma.cc/9GDZ-YNXW>].

153. ABEL, *supra* note 152, at 8.

154. The Supreme Court of New Jersey has articulated a presumption of in-person interpretation during criminal trials. See *State v. Juracan-Juracan*, 255 N.J. 241, 258 (2023). This decision was

person speaking, the interpreting quality suffers, introducing additional credibility risks.¹⁵⁵

Moreover, officials sometimes look for interpreters in inappropriate places. For instance, officials sometimes ask children who speak both Indigenous languages and Spanish to translate for adults.¹⁵⁶ The harms of using children as interpreters are well documented, ranging from frequent mistranslations to exposing children to developmentally inappropriate content.¹⁵⁷ This practice is especially concerning in the asylum-seeking context, where the stakes of any misunderstanding are enormous, and cases may involve topics like sexual and domestic violence.¹⁵⁸

Even when officials find adult interpreters, the interpreters they find may have no training or experience. Instead, they may rely on local Indigenous laborers¹⁵⁹ or other detained people.¹⁶⁰ Such arrangements may make the drafted interpreter feel that they must agree to interpret or else their own immigration status will be in jeopardy. Moreover, lay interpreters lack the specialized training and vocabulary necessary to interpret accurately during legal proceedings, jeopardizing asylum seekers' cases.

Alternatively, officials may contact local consulates for referrals to interpreters.¹⁶¹ This arrangement, too, presents problems. It is not typically appropriate to use a consulate-affiliated interpreter in the context of an asylum case because

based in part on the testimony of a Kaqchikel interpreter who noted that the “nature of the language” meant that video remote interpretation was “not the same.” *Id.*

155. See *Juracan-Juracan*, 255 N.J. at 258; Muleiro, *supra* note 46, at 13, 19.

156. Letter from Karen S. Lucas, Lindsay M. Harris, Amy Fischer & Ashley Feasley, CARA Family Detention Pro Bono Project, to Megan Mack & John Roth, Dep't of Homeland Sec., Family Detention—Challenges Faced by Indigenous Language Speakers, at 5 (Dec. 10, 2015), <https://www.aila.org/library/crcl-complaint-challenges-faced-family-detention> [<https://perma.cc/L2YC-MDYH>] [hereinafter Letter from Lucas, Harris, Fischer & Feasley]; see also *Matter of Tomas*, 19 I. & N. Dec. 464, 465 (B.I.A. 1987) (overturning an immigration judge's removal order because the judge used a couple's fifteen-year-old daughter as their Q'anjob'al interpreter).

157. See, e.g., Letter from Lucas, Harris, Fischer & Feasley, *supra* note 156, at 5 (“Mothers resist sharing details of abuse, torture, sexual assaults, and humiliation with their children; children and teenagers withhold such information from their parents.”); Renu Narchal, *Migrant Children Are Often Their Parents' Translators—And It Can Lead to Ill Health*, CONVERSATION (May 26, 2016), <https://theconversation.com/migrant-children-are-often-their-parents-translators-and-it-can-lead-to-ill-health-55309> [<https://perma.cc/UF3Z-L2TV>].

158. See Blaine Bookey, *Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 HASTINGS WOMEN'S L.J. 107, 110 (2013) (citing a database of 6,000 gender-based, child, and LGBT asylum claims).

159. Luis Chaparro, *Indigenous Asylum Seekers Struggle for Interpreters in US*, AL JAZEERA (July 3, 2021), <https://www.aljazeera.com/news/2021/7/3/indigenous-migrants-seeking-us-asylum-struggle-for-interpreters> [<https://perma.cc/N4QG-85NE>].

160. ELIZABETH CASSIDY & TIFFANY LYNCH, U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, BARRIERS TO PROTECTION: THE TREATMENT OF ASYLUM SEEKERS IN EXPEDITED REMOVAL 27 (2016), <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf> [<https://perma.cc/R2NV-D2FG>].

161. *Id.* at 27–28.

asylum seekers are so often fleeing persecution by the same governments those consulates represent.¹⁶²

Gender also complicates the process of finding appropriate interpreters. Indigenous communities that send migrants to the United States often experience gendered monolingualism.¹⁶³ Because women in these communities are less likely than their male counterparts to attend school and work outside the home, women are also less likely to learn Spanish.¹⁶⁴ This dynamic persists even after Indigenous-language-speaking migrants settle in the United States.¹⁶⁵ Women are more likely than men to require Indigenous language-access services,¹⁶⁶ and men are more likely than women to become interpreters.¹⁶⁷ These dynamics put women and girls at a heightened risk of linguistic refoulement. Moreover, they make it harder to find appropriate interpreters, especially in cases involving domestic or sexual abuse, where women might prefer to have their stories interpreted by other women.¹⁶⁸

Even where professional interpreters are available, problems persist. For-profit services provide most of the interpreters in the immigration courts.¹⁶⁹ Advocates have noted that these companies, in trying to keep costs low, do not always provide qualified interpreters. For instance, to evaluate these companies' Indigenous-language services, a prominent Mam interpreter named Oswaldo Martín took the certification test that the company Lionbridge administers, purposefully

162. These concerns may apply even when the interpreter is not from the consulate but is from the same community as the asylum seeker. One language professional noted, "it's really hard to talk about your trauma in excruciating detail to someone from your same community." Remote Video Interview with Language Professional D (Aug. 31, 2021). On the other hand, because of the need to have someone who speaks the same dialect of a language as the asylum seeker, there may be a tradeoff between privacy and mutual intelligibility for language variants with especially small populations of speakers.

163. Stephen, *Fleeing Rural Violence*, *supra* note 78, at 230.

164. Letter from Lucas, Harris, Fischer & Feasley, *supra* note 156, at 2; JESSICA HUGHES, PAN-AM. HEALTH ORG., GENDER, EQUITY, AND INDIGENOUS WOMEN'S HEALTH IN THE AMERICAS 5 n.25 (2004), <https://www3.paho.org/hq/dmdocuments/2011/gdr-gender-equity-and-indigenous-women-health-americas.pdf> [<https://perma.cc/YNY9-ZZ4N>]; GRACE MENG, HUM. RTS. WATCH, CULTIVATING FEAR: THE VULNERABILITY OF IMMIGRANT FARMWORKERS IN THE U.S. TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT 38 (2012), https://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf [<https://perma.cc/9YYE-P3GG>].

165. Kirk Semple, *Immigrants Who Speak Indigenous Languages Encounter Isolation*, N.Y. TIMES (July 10, 2014), <https://www.nytimes.com/2014/07/11/nyregion/immigrants-who-speak-indigenous-mexican-languages-encounter-isolation.html> [<https://perma.cc/4C7A-HK5E>] ("The isolation, their advocates said, is particularly widespread among women, many of whom stay at home with young children while their husbands go to work on construction sites and in restaurant kitchens, where they can pick up Spanish more quickly.").

166. See U.S. DEP'T OF HOMELAND SEC., EQUITY ACTION PLAN PURSUANT TO EXECUTIVE ORDER 13985 12 (Jan. 25, 2022), https://www.dhs.gov/sites/default/files/2022-04/DHS%20Equity%20Action%20Plan%20%28Final%29_0.pdf [<https://perma.cc/H8PR-VDNK>].

167. Scott, *supra* note 150, at 21.

168. See OFF. OF THE U.N. HIGH COMM'R FOR REFUGEES, *supra* note 50, at 90 (articulating the need for same-sex interpreters).

169. Chaparro, *supra* note 159; Nolan, *supra* note 9.

committed serious interpreting errors, and was still offered a court-interpreting job.¹⁷⁰ Odilia Romero, a Zapotec interpreter, had a similar experience with another company.¹⁷¹ She has observed that some interpreters for these companies lack culturally appropriate training, so they try to interpret complex concepts word-for-word using many Spanish loanwords instead of converting the meaning into the target language.¹⁷² This leaves asylum seekers confused—and vulnerable to linguistic refolement.

The situation need not be this dire. One might imagine a number of policy interventions to secure a pipeline of qualified, appropriate interpreters: creating a special immigrant visa to allow qualified interpreters to migrate to the United States using existing cultural- and language-exchange programs to build capacity,¹⁷³ and funding grassroots Indigenous groups to provide training.¹⁷⁴ To be sure, the Administration is unlikely to create a special interpreter visa or put federal funding behind developing an interpreter pipeline. But a future government more committed to the integrity of the asylum system should focus energy here. In the meantime, NGOs and grassroots groups must continue their work to develop interpreter-pipeline programs, even without government support. As the government apprehends, detains, and departs immigrants at record levels,¹⁷⁵ that pipeline is more critical now than ever.

170. Nolan, *supra* note 9.

171. Amy Goodman, “A Translation Crisis at the Border”: U.S. Immigration Courts Are Failing Mayan-Language Speakers, DEMOCRACY NOW! at 15:59 (Jan. 9, 2020), https://www.democracynow.org/2020/1/9/a_translation_crisis_at_the_border [<https://perma.cc/PQY3-FGJM>] (statement of Odilia Romero).

172. *Id.* at 17:53.

173. The National Security Education Program, for example, granted only two Boren Awards to students studying Western Hemisphere Indigenous languages out of nearly 1,500 total awards between 2017 and 2021. DEF. LANGUAGE & NAT’L SEC. EDUC. OFF., 2021 ANNUAL REPORT: NATIONAL SECURITY EDUCATION PROGRAM 99 (2021), <https://dlneo.org/sites/default/files/2021%20NSEP%20Annual%20Report.pdf> [<https://perma.cc/3E55-8FGM>] (showing one award for K’iche’ and one award for Quechua). One of the express purposes of the Boren Awards program is to train future DHS staff. *Id.* at 11 (identifying DHS as a priority agency).

174. Groups like the Frente Indígena de Organizaciones Binacionales, Comunidades Indígenas en Liderazgo, the Mixteco/Indígena Community Organizing Project, the International Mayan League, Asociación Colectivo Vida Digna, Promotores de la Liberación Migrante, California Rural Legal Assistance, Pixan Q’anej Colectivo, and Respond Crisis Translation, among others, already train Indigenous interpreters. Comunidad Maya Pixan Ixim in Nebraska trains people who speak Maya Q’anjob’al to become DOJ-accredited representatives, qualified to represent people directly in immigration proceedings. *Immigration Services & Legal Advocacy*, COMUNIDAD MAYA PIXAN IXIM, <https://www.pixanixim.org/immigration-services--legal-advocacy.html> [<https://perma.cc/96AW-MWTV>].

175. Camilo Montoya-Galvez, *ICE’s Detainee Population Reaches New Record High of 73,000, as Crackdown Widens*, CBS NEWS (Jan. 16, 2026, 11:22 AM), <https://www.cbsnews.com/news/ices-detainee-population-record-high-of-73000> [<https://perma.cc/6ZRD-B34D>].

B. Linguistic Erasure

After the news that U.S. Border Patrol agents were forcibly separating young children from their parents spread widely in June 2018, then-Secretary of Homeland Security Kirstjen Nielsen assured the White House Press Corps that the agency was equipped to communicate with the children and their families:

[A]ll U.S. Border Patrol personnel in the southwest border are *bilingual*—every last one of them. They are directed to clearly explain the relevant process to apprehended individuals, and provide detainees with written documentation in *both Spanish and English* that lays out the process and appropriate phone numbers to contact.¹⁷⁶

But many of the separated parents and children spoke neither Spanish nor English.¹⁷⁷ Reporters soon revealed that government officials had separated some Indigenous parents from their children because, without appropriate interpreters present, the agents did not understand or believe that the parents were related to

176. *White House Daily Briefing*, C-SPAN, at 10:18 (June 18, 2018), <https://www.c-span.org/video/?447252-1/homeland-security-secretary-nielsen-calls-congress-fix-immigration-policy> [<https://perma.cc/266K-PAY8>].

Previously, when the Border Patrol recruited a new agent who does not speak Spanish, the trainee studied Spanish for eight weeks. *Are Trainees Required to Learn the Spanish Language?*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/faqs/are-trainees-required-learn-spanish-language> [<https://perma.cc/BP4Y-FA3N>]; GENTRY, *supra* note 74, at 15. As of 2026, this requirement is no longer listed on the CBP website, and DHS has done away with this requirement for ICE recruits. See Nikita Mazurov, *ICE Removes Spanish-Language Training Requirement for New Recruits*, INTERCEPT (Aug. 14, 2025, 11:46 AM), <https://theintercept.com/2025/08/14/ice-spanish-language-new-recruits> [<https://perma.cc/X7D7-AGKH>].

177. See, e.g., Ashley Cleek, *The Government Says Border Patrol Agents in the Southwest Speak Spanish—But Many Migrants Speak Indigenous Languages*, WORLD (July 3, 2018), <https://theworld.org/stories/2018-07-03/government-says-border-patrol-agents-southwest-speaks-spanish-many-migrants-speak> [<https://perma.cc/ZC7C-EEG3>] (describing the forced separation of Q'anjob'al-speaking families); Nolan, *supra* note 9 (describing the forced separation of a Q'eqchi'-speaking family); Candice Bernd, *Indigenous Asylum Seekers Face Language Barriers and a Legacy of Oppression at the Border*, TRUTHOUT (July 26, 2018), <https://truthout.org/articles/torn-away-traumatized-and-tongue-tied-seeking-asylum-while-indigenous> [<https://perma.cc/JVG2-AXTM>] (describing the forced separation of a K'iche'-speaking family).

their children.¹⁷⁸ Parents were deported without their children.¹⁷⁹ By the time they were reunited, some children had forgotten their native tongues.¹⁸⁰

By failing to recognize the linguistic diversity among the separated families, Secretary Nielsen was perpetuating linguistic erasure, excluding non-dominant languages from official reports and accounts of immigration dynamics. Whereas linguistic neglect describes failing to give an appropriate interpreter to someone whom officials know needs one, linguistic erasure is a failure to recognize that an interpreter is needed in the first place. Erasure is a key engine of linguistic re-foulement, justifying linguistic neglect and other language-access shortcomings by underestimating language needs.

Erasure is salient in the Indigenous-language case because many officials assume that all people from countries like Guatemala and Mexico speak Spanish.¹⁸¹ For instance, one USCIS official working on the border told reporters that he had never run across Indigenous languages as “an issue”¹⁸²—a puzzling assertion given the high rates of migration by Indigenous-language speakers.¹⁸³

When officials see a communication breakdown, they sometimes assume that the person speaks the wrong “dialect of Spanish.”¹⁸⁴ They may try to solve the

178. See, e.g., Scott Bixby, *Language Barriers Lead Border Patrol to Rip Children From Their Indigenous Parents*, DAILY BEAST (Aug. 17, 2018, 10:33 AM ET), <https://www.thedailybeast.com/language-barriers-lead-ice-to-rip-children-from-their-indigenous-parents> [<https://perma.cc/Q54S-ZPWM>] (describing how a Maya-Mam man had to take a DNA test and get his daughter’s birth certificate verified by the Guatemalan consulate to convince the government that she was his daughter after they were forcibly separated two months earlier).

179. Miriam Jordan, *‘Why Did You Leave Me?’ The Migrant Children Left Behind as Parents Are Deported*, N.Y. TIMES (July 27, 2018), <https://www.nytimes.com/2018/07/27/us/migrant-families-deportations.html> [<https://perma.cc/XGR3-EAFS>]; Caitlin Dickerson, *Three Years After Family Separation, Her Son Is Back. But Her Life Is Not.*, N.Y. TIMES (Feb. 1, 2021), <https://www.nytimes.com/2020/12/07/us/family-separation-complications.html> [<https://perma.cc/7YR2-FYLF>].

180. See, e.g., Gaby Del Valle, *The Most Horrifying Allegations in the ACLU’s Newest Family Separation Lawsuit*, VICE NEWS (Oct. 4, 2019, 11:36 AM), <https://www.vice.com/en/article/8xwvy5/the-most-horrifying-allegations-in-the-aclu-s-newest-family-separation-lawsuit> [<https://perma.cc/7RK9-8FQL>]; Kevin Sieff, *Separated at the U.S.-Mexico Border by Trump, A Mother and Daughter Work to Reconnect*, WASH. POST (Dec. 23, 2021, 9:45 AM), <https://www.washingtonpost.com/world/2021/12/23/mexico-trump-separated-family-reunification/> [<https://perma.cc/VV7K-HTEX>].

181. Letter from Lucas, Harris, Fischer & Feasley, *supra* note 156, at 3; Remote Video Interview with Language Professional A (Aug. 23, 2021); Remote Video Interview with Legal Advocate D (Aug. 26, 2021); Remote Video Interview with Legal Advocate F (Sept. 23, 2021).

182. Letter from Amnesty Int’l USA, Am. Immigr. Laws. Ass’n, Am. Immigr. Council, Hum. Rts. First, Laws. for Good Gov’t & Tex. C.R. Project, to Chad Wolf, Acting Sec’y, U.S. Dep’t of Homeland Sec., Mark A. Morgan, Acting Comm’r, U.S. Customs & Border Prot., William Barr, Att’y Gen., U.S. Dep’t of Just., & James McHenry, Dir., Exec. Off. for Immigr. Rev. 3, at 3 (Feb. 21, 2020), <https://www.amnestyusa.org/wp-content/uploads/2020/02/20022130.pdf> [<https://perma.cc/X7CS-QRKD>] [hereinafter Letter from Amnesty International USA].

183. See *supra* note 9 and accompanying text.

184. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

In some Spanish-speaking countries and the United States, Indigenous languages are often mistakenly or pejoratively called “*dialectos*”—dialects. Madison Crow, ‘Sí, Hablo Dialecto’: *A Study to Identify the Presence of and Promote Pride for Indigenous Languages in Charleston, SC*, 44 S. J.

problem by speaking Spanish more loudly or slowly. As one legal advocate explained, that's "like speaking German to a Mandarin speaker."¹⁸⁵

But because of Indigenous-language speakers' experiences of racism in their home countries, they often acquiesce to assumptions that they speak Spanish. They do this, one legal advocate noted, "as a protection."¹⁸⁶ Scholar and reporter Rachel Nolan, who has studied this context extensively, explains:

[I]t's important to take into account the long history of violent discrimination in Guatemala in order to understand why migrants might, at the border, try to get by in a language that is not their own. People who speak Mayan languages in Guatemala, who can't sort of eke out daily interactions in Spanish, are discriminated against virulently. And Guatemalans have every reason to believe that the same thing will happen to them in the United States, if they don't at least appear to speak Spanish.¹⁸⁷

A legal advocate further explained that Indigenous-language speakers have "always dealt with the state in Spanish, so they feel like they can't get access otherwise."¹⁸⁸

Interviewees told stories of asylum seekers lacking Spanish fluency choosing to engage in Spanish to avoid drawing attention to themselves, causing problems, or "being a burden."¹⁸⁹ They may speak "market Spanish"¹⁹⁰ or "religious Spanish"¹⁹¹—enough to pretend like they are following along—but not fluent Spanish.

LINGUISTICS 150, 170 (2020) ("Due to a history of linguistic discrimination against Latin American indigenous languages, the term *dialecto* has transformed into the common term to reference these indigenous languages—separating them from Spanish and English in particular."); García, *supra* note 13, at 794 n.4. Some speakers of Indigenous languages may even conceive of their own languages as dialects because, as one legal advocate explained, "they've been told that they speak a dialect." Remote Video Interview with Legal Advocate B (Aug. 12, 2021). Indigenous languages are pre-Hispanic languages not descended from Spanish. They have no linguistic relationship to Spanish except the occasional loanword. García, *supra* note 13, at 794, 796; Clifton Pye, Barbara Pfeiler & Pedro Mateo Pedro, *Mayan Language Acquisition*, in THE MAYAN LANGUAGES, *supra* note 135, at 19, 24; Juan Pablo Pérez-Burgos, *The Mayan Languages Spreading Across the US*, BBC (May 22, 2025), <https://www.bbc.com/future/article/20250515-the-mayan-languages-spreading-across-the-us> [<https://perma.cc/GJE7-QUYF>].

185. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

186. Remote Video Interview with Legal Advocate D (Aug. 26, 2021).

187. Goodman, *supra* note 171, at 14:36 (statement of Rachel Nolan).

188. Remote Video Interview with Legal Advocate D (Aug. 26, 2021).

189. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

190. Geoff Nunberg, Opinion, *Migrant Girl's Death Reveals a Need for More Interpreters Along The Border*, NPR (Jan. 3, 2019), <https://www.npr.org/2019/01/03/681942831/opinion-migrant-girls-death-reveals-a-need-for-more-interpreters-along-the-borde> [<https://perma.cc/J2ZT-YV2D>].

191. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

Others may speak a non-standard form of Spanish sometimes called “La Castilla,” which may be mutually unintelligible with other forms of Spanish.¹⁹²

But even where someone does not proactively disclose their lack of Spanish fluency, it is possible to detect difficulties. One legal advocate explained that she listens for people conjugating verbs only in present tense, even when speaking about the past, or searching for words.¹⁹³ She also described a situation where she said court staff should have realized that an asylum seeker was only pretending to speak Spanish.¹⁹⁴ She had read a report from a court watcher who had observed a master calendar hearing where the immigration judge asked all the migrants roughly the same series of questions. An Indigenous asylum seeker clearly copied the answers of the other respondents but failed to realize that the judge had asked her the questions in a different order, making her answers “nonsensical.”¹⁹⁵ The legal advocate was not aware of the judge or officials intervening to make sure that she understood what was going on.¹⁹⁶ She called the failure to detect language issues “chosen ignorance” on the part of immigration officials.¹⁹⁷

This form of linguistic erasure can harm people’s cases down the line if government attorneys use it to impeach people’s credibility. Indigenous asylum seekers’ claims frequently involve discrimination for speaking imperfect Spanish.¹⁹⁸ When judges see that an asylum seeker consented to proceed in Spanish—perhaps out of fear of what might happen if they fail to do so—judges doubt those claims, concluding, “well, you speak Spanish.”¹⁹⁹

Even when procedures exist to proactively identify what language someone speaks, such procedures are rarely useful to Indigenous asylum seekers. For instance, DHS and DOJ have historically relied heavily on a series of tools called “I Speak,” one of which is reprinted as an example in Figure 1, *infra*.

DHS instructs officials to show the “I Speak” booklets and posters to detained people and ask them to point to the languages they speak.²⁰⁰ A French speaker, for instance, might point to the part of the poster that says, “*Je parle Français*” (“I speak French”).

192. KRISTA CZERWINSKI, ALAN LEBARON & MANDY MCGREW, U.S. CONF. OF CATH. BISHOPS, MAYA HEALTH TOOLKIT FOR MEDICAL PROVIDERS 15 (2011), <https://brycs.org/wp-content/uploads/2018/09/Maya-Toolkit.pdf> [<https://perma.cc/XF2S-DJNK>].

193. Remote Video Interview with Legal Advocate F (Sep. 23, 2021).

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

199. *Id.*

200. See OFF. FOR C.R. & C.L., DEP’T OF HOMELAND SEC., PROTOCOL FOR IDENTIFYING LEP PERSONS AND PROVIDING LANGUAGE SERVICES 1 (2016), https://www.dhs.gov/sites/default/files/publications/crcl-protocol-identifying-lep-persons_0.pdf [<https://perma.cc/F3Q4-L2Q6>].

The main version of the poster, shown in Figure 1, includes only four Indigenous languages: Kaqchikel, Mam, K'anjob'al, and K'iche'. Other common languages, like Q'eqchi', are missing entirely. From 2000 to 2022, between zero and three documented speakers of Welsh, Icelandic, Norwegian, Danish, and Yiddish—all included on the sign—applied for asylum in immigration court.²⁰² Over that same period, nearly 2,500 Q'eqchi' speakers applied for asylum.²⁰³ Blake Gentry, who wrote a technical review of the “I Speak” resources, noted that the standard poster includes no Mexican-origin Indigenous languages.²⁰⁴ He calculated that while Mexican and Central American migrants represent 94% of migrants whom DHS apprehends, their languages represent only 7% of those included on the poster.²⁰⁵

Furthermore, monolingual speakers of the four Indigenous languages included by DHS are unlikely to recognize and point to their languages because they are unlikely to know their written forms. Although several Indigenous languages have historically had writing systems,²⁰⁶ the modern written forms of many languages are new, and people have not had the chance to learn them.²⁰⁷ Until recently, Indigenous schoolchildren growing up in Mexico and Guatemala were punished for speaking their languages—not taught to read and write them.²⁰⁸

202. *Asylum Filings*, TRAC IMMIGR. (Nov. 2022), <https://tracreports.org/phptools/immigration/asyfile> [<https://perma.cc/8D4M-X4KP>]; <https://perma.cc/XPB6-KXJ4>; <https://perma.cc/M7L6-X69F>].

203. *Id.* [<https://perma.cc/TFK8-Q5V7>].

204. GENTRY, *supra* note 74, at 13. DHS released a separate booklet that contains information specific to thirteen Indigenous languages spoken primarily in Mexico. OFF. FOR C.R. & C.L., DEP'T OF HOMELAND SEC., I SPEAK... LANGUAGE IDENTIFICATION GUIDE 16–17 (2011), <https://www.dhs.gov/xlibrary/assets/crcl/crcl-i-speak-booklet.pdf> [<https://perma.cc/232R-GNND>].

205. GENTRY, *supra* note 74, at 13. In 2016, DHS released a poster focused only on Indigenous languages. OFF. FOR C.R. & C.L., DEP'T OF HOMELAND SEC., I SPEAK... INDIGENOUS LANGUAGE IDENTIFICATION POSTER 1 (2016), https://www.dhs.gov/sites/default/files/publications/Habla%20Poster_12-9-16.pdf [<https://perma.cc/CB5Q-S5CD>]. While that poster includes more languages than the previous one, it poses the question of what language someone speaks in Spanish, not in Indigenous languages, and is thus likely to be of little use to a monolingual asylum seeker.

206. *Discovery*, in THE DECIPHERMENT OF ANCIENT MAYA WRITING 21, 22 (Stephen Houston, Oswaldo Chinchilla Mazariegos & David Stuart eds., 2001).

207. GENTRY, *supra* note 74, at 2; Ryan Bennett, Jessica Coon & Robert Henderson, *Introduction to Mayan Linguistics*, 10 LANGUAGE & LINGUISTICS COMPASS 455, 459 (2016); Elizabeth Jenner & Maria Konkell, *A Minority Within a Minority*, LANGUAGE MAGAZINE (Mar. 19, 2018), <https://www.languagemagazine.com/2018/03/19/a-minority-within-a-minority/> [<https://perma.cc/4EDY-4TBT>]; Remote Video Interview with Language Professional B (Aug. 25, 2021) (“They [the immigration agencies and courts] don’t understand how educational discrimination works. There is a written form, but you weren’t taught it.”).

208. See, e.g., Ethan Simmons, *UI Professor Fights Different Pandemic Challenge: Mayan Language Barrier*, NEWS GAZETTE (Sept. 14, 2021), https://www.news-gazette.com/news/ui-professor-fights-different-pandemic-challenge-the-mayan-language-barrier/article_d82d777b-581d-5e06-9ba0-11b29b4c0e0f.html [<https://perma.cc/W45Y-CGVF>]; Karina Almaraz, *Así desaparecen las lenguas indígenas en México: “Me daban golpes en la mano por no hablar castellano en la escuela”* [*This is How Indigenous Languages Disappear in Mexico: “They Beat My Hand for Not Speaking*

For these reasons, many speakers of Indigenous languages cannot read or write in their mother tongues. Linguists estimate that only between five and ten percent of native K'iche' speakers can read K'iche',²⁰⁹ and only between one and five percent of native Mam speakers can read Mam.²¹⁰

Furthermore, monolingualism and low literacy are likely correlated. Most schoolchildren in Latin America receive instruction in the dominant language of their countries, which in most cases is Spanish.²¹¹ Therefore, if an Indigenous-language speaker from a Spanish-dominant country does not speak Spanish, that person likely did not receive formal schooling and therefore never had the opportunity to learn to read and write either Spanish or their native language. It seems likely, then, that of the five to ten percent of K'iche' speakers who are literate in K'iche', most also know how to speak Spanish at a very high level. But to a monolingual K'iche'-speaking asylum seeker, a written translation into the K'iche' language would be nearly worthless. The "I Speak" poster is thus unlikely to provide a meaningful mechanism for Indigenous-language speakers to indicate their preferred languages.

Several years ago, ICE began using an audio-visual "I Speak" tool with audio recordings in several Indigenous languages, which asks migrants to raise their hands when they hear their languages.²¹² While the tool is an improvement on the written materials, people may still fear discrimination if they "out" themselves as speakers of Indigenous languages in front of many other people.²¹³

Beyond the "I Speak" program, another force driving linguistic erasure is the lack of counsel to advocate for interpreters. Asylum seekers are not guaranteed appointed counsel at any point in the process.²¹⁴ Lack of access to counsel means that Indigenous-language speakers often have no one to recognize their language needs and advocate for appropriate interpretation.

Spanish in School"], ELDIARIO.ES (Aug. 10, 2018), https://www.eldiario.es/desalambre/indignacion-mexico-racismo-aprender-indigena_1_1983401.html [<https://perma.cc/XJ6U-F9X5>].

209. *K'iche'*, in *ETHNOLOGUE: LANGUAGES OF THE WORLD* (David M. Eberhard, Gary F. Simons & Charles D. Fennig eds., 28th ed. 2026), <https://www.ethnologue.com/language/que> [<https://perma.cc/BY3D-X7V8>].

210. *Mam*, in *ETHNOLOGUE: LANGUAGES OF THE WORLD*, *supra* note 209, <https://www.ethnologue.com/language/mam> [<https://perma.cc/E5XS-PDLP>].

211. *See, e.g.*, Leanne Reinke, *Globalisation and Local Indigenous Education in Mexico*, 50 *INT'L REV. EDUC.* 483, 486 (2004).

212. *IMMIGR. & CUSTOMS ENF'T*, *supra* note 105, at 4.

213. *See* Gentry, Richardson, Lopez & Watkins, *supra* note 9, at 48 ("Asking someone to openly and immediately identify themselves as an Indigenous person can be seen as provocative, and pose risk from the point of view of the Indigenous immigrant who arrives with their family."). People familiar with the dynamics of Indigenous migration argue that for a language-identification procedure to work, identification needs to happen in private and in a non-threatening manner. *Id.* at 48–50. Ideally, any place using "I Speak" or similar materials would also show affirming pictures of cultural symbols and people wearing traditional Indigenous regalia to implicitly communicate to people—regardless of literacy—that it is safe for them to be Indigenous there. *Id.*

214. Mellinger, *supra* note 18, at 233; *see also* 8 U.S.C. § 1362 (establishing only a right to counsel "at no expense to the Government" in removal proceedings and appeals).

More than 90% of asylum seekers who reach an affirmative asylum interview or immigration court have lawyers.²¹⁵ But many border arrivals are funneled into expedited removal and other fast-track processing programs, never making it to a full interview or merits hearing at all.²¹⁶ People are often uncounseled during the first stages of their asylum process: DHS data from 2022 found that 99% of people did not have a lawyer during their credible-fear interviews.²¹⁷ A negative credible-fear finding usually results in the person being deported via expedited removal, bypassing traditional removal proceedings or affirmative procedures.²¹⁸ The lack of counsel during the credible-fear process means that many people go through the entire process from arrival through removal without the help of a lawyer.

Indigenous-language speakers may be especially unlikely to have access to counsel. They are often excluded from the informal Spanish-speaking networks of asylum seekers, through which people share information about how to contact attorneys and locate legal clinics.²¹⁹ Even when they do manage to contact attorneys, private attorneys' fees for an affirmative asylum case can exceed \$5,000, and if the client is in removal proceedings, fees typically start at \$10,000.²²⁰ And providing pro bono legal services to Indigenous-language speakers is costly. Most attorneys do not speak Indigenous languages and must therefore hire interpreters to communicate during attorney-client meetings.²²¹ In 2021, the market rate for Indigenous-language interpretation was nearly \$300 for a two-hour meeting.²²² Nonprofit lawyers sometimes require clients to pay for interpreters, which can make otherwise pro bono legal services cost-prohibitive.²²³ And legal organizations face difficulty securing funding for these services. A legal advocate who received a grant to work on Indigenous language access in asylum noted that given the lack of reliable statistics about the prevalence of Indigenous-language speakers

215. In fiscal year 2022, people receiving asylum decisions had counsel in 97% of affirmative asylum cases and 90% of defensive cases. TRAC IMMIGR., SPEEDING UP THE ASYLUM PROCESS LEADS TO MIXED RESULTS (Nov. 29, 2022), <https://trac.syr.edu/reports/703/> [<https://perma.cc/X5VX-3TWX>].

216. HUM. RTS. FIRST, RUSHED TIMELINES, INADEQUATE ACCESS TO LEGAL REPRESENTATION IMPEDE MEANINGFUL OPPORTUNITY TO SEEK ASYLUM UNDER NEW ASYLUM PROCESSING RULE 1 (2022), <https://humanrightsfirst.org/wp-content/uploads/2022/10/AsylumProcessingRuleFactSheet10.21.2022.pdf> [<https://perma.cc/P3JU-THQ4>].

217. *Id.*

218. See HUM. RTS. FIRST, CREDIBLE FEAR: A SCREENING MECHANISM IN EXPEDITED REMOVAL 1 (Feb. 2018), https://humanrightsfirst.org/wp-content/uploads/2022/10/Credible_Fear_Feb_2018.pdf [<https://perma.cc/82UJ-D4K7>]; see also 8 U.S.C. § 1225(b)(1)(B)(iii) (providing for this process).

219. Remote video interview with Legal Advocate B (Aug. 12, 2021).

220. Aaron Elinoff, *How Much Money Do You Need To Hire An Immigration Lawyer?*, NOVO LEGAL (May 26, 2022), <https://www.novo-legal.com/en/blog/how-much-money-immigration-lawyer-cost> [<https://perma.cc/G5EU-WHEJ>].

221. Remote Video Interview with Language Professional D (Aug. 31, 2021).

222. *Id.*

223. *Id.*

in the immigration system, she had initially struggled to convince her funder that language access was a concern worth addressing.²²⁴

All these factors—limited access to information, the high cost of private legal services and interpreters, and nonprofit funding constraints—make it less likely that Indigenous-language-speaking clients will have counsel. Yet access to counsel is critical for preventing linguistic refoulement through erasure. A lawyer can make sure the immigration official or court knows what language the asylum seeker speaks and can advocate for their client to receive an appropriate interpreter. In one case, a pro bono lawyer intervened when an asylum officer tried to conduct a credible-fear interview with an Indigenous client who did not speak sufficient Spanish to communicate their claim:

We were able to say to the asylum officer, “please ask him what day it is.” And when we asked him what day it was, he said something [in Spanish] like, “my brother.” And we stopped the interview until we could get him a translator [interpreter] in the language that he actually spoke. Interestingly, the [Spanish] interpreter had not identified that he was giving nonsensical answers. But that is the kind of impact that the presence of a lawyer can have where someone was being interviewed in a language he didn’t speak.²²⁵

Had the lawyer not recognized their client’s lack of understanding and insisted on an appropriate interpreter, the client likely would have been found not to have a credible fear and placed in expedited removal—without anyone ever realizing that the problem was the lack of appropriate language services, not the substance of his asylum claim.

In many cases, the presumption that Indigenous people speak Spanish, combined with the failure to appropriately identify their languages or appoint lawyers who might do so, means that Indigenous-language speakers never appear as such in government data. How significant is the undercounting? Using a statistical method I devised to triangulate U.S. government data with demographic data from Latin American countries, I estimated the number of monolingual Indigenous-language speakers at various stages of the immigration process.²²⁶ The results

224. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

225. David Lat, *The Rise of Pro Bono Counsel: An Interview with Jackie Habersfeld*, ORIGINAL JURISDICTION, at 14:58 (Dec. 13, 2023), <https://davidlat.substack.com/p/the-rise-of-pro-bono-counsel-an-interview> [<https://perma.cc/68BV-CYAS>].

226. I estimated the number of monolingual Indigenous-language speakers at each stage by applying by-country multipliers—representing the fraction of each country’s population that does not speak Spanish, drawn from data published by the Cervantes Institute—to U.S. government data on asylum seekers’ countries of origin. See EL ESPAÑOL EN EL MUNDO [SPANISH IN THE WORLD], INSTITUTO CERVANTES [CERVANTES INST.] (2020), https://cvc.cervantes.es/lengua/anuario/anuario_20/el_espanol_en_el_mundo_anuario_instituto_cervantes_2020.pdf [<https://perma.cc/ZH3X-PFR8>]. These estimates assume that Indigenous-language speakers migrate at roughly the same rate as Spanish speakers. This assumption may not hold in either direction: on the one hand, migrating requires resources that Indigenous-language speakers may be less likely to

suggest that EOIR undercounted immigration-court filings by Indigenous-language speakers by 58%.²²⁷ But where asylum seekers must affirmatively come forward and request language services, the undercount is likely much greater. In 2019, ICE detained an estimated 36,000 monolingual Indigenous-language speakers.²²⁸ But that year, ICE reported 1,600 requests for Indigenous-language services,²²⁹ suggesting that over 95% of detained Indigenous-language speakers were never provided with any interpretation services and may not have even known to request such a thing.

Several of the legal advocates I spoke with suggested that the immigration agencies are incentivized not to identify Indigenous-language speakers.²³⁰ One legal advocate remarked, “It’s a huge shame that the government doesn’t want, doesn’t have the will to get accurate numbers, but I think it’s pretty deliberate in terms of them not wanting to do what they’re supposed to do.”²³¹ She added, “They’re not collecting the data because if they do, they’ll have to do certain things [to comply with the law]. There are so many people who are never accounted for.”²³² Another legal advocate noted that when an agency asks someone to sign a document written in a language they do not understand, “no one’s watching, no one’s gonna call them out for it.”²³³ This lack of oversight generates a risk that officials might interview Indigenous-language speakers in Spanish and “no one would ever know” that the person did not understand the questions.²³⁴

Finally, these same dynamics of linguistic erasure affect how agencies and organizations report on other countries, which then shapes how U.S. officials assess asylum claims from those countries. The U.S. Department of State and NGOs like Amnesty International publish overviews of human rights issues occurring in countries around the globe. These reports may highlight certain

have. On the other hand, many Indigenous communities have established “cultures of migration.” Bova, *supra* note 80, at 7, 9, https://kuscholarworks.ku.edu/bitstream/handle/1808/18605/Bova_JUR2015.pdf?sequence=1&isAllowed=y [<https://perma.cc/X4ER-PJF2>] (citing JEFFREY H. COHEN, *THE CULTURE OF MIGRATION IN SOUTHERN MEXICO* 5 (2004)). For instance, researchers estimate that between 25% and 40% of people born in Cajolá, a Maya Mam community in Guatemala, live in the United States. Jonathan Blitzer, *The Dream Homes of Guatemalan Migrants*, *NEW YORKER* (Apr. 5, 2019), <https://www.newyorker.com/news/dispatch/the-dream-homes-of-guatemalan-migrants> [<https://perma.cc/7UU9-CVA4>]; *Our Story*, GRUPO CAJOLÁ [CAJOLÁ GROUP], <https://www.grupocajola.org/who-we-are> [<https://perma.cc/33RC-Y7BR>] (last visited Mar. 30, 2024). If anything, therefore, these estimates may be conservative.

Full methodology and data tables are on file with the author and available upon request.

227. Data tables on file with author.

228. Data tables on file with author.

229. U.S. IMMIGR. & CUSTOMS ENF’T, *supra* note 105, at 12.

230. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

231. *Id.*

232. *Id.*

233. Remote video interview with Legal Advocate D (Aug. 26, 2021).

234. Blake Gentry, *O’odham Niok? In Indigenous Languages, U.S. “Jurisprudence” Means Nothing*, 37 *CHICANX-LATINX L. REV.* 29, 40 (2020).

human-rights issues.²³⁵ But when in-country researchers cannot communicate with a community—like Indigenous-language speakers—that community’s concerns get sidelined.²³⁶

Such omissions cause problems for asylum seekers. Asylum officers and immigration judges look to official reports when evaluating the credibility of asylum seekers’ claims.²³⁷ The Board of Immigration Appeals believes the Department of State reports to be the “best source of information on conditions in foreign nations.”²³⁸ Yet Gustin Bova, who has studied Ecuadorian Kichwa speakers seeking asylum in the United States, notes that the Department of State reports “deny government complicity in harm to Indigenous people, and they do not mention the local-level political persecution or Evangelical-Catholic conflicts.”²³⁹ When reports exclude these human rights issues, it reduces the chances that decision-makers will believe Indigenous asylum seekers’ stories. This risk is heightened when researchers and report drafters have limited means of communicating with a country’s linguistic minorities. “[T]his downplaying and absence of issues is likely to undermine the strength of some otherwise valid claims”²⁴⁰—long before someone even reaches a border to claim asylum.

C. Linguistic Illegibility

Several years ago, two K’iche’ women failed to appear at their immigration hearings, and a judge ordered them removed in absentia.²⁴¹ Later, when asked why they had not gone to court, they said that while they understood that they had to go to “a thing that was called court,” they did not understand what that meant because there was no word for “court” in their language.²⁴² They did not know

235. Peter Haschke & Daniel Arnon, *What Bias? Changing Standards, Information Effects, and Human Rights Measurement*, 19 J. HUM. RTS. 33, 37–38 (2020) (noting that human rights reports “may approximate the ‘truth,’ but they likely contain some amount of subjectivity or bias depending on each organization’s mandate or agenda”).

236. *Id.* at 40 (describing the role of access effects in determining which issues make it into human rights reports). Some issues may not even make it into reports at all. *Galina v. INS*, 213 F.3d 955, 959 (7th Cir. 2000) (“[T]he [State Department] reports are brief and general, and may fail to identify specific, perhaps local, dangers to particular, perhaps obscure, individuals.”).

237. U.S. CITIZENSHIP & IMMIGR. SERVS., LESSON PLAN OVERVIEW: CREDIBLE FEAR OF PERSECUTION AND TORTURE DETERMINATIONS 13 (2019), <https://refugeerights.org/wp-content/uploads/2021/08/Sept.-2019-Lesson-Plan.pdf> [<https://perma.cc/QZ4W-8KUD>] (“The asylum officer should assess the credibility of the assertions underlying the applicant’s claim to be a refugee entitled to asylum, considering the totality of the circumstances, including . . . State Department reports . . .”).

238. *Matter of H-L-H & Z-Y-Z*, 25 I. & N. Dec. 209, 209 (B.I.A. 2010) (“State Department reports on country conditions are highly probative evidence . . .”). *But see Chand v. INS*, 222 F.3d 1066, 1077 (9th Cir. 2000) (noting that such reports do not contain all “potentially relevant incidents of persecution in a country”).

239. Bova, *supra* note 80, at 5 n.11.

240. *Id.*

241. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

242. The K’iche’, like other Indigenous groups, have a radically different legal system within their own communities, and that system does not map neatly onto the U.S. asylum system. Radio

how to get to this “court” or what would be expected of them if they did get there.²⁴³

This complex situation highlights the types of misunderstandings that can occur when two different cultures, worldviews, and ontologies collide in the legal system. Language is often the site of such misunderstandings. Indigenous asylum seekers find themselves victims of that collision when their ways of using language, their narrative preferences, and the ways in which they understand and present information lead to refoulement. This is *linguistic illegibility*, which produces refoulement when one’s method of communication is not understandable or credible to those assessing an asylum claim.

Storytelling is central to seeking asylum.²⁴⁴ Different cultures have distinct narrative preferences—that is, norms about the correct way to tell stories.²⁴⁵ “Across cultures, patterns of storytelling, preference for the importance of different attributes, sequencing order, and ways of connecting events or features differ.”²⁴⁶ When one culture’s narrative preferences color assessments of an outsider’s credibility, that can produce linguistic refoulement.

For example, linguistic anthropologist María Luz García has observed that, like Americans, Maya people also subscribe to “very specific conventions” around storytelling through language.²⁴⁷ But Mayan conventions do not align with the format of U.S. court proceedings or interviews. For instance, Maya narratives tend to be structured but temporally circular, and Maya tend to repeat questions before answering them, confusing judges.²⁴⁸

That confusion goes both ways. One language professional explained that some Indigenous clients get confused by judges who ask all sorts of questions that do not seem relevant to them.²⁴⁹ García elaborates:

Mayas struggle with the unfamiliar question-and-answer format of asylum interviews which do not permit the types of narratives that they feel are appropriate. Questions about an interviewee’s occupation in Guatemala, for example, might be common in an asylum interview but fall outside the scope of the narrative that asylum seekers expect to provide. As a result, the Mayan speaking

Ambulante, *The Judge*, NPR (Feb. 11, 2020), <https://radioambulante.org/en/audio-en/the-judge> [<https://perma.cc/MGN9-WM3Y>] (describing the role of a judge in a K’iche’ community); Remote Video Interview with Legal Advocate D (Aug. 26, 2021).

243. A legal advocate who participated in this study was able to get the women’s cases reopened. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

244. See *supra* notes 19–22 and accompanying text.

245. See Bova, *supra* note 80, at 12; Jason A. Cade, *Narrative Preferences and Administrative Due Process*, 14 HARV. LATINO L. REV. 155, 168 (2011).

246. Durst, *supra* note 20, at 153 (citing Janet Bauer, *Speaking of Culture: Immigrants in the American Legal System*, in IMMIGRANTS IN COURTS 8, 17 (Joanne I. Moore ed., 1999)).

247. García, *supra* note 13, at 799.

248. *Id.* at 795–96.

249. Remote Video Interview with Language Professional B (Aug. 25, 2021).

interviewee often continues with their narrative while the interviewer becomes increasingly frustrated at what is perceived as a refusal to answer basic questions.²⁵⁰

This can frustrate and perplex judges and officers who expect straight answers to their questions. In this way, the question-and-answer format of immigration proceedings, especially in-court proceedings, becomes a site of linguistic confusion.

Closely related to the issue of narrative preferences is that of different cultural constructions of credibility. Asylum cases are won or lost on credibility grounds.²⁵¹ And adverse credibility determinations can be very hard to challenge on appeal because courts often defer to the initial decision-maker's assessment of credibility.²⁵²

Credibility determinations are challenging. One asylum officer described a constant struggle: "How do you decide whether someone's telling the truth or not? It's not simple, and you're never sure. And we still have to make a decision. Based on fuzziness."²⁵³

That fuzziness often works against Indigenous-language speakers. As Judge Posner once noted, "[i]mmigration judges often lack the 'cultural competence' to base credibility determinations on an immigrant's demeanor."²⁵⁴ A legal advocate remarked in an interview that the immigration system employs a very "U.S.-centric" ideal of credibility.²⁵⁵ For instance, in the United States, eye contact and direct answers are signs of credibility.²⁵⁶ But for Indigenous Guatemalans, eye contact and direct answers can be seen as disrespectful.²⁵⁷ In this way, someone's attempt to communicate respectfully can instead be held against them. The

250. García, *supra* note 13, at 799.

251. Julia Simon-Kerr, *Law's Credibility Problem*, 98 WASH. L. REV. 179, 179 (2023).

252. See, e.g., *Ndudzi v. Garland*, 41 F.4th 686, 690 (5th Cir. 2022); *Huang v. Gonzales*, 403 F.3d 945, 948 (7th Cir. 2005); Aruna Sury & Kate Mahoney, *Challenging an Immigration Judge's Adverse Credibility Finding with the Board of Immigration Appeals*, IMMIGRANT LEGAL RSCH. CTR. 6 (June 2023), <https://www.ilrc.org/sites/default/files/2023-06/06-23%20challenging%20IJ%27s%20credibility%20findings%20%28part%20one%29.pdf> [<https://perma.cc/A7BR-KADK>]; see also Liz Bradley & Hillary Farber, *Virtually Incredible: Rethinking Deference to Demeanor When Assessing Credibility in Asylum Cases Conducted by Video Teleconference*, 36 GEO. IMMIGR. L.J. 515, 526–534 (2022) (situating deference to immigration judges' findings within "America's long tradition of weighing face-to-face interactions between the trier of fact and witnesses as the most accurate method of ascertaining the truth" (internal quotation marks omitted)).

253. POV, *Well-Founded Fear—Shari Robertson and Michael Camerini—Behind the Lens*, (YouTube, Oct. 29, 2015), <https://www.youtube.com/watch?v=bsW8e3Ys04I> [<https://perma.cc/SV4T-WSLW>].

254. *Kadia v. Gonzales*, 501 F.3d 817, 819 (7th Cir. 2007).

255. Interview with Legal Advocate A (Aug. 12, 2021).

256. See Lynn Alvarez & James Loucky, *Inquiry and Advocacy: Attorney-Expert Collaboration in the Political Asylum Process*, in *DOUBLE VISION: ANTHROPOLOGISTS AT LAW* 43, 48 (Randy Frances Kandel ed., 1992).

257. See Alvarez & Loucky, *supra* note 256 at 48; see also Interview with Legal Advocate A (Aug. 12, 2021) (identifying how judges hold lack of eye contact against people).

question of “who’s credible?” necessarily implicates the question of “whose credibility?”

One of the seemingly innocuous ways in which immigration officials and judges assess credibility is by asking detailed questions about someone’s story. These questions often turn on “duration, time, and distance.”²⁵⁸

The problem is that Indigenous-language speakers frequently cannot put their stories into a “timeline that makes sense to a judge,” as one interviewee put it.²⁵⁹ They often come from rural communities where people have limited education and nobody is working a nine-to-five job.²⁶⁰ In such communities, the interviewee explained, “time means something different . . . their lived context is not run by months or weeks or days, so they struggle to connect time to moments in their lives.”²⁶¹ A lawyer told another researcher that the lack of comfort with a Western calendar system among migrants requires “a whole other level of education to the court.”²⁶²

Indeed, members of the Board of Immigration Appeals (BIA) have noted this exact dynamic in expressing concern about how deference to immigration judges’ credibility determinations might affect pro se asylum seekers. One BIA member wrote directly to unrepresented asylum seekers, imploring them to:

Make sure to articulate your story in a manner that would be best understood by a college educated adjudicator, because that is who will evaluate your claim. . . . In the event that you are illiterate or semi-literate, explain how you remember significant things like when certain births and deaths happen or significant holidays, and tell us in as much detail as possible how you express the happening of these things. If you are illiterate or semi-literate or from a culture other than a Western one, make sure to explain whether the calendar used in the United States is the one used in your country, and make sure to explain whether you mark time by some other method such as significant religious holidays, or seasons of the year.²⁶³

It is difficult to imagine how many Indigenous asylum seekers—lacking education or familiarity with both cultures—could follow this charge.

What rings as true to a U.S. official or judge may not be what is true for the asylum seeker. For instance, officials and judges may be biased towards the

258. Durst, *supra* note 20, at 156.

259. Interview with Legal Advocate B (Aug. 12, 2021).

260. *Id.*

261. *Id.*

262. Scott, *supra* note 150, at 25 (quoting a lawyer interviewee).

263. *In re A-S-*, 21 I. & N. Dec. 1106, 1132–34 (B.I.A. 1998) (Rosenberg, Bd. Member, dissenting) (critiquing a Board ruling that made it more difficult to challenge adverse credibility rulings).

“presumptive legitimacy of government”²⁶⁴ and may therefore not understand why an Indigenous asylum seeker would not go to the police for help following a violent attack. As one legal advocate noted while alluding to the U.S.-backed Guatemalan military genocide against Indigenous people, a person who “stepped over the dead bodies of everyone in his village” will have a different relationship with their government than will an immigration judge.²⁶⁵

In some instances, police in people’s home countries do not help Indigenous-language speakers because police only speak Spanish.²⁶⁶ Their language and ethnicity may also limit their ability to seek medical care.²⁶⁷ Without this context, a person’s language-based failure to seek help in the home country may give their claim the appearance of not being credible. In this way, the exact linguistic vulnerabilities that forced people to flee their homes make them disproportionately likely to face refoulement.

One way to mitigate linguistic illegibility would be to reduce the adversarial nature of the asylum process. The question-and-answer format of adversarial proceedings is especially ill-suited to asylum seekers whose narrative preferences, cultural norms, and linguistic structures do not map onto the conventions of U.S. courtrooms. An inquisitorial process, in which a neutral fact-finder engaged directly with the applicant rather than relying on cross-examination by a government attorney seeking to surface inconsistencies, would likely better serve speakers of Indigenous languages, who are often unrepresented and whose ways of telling stories can be especially at odds with adversarial testimony.²⁶⁸ Such an approach may allow for a more natural exchange in which people can present their claims without being found “not credible” for failing to conform to unfamiliar communicative norms.

Several years ago, agencies began to work with grassroots Indigenous groups to create an “Indigenous Cultural Awareness training.”²⁶⁹ Such trainings must address cross-cultural credibility dynamics so that judges and officers do not deny people asylum for telling stories and sharing details in a manner that does not match adjudicators’ expectations.

264. Durst, *supra* note 20, at 161.

265. Remote Video Interview with Legal Advocate E (Sept. 14, 2021).

266. Bernd, *supra* note 177.

267. Scott, *supra* note 150, at 27 (describing an incident in which “a migrant who, while living in her country of origin, ‘was turned away from the hospital when she was fully pregnant and they referred to her with slang terms towards indigenous people, and for her that was an afterthought . . . because it was such a part of everyday life.’”).

268. See Johana Selberg, *Truth and Trauma: Exploring the Merits of Non-Adversarial Asylum Hearings*, 35 GEO. IMMIGR. L. J. 929, 939–944 (2019) (discussing the benefits of inquisitorial processes for asylum).

269. OFF. FOR C.R. & C.L., U.S. DEP’T OF HOMELAND SEC., INDIGENOUS LANGUAGES PLAN 6 (Feb. 2024), https://www.dhs.gov/sites/default/files/2025-06/24_0228_dhs-indigenous-languages-plan-english-508.pdf [<https://perma.cc/B9TM-9NMT>].

D. Linguistic Punishment

In the early days of the Migrant Protection Protocols regime, an Indigenous family approached Border Patrol agents to request entry into the United States.²⁷⁰ They were seeking a “non-refoulement interview”—a chance to prove to officials that they would most likely face harm if made to wait in Mexico.²⁷¹ The family spoke an Indigenous language and wanted to speak to agents via an interpreter. According to later congressional testimony, the agents told the family that if they did not consent to be interviewed in Spanish, they would return them to Mexico with no interview.²⁷² Agents reportedly repeated the threat for five hours while the family waited for their interpreter.

Speakers of non-dominant languages sometimes experience extreme pressure, threats, frustration, and animus from authorities. When agents and judges become annoyed with asylum seekers simply for needing language-access services, there is a risk of refoulement through *linguistic punishment*—penalizing asylum seekers for their language differences.

One factor that produces linguistic punishment is that language access can be slow. When a consecutive interpreter is involved, proceedings take at least twice as long. If there is relay interpretation involving multiple interpreters, a simple conversation could take three times longer, or more. An attorney practicing in Houston told a researcher that this can put asylum officers on edge:

Some of these interviews, especially where the interpretation takes two to three to four hours, and they are [the asylum officers] having to type it up, and then they probably have not eaten. They’re waiting for lunch and their brain, you know, the blood sugar and all that stuff. So, you really do not want to annoy them [the asylum officers].²⁷³

Delays are especially likely when words and concepts don’t translate directly—a dynamic common with Indigenous languages. For instance, the word for “asylum” in Spanish is “*asilo*.”²⁷⁴ The translation of “asylum” in Mam is “*Jun u’j tun tkleti tij qa xjal aj kyaj tun tkub’ tb’yon ay bix qa tk’awali tu’x txuli / tchmili*,” which means “A paper that saves / protects you from people who are harming / attempting to kill you and your children, your wife / husband.”²⁷⁵ Many Indigenous languages do not have words for legal concepts that are widely understood

270. *Examining the Human Rights and Legal Implications of DHS’s “Remain in Mexico” Policy: Hearing Before the H. Subcomm. on Border Sec., Facilitation, and Operations*, 116th Cong. 32 (2019) (statement of Erin Thorn Vela, Staff Attorney, Racial and Economic Justice Program, Texas Civil Rights Project).

271. *See id.*

272. *Id.*

273. Mellinger, *supra* note 18, at 246.

274. *Asylum*, WORDREFERENCE.COM, <https://www.wordreference.com/es/translation.asp?tranword=asylum> [<https://perma.cc/5RG4-N5NZ>].

275. Nolan, *supra* note 9.

in English.²⁷⁶ One language professional explained that she struggled to interpret words like “constitution,” “article,” or “psychiatrist.”²⁷⁷ She explained, “you have to explain what it is that the psychiatrist does.”²⁷⁸

A Tzotzil interpreter explained how this time-consuming interpretation produces punitive impatience in other legal contexts:

[Court officials] can get very impatient—they can’t see why a simple question like “Do you waive your right to a jury?” takes three paragraphs to translate... [i]n the case of someone from an [Indigenous] village, there is nothing equivalent to a trial or a jury or a legal right.²⁷⁹

With so much need for explanation, proper interpretation is slow, and a legal advocate observed that “judges can get really impatient.”²⁸⁰ Moreover, a language or variant mismatch between an interpreter and an asylum seeker can stop cases entirely, frustrating all parties even more.²⁸¹

This frustration creates serious problems when authorities express their frustration in ways that make it harder for people to win asylum. For example, when Border Patrol agents started pressuring the family to renounce their legal right to an interpreter, they put that family at risk of linguistic refolement—had the family consented to proceed in Spanish, they may have failed to communicate their reasonable fear and been returned to a dangerous situation in Mexico.

Immigration judges occasionally yell at interpreters during interviews and proceedings,²⁸² which can harm people’s cases in at least two ways. First, this additional stress may make it harder for the interpreter to translate accurately and completely.²⁸³ Second, it almost certainly frightens the asylum seeker. Blake Gentry describes a case where an asylum seeker became “increasingly withdrawn”

276. Another example is that of “psychological harm,” which is difficult to translate into Kichwa. Bova, *supra* note 80, at 9–10; see also Eileen Traux, Opinion, *The U.S. Must Provide Interpreters for Indigenous Migrants. It Could Save Lives.*, WASH. POST (Dec. 19, 2018), <https://www.washingtonpost.com/opinions/2018/12/19/us-must-provide-interpreters-indigenous-migrants-it-could-save-lives/> [<https://perma.cc/QU4M-LX9F>] (explaining how different justice systems in Indigenous communities mean that many words do not translate directly).

277. Remote Video Interview with Language Professional C (Aug. 26, 2021).

278. *Id.*

279. Bova, *supra* note 80, at 10 (citing Victoria Kim, *American Justice in a Foreign Language*, L.A. TIMES (Feb. 21, 2009), <https://pages.ucsd.edu/~jhaviland/Publications/American%20justice%20in%20a%20foreign%20language.pdf> [<https://perma.cc/P23T-SDDL>]).

280. Remote video interview with Legal Advocate B (Aug. 12, 2021).

281. Barak, *supra* note 18, at 213.

282. See, e.g., Gentry, *supra* note 234, at 50; Nina Bernstein, *Judge Who Chastised Weeping Asylum Seeker is Taken Off Case*, N.Y. TIMES (Sept. 20, 2007), <https://www.nytimes.com/2007/09/20/nyregion/20immigrant.html> [<https://perma.cc/Q5R6-7L6G>].

283. Cf. Saihong Li, Yifang Wang & Yugo Zho Ramussen, *Studying Interpreters’ Stress in Crisis Communication: Evidence from Multimodal Technology of Eye-Tracking, Heart Rate and Galvanic Skin Response*, 28 TRANSLATOR 468, 481 (2022) (finding that medical interpreters perform more accurately in a routine-interpreting scenario rather than a crisis).

after the judge yelled at both her and the interpreter.²⁸⁴ The yelling and subsequent withdrawal are likely to have made her testimony less coherent—and therefore less compelling to the already-angry judge.

One way to mitigate linguistic punishment is to reduce the exogenous pressures that predispose immigration personnel to frustration with language delays. The first Trump administration applied unprecedented pressure to immigration judges, requiring them to finish 700 cases per year—nearly three cases per working day.²⁸⁵ Considering that a single asylum merits hearing can take several hours, this standard was nearly impossible to meet, and turnover among immigration judges increased dramatically.²⁸⁶ During that same period, other immigration agencies reported high levels of dysfunction, exhaustion, and job dissatisfaction.²⁸⁷ In an asylum-friendly system, these dynamics would be addressed by capping caseloads, eliminating quotas, and encouraging adjudicators to take the time they need to engage with the merits of each case.

But the punishment of language difference cannot be wholly solved by reducing the pressures on judges. Sometimes, punishment results not from delay or administrative burden but from an animus towards language differences themselves. Some policymakers appear to believe that language difference itself is a justification for deportation.²⁸⁸ To withhold protection—implicitly or directly—simply because of linguistic difference is linguistic punishment that risks running afoul of the principle of non-refoulement.

E. Linguistic Isolation

The four mechanisms described above operate within the adjudicative process, shaping how claims are heard, understood, and assessed. Linguistic isolation affects whether people can endure the system long enough to have their claims

284. Gentry, *supra* note 234, at 50.

285. Yeganeh Torbati, *Head of U.S. Immigration Judges' Union Denounces Trump Quota Plan*, REUTERS (Sept. 21, 2018), <https://www.reuters.com/article/us-usa-immigration-judges/head-of-u-s-immigration-judges-union-denounces-trump-quota-plan-idUSKCN1M12LZ> [<https://perma.cc/U4FL-C4VV>].

286. *More Immigration Judges Leaving the Bench*, TRAC IMMIGR. (July 13, 2020), <https://trac.syr.edu/immigration/reports/617/> [<https://perma.cc/HPZ8-BU3Y>].

287. See Garrett M. Graff, *The Border Patrol Hits a Breaking Point*, POLITICO MAG. (July 15, 2019), <https://www.politico.com/magazine/story/2019/07/15/border-patrol-trump-administration-227357/> [<https://perma.cc/KU3Y-WEPE>]; Jonathan Blitzer, *ICE Agents Are Losing Patience with Trump's Chaotic Immigration Policy*, NEW YORKER (June 24, 2019), <https://www.newyorker.com/news/news-desk/ice-agents-are-losing-patience-with-trumps-chaotic-immigration-policy> [<https://perma.cc/W3N4-6Y3V>] (describing ICE officers' dissatisfaction with White House policies).

288. *Speech: Donald Trump Delivers a Speech at the 2024 CPAC Convention in Maryland*, ROLL CALL (Feb. 24, 2024), <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-cpac-convention-national-harbor-maryland-february-24-2024> [<https://perma.cc/B9UT-8G4V>] (statement of Donald Trump) (“We have languages coming into our country. We don’t have one instructor in our entire nation that can speak that language. These are languages—it’s the craziest thing. They have languages that nobody in this country has ever heard of. It’s a very horrible thing.”).

processed at all. Recall that “constructive refoulement” does not require direct return but can come about through being indefinitely held in poor conditions.²⁸⁹ One condition that makes detention and other losses of liberty especially intolerable is *linguistic isolation*, the forceful separation of people from others who speak one’s language, leaving one “alone in a sea of voices.”²⁹⁰ Scholars and activists call the detention of Indigenous-language speakers without others who speak their language “linguistic solitary confinement.”²⁹¹

Use of one’s native language is associated with positive life and health outcomes.²⁹² In contrast, a lack of meaningful contact with other people who speak one’s language can induce symptoms like depression, anxiety, paranoia, and apparent psychosis.²⁹³

The immigration system perpetrates linguistic isolation against Indigenous-language speakers in at least two ways. First, border-externalization and pushback regimes in Mexico may keep people far from same-language community members. Second, immigration detention may separate people from others who share their languages, sometimes indefinitely. This linguistic isolation can lead people to abandon their asylum cases and constructively refool themselves.

“Border externalization” and “pushback” refer to policies that prevent asylum seekers from entering destination countries where they might seek protection.²⁹⁴ Over the last several years, the United States has experimented with a variety of border-externalization and pushback regimes.²⁹⁵ By one estimate, monolingual Indigenous-language speakers accounted for roughly 5.6% of people placed into the Migrant Protection Protocols and 3.9% of those expelled under Title 42.²⁹⁶

289. See *supra* notes 57–61 and accompanying text.

290. David Berreby, *Desperately Alone in a Crowd*, NEW YORKER (May 30, 2013), <https://www.newyorker.com/tech/annals-of-technology/desperately-alone-in-a-crowd> [<https://perma.cc/ULU3-DFH7>] (describing the Sunnat case).

291. Vivian Newdick & Odilia Romero, *Interpretation is an Act of Resistance: Indigenous Organizations Respond to “Zero Tolerance” and “Family Separation,”* 50 LATIN AM. STUD. ASS’N F. 30, 30 (2019).

292. Gerald Roche, *The Necropolitics of Language Oppression*, 51 ANN. REV. OF ANTHROPOLOGY 31, 33 (2022).

293. Meghan Maree Ballard, *The Effects of Linguistics Solitary Confinement*, BLEAKHOUSE REVIEW, 2018, at 42–43 (citing RUDOLF ALLERS, PSYCHOGENIC DISTURBANCES IN A LINGUISTICALLY STRANGE ENVIRONMENT (1920), *reprinted in* UPROOTING AND AFTER 51 (Charles Zwigmann & Maria Pfister-Ammende eds., 1973)).

294. Bill Frelick, Ian M. Kysel & Jennifer Podkul, *The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants*, 4 J. MIGRATION & HUM. SEC. 190, 193 (2016); Felipe González Morales (Special Rapporteur on the Human Rights of Migrants), *Rep. on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea*, U.N. Doc. A/HRC/47/30 ¶ 34 (May 12, 2021), <https://docs.un.org/en/A/HRC/47/30> [<https://perma.cc/2FEA-LT4L>]. While some sources treat these as distinct categories of policies, the UNHCR recognizes them as overlapping. See *id.* ¶¶ 67–71.

295. Emily J. Johanson, *The Migrant Protection Protocols: A Death Knell for Asylum*, 11 U.C. IRVINE L. REV. 873, 876, 886 (2021).

296. For a description of this methodology, see *supra* note 226. Complete data tables on file with author.

Although the details of the programs vary, they all require asylum seekers to wait for weeks, months, or years at the border for a chance to seek asylum. To be sure, border externalization complicates the refoulement framework because the government has not technically “returned” anyone—it has simply refused to let them in. But for a person stranded without interpreters, community, counsel, or any other realistic means of entering the asylum pipeline, the distinction between being kept out and sent back is academic.²⁹⁷ In both cases, the person returns to danger not because their claim lacks merit but because the system was made inaccessible to them.

While waiting in Mexico, Indigenous migrants are more vulnerable than other groups.²⁹⁸ They suffer harassment and discrimination by Mexican authorities, kidnapping, human trafficking, rape, and extortion.²⁹⁹ One legal advocate, himself a native Indigenous-language speaker from Mexico, reflected on these dynamics and expressed that to be Indigenous in Mexico was to suffer extreme disadvantage and violence.³⁰⁰ Thus the act of pushing back Indigenous asylum seekers to Mexico can constitute refoulement by putting them in harm’s way.

Furthermore, Indigenous migrants often wait in shelters, camps, or other localities where there may be few people who speak their languages. A monolingual Mam speaker fleeing Guatemala is likely leaving a community where many others speak their language, and their intended destination in the United States is

297. *Access to Territory and Non-Refoulement*, U.N. HIGH COMM’R FOR REFUGEES (Mar. 6, 2025), <https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement> [<https://perma.cc/AY7B-EKSE>] (“The principle of non-refoulement is applicable to any form of removal or return, including in the context of interception at land or sea; rescue at sea; rejection, non-admission, or ‘pushbacks’ at the border; deportation or expulsion (either individually or collectively); externalization or third-country transfer measures; extradition; enforced disappearance; and extraordinary rendition.”) (emphasis added).

298. *See generally* Brief for 61 Immigr. Advoc. & Legal Serv. Orgs. as Amici Curiae Supporting Petitioners, at 16, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (“For indigenous language speakers who are not fluent in Spanish, an additional layer of vulnerability is created [in Mexico] because of language barriers, cultural differences, and discrimination.”).

299. *See, e.g.*, TANYA DUARTE, ABRAHAM GÓMEZ PASCENCIA, ANNA JOSEPH & ELIZABETH OREM, “BECAUSE OF THE COLOR OF MY SKIN AND THE WAY I SPEAK SPANISH”: THE INM’S DETENTION AND DEPORTATION OF INDIGENOUS AND AFRO-DESCENDENT MEXICANS 6–11 (2020), https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/coalicion-indigena-migrantes-chiapas-proyecto-afro-mexico-imumi.pdf [<https://perma.cc/FTE2-TGS5>]; Nina Lakhani, *Mexico Tortures Migrants-And Citizens-In Effort to Slow Central American Surge*, GUARDIAN (Apr. 4, 2016), <https://www.theguardian.com/world/2016/apr/04/mexico-torture-migrants-citizens-central-america> [<https://perma.cc/AC7P-FYGG>]; Julia Neusner, *Kidnapped, Raped, and Robbed: Dangerous Title 42 Expulsions to Mexico Continue*, HUM. RTS. FIRST (May 24, 2021), <https://humanrightsfirst.org/library/kidnapped-raped-and-robbed-dangerous-title-42-expulsions-to-mexico-continue/> [<https://perma.cc/DJW7-FEST>]; INDIGENOUS ALL. WITHOUT BORDERS & INT’L MAYA LEAGUE, *supra* note 9, at 12–13; Ashoka Mukpo, *An Indigenous Woman Made it to Safety in the U.S. DHS Won’t Let it Go.*, ACLU (Oct. 12, 2020), <https://www.aclu.org/news/immigrants-rights/this-indigenous-woman-reached-safety-in-the-us-and-dhs-is-furious> [<https://perma.cc/R6EU-9MFN>].

300. Remote Video Interview with Legal Advocate C (Aug. 24, 2021).

probably somewhere that many Mam people have already settled.³⁰¹ But en route they experience social deprivation and exclusion from the informal support networks through which asylum seekers can commiserate and share information about the process.³⁰²

In this way, border externalization creates a coercive situation that produces refoulement to the home country through what we might call constructive chain refoulement: the United States pushes them back to Mexico, where they face an unlivable situation that gives them no choice but to leave.³⁰³ The director of a shelter in Ciudad Juárez described a situation where Indigenous migrants—presumably in the Migrant Protection Protocols—could not start the asylum-seeking process until either the U.S. government or the shelter had located an appropriate interpreter.³⁰⁴ He observed, “Most of them get tired of waiting for an interpreter and leave to go back to their hometowns. Only very few wait long enough to get an interpreter and start their immigration process.”³⁰⁵ Each of these asylum seekers chose to leave their country and seek safety in the United States. And each one who returns because of linguistic isolation through border externalization is putting themselves back into harm’s way.

And even when asylum seekers do get to enter the United States, they may still face linguistic refoulement through isolation in detention, which can last months or years.³⁰⁶ People who do not speak English or Spanish often have no mechanism to communicate with detention officials.³⁰⁷ One Q’anjob’al asylum seeker explained:

301. See, e.g., Cesar Hernandez, *How Oakland’s Fruitvale Became a Thriving Guatemalan Enclave*, SAN FRANCISCO CHRONICLE (Jan. 2, 2023, 4:26 P.M.), <https://www.sfchronicle.com/east-bay/article/oakland-fruitvale-guatemala-neighborhood-17667201.php> [https://perma.cc/JX4Q-JL8D] (discussing the Mam community in Oakland’s Fruitvale neighborhood).

302. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

303. See Yota Negishi, *Constructive Refoulement as Disguised Voluntary Return: The Internationalized Externalisation of Migrants*, 71 NETH. INT’L L. REV. 155, 156, 163–64 (2024).

304. Chaparro, *supra* note 159.

305. *Id.*

306. See, e.g., HUM. RTS. FIRST, “I’M A PRISONER HERE”: BIDEN ADMINISTRATION POLICIES LOCK UP ASYLUM SEEKERS 1, 23, 27–28 (2022), <https://humanrightsfirst.org/wp-content/uploads/2022/09/ImaPrisonerHere.pdf> [https://perma.cc/R6S-NDZB]; ACLU, PROLONGED DETENTION FACT SHEET 1 (n.d.), https://www.aclu.org/sites/default/files/assets/prolonged_detention_fact_sheet.pdf [https://perma.cc/A9K3-N7B8].

307. See, e.g., Memorandum from Dana Salvano-Dunn, Dir., Compliance Branch, Off. for C.R. & C.L., U.S. Dep’t of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf’t, & Kerry E. Doyle, Principal Legal Advisor, U.S. Immigr. & Customs Enf’t., *Henderson Detention Center Complaint Nos. 21-01-ICE-0042, 21-01-ICE-0056, 000255-22-ICE, and 000036-22-ICE*, at 2 (Mar. 15, 2022), https://www.dhs.gov/sites/default/files/2022-08/2022.03.15%20CRCL%20Retention%20Memo%20to%20ICE%20-%20Henderson%20Detention%20Center%20-%20Redacted_508.pdf [https://perma.cc/UKZ4-LQ55] (reporting a complaint by a detained person that ICE officers ignored his requests because he did not speak English). As of 2023, the *National Detainee Handbook*, which informs detained people of their rights, had not been translated into Indigenous languages. Zefitret Abera Molla, *Improving Language Access in the U.S. Immigration System*, CTR. FOR AM. PROGRESS (May 25, 2023), <https://www.americanprogress.org/article/improving-language-access-in-the-u-s-asylum-system> [https://perma.cc/S27D-

Most of the time I have to guess what is being said or try to communicate with gestures, but usually the guards or government officials get frustrated and give up even trying. No one asks me if I understand or if I speak a different language. Instead, the guards laugh at me and treat me like I am stupid.³⁰⁸

And Indigenous-language speakers can be stuck in this situation for far longer than other asylum seekers.³⁰⁹ Several legal advocates mentioned that they had clients whose cases were repeatedly delayed while the government looked for an interpreter.³¹⁰ This is typical. A lawyer who represents detained families said of asylum seekers who speak Indigenous languages: “It delays everything. It delays court. It delays the credible-fear process. It delays their release.”³¹¹ In fact, for many Indigenous migrants, the most expedient way to get out of immigration detention is by learning enough Spanish to proceed to a Spanish-language hearing.³¹²

Several legal advocates interviewed for this study were eventually able to request that their clients be released from detention on bond.³¹³ If those clients had not had legal advocates—as is the case for 86% of detained people³¹⁴—they may have chosen to return to their countries of origin instead. “It happens all the time,” a legal advocate said of long-term detention of Indigenous asylum seekers, “with varying degrees of negligence.”³¹⁵ Another said of the topic, “I worry about the cases we don’t see.”³¹⁶ DHS’s own Homeland Security Advisory Council has recommended that, because of “threats to their health and safety” and interpreter

CRCG]. It has since been translated into K’iche’, Mam, and Q’eqchi’. See *National Detainee Handbook*, U.S. IMMIGR. & CUSTOMS ENF’T (Mar. 23, 2026), <https://www.ice.gov/detain/detention-management/national-detainee-handbook> [<https://perma.cc/B3YU-9GJE>]. But many speakers of even these Indigenous languages are unlikely to be able to read it due to literacy limitations. See *supra* notes 206–211 (describing the correlation between monolingualism and illiteracy).

308. Roque Planas, *Winning Asylum is Even Harder for Central Americans Who Don’t Speak Spanish*, HUFFPOST (Sept. 1, 2016), https://www.huffpost.com/entry/asylum-central-americans_n_57c85ebde4b0e60d31ddb9d9 [<https://perma.cc/B236-GNA3>].

309. Letter from Lucas, Harris, Fischer & Feasley, *supra* note 156, at 5.

310. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

311. Planas, *supra* note 308.

312. Muleiro, *supra* note 46, at 56; see also Brendan H. O’Connor, *Spanish as a Migrant Lingua Franca*, ANTHROPOLOGY NEWS (Feb. 14, 2022), <https://www.anthropology-news.org/articles/spanish-as-a-migrant-lingua-franca/> [<https://perma.cc/CW23-N5LP>] (observing that Spanish functions as the lingua franca of the immigration system, leading many migrants to try to learn it).

313. Remote Video Interview with Legal Advocate B (Aug. 12, 2021); Remote Video Interview with Legal Advocate D (Aug. 26, 2021).

314. INGRID EAGLY & STEVEN SHAFER, AM. IMMIGR. COUNCIL, ACCESS TO COUNSEL IN IMMIGRATION COURT 23 (2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf [<https://perma.cc/B9SZ-EMZ9>].

315. Remote Video Interview with Legal Advocate A (Aug. 12, 2021).

316. Remote Video Interview with Legal Advocate B (Aug. 12, 2021).

costs, “individuals who speak rare languages that pose these kinds of language access difficulties should be kept out of detention.”³¹⁷

Not only does speaking an Indigenous language prolong detention, but detention often means social isolation from others who speak one’s language.³¹⁸ This can result in “intense loneliness, disorientation, a deterioration of decision-making skills” and—as described by one detained Somali speaker—a feeling that one is “alone, alone, alone.”³¹⁹

These observations comport with what observers have noted in other detention contexts. Alongside the many Arabic speakers detained at Guantanamo Bay was a man who spoke only Uzbek.³²⁰ He had no contact with other people who spoke his language, nor any opportunity to learn English or Arabic.³²¹ An observer noted that:

An inmate who experiences linguistic isolation cannot hold meaningful conversations with other prisoners, but must limit his communications to gestures, eye contact and halting words. While held in Guantanamo, Sunnat did not speak Arabic or English, the languages spoken by the men nearby. He only spoke Uzbek, his native language. He explained to [Witness to Guantanamo] how the prisoners would converse with each other and build a community. He could sense the warm and communal contacts among his neighbors but could not join with them in prison life. Instead, he awoke each morning and cried.³²²

Peter Jan Honigsberg, an observer for Witness to Guantanamo, compared Sunnat to “a stroke victim who sees the community of conversations around him but cannot participate.”³²³

Indigenous-language speakers often find themselves in similar positions, detained and able to contact no one who speaks their languages. One legal advocate shared a story of two K’iche’-speaking children separated from each other in detention. One of the boys, who was detained this way for a year, began to “despair.”³²⁴ Some of these children may decide to return home—even if that means

317. DHS ADVISORY COMM. ON FAM. RESIDENTIAL CTRS., DEP’T OF HOMELAND SEC., REPORT OF THE DHS ADVISORY COMMITTEE ON FAMILY RESIDENTIAL CENTERS 79 (2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf> [<https://perma.cc/5LWQ-7XF3>]. Where release is impossible, the Committee said, “such persons should be provided with appointed counsel who can facilitate both effective language access and fair immigration proceedings.” *Id.*

318. Peter Jan Honigsberg, *Linguistic Isolation: A New Human Rights Violation Constituting Torture, and Cruel, Inhuman and Degrading Treatment*, 12 NW. J. INT’L HUM. RTS. 22, 40–42 (2014).

319. *Id.* at 40–41, 41 n.114.

320. *Id.* at 22, 36 (2014).

321. *Id.* at 22–23.

322. *Id.* at 35 (footnote omitted).

323. *Id.* at 36.

324. Remote Video Interview with Legal Advocate E (Sep. 14, 2021).

being put in harm's way. As one Guatemalan boy seeking asylum but considering abandoning his claim after prolonged detention explained to a researcher: "I don't want to go back, but how can I stay here one more day?"³²⁵

Even when a person is able to communicate to some degree, language differences can still be a source of social isolation or even ostracization. One Indigenous boy who had spent time in a Health and Human Services detention center told a researcher:

Detention was cruel. ... Kids teased me for everything—my height, my nose, *how I speak Spanish*, and the staff didn't do anything to stop it. There was one staff member who was nasty; he called me a maricón [an anti-LGBTQ slur] and teased me I couldn't wait to get out.³²⁶

In addition to the social isolation, another key source of despair is the lack of medical care provided to Indigenous migrants. This subject received a lot of attention following the deaths of five Indigenous children in custody in less than six months.³²⁷ A 2018 study found that Indigenous-language speakers were less likely than others to receive medical care when they requested it while in custody.³²⁸ Even when Indigenous-language speakers receive medical care, the instructions they receive from medical personnel may be deficient and incompletely translated.³²⁹ This lack of linguistically appropriate medical attention may induce sick or injured Indigenous-language speakers to refool themselves to places where they can access medical care in languages they understand.

Many people do ultimately abandon their claims. Researcher Edith Muleiro observes that asylum seekers who cannot access interpretation in their language often choose to go home.³³⁰ A language professional who works with Indigenous immigrants observed that sometimes "they can't handle the extreme isolation" and agree to leave.³³¹ But a person's decision to return to their home country because

325. LAUREN HEIDBRINK, *MIGRANT YOUTH, TRANSNATIONAL FAMILIES, AND THE STATE: CARE AND CONTESTED INTERESTS* 100 (2014).

326. Lauren Heidbrink, '*How Can I Have a Future?*': *The Temporal Violence of Deportation*, 43 J. INTERCULTURAL STUD. 480, 491 (2022) (emphasis added).

327. Katherine Hamilton, *Five Indigenous Children Have Died at Border Patrol Since December 2018*, CULTURAL SURVIVAL (July 8, 2019), <https://www.culturalsurvival.org/news/five-indigenous-children-have-died-border-patrol-december-2018> [<https://perma.cc/H4BQ-RP4F>]. The father of Jakelin Amei Rosmery Caal Maquin signed a document he could not read in which he unknowingly attested that his daughter was in good health. C. Nicholas Cuneo, *The Death of a Girl at The Border: Even More Preventable, and Tragic, Than We Knew*, WBUR (Dec. 21, 2018), <https://www.wbur.org/cognoscenti/2018/12/21/jakelin-caal-maquin-border-death-c-nicholas-cuneo> [<https://perma.cc/LJ5H-2FMN>].

328. Jeremy Slack, Daniel E. Martínez & Josiah Heyman, *Immigration Authorities Systematically Deny Medical Care for Migrants Who Speak Indigenous Languages*, CTR. FOR MIGRATION STUD. (Dec. 21, 2018), <https://cmsny.org/publications/slackmartinezheyman-medical-care-denial/> [<https://perma.cc/U37N-L53L>].

329. See GENTRY, *supra* note 74, at 29.

330. See Muleiro, *supra* note 46, at 57.

331. Remote Video Interview with Language Professional B (Aug. 25, 2021).

they can no longer withstand the detention and linguistic solitary confinement is not the same as returning because it is safe in their home country; it is constructive refolement.³³² When such a dynamic is pervasive, persistent, and known to the state that a policy induces wrongful return—as in the cases identified in this Section—the negligent failure to correct should also be understood through the lens of constructive refolement. For Indigenous-language-speaking migrants detained without language services or same-language peers, the conditions and indeterminacy of detention often induce asylum seekers to return home, a form of refolement produced by linguistic isolation.

CONCLUSION

Access to asylum requires language access. This Article introduced linguistic refolement as a theoretical construct, revealing the dynamic mechanisms by which language-access failures lead to the return of asylum seekers to situations of persecution and torture. It identified five mechanisms (neglect, erasure, illegibility, punishment, and isolation) that produce linguistic refolement. This is not a complete enumeration; future scholars considering this and other forced-migration contexts will no doubt identify others. And the framework applies beyond the United States and the case study of Indigenous-language speakers; any country that fails to account for the linguistic needs of asylum seekers risks producing the mechanisms of refolement documented here.

The value of this taxonomy is diagnostic. Because each mechanism operates differently, each requires a different response. Scholars and advocates who treat language-access failures in the asylum system as a singular problem—typically focused on the absence of interpreters during hearings—risk missing the other forces that this Article has documented.

The concept of linguistic refolement is especially salient in this moment when asylum seekers face a heightened danger of refolement,³³³ when the president has declared English the official language of the United States,³³⁴ and when the U.S. Supreme Court has declined to intervene in ICE's use of language as a partial basis for profiling.³³⁵ Scholars, practitioners, and advocates seeking to prevent refolement must take seriously the many ways in which language operates as a mechanism of wrongful return. At a time when language itself has become grounds for suspicion and exclusion, naming and understanding linguistic refolement is essential to fulfilling the obligation of non-refolement—and to ensuring that no one is returned to persecution because of the language they speak.

332. Shana Tabak, *Refugee Detention as Constructive Refolement*, 48 YALE J. INT'L L. 289, 291 (2023).

333. See Jaya Ramji-Nogales, *The Trump Administration's Unprecedented Violations of the Non-Refolement Principle*, 119 AM. J. INT'L L. 758 (2025).

334. Exec. Order No. 14224, 90 Fed. Reg. 11363, 11363 (Mar. 6, 2025).

335. See *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 1 (2025) (mem.).

The task ahead is to translate this framework into systems, movements, and enforceable protections that treat linguistic difference not as a basis for suspicion and punishment but as a feature of human difference that the asylum system must accommodate.