

# Lost in Translation: Indigenous Latin American Migrants in the U.S. Asylum-Seeking Process

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## Abstract

Despite the presence of 42 million Indigenous people across Latin America and wide linguistic diversity among immigrants, Indigenous identities and languages are often overlooked, especially in legal immigration processes such as the United States (U.S.) asylum-seeking process. Research focused on immigration barriers often center on Latin American people broadly but does not investigate the unique experiences of Indigenous people, such as denial of identity and inadequate language access. Despite the U.S. having the legal obligation to provide language access, this obligation often goes unmet for Indigenous migrants, limiting their access to a fair and equal shot at asylum. By examining the histories of exclusion faced by Indigenous migrants and the construction of a Latin American monolith, this paper explores how colonial ideals and a linguistic hierarchy contribute to Indigenous people's linguistic exclusion and lack of access to equitable resources. This research centers Indigenous case studies and perspectives to identify four main ways that linguistic exclusion manifests in the asylum-seeking process; it ultimately showcases how linguistic exclusion in the asylum-seeking process operates as a form of racial discrimination that denies Indigenous identities and systematically undermines Indigenous Latin American migrants' access to due process.

## Introduction

In 2005, an Akateco asylum seeker approached U.S. Customs and Border Protection (CBP) agents expressing fear for her safety and requesting permanent protection (Gieselman, 2018, p. 451). Recognizing that she was a Guatemalan woman, the CBP agents interviewed her in Spanish through a process known as the credible fear interview, through which they were to determine whether her persecution was legitimate and if she would be given the chance to apply for asylum. After a twenty-day detention period, they turned her away for not demonstrating "credible fear," and for the next ten years, this woman returned to the same conditions that had driven her to seek asylum in the first place. In 2015, she returned to the U.S. and underwent the exact same process, but this time she was found to have faced true safety concerns.

Unfortunately, because of her prior removal, she will never be eligible for asylum status and was only offered limited relief (Gieselman, 2018, p. 452). So what happened in 2005? Had she truly not endured any harm at that point and time? The answer lies in the language used in her credible fear interview. As an Indigenous woman, this migrant primarily spoke Akateco yet was made to undergo her initial screening process in a language in which she had limited understanding: Spanish.

This case study raises a fundamental question: how can anyone be expected to demonstrate a need for protection in a language they do not fully understand? This story is just one of many examples of the experiences Indigenous asylum seekers face as they navigate the U.S. asylum-seeking process. Social scientist Obinna (2021) reveals that Indigenous Latin American migrants are not recognized as Indigenous at the borderlands and are often assumed to be fluent Spanish speakers. Despite there being 42 million Indigenous people across Latin

America (Fleischner, 2016), wide linguistic diversity among immigrants (Obinna, 2021), and a growing demographic shift in the borderlands towards more Honduran, Salvadoran, and Guatemalan migrants (Shepherd, 2020), this lack of linguistic recognition persists. As such, this paper aims to showcase how linguistic exclusion in the asylum-seeking process operates as a form of racial discrimination that denies Indigenous identities and systematically undermines Indigenous Latin American migrants' access to due process.

## **Background**

Extensive research has shown that the United States has historically used restrictive policies and exclusionary practices to determine who is welcome in this country and who is not. However, this research rarely considers how linguistic barriers within systems such as the asylum-seeking process limits the entry of Indigenous people fleeing persecution and reproduces these same practices of selective acceptance. Conversations on immigration typically center on Latino communities, portraying Latin American people as a monolith that obscures the unique identities, histories, and challenges faced by Indigenous people. When Indigenous people are mentioned in conversations, it often centers state power rather than Indigenous perspectives or the unique challenges Indigenous people face (Obinna, 2021). One of those challenges is navigating immigration and legal systems with inadequate language access services.

Many scholars have examined the legal responsibility of the United States to provide equitable language services in the asylum-seeking process and have demonstrated that the United States has consistently fallen short of these obligations, resulting in life-threatening consequences for Indigenous migrants (Gieselmann, 2018, p. 59–62). Obinna (2021) advances the conversation by drawing on critical race theory and histories of Indigenous marginalization to argue that the U.S. reproduces a hierarchical system that prevents those who speak lesser-known languages from having an equal “division of power and resources” (p. 498). Building on the premise that the U.S. is failing to meet its language access obligations, I argue that Indigenous migrants are unfairly excluded from asylum due to the assumption that all Latin American migrants are primarily Spanish-speaking.

I accomplish this research goal by first identifying the demographic breakdown of those most likely to be granted asylum in order to contextualize the broader disparities faced by Latin American asylum seekers. From there, I examine how Indigenous Latin American migrants are further disadvantaged within the asylum process due to the assumption that all Latin American migrants are Spanish-speaking. I then explain how this assumption leads to a denial of identity and overlooks the unique history of marginalization specific to Indigenous people. This research demonstrates that Indigenous identity and background play a role in the language exclusion of the U.S. asylum-seeking process due to the reproduction of colonist ideals that “other” Indigenous people. I strengthen this assertion of racial discrimination by examining the lived experiences of Indigenous asylum seekers through case studies and interviews that uplift individual perspectives and experiences, thereby showcasing the four main ways linguistic exclusion affects Indigenous people.

## **Asylum-Seeking Disparities for Latin American Migrants**

In 2023, the United States reviewed over 200,000 asylum applications, with more than 50% coming from individuals with national origins in El Salvador, Honduras, Guatemala, and Mexico (Executive Office for Immigration Review Adjudication Statistics, 2024, p. 2–4). However, only 7,922 individuals from these nations were granted protection. The disproportionate number of

asylum applicants received vs. accepted may lead some to believe that the “degree of political repression” within these countries is not significant enough to warrant protection. However, the Southern Poverty Law Center contradicts this assumption by highlighting that El Salvador, Honduras, and Guatemala alone “have some of the highest murder rates in the world” and also face serious drug trafficking, organized crime, and government corruption (2018, p. 22–23). Yet some members of the current administration have stated that Central and Latin American migrants should not be included as asylum seekers because asylum is not meant to alleviate all problems or private violence (The Week Staff, 2019). Gieselman (2018) notes that U.S. federal law states that an asylum seeker’s legal definition is:

any person who is outside any country of such person’s nationality ... and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. (p. 459)

Therefore, any person facing violence because of their status under one of these protected groups whose government is unwilling or unable to bring their perpetrators to justice (due to governmental lack of power, corruption, or dysfunction) qualifies as an asylum seeker—and, contrary to current administrative opinion, is worthy of at least applying for protection.

Taking these legal standards into account, staff at *The Week* reveal that, since the comprehensive creation of the asylum system in 1980, those most likely to receive permanent protection are individuals fleeing communist states. Despite Central Americans historically fleeing civil wars and gangs that “often wield[ed] more power than the government,” they were disproportionately underrepresented among those granted asylum not only in 2023, but for over forty years (The Week Staff, 2019, para. 7). This demonstrates that the asylum-seeking process, while already being a difficult, expensive, and backlogged process for many, has historically further disadvantaged those seeking protection from Latin America.

### **Operating Within a Latin American Monolith**

On top of the existing difficulties faced by Latin American migrants seeking asylum, Indigenous people have a unique experience considering the language barriers they face as individuals who do not speak ““world languages”” such as English or Spanish (Obinna, 2018, p. 498). Several scholars have showcased that, although the United States is legally obligated to administer a credible fear interview to anyone who identifies as an asylum seeker or expresses fear of persecution, these needs often go unmet for Indigenous people. The U.S. Department of Homeland Security (DHS) itself has stated that it has an additional responsibility to provide language access to people with limited English proficiency, including those navigating the asylum-seeking process (2023, p. 2). Its archived *Language Access Plan* references Executive Order 13166, which mandates that the DHS examine its services to ensure they provide meaningful access to language through “services such as translation of written materials and on-demand or prescheduled interpretation services” (2023, p. 2). Additionally, it references Title VI of the Civil Rights Act of 1964, which requires language access as part of national origin nondiscrimination.

Gieselman (2018) references the 1967 Protocol Relating to the Status of Refugees and Immigration and Nationality Law to showcase that anyone who physically appears at a port of

entry or border and expresses “credible fear” has a right to apply for asylum and not be sent back to their country of origin if they demonstrate their persecution via a credible fear interview (p. 458–459). She uses these protocols and laws to demonstrate that U.S. border officers must identify asylum seekers and allow them to express their prosecution. But her work shows that actual practice often misses this initial step of identifying Indigenous seekers as asylum seekers because of miscommunication and a lack of understanding. If migrants are recognized as needing to undergo the asylum process, they sometimes proceed without their primary Indigenous language due to inaccurate identification or lack of efficient and equitable Indigenous language services, despite language access being a legal obligation.

Other scholars delve into the reality that these patterns of misidentification or lack of understanding stem from the assumption that all Latin American migrants are Spanish-speaking, despite many having an Indigenous background. At the borderlands, Indigenous people are not recognized as a distinct racial group, and their primary language is excluded from documentation (Obinna, 2021). As a result, it is unknown how many Indigenous people arrive at the border or undergo the asylum-seeking process because only national origin is accounted for. Migrants have shared that DHS and CBP workers often speak to Indigenous people only in Spanish, disregarding their ethnic and linguistic identities (Obinna, 2021). By characterizing the millions who approach the border through the lens of a single dominant language, this practice obscures the linguistic diversity across Latin America and attempts to create the monolithic view that all Latinos are fluent Spanish speakers. Despite Guatemala alone being home to 22 officially recognized Mayan languages (Shepherd, 2020) and *New York Times* author Jennifer Medina revealing that Mam, K’iche’, and Q’anjob’al are among the 25 most common languages spoken in immigration court (2019), this misconception persists. In reality, Latin America is home to a diverse range of languages for which Spanish alone is insufficient to provide equitable translation services.

Furthermore, establishing the idea that Indigenous language-speaking is outside the norm and unexpected from migrants reproduces colonial ideologies that Indigenous languages are “dying out” and not commonly used due to their “vanishing” status—a common narrative pushed by U.S. political rhetoric and literature that has historically been deployed against a range of Indigenous groups for purposes of silencing and erasure (Patton, 2022, p. 612). Such denial of the common use of Indigenous languages excludes these languages and denies the identities tied to them. By dismissing Indigenous identities, not only are Indigenous people not recognized properly, but their unique histories of marginalization and discrimination across Latin America are overlooked. For some, this oppression persists in their home country and can be a driving motivation for asylum-seeking in the first place (Gieselman, 2018, p. 455).

### **Histories of Exclusion and Reproduced Racial Discrimination**

Recognizing Indigenous identities includes recognizing Indigenous peoples’ unique history of being “othered” and placed at the bottom of society for centuries. Scholars Gieselman (2018) and Obinna (2021) discuss how Indigenous people from Latin America have a “long history of being marginalized, massacred and mistreated” (Obinna, 2021, p. 495). Across Latin America, “many indigenous groups are still routinely discriminated against in their home countries” despite the centuries that have passed since colonial ideologies first placed Indigenous people at the bottom of the social hierarchy (Gieselman, 2018, p. 453). While change has occurred, hostilities remain, and Indigenous people are subject to exploitative state abuse, threats to their homeland, extreme poverty, lack of literacy, workplace discrimination, incarceration, and even murder of activists

fighting for improvements (Gieselman, 2018, p. 454). Many leave their homes in hopes of greater physical security in the United States. Yet the linguistic exclusion that they face once they arrive can itself become a form of racial discrimination—one that denies them a fair and equal shot at claiming asylum.

The historical decision to conduct the asylum process primarily in Spanish has created conditions in which speakers of lesser-known languages have fewer resources and therefore less power within Western systems. This dynamic reproduces a hierarchy in which speakers of more dominant “world languages,” such as Spanish, are more likely to receive support over Indigenous people. For example, in detention centers, 36% of Spanish-language speakers received medical care compared to 24% of Indigenous language speakers, revealing a stark imbalance in something as basic as access to healthcare (Obinna, 2021, p. 493). In addition, the language services reserved for Indigenous people are usually faulty and hard to access, becoming additional barriers in the asylum-seeking process. Race and language scholars Rosa & Flores (2017) demonstrate that this racialized ideology of language rooted in colonialism creates “no role for indigenous languages in European colonial projects,” instead urging Indigenous people “to replace their heritage language with a [colonial] language in order to become modern citizen-subjects” capable of navigating complicated systems (p. 625–626). This premise makes the asylum-seeking process simpler and easier to navigate for those who speak more “recognized” languages and renders speaking an Indigenous language inferior, given that only those who are part of the racial majority have a system designed in their language.

Overall, the current asylum-seeking system denies Indigeneity and creates a system that operates primarily in Spanish, resulting in thousands of people being ignored in a system meant to provide protection. This systemic devaluation and denial of Indigenous language not only makes communication difficult but also ignores individuals’ racial identities as Indigenous people with unique histories of discrimination. Such linguistic exclusion can be tied to racial discrimination, given the intersection of language and racial class and the way the asylum system perpetrates colonial erasure of Indigenous people’s existence and prevalence in society. “Othering” Indigenous people and placing them at the bottom of the system with unequal access to resources then sets them up to face additional barriers when seeking due process.

## Denial of Due Process

Scholars have shown that Indigenous language services are both inadequate and unreliable. For example, the Center for American Progress reports a shortage of interpreters for Indigenous languages, resulting in excessive backlogs for those relying on the limited number of interpreters (Molla, 2023). As a result, services are often carried out by nonprofessionals who are unable to break down complicated legal jargon or delivered by professionals over the phone and via video conferencing. Consequently, “technical and internet issues during hearings conducted using video teleconferencing greatly reduce the accuracy of interpretation” (Molla, 2023, para. 12). Such inadequacies are prime examples of how linguistic discrimination complicates the path to asylum and makes access to due process extremely difficult for Indigenous people. To center Indigenous perspectives and narratives, it is essential to examine the many forms of this exclusion for asylum seekers. Drawing on several case studies, I identify four main ways linguistic exclusions appears in the asylum seeking process for Indigenous migrants: (1) asylum seekers do not get referred to take a credible fear interview because they are never understood to be asylum seekers, (2) Indigenous migrants undergo the process in Spanish because their primary language is misidentified, (3) Indigenous people pursue the asylum-seeking process in their

native tongue and experience a numerous mishaps due to inefficient services, and (4) Indigenous migrants recognize the major barriers of pursuing the process in their primary language and select to continue in Spanish despite limited understanding or because they believe that communicating in Spanish will increase their chances of being granted asylum.

### (1) Failure to Recognize Asylum Claims

Once a migrant expresses a fear of persecution, the first step in the asylum-seeking process is to undergo a credible fear interview; however, sometimes migrants are unable to proceed to this initial step because their fears are not understood. In 2014, a monolingual Mam-speaking teenager from Guatemala expressed fear of returning to San Pedro Necta, Huehuetenango, Guatemala, for unknown reasons (Due Process Denied, 2026, p. 29). He was detained in Arizona and incarcerated upon arrival at the border. During his detention, he was instructed to sign papers he did not understand. Another detainee who spoke Spanish and Mam later explained that he had unknowingly signed his own order for deportation. As a result, this young man was deported without having the chance to explain why returning home filled him with extreme distress.

### (2) Misidentified as a Spanish Speaker

While some migrants do get the opportunity to undergo the credible fear interview, their chances of advancing in the process are limited if they must do so in a language other than their native tongue. Translator Valeria Luiselli (2017), who conducted screening with children, often found herself hoping interviewees would describe forced labor, abuse, gang threats, or documentations such as police reports—not because she wanted those applying for asylum to have experienced these harms, but because she knew that these indicators were the most effective for demonstrating fear and safety concerns. Eliciting this information, however, often required careful probing and rephrasing that interviewees did not always understand. Similarly, Katherine Shattuck (2018), writing in the *Washington Law Review*, notes that strong personal testimonies significantly increase the likelihood of a positive credible fear determination. This includes the “consistency of the asylum seeker’s statements during the credible fear interview,” the “level of detail contained in the asylum seeker’s statements,” and the asylum seeker’s “demeanor, candor, and responsiveness” (Shattuck, 2018, p. 496). A hard standard to fulfill if one lacks the ability to understand and communicate effectively.

One example story similar to that of the Akateco asylum seeker from the Introduction comes from Fidelia, a Guatemalan Mam woman who was unable to express her fear and persecution when her primary language was initially misidentified (Due Process Denied, 2026, p. 11). After fleeing Guatemala due to rape threats and repeated harassment from members of transnational criminal organizations, Fidelia sought asylum and was referred to take her credible fear interview in Spanish. As a result, she struggled to explain her traumatic experiences and understand the questions being asked. Consequently, she received a negative determination in her interview, which a judge later upheld. With the help of a pro bono organization, her interview was reconsidered, and she was able to obtain a second chance in Mam, where she proved her fears to be credible. However, not everyone gets a second chance, and even if they do, permanent protection is not always guaranteed, as seen with the Akateco asylum seeker discussed in the Introduction.

### (3) Interpretation Failures in the Native Language

Ideally, a migrant correctly identified as Indigenous would be able to pursue the asylum process

in their native tongue; however, this is not the case due to the inadequate interpretation services discussed earlier. Through the case study of Kira, a Mayan Guatemalan woman, we can better understand how, even when linguistic identity is recognized, the services available are often too flawed to ensure equal access to due process: Kira was targeted by gangs—along with her family—for sharing religious messages of nonviolence and was severely beaten on multiple occasions (Due Process Denied, 2026). While she had a strong case, difficulties with interpretation led to her asylum hearing being held three times. Her first hearing took place through a video conference and “three-way telephonic interpretation,” in which her native tongue was first translated into Spanish and then into English (Due Process Denied, 2026, p. 21). She was fortunate to have legal counsel, something not every applicant has access to. Her lawyers identified several critical translation errors and secured a second hearing for her, but the second hearing was just as unsuccessful, leading to a third that ultimately resulted in her obtaining asylum. Without legal representation, it is unlikely that Kira would have ever succeeded, given the extent of the translation errors that hindered her case.

#### (4) Choosing to Proceed in Spanish

Because the asylum process is conducted primarily in Spanish, many migrants choose to proceed in that language even when it is not their primary one. Immigration judge Dana Marks Tabaddor has noted that “migrants who speak only rudimentary Spanish try to get by in that language, sometimes out of ... [the] belief that Spanish will help them convince United States officials that they should be allowed to stay” (Medina, 2019, para. 22). This dynamic was evident in the case of a seven-year-old Guatemalan girl undergoing a screening and intake process to determine whether asylum was a viable legal avenue for her as an unaccompanied minor. During her interview, the Spanish-language interpreter acknowledged that Spanish was the girl’s second language—yet the interview proceeded in Spanish because the girl “speaks it well” (Luiselli, 2017, p. 55). The interpreter had to continually rephrase questions and pause so the girl could check in with her mother; ultimately, the interpreter expressed frustration that the information gathered was insufficient to build a strong case. While the girl’s age likely played a role, it remains an open question about what the outcome might have been had she been interviewed in her primary language.

Taken together, these four scenarios illustrate the profound difficulties Indigenous people face in accessing due process and a fair shot at permanent protection. Across all four avenues of linguistic exclusion, having an Indigenous background or identity remains closely tied to limited access to protection, regardless of the specific route an applicant takes.

## Conclusion

When migrants are not provided with adequate language services, being turned away at the border can have life-threatening consequences for those sent back to the dangerous conditions they fled. Proposed solutions to this language-access crisis include AI-based tools such as CustomGPT, language-identification posters to help identify which language a migrant speaks, expanded translation of materials into more Indigenous languages, and efforts to address interpreter shortages (Matthews, 2025; Molla, 2023). Yet despite DHS’s acknowledgment of its legal obligation to provide equitable language services, the agency continues to fall short of meeting this need. This raises a pressing question: how can we ensure that language access is taken seriously and meaningfully implemented within a system that is already flawed and backlogged? Addressing this problem begins with acknowledging that Indigenous people across

Latin America exist—and that Indigenous migrants carry their own distinct experiences, histories, and languages. Only then can we begin to recognize that Spanish-language services alone are not sufficient to ensure an equitable and fair path to protection.

As the daughter of an Indigenous immigrant from Totonicapán, Guatemala, I have been privileged to be raised with Maya K'iche' values. Decades of isolation from other K'iche'-speaking communities and assimilative pressures led my father to lose his native tongue and left him unable to pass it on to my siblings and me. Yet my time in Guatemala has shown me both the enduring presence of Indigenous ways of life and the severity of the poverty and mistreatment members of my community too often face. My abuela taught me that every pueblo in Guatemala has a representative color in its traditional clothing. In Toto, our huipiles and cortes feature deep navy blues and black—dark colors representing the destruction and death that arrived with the colonizers. These histories of exclusion and racial discrimination, born of Spanish colonialism, did not disappear over time. They live on—not only in the threads of our clothing, but in the systems and dangers that continue to push Indigenous people from their homes in search of safety elsewhere, despite the risk of being turned away due to misunderstanding. Ultimately, this paper argues that if language barriers continue to determine who receives equitable due process, we risk allowing race to shape who can seek protection in the United States—and who cannot.

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