

LOST IN TRANSLATION: AN ANALYSIS OF ACCESS TO
INDIGENOUS LANGUAGE INTERPRETERS IN U.S.
IMMIGRATION PROCEEDINGS

by

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A THESIS

Presented to the Department of Political Science
and the Robert D. Clark Honors College
in partial fulfillment of the requirements for the degree of
Bachelor of Arts

Spring 2023

An Abstract of the Thesis of

Alexa Scott for the degree of Bachelor of Arts
in the Department of Political Science to be taken June 2023

Title: Lost in Translation: An Analysis of Access to Indigenous Language Interpreters in U.S.
Immigration Proceedings

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The United States immigration system continues to be a source of contention and debate within politics and society in general. While popular discourse tends to center around federal policies, there are many aspects of migration in the United States that are overlooked and under researched. One such area is the presence of migrants in the U.S. court system whose primary language is an indigenous language. The number of indigenous migrants in the United States has increased significantly in recent years, meaning that a wide variety of languages never seen in the United States are now present in immigration courts. With this increased demand, there is a new need for interpreters who can provide services to these migrants and for immigration attorneys who are culturally competent and able to represent their clients' diverse backgrounds and lived experiences. This paper seeks to fill the gap in research regarding the presence of indigenous migrants in the United States by asking how different actors in immigration courts approach issues of language access when a migrant's primary language is an indigenous language. The data consists of interviews done with immigration attorneys who have experience working with indigenous migrants and a courtroom interpreter who leads a coalition of indigenous language interpreters. The interviews reveal a complex series of logistical barriers and discrimination that are unique to migrants who speak indigenous languages. The paper concludes with a discussion of recommendations that may increase accessibility, visibility, and quality of services for indigenous migrants in the United States.

Acknowledgements

First and foremost, this project would not have been possible without the generous participation of the immigration attorneys and interpreters who shared their personal experience working with indigenous migrants. They took time out of their already incredibly busy schedules and offered thoughtful, profound answers to every question I asked. It has been such a privilege to conduct this research and meet so many intelligent and inspiring people. I have gained not only insight into accessing indigenous language interpreters, but also a new appreciation for communication across cultural, social, and linguistic differences. I am in awe of the work they do each and every day, and it has inspired me to pursue meaningful work in the future. I hope they feel represented in this paper and the work that I have produced.

This paper would also not be possible without the guidance and support of my amazing thesis committee. I have had the privilege of taking several classes with my Clark Honors College representative, Dr. Alison Gash, and her knowledge of the United States court system has been an invaluable guide while writing this paper. Dr. Lynn Stephen from the University of Oregon Anthropology Department has served as both my second reader and as the ultimate resource on indigenous languages. I am incredibly grateful for the resources she sent my way and the interview participants she was able to connect me with. Finally, I cannot express enough gratitude for my primary thesis advisor, Dr. Erin Beck. I first met with Dr. Beck in regards to this project during my sophomore year, and she has been a kind, generous, and knowledgeable guide through every step of the process. Dr. Beck was the first professor I had at the University of Oregon who made me feel like I was capable of this type of research, and I am grateful for the way she has pushed me and supported me.

I would also like to thank the University of Oregon in general and the different academic departments I have had the privilege of taking classes in. The Political Science, Spanish, and Legal Studies departments have inspired me, pushed me, and informed my research in many ways. It has been a privilege and an honor to work with so many incredible professors and peers.

I would like to extend a huge thank you to my family and friends for being the best support system I could ask for. Thank you does not even begin to express how grateful I am towards my parents and grandparents for the ways they have made my education possible. I would especially like to thank my grandma whose own immigration story is such a large part of the inspiration for my research. I would like to extend another huge thank you to my roommates Kate Stupin and Kailey Kreienbrink who have lived with me since I started this project nearly three years ago. I appreciate the ways they have supported me, listened to me, and reminded me to take breaks and enjoy myself as well. I would also like to thank Lauryn Lilly, who has been by my side for many Political Science classes and offered the best support and advice when I was feeling overwhelmed.

Finally, I would like to thank my parents and my sister for their unwavering support. My parents, Matt and Laurette Scott have been my biggest supporters from the very beginning, and I know I would not be here today without them. I am so deeply grateful for the way they have always prioritized and supported my education and taught me the value of hard work. Thank you does not even begin to cover all that they have done for me on an academic and personal level. Finally, thank you to my sister and best friend, Caitlin Scott. She has been the best role model I could ever ask for. Her knowledge, support, and love has been felt and appreciated throughout this project and everyday.

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Introduction

Citizens of the United States oftentimes struggle to understand the legal jargon that surrounds court proceedings. Even people who have lived in the United States their entire lives and grown up with English as their first language do not have the vocabulary and specialized knowledge that is necessary for navigating the complexities of the court system. This struggle is further multiplied in immigration court for migrants whose primary language is not English. Federal law in the United States requires that an interpreter be present for immigration hearings when the defendant does not speak English (Jaafari 2019). This requirement, however, does not dictate the quality of translation as there is no standard of training for interpreters. As the migrant population increases in the United States, the role of interpreters and access to quality interpretation has become more and more important.

Migrants make up a significant portion of the total U.S. population, making proceedings in immigration courts an important area of inquiry in regards to rights and accessibility. According to the Pew Research Center, the “United States has more immigrants than any other country in the world” and accounts “for about one-fifth of the world’s migrants” (Budiman 2020). The immigrant population in the United States represents a diverse array of countries of origin. Over the course of history, Mexico has been the top country of origin for immigrants in the United States, followed by China, India, the Philippines, and El Salvador (Budiman 2020). With such variety in regards to country of origin, there also comes diversity in regards to primary language and knowledge of English.

In recent years, the United States has seen an increase in the amount of migrants who report their primary language being an indigenous language. A recent analysis of indigenous languages in immigration courts stated that “Mam, K’iche’ and Q’anjob’al — all indigenous to

Guatemala — have each become one of the 25 most common languages spoken in immigration court in the past few years” (Medina 2019). This has posed a challenge for judges, lawyers, and courtroom interpreters as there is a significant lack of interpreters who have both legal knowledge and knowledge of an indigenous language. Further, many indigenous interpreters do not speak English fluently, which necessitates relay translations, which is a series of translations “with the judge’s English first being translated into Spanish before being translated to the indigenous language” (Medina 2019). This allows for even more misinterpretation or misunderstanding as each translation may change the meaning or nuance of the original statement. There is also a significant issue with accessibility. Since there is such a small number of indigenous interpreters available, they are often only available over the phone. This creates a unique set of challenges as well since “dial-in interpretation is often inadequate, because the translation services are hard to schedule and the quality of the telephone connections can be poor, critics say, adding that these problems are worsening backlogs in immigration courts across the country” (Jaafari 2019). With a growing need for interpreters, the nationwide shortage leads to challenges in accessibility and equity.

As the need for interpreters of indigenous languages grows, the lack of research on the gap in accessibility makes meaningful reform difficult to achieve. This creates an equity issue in which indigenous people migrating to the United States do not have access to the same due process of the law or the same quality of services that are available to migrants who speak more common, well-known languages. This thesis will seek to add a new perspective to the existing body of research by examining how lawyers, judges, interpreters, and migrants approach issues of accessibility to interpreters as well as the quality of translation.

I. Literature Review:

This report first draws on research from two distinct fields of study, a legal perspective and a linguistic perspective, to analyze the gaps in access to interpreters in immigration courts who speak indigenous languages. The analysis then takes a theoretical approach to look at the role of immigration attorneys and courtroom interpreters as cultural brokers who must navigate and communicate across different worldviews. The linguistic approach to courtroom translation looks at the ways in which interpretation between indigenous languages and English fails to capture the same cultural meaning and nuance that is essential for immigration court. In contrast, the legal perspective focuses more on the ability to access interpreters and how it affects the timeline and outcome of asylum cases. The analysis of the role of immigration attorneys and courtroom interpreters applies a theoretical framework which considers the unique space these actors occupy and the importance of cross-cultural communication. The existing research explained here is used in this report to inform the analysis of original interview data with professionals who have experience working with indigenous migrants in immigration court.

The basis for linguistic analysis comes largely from Augustine-Adams and Nuñez (2021) which focuses on how certain parts of immigration proceedings cannot be adequately translated. This article specifically looks at the credible fear interview which is a part of asylum cases where the asylum-seeker must prove that there is a legitimate reason for them to be fearful of returning to the country they have fled due to the threat of violence or persecution. The article describes the challenges of adequately interpreting these interviews since the standard translations often lack the nuance and cultural understandings that allow refugees' experiences to be adequately conveyed. This theme is further developed in the Medina (2019) This article looks more specifically at the barriers to effective courtroom interpretation as many interpreters lack the

legal knowledge and knowledge about people's rights to effectively communicate. After further exploring this topic, this project will go beyond just the credible fear interview and examine all parts of immigration proceedings, from meeting with attorneys to hearings. It will also look at a wider variety of indigenous languages.

The next section of research focuses on access to interpreters and the effect this has on the outcome of asylum cases. There is a lot of existing research on this topic, but the most influential articles are Abel (2011), Barak (2021), and Jaafari (2019). These three articles describe the general process for accessing interpreters in immigration court including the timeline and mode of access such as over the phone. They also discuss how the timeline of immigration cases can be impacted by this wait for an interpreter, often creating delays. Demonstrating the effect on outcome on asylum cases is "TRAC Immigration," an online database that tracks the outcome of asylum cases and allows users to filter or sort the results based on a number of factors including language spoken, nationality, age, and gender.

The final section of research, and the most significant for the purposes of this report's analysis, considers the role of immigration attorneys and interpreters in the unique role they occupy as individuals who must communicate across cultural and linguistic differences. The theoretical framework outlined in this section of research identifies courtroom interpreters as "cultural brokers" which is defined in one article as "persons who have cross-cultural competences to explain, elucidate, and bridge cultural differences in multicultural contexts" (Gustafsson et al. 2013, p. 4). The majority of research in this area is based on Gustafsson et al., Barsky (1996), and Killman (2020). The articles take on a theoretical framework that analyzes the role of interpreters as cultural brokers who navigate not only linguistic differences but also cultural and social differences. They also emphasize that interpretation work is not a passive

transmission of words, but rather an active role of “agents of culture” (Barsky 1996, p. 46). The articles also delve into the dynamic relationship that develops between interpreters, attorneys, and migrants which requires trust and understanding. They also explain that interpretation in the context of immigration is particularly challenging and can take on jobs beyond pure translation: “In the context of communication between asylum seekers and lawyers, we may indeed expect variations in interpreter behavior and tasks as well, but the dynamics of the situation are different and likely give rise to different types of behavior and tasks” (Killman 2020, p. 75). This may pertain to personal support and cultural education. This theoretical consideration of the roles of interpreters and attorneys using linguistic and legal analysis to demonstrate the ways on which the role of these professionals is varied, important, and unique.

The analysis in this paper will combine these distinct areas of research to look at the interpretation of indigenous languages in U.S. immigration courts and the quality and accessibility of these interpretation services. While the existing research places an emphasis on accessibility and quality of connection, there is less of a focus on the linguistic perspective. This project will place more of an emphasis on how the linguistic and legal analysis combine to offer a more thorough, meaningful understanding of interpretation in immigration courts. Further, it will use this linguistic and legal research to contextualize the distinct role of immigration attorneys and interpreters. It will use the theoretical framework laid out in the existing research and apply the concept of “cultural broker” to unique data provided in attorney and interpreter interviews. The existing literature is essential for contextualizing and offering background information about the existing system, which will help inform the research that is original to this project.

II. Research Questions:

The guiding research question of this project is how do different actors in immigration court experience and approach issues of language access and translation in asylum cases where the migrant's primary language is an indigenous language. The project will go into more depth by exploring the different actors' experiences, such as, what strategy do lawyers use to confront a backlog of cases and a lack of interpreters who speak indigenous languages. What level of training are interpreters required to have to work in immigration courts? What is their approach to translating immigration interviews: direct, word-for-word translation or an attempt at more nuanced translations that preserve intended meaning? Are translation services related delays positive or negative in the opinion of the different actors?

III. Methods:

The research conducted for this project consists of personal interviews with lawyers and interpreters. The analysis then falls under four general categories. The first category is compiling and analyzing interviews with immigration lawyers. The next parallels the first category, but instead is based on interviews with courtroom interpreters. The third section of the report compares and contrasts the answers to interview questions from the interpreters and lawyers. The final section then uses these comparisons to generate general recommendations for improving equity and accessibility for migrants speaking indigenous languages.

The first portion of research focuses on lawyers and their perception of language access in immigration courts. The data consists of interviews with immigration attorneys who have all worked directly with indigenous migrants. After gaining some background on each attorney's work experience, the initial question was how these lawyers approach cases in which an indigenous interpreter is required? Further, how do they cope with the potential delays that are associated with waiting for an indigenous interpreter? After some background knowledge was established, each lawyer was asked about their own experience accessing indigenous language interpreters and how that might differ from a case in which the client speaks Spanish or a more commonly known language. Finally, each lawyer was asked whether or not they view language related delays as a positive or negative thing. The analysis compiles the different answers to these questions and demonstrates general trends and attitudes. Additionally, it looks at similarities and differences between strategies and attitudes towards language access. A similar methodology is used for analyzing interpreters' attitudes toward language access.

The second set of interviews and analysis explores the experience of indigenous interpreters working in immigration court. Due to the scarcity of indigenous language

interpreters, the data currently consists of an interview with one indigenous language interpreter. Because the role of interpreters in the immigration process differs from that of lawyers, the set of interview questions is slightly different. First, the interpreter was asked about their general perception of the current system that exists for accessing courtroom interpreters and whether or not they think the practice is equitable. Next they were asked about their background in indigenous languages and the context in which they learned the language. The interpreter was also asked about the level of formal training required for an interpreter to work in a courtroom. Finally, they were asked about their general approach to translation especially in cases where the indigenous word or phrase does not exist in the target language. The analysis will focus on a comparison across different interpreters' experiences and impressions about courtroom interpretations.

The final portion of research will focus on comparing and contrasting the interview data gathered from both the interviews with lawyers and with interpreters. To achieve this comparison, there is an analysis of general trends, attitudes, strategies, and perceptions about courtroom interpretation.

IV. Expected Outcomes and Implications:

This project aims to bring more awareness to the presence of indigenous languages in immigration courts in the United States. Further, it seeks to blend the linguistic approach and the legal approach to studying language as it relates to immigration. While previous research has been done separately about these perspectives, there has been none that look at how the two inform each other. Also, there is generally a lack of research about indigenous languages within the United States. This thesis seeks to fill these gaps in the research, and introduce a new category of research in regards to indigenous languages and immigration. Further, this project aims to draw attention to the unique role of immigration attorneys and indigenous interpreters who take on the additional role of advocate and cultural broker when working with indigenous clients.

V. Analysis of Interviews with Immigration Attorneys:

From the time that they first meet their client to when they defend their client in court, immigration attorneys take on a wide array of roles. They act as legal defense, personal support, advocate, cultural bridge, and language broker. Oftentimes, they take on these roles in response to the vehement opposition of the presence of migrants in the United States. Further, accessing resources and translators inevitably slows down the process which can bring negative attitudes towards their client within a system that values speed and efficiency above all else. Throughout the course of research and personal interviews, the answers to questions regarding language access for indigenous migrants were incredibly diverse. While essentially all of the attorneys interviewed articulated a general lack of access to indigenous language interpreters, the reasons for this scarcity and solutions for mitigating the issue were varied and influenced by their own personal experiences. Despite the differences, the data does reflect several commonalities that act as barriers to indigenous migrants navigating the United States immigration system.

A. Accessibility Issues and Delays

An initial commonality that stood out across the different interviews included difficulties in accessing indigenous language interpreters which can create delays and cancellations that have the potential to affect the outcome of the case. Four different lawyers specifically mentioned that they had experienced more delays in the cases where they were representing indigenous clients. Lawyer G stated that along with a greater number of delays, they saw a significant number of hearings canceled when migrants required an indigenous interpreter because the court failed to provide an interpreter on the day of the hearing: “there’s no back-up, there’s no substitutes, and so that can be much more likely to happen” (Lawyer G Interview). Lawyer E described a particular client whose hearing was delayed “six to seven times” before they were able to make

an appearance in court with the appropriate translator present (Lawyer E Interview 2023).

Lawyer A described a particularly frustrating series of delays faced by their Triqui clients. The Triqui are an indigenous group from Oaxaca, Mexico (IACHR). While the Triqui are a significant group in Mexico with a growing presence in the United States, there is a general lack of awareness about their culture and language needs. This was demonstrated by Lawyer A's statement that "in the entire United States they have one Triqui interpreter" (Lawyer A Interview 2023). Further, Lawyer D shared that they once arrived in court with a Triqui client after filing a letter explaining the client's language needs, and the only interpreter present spoke Spanish: "[I said] your honor I'm sorry she doesn't speak Spanish, she speaks Triqui. And the judge says what..and he's like, can you spell it?" (Lawyer D Interview 2023). Because of this lack of knowledge and access to interpreters, several lawyers mentioned that they saw a significant amount of delays for their Triqui clients in particular.

These delays and cancellations can have significant effects on the outcome of cases which were highlighted across several different attorney interviews. Lawyer E described the complicated effect of language related delays on different cases. First, Lawyer E stated that in weak cases where the outcome of the case is uncertain, delays can be a good thing for the migrant. They explained that "if you have a weak asylum case and you're trying to keep someone here, and you're hoping the laws change, I understand how that can be good because you have a work permit and they're here" (Lawyer E Interview 2023). When a case is delayed, the migrant who may be at risk of deportation is able to stay in the country longer and oftentimes continue working while they are waiting for a new hearing date. For migrants with strong asylum cases, the effects of delays tend to be more negative. For example, Lawyer E explained that sometimes the circumstances in a migrant's country of origin may change between the time they

file for asylum and the time that they are able to present their case in court due to language related delays and cancellations. If there are significant changes to the circumstances of a migrant's home country, it has the potential to undermine a migrant's case: "You open yourself up to the argument that the government can say, well are you really in harm anymore?" (Lawyer E Interview 2023). Different lawyers also described several other negative effects of delays and cancellations. Nearly all of the lawyers interviewed described the emotional toll it can take on migrants to prepare for a hearing and then have it canceled, often on the day of. Especially for migrants who have a strong asylum claim, it means another day living in the country without a guarantee that they will be able to stay in the long term.

Another common negative effect that was described in interviews was the significant cost these delays can have for both lawyers and migrants. Preparing for an asylum case takes an incredible amount of time on the part of immigration attorneys. Oftentimes attorneys choose to do this work pro bono or low bono which means that they are donating significant amounts of time without profit. Although all of the lawyers expressed their willingness and desire to do pro bono work, they also described the burden this can be financially. The financial burden is not limited to the immigration attorneys however. Repeated delays can mean that migrants have to continue paying for legal representation and interpretation services. Oftentimes this is a burden that migrants cannot afford. While these initial similarities between attorney interviews relate to the accessibility of indigenous interpreters, the interviewed attorneys described challenges that extended beyond just barriers to accessing indigenous language interpreters.

B. Quality of Translations

Another similarity between the different attorney interviews was a general concern regarding the quality of translation that migrants receive. None of the attorneys interviewed had

an understanding of an indigenous language to the point where they could communicate with a migrant completely in their preferred indigenous language. While some lawyers had conversational skills or knew several common words, none of the lawyers had the level of knowledge that would be required to act as the migrant's interpreter. This means that there was a need for interpreters, but it also means that attorneys could not individually judge the quality of translation that migrants received. Many of the lawyers were bilingual in Spanish and could draw attention to misinterpretations or low quality interpretations if the court proceedings were conducted in Spanish and English. When a migrant is speaking in an indigenous language, the attorneys lose this fact checking ability and must rely on the interpreter's ability to communicate with the migrant. Despite their own lack of knowledge of indigenous languages, many interpreters stated concerns about the quality of translation based on their general perception and the concerns that their clients communicated with them.

Several lawyers expressed concerns over finding an interpreter that speaks the same variant of the indigenous language that their client speaks. Like most other languages, indigenous languages have a lot of internal diversity. If the interpreter and migrant speak different variations of the same language it can cause some minor confusion at best and at worst a complete lack of understanding. Lawyer I stated that one of their main concerns when preparing for a case in which the migrant's primary language is an indigenous language is making sure that they are able to find an interpreter who "spoke the right variant of the language" (Lawyer I Interview 2023). Lawyer A expressed a similar concern and shared their own difficulties with making sure that their clients actually understand the interpreter that is provided. In their interview, Lawyer A described being in court with a client after they had waited for an interpreter to become available who spoke the same language as the client. Lawyer

A described the great sense of relief they felt after they had been waiting so long for an interpreter to become available. During the court appearance, however, Lawyer A could tell that their client seemed confused during the hearing and did not seem to be understanding the interpreter. The interpreter was able to express that they spoke a different variant of the language than the client (Lawyer A Interview 2023). While the variants came from geographical areas that were physically very close, the linguistic differences were significant enough that the interpreter and the client could not understand each other. The internal diversity of indigenous languages and the lack of access to interpreters who speak each dialect have obviously negative effects including more delays and preventing indigenous migrants from fully and effectively communicating with the court or lawyers.

Another factor that can affect the quality of interpretation is the need for relay interpretations. Relay interpretation refers to cases where two interpreters are required to get from the indigenous language to the English. Oftentimes one interpreter speaks an indigenous language and Spanish and another interpreter is brought in to translate from Spanish to English. This is then done in reverse to translate the judge's statements back to the interpreter. Many attorneys mentioned relay interpretation in their interviews, and their comments about it were overwhelmingly negative. Lawyer D even went as far as to say that relay interpretations are horrible: "So you get these situations sometimes with relay interpretation where it's like...Mam to Spanish, Spanish to English, and that's horrible because there's always, even with a really good interpreter, there's a certain amount of slippage between what's communicated because of translation and you basically square that interpretation" (Lawyer D Interview 2023). Lawyer G and Lawyer I had similarly negative reactions and also both articulated that one of the main negative effects of relay interpretation is that it can take significantly more time in court.

Immigration courts in the United States tend to value efficiency and the speed with which they can get through cases. Relay interpretation can create delays which tend to have negative effects on the attitudes towards indigenous migrants in court. With relay interpretation, there is also an increased concern for miscommunication and misinterpretation. When translation passes through multiple interpreters there is often a “telephone effect.” A reference to the childhood game Telephone, it means that oftentimes the statement that was originally made morphs and becomes something entirely different in the final statement that is given in English. This can cause misunderstandings and misrepresentations of a migrant’s experiences and petition.

Another factor that can affect the quality of translations is the reliance on community members and family members. Because there are very few court certified indigenous language interpreters available in the United States, many attorneys described alternative ways to access people who can help them communicate with indigenous clients while they are preparing for cases. Oftentimes this means working with other community members or family members who can communicate in both the indigenous language and either Spanish or English. This can present a lot of issues in terms of both quality and accuracy of translation and the ethics of using individuals who know the migrants on a personal level. One issue that attorneys described when having these individuals to help with interpretation is that they do not have formal training in translation work. In regards to immigration proceedings in particular, if the individual who is interpreting does not have background knowledge on immigration laws, they may not be able to convey these concepts in an accurate way to the migrant. Several lawyers mentioned concerns regarding the accuracy of translation when relying on the migrants’ personal networks. Further, there were also a number of concerns regarding the ethics of relying on interpreters who know the migrants personally. For one, there are concerns regarding trauma and the effects that this

can have on family members. Lawyer D, in particular, mentioned that using family members as interpreters can increase the risk of retraumatization which is detrimental to the wellbeing of migrants and their families: “What I try to avoid with interpretation is having the...teenage more assimilated Americanized kids translate for stuff. I mean, that’s awful. Having a kid translate and like spool out the story of their mom’s trauma...that’s not acceptable” (Lawyer D Interview 2023). Three different lawyers also mentioned concerns that a migrant may hide some experiences because they are worried about sharing those experiences with family members. Both Lawyer A and Lawyer H mentioned that when working with indigenous women who use their husbands or partners as interpreters that they may not be able to disclose sexual violence or domestic abuse that they have experienced. Lawyer H stated that they recently worked with a client who “brought a man that was the friend of her husband as an interpreter” and that they were “uncomfortable with the idea that something could be concealed via interpretation” (Lawyer H Interview 2023). Lawyer G also stated that the majority of interpreters, community based and otherwise, are men and they fear that female migrants will be hesitant to open up about gender based violence that they have experienced (Lawyer G Interview 2023). On top of all of this, there are concerns about confidentiality in a close knit community where migrants and interpreters are likely to exist within similar social groups.

Another factor that can affect the quality of interpretation that indigenous migrants receive is the tendency to opt out of using indigenous language interpreters. Oftentimes this can be related to migrants’ experiences with discrimination in their country of origin and the shame they have internalized as a result. Lawyer F in particular emphasized the stigma that can surround indigeneity in Latin America and that this can result in an internalized shame not just about being indigenous but about using their indigenous language: “it was often saddening when

I heard clients refer to their own language as dialects and just not really credit it beyond that and not really want to engage further with their languages and use Spanish” (Lawyer F Interview 2023). Lawyer I echoed this idea stating that they have worked with many indigenous clients who do not want to claim their indigenous status or language: “culturally something that I noticed was a barrier was shame and sometimes, even, people not wanting to talk about their indigenous identity sometimes or feeling too embarrassed to claim an indigenous language as their dominant language...because people are used to being shamed about that in [their country of origin]” (Lawyer I Interview 2023) This stigmatization can also lead to a desire to please people in power and fear of creating more inconvenience. Lawyer E stated that many of their indigenous clients do not feel empowered to say they don’t understand the interpreter or the court proceedings in general. Lawyer I described this tendency as a “desire to please” even when they don’t fully comprehend (Lawyer I Interview 2023). As a result of this stigmatization, indigenous migrants often say that they do not need an indigenous language interpreter and would rather proceed in Spanish. This can act as a barrier to access, because when indigenous migrants opt out of the services available to them and conduct hearings in Spanish, they are often unable to fully understand the proceedings or express themselves effectively.

One final barrier to quality interpretation services is the general attitude of the court towards indigenous migrants. Lawyer H stated that they “definitely feel like there’s hostility a lot of the time if [they] have to slow anything down” in regards to using relay interpretation or needing to find the correct interpreter (Lawyer H Interview 2023). This can be especially true for indigenous migrants whose language needs can create more of a logistic challenge due to the lack of indigenous interpreters and the need for more labor intensive services. These kinds of services can cause delays which prevent the efficiency that immigration courts generally

prioritize. This was echoed by Lawyer G who stated that judges often seemed annoyed by the need for relay interpretation: “[relay interpretation] totally guts the process. Everything takes longer. The judges are annoyed. They’re just trying to whip through cases and make a decision” (Lawyer G Interview 2023). These descriptions of the general environment in immigration court were repeated throughout the different interviews, such as Lawyer F’s statement that the environment of court was generally not favorable towards migrants. Beyond direct hostility, perceived anger or hostility can also affect the environment of the courtroom and the quality of interpretation that migrants receive. Lawyer I stated that oftentimes judges may express anger towards technology or other aspects of access interpretation services. In particular, Lawyer I described a hearing in which there were “serious technical difficulties and the judge got very angry...and they just canceled the hearing” (Lawyer I Interview 2023). Since migrants may not understand what is happening due to language barriers, they may perceive this hostility as being directed towards them. In similar ways to the role of shame and stigma, hostility whether direct or perceived, can act as a barrier to quality translation because if migrants may they are less likely to express their needs and articulate issues with the quality of interpretation they are receiving.

C. Cultural Barriers

In their interview, Lawyer D explained that they feel when they are representing indigenous clients they must take on the additional role of cultural broker. Similar to the way it was explained in the article “The interpreter -- cultural broker?,” they often find themselves in the position of communicating each unique indigenous culture with judges who may have no background knowledge of the specific community. Further, they described the task of communicating cultural understandings and perceptions of the world in a way that the court

accepts and understands. Lawyer D described their role as an advocate as being a “cultural broker” because “the way people turn up and tell their stories and talk about what happened to them isn’t the way the legal system understands it. And so part of the challenge is like, let’s make those two stories meet in the middle. Let’s help the client understand how to kind of modify how they tell their story. You know, staying true to it, of course, but telling it in a way that’s gonna make sense, but then also how do I present it and put it in context so that it’s lucid and understandable to a decision maker” (Lawyer D Interview 2023). This sentiment was echoed among many of the attorneys interviewed. They described the ways in which indigenous traditions and cultures do not always translate well to the priorities of the court which includes linear storytelling and adherence to strict timelines and details.

This leads to one of the greatest challenges that lawyers described when representing indigenous clients which was communicating a consistent and coherent timeline of events. Lawyer D, who described themselves as a cultural broker, stated that they sometimes struggled to get a detailed and linear story of a migrant’s experience in their home country. While trauma can have a significant impact on an individual's memory and testimonial capacity, this lack of a linear story can be heightened in cases of indigenous migrants whose cultural understandings of time and sequence of events are different than what is traditionally accepted in a courtroom in the United States. Lawyer D recalled working with a migrant who was “illiterate” and “didn’t use a calendar. So days, months, weeks, this year, that year, she didn’t think that way” (Lawyer D Interview 2023). Lawyer E and Lawyer A also described similar experiences working with indigenous migrants who lacked a linear calendar and struggled to present their testimony in the strict timeline that the judge requested. Without this linear timeline, Lawyer E explained that attorneys often have to occupy the role of not just legal counsel, but also an educator for the

court who can take their indigenous client's story and present it in a way that is understandable and acceptable to the court: "There's another level of almost education that I have to do in those cases to the court usually" (Lawyer E Interview 2023). While time and series of events can prove a challenge in the courtroom, lawyers also described different strategies to navigate these differences and present a strong case to the judges.

Strategies to mitigate these differences in storytelling and understanding included the use of expert witnesses, open ended statements, and preparing clients to reorganize their thoughts in a manner that is coherent to the court. Lawyer E, who stated that some of their clients did not use or understand a linear calendar, described the importance of education and the role of expert witnesses in the courtroom. Expert witnesses are individuals called to testify in court who have specific knowledge in a particular field that is relevant to the case. Lawyer E explained that oftentimes these expert witnesses can offer testimony about the migrant's cultural practices, in this case, their understanding of time and sequencing of events: "They're not raised and accustomed to the same calendar system. Time and date has a different significance to them...so there's just a whole other level of education to the court" (Lawyer E Interview 2023).

Additionally, using open ended statements and questions allows some leeway in court if the migrant is asked to recount their experiences and the timeline is not exactly the same as what was stated in the declaration. Sometimes if a migrant's detailing of facts in the declaration does not match what they say in court, it can challenge their credibility and undermine their case. By using open ended questions and statements, it decreases the likelihood that these contradictions will happen. Beyond educating the judges and using open ended questions, immigration attorneys described a significant amount of prep-work they do with their clients to make sure that they present themselves and their experiences in a way that will be amenable to the court.

Lawyer H described that sequence of events can be difficult for indigenous clients, and they often take a significant amount of time before hearings to help their clients “reorganize their thoughts” in a way that their story is true to their experience and can be presented in a way that the court will accept (Lawyer H Interview 2023). Lawyer D explained how they used the image of stairs to help their clients understand the sequence of events that judges looked for: “I said ‘Here’s how the judge understands it, it’s like walking up a flight of stairs, uno, dos, tres, cuatro, así’...that visualize of walking up a flight of stairs kind of helped them understand how they needed to break down their experience and explain it to help make it accessible to a decision maker” (Lawyer D Interview 2023). Understandings of time and sequence can cause a significant cultural disconnect between indigenous migrants and the United States court system, but it is not the only barrier.

Another cultural barrier for indigenous migrants is the different worldview with which they approach their lived experiences and status as an indigenous person. One such example was described by Lawyer H who stated that “not everybody knows how to respond when they are asked if they are a member of an indigenous group” (Lawyer H Interview 2023). Because their experiences outside of their community may have been incredibly limited before they migrated, indigenous migrants may not have the same perception of their indigeneity. This can mean that the way they speak about their place in society may differ from the judge's understanding of indigenous communities. It can also mean that it is harder to highlight their indigenous status in a petition, because the migrant does not perceive this factor as something that should be or needs to be highlighted. The challenge of navigating different worldviews was also described by Lawyer F. In their interview, Lawyer F stated that they have worked with indigenous migrants who have denied experiencing trauma, abuse, or persecution in their home country. Over the

course of preparing for their case, however, the migrants later disclosed to Lawyer F experiences that they “would absolutely consider trauma or persecution” (Lawyer F Interview 2023).

Similarly, Lawyer G described working with a migrant who, while living in her country of origin, “was turned away from the hospital when she was 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” (Lawyer G Interview 2023). Although the migrant they were working with did not consider this persecution, Lawyer G explained that from their perspective and the court’s, this did constitute persecution. These experiences can be essential for presenting a strong case for asylum and becoming aware of these experiences later in the process can make it harder for the attorney to present them to court before hearings are scheduled. Another difference that attorneys often encountered between indigenous migrants and courts was the significance of certain cultural practices. Lawyer E in particular referenced the frequency and significance of common law marriages in indigenous communities that they had worked with. In their interview, Lawyer E stated that they often worked with indigenous communities where common law marriages occurred regularly and were just as significant as formally recognized marriages here in the United States. They went on to explain that they must teach the court about this significance: “even with marriage...explaining why a common law marriage really is in a lot of places the same as a marriage. The significance is the same as any legal marriage” (Lawyer E Interview 2023). Oftentimes lack of access to legal services that formally recognize marriage and community traditions, means that formal marriage licenses are hard to obtain and insignificant in some indigenous communities. Since American courts place an emphasis on formal documentation, oftentimes the lived experiences of indigenous migrants who were a part of common law marriages do not carry over well into immigration cases.

All of these cultural barriers play a role in forming a strong case for asylum and can affect the framing of a migrant's petition and its outcome. The biggest effect that was described by several different lawyers was the effect that these differences can have on the credibility of the migrant. Credibility is an essential part of forming an asylum case, and if a migrant's credibility is undermined by inconsistencies in their timeline or storytelling, it can mean that they lose their case entirely. Lawyer D went so far as to state that "if you're going to lose [an asylum case] you're probably gonna lose on some credibility...and a lot of credibility problems are, I think they're more an issuing of understanding experience and one cultural frame compared to another" (Lawyer D Interview 2023).. Lawyer E also echoed the importance of credibility stating that it has the potential to undermine an entire case. If the way a migrant recounts their experiences does not align with the written testimony or petition or can lead the judge to think that the migrant is not a credible source. This is oftentimes enough to make a judge deny asylum for the migrant.

VI. Analysis of Interviews with Indigenous Language Interpreters:

In a similar way to immigration attorneys, indigenous language interpreters take on unique and varied roles while working in the courtroom and helping migrants prepare for hearings. While their primary role is to translate and ensure that the migrant comprehends immigration proceedings and preparations, interpreters also act as a point of connection between the migrant and their home country and culture. By translating words and phrases that have no direct translation, they also occupy the role of cultural broker by finding a way to communicate these phrases and practices in a way that makes sense to people who have no background knowledge about the topics. In their interview, the indigenous language interpreter described some aspects of interpreting indigenous languages that make it unique.

A. Barriers to Getting Certification

The first aspect described by Interpreter A was the significant barriers that can prevent indigenous language speakers from becoming certified courtroom interpreters. The main barriers which prevent people from becoming certified interpreters include the cost of trainings and the lack of training sessions in languages other than English. Interpreter A explained that to become a certified interpreter there are a variety of trainings that one must attend. While this may not initially sound like a particularly difficult requirement, there are significant barriers that make the sessions inaccessible to community members who may otherwise be interested. First, Interpreter A explained that individuals must pay to attend these sessions: “You have to pay for those trainings and not just 50 bucks, 25 bucks. 548. That’s a number I have in my mind, because I just received an email for a training...and they charge [that much]” (Interpreter A Interview 2023). Oftentimes, community members who speak an indigenous language do not have the discretionary funds to be able to afford these trainings. Further, it is likely that interpreters would

have to miss regular work hours in order to attend these trainings: “[to charge that much] is not fair to us as indigenous interpreters because the interpretation, for us, we do it not as a full time job. We just do it every time we’re asked for” (Interpreter A Interview 2023). So while there is already a significant cost to attend, indigenous language speakers are further missing out on the opportunity to work and earn money in their regular, day-to-day jobs.

Another significant barrier to certification is the lack of training sessions in languages other than English. As Interpreter A expressed, a significant number of indigenous language interpreters “don’t speak English. They speak their native language and Spanish” (Interpreter A Interview). With the possibility of relay interpretation, it is not required for indigenous language interpreters to speak English. Despite this and the fact that most indigenous language speakers communicate largely in Spanish and their indigenous language, Interpreter A explained that “many trainings that are out there, they are in English” (Interpreter A Interview 2023). This means that many individuals who speak an indigenous language and want to become an interpreter are unable to meet the certification requirements because the trainings are not offered in a format that is accessible. The accessibility of certification trainings contributes to the lack of indigenous lacking interpreters which in turn creates a lack of representation for indigenous migrants.

B. Personal Cost of Doing Interpretation Work

Another key theme of the interview with indigenous language Interpreter A was the significant personal cost interpretation work can have on interpreters. The first cost that Interpreter A mentioned was the literal cost that comes with the lack of compensation for interpretation work. Interpreter A explained that many courts and law firms contract with interpretation companies that have interpreters on call to meet needs in the moment. While this

may seem like an effective way to mitigate the lack of access to indigenous language interpreters, it can actually have a significantly negative effect on the interpreters who are doing the work. Because the courts and law firms contract directly with these large companies, they pay the companies directly for their services. As Interpreter A explained, this means that the companies are in charge of compensating interpreters and oftentimes they take a significant amount of the profit before paying interpreters for their work: “[the corporations] charge a lot, but they give the interpreter less than what they receive” (Interpreter A Interview 2023). Along with this lack of compensation, in Interpreter A’s experience, interpretation work is often not frequent enough or profitable enough to be an individual’s full time job. Most interpreters must have another job to support themselves and then do interpretation work on the side as they are able (Interpreter A Interview 2023). While this is a reflection of the monetary cost that interpreters face, the costs can also be emotional.

To claim asylum, a migrant must prove that they have suffered persecution and have credible fear of continued persecution if they were to return to their home country. It is the interpreter’s role to first hear these stories of persecution, violence, and suffering and then retell it in whatever the target language is. Interpreter A explained that this can take a significant toll on people working as courtroom interpreters. This toll is further exacerbated by the fact that people who work as an interpreter and speak an indigenous language are often well connected to these stories of persecution. It can be a reminder of the persecution they faced in their own migration experience or a reminder of the persecution faced by their families and community. While this can create an immense emotional burden, Interpreter A explained that it is this desire to help and represent members of their own community that motivates their interpretation work in spite of the significant costs, monetary and otherwise. Interpreter A stated “for me, it’s not just

going and doing the interpretation to get some income. I'm not doing that just because of the money. I'm doing interpretation because I know that there's many of my community out there that need help, and I do it because that's one of the main knowledges that our ancestors gave us to help our community, to help others" (Interpreter A Interview 2023). This personal connection to their work was also seen in the way Interpreter A described their perspective on language.

C. Perspective on Language

A third aspect of Interpreter A's interview which stood out was the perspective on language which was unique and personal. In describing their perspective on language, Interpreter A explained the deeply personal connection that they have to language and that they bring to interpretation. Being Maya K'iche', an indigenous group from Guatemala, Interpreter A spoke about language as a connection to their ancestors: "My perspective and how I work...I connect this to my roots. My language, I certainly know that it's a direct connection with my ancestors, and those words that we have right now in Spanish or English we didn't use that. Our grandpas and grandmas, they didn't use those words" (Interpreter A Interview 2023). They explained that they pray to their ancestors for support and guidance before each hearing because the words of their indigenous language are a gift from their ancestors. Interpreter A also explained that it is this understanding of language and connection that informs how they approach interpretation. When an interpreter needs to translate a word from an indigenous language that does not exist in Spanish or English, Interpreter A explained how they often turn to their ancestors and how they would have understood the word in their cultural context. With this in mind, Interpreter A then does their best to speak around the word and describe it as closely as possible while contextualizing its original meaning and cultural context (Interpreter A Interview 2023). This is a time intensive process that can create delays in court that are unique to migrants who speak

indigenous languages: “It takes time, and that’s one of the barriers that we face as indigenous interpreters because [court officials] always want to do it fast...for us it’s hard because they want that, but it’s not easy for us as an interpreter” (Interpreter A Interview 2023). Through the barriers and cost interpreters experience while working with indigenous migrants, their experience is different from other actors in immigration court. Despite these differences, there are also some areas where their experiences overlap with other actors.

VII. Similarities Between Data Sets:

While the experiences, perspectives, and priorities of immigration attorneys and indigenous language interpreters have significant differences there are also points of connection that inform the system of courtroom interpretation as a whole. Some of the similarities between interviews with attorneys and interpreters include the perception of accessibility of interpretation as a whole and the lack of knowledge surrounding indigenous peoples in the United States legal system.

One of the biggest similarities between attorney interviews and interpreter interviews was the emphasis on barriers to quality interpretation that are unique to indigenous migrants. Several of the different attorneys cited a lack of interpreters and the delays associated with this lack of accessibility. Further, they referred to the practice of relay interpretation and the increased chances of miscommunication across the different interpretations. In the interview with a indigenous language interpreter, they also acknowledged that having to use relay interpretation can increase the amount of time spent interpreting and explaining. Interpreter A further explained that the extra time spent in this step can act as a barrier to indigenous migrants who can face annoyance and anger due to this individualized need. Even across their different experiences with this time of translation and the associated delays, both interpreters and lawyers emphasized the effect that this has on migrants and the outcome of their cases.

Another similarity across the two sets of interviews was the acknowledgement that when representing or translating for indigenous clients, one must often take on the role of educating the court about indigenous communities and cultures. In their interview, Lawyer D described the unique role they occupy as a “cultural broker” who must communicate the unique and varied culture of different indigenous groups with individuals in a courtroom who have no background

knowledge or awareness of the given group. Lawyer E similarly explained the importance of educating the court on the given indigenous so that their lived experience can be understood in the context of the United States court system. In their interview, Interpreter A reflected this idea of education and contextualization by describing the ways in which they connect their interpretations to the context of their ancestors and their original understanding of the words, phrases, and cultural practices.

VIII. Differences Between Data Sets:

Between the different sets of interviews, some initial differences stood out. Lawyers and interpreters have different experiences with indigenous languages and also occupy different roles in the courtroom and in immigration proceedings. Because of these differences, differences also emerge between their perceptions of the problems of access to indigenous language interpreters in immigration court. Other differences also emerge in their perspective on language in general.

An initial difference that stood out was the level of awareness of what is required to become a court certified interpreter and the different barriers that can stand in the way of achieving this certification. In their interview, Interpreter A expressed how difficult the process can be to become a courtroom interpreter. They also outlined some of the barriers that are unique to indigenous interpreters including the high costs of training as well as the lack of trainings in languages other than English. Although all of the lawyers who were interviewed observed a lack of indigenous interpreters and identified some of the reasons for this disparity, including the generally small number of indigenous people in the United States, there was significantly less awareness of the certification process and the barriers that can prevent individuals from pursuing court certification.

Another difference that arose between the two sets of interviews were the general attitudes towards language and the use of language. Throughout the interviews with immigration attorneys, language was described as a logistical barrier and matter of equity. Nearly all of the lawyers discussed the use of telephone interpretation and relay interpretation can create issues such as delays, misinterpretation, and confusion. Lawyer D and Lawyer H both described the importance of advocating for their client and ensuring that they are receiving accurate and effective services. While there is deep care and attention to clients' needs from both lawyers and

interpreters, attorneys tended to describe the linguistic challenges faced by indigenous language speakers as a logistic barrier that they must navigate and overcome. In the interpreter interviews, however, Interpreter A described a deeply personal connection to language and the people who spoke it. Interpreter A described the ways in which their indigenous language functions as a means of connection with their community and the ancestors that came before them. In their interview, Interpreter A described language with a deep reverence and respect. The way they spoke about language made it clear that it was not just a logistic barrier, but something central to their and asylees' identities.

IX. Recommendations:

Across the interview sets, three recommendations stood out for improving the accessibility and quality of interpretation services for indigenous migrants. These suggestions include offering certification trainings in languages other than English and reducing the cost, creating better protections for the confidentiality of indigenous migrants, and increasing the general awareness and knowledge of indigenous migrants' experiences in United States immigration courts.

A. Certification Trainings

One improvement that was detailed primarily in the interview with an indigenous language interpreter was making certification trainings more accessible to indigenous language interpreters. In their interview, Interpreter A explained several barriers that make it difficult for indigenous language speakers to attend and complete the trainings that are required for certification. These barriers included the cost to attend and the lack of training sessions in languages other than English. Interpreter A explained that many indigenous language speakers feel most comfortable in their indigenous language or Spanish. This was also acknowledged by several different lawyers when they explained the need for relay interpretation that translate the original statement in an indigenous language into Spanish before it is translated from Spanish into English by another interpreter. If the court required certification trainings were offered in Spanish or in different indigenous languages, it would likely increase the number of individuals who are able to attend training sessions and complete the requirement.

Another barrier that Interpreter A identified in their interview was the cost of attending certification trainings. These trainings often have a significant cost associated with them and individuals are expected to pay for these trainings out of their own pockets. This cost itself can

prevent people who have language skills and a desire to work as an interpreter from meeting the formal requirements that would allow them to become a certified interpreter. Reducing the cost of these trainings would also likely increase the numbers of interpreters available to assist in immigration court. Interpreter A explained that at times non-profit organizations will help cover individuals' cost of attending certification trainings. Speaking about a program they participated in, Interpreter A explained that they helped organize a training session for indigenous interpreters that was completely free to attend: "we did not charge for that and...15 members of the community of different indigenous languages [attended] and it was successful" (Interpreter A Interview 2023). Programs like this can help make trainings much more accessible.

Improving the accessibility of these trainings would increase the number of court certified interpreters. Increasing the number of certified interpreters would mean indigenous migrants navigating the immigration system would face fewer cancellations of hearings and have an increased likelihood of having an interpreter who speaks the same variant of their indigenous language. Further, because these trainings provide information about court proceedings and specialized legal knowledge and vocabulary, the quality of interpretation provided to indigenous migrants would improve because interpreters would be more knowledgeable about what is occurring and therefore able to offer accurate and informed translations.

B. Increased Confidentiality and Personal Protections

One concern that was expressed by several different lawyers was the ethical concerns that arise when using community members or people who know the migrants on a personal level to aid in interpreting. When community members provide interpretation services, it is unlikely that they have received the same trainings that court certified interpreters have undergone. While this can present issues with the accuracy of interpretation and the knowledge of legal proceedings, it

can also mean that the interpreters have not been trained on the importance and requirement of confidentiality. Further, all of the lawyers interviewed described the indigenous communities that they work with as being close knit. This means that migrants and community members who offer interpretation services are likely to have overlapping social circles. This can create a situation in which a migrant may not feel comfortable sharing some of their reasons for migration if it relates to people that the migrant and interpreter both personally know. Concerns regarding confidentiality and the sharing of personal information can mean that they do not fully disclose facts about their lived experience that could be essential to presenting a strong case for asylum.

Issues with confidentiality and personal information can oftentimes be prevented in the preparation for a case. One way to mitigate these concerns was outlined in the recommendations for making court certification trainings more accessible. By making official training sessions more accessible, there will be less need to rely on community members or people who may know the migrants on a personal level. This will help limit the situations in which a migrant's confidentiality is compromised or where they feel that they cannot disclose all of their experiences due to their personal relationship with the person who is aiding with interpretation. This will also increase the likelihood that the interpreters providing services will have training in the confidentiality requirements of working with clients and within a courtroom.

Another way to mitigate privacy concerns can be to work with expert witnesses and community members to gain a better understanding of a specific indigenous community's cultural practices and traditions before working with a migrant from that community. By gaining a better understanding of the community that they are working with, immigration attorneys can help prevent some of the situations that may prevent a migrant from freely articulating their lived

experiences. For example, by understanding gender roles and the prevalence of sexual violence in a given community, immigration attorneys can work to ensure that women who may have experienced gender based violence can speak with a female interpreter who is less likely to retraumatize the client. Of course, all of these solutions require an increased number of indigenous interpreters who are certified and able to work. It also requires an increased knowledge of different indigenous communities, which leads to the third and final recommendation.

C. Increased Awareness

One theme that stood out across the interviews with both lawyers and interpreters was an overwhelming lack of knowledge surrounding indigenous communities and languages. This is best demonstrated by Lawyer D's statement that they once arrived in court and had the judge remark that they had never heard of the Triqui indigenous group. It is also demonstrated by the court's emphasis on a linear, coherent retelling of the facts, which is very different from many indigenous people's way of processing time and experiences. This lack of awareness regarding indigenous people can add to stigma and the shame that many indigenous people already feel in regards to their indigeneity due to discrimination and persecution in their native countries. Further adding to this stigma can lead migrants to feel more shame and avoid advocating for their own needs due to fear of retribution or disappointing people in power. Mitigating these kinds of misunderstandings and increasing opportunities for indigenous migrants hinges on better education and awareness for people in the United States who work with indigenous people.

While this increased awareness can be achieved through a variety of different methods, the essential part of these efforts is that they are centered around the indigenous people who are

actually members of the communities. Indigenous communities are very much present in the United States, and their presence has been increasing over recent years. Nearly all of the lawyers interviewed described close knit and growing communities of indigenous people in the areas where they work. With this increased presence, indigenous migrants are bringing the traditions, cultural practices, and knowledge from the indigenous communities in their home countries. With the increased presence, it is possible now more than ever to learn about different indigenous cultures directly from their members. This could take the form of community forums or gatherings that allow for culture exchange. Offering this space for education and increased awareness allows indigenous migrants to occupy a leadership role that highlights their indigeneity. Creating space and acknowledgement for indigenous people helps mitigate some of the shame and stigma that is currently perpetuated by the immigration system. Lessening shame will increase the likelihood that indigenous migrants feel empowered to advocate for themselves and their language needs. This ensures that the court is providing adequate and accurate interpretation services to indigenous migrants.

X. Conclusion:

The increased presence of indigenous migrants in recent years makes it more important than ever that the United States court system is equipped to provide indigenous migrants with high quality and accessible interpretation services. It is not enough to provide indigenous migrants with access to any interpreter. To ensure that services are equitable, more effort must be made to provide indigenous migrants with high quality interpreters that are accessible and speak the correct variant of their language. As was highlighted by the majority of lawyers who were interviewed, the current system for interpretation does a disservice to indigenous migrants. It often fails to obtain interpretation services in a timely manner and can fail to ensure that there is actually understanding between the interpreter and the migrant. Lawyers also described a lack of awareness of different cultures and a hostile environment in court which can perpetuate shame and stigma surrounding indigeneity. The interview with a certified courtroom interpreter for indigenous languages highlighted the barriers that indigenous language speakers face when they try to meet this need and become court certified. This included the cost of trainings and the lack of trainings in languages other than English. Efforts to mitigate these barriers include making certification trainings more accessible, increasing privacy and personal protections for indigenous migrants, and fostering an increased awareness of the presence and importance of indigenous groups in the United States immigration system. Even if indigenous migrants are provided the highest quality of interpretation services there are still many factors of court that could pose a barrier to indigenous migrants attempting to navigate the United States immigration system. In their interview, Lawyer F stated “assuming that justice will be delivered if there is absolute, 100% comprehension on the part of the respondent, that’s a giant assumption” (Lawyer F Interview 2023).

The question of will justice be served even if there is 100% comprehension remains unanswered, but by ensuring that indigenous migrants have access to the highest quality interpretation services, they are granted the best chance at achieving justice.

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