



**Exclusion of Indigenous Language Speaking Immigrants
in the US Immigration System, a technical review**



Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Preface

Quey coq ncoyolna tuj Kyo'l.

Wey quin nchin xolan tuj.

Indigenous peoples, like all peoples, need to communicate in their primary language in order to respond to human communications. Over eighty indigenous languages represent the daily communication patterns of indigenous immigrants from Mexico and Central America. Many of those indigenous language speakers enter the United States and travel in its interior. Most indigenous language speakers from Mexico and Central America do not read nor write in the written form of their language - which for many indigenous languages is a relatively new development.

If you did not understand the first six words written in this preface, you might have experienced what many *indigenous language speaking immigrants* in the US immigration system experience - language exclusion. That language happens to be from the largest group of indigenous language speaking immigrants from Guatemala entering the United States – *Maya Mam*.

From the perspective of the indigenous language speaker, it is not only contact with US immigration officials authorized to conduct interrogations and interviews for legal purposes that requires interpretation of their primary language, it is also contact with other key governmental and privately contracted personnel who make decisions about their welfare while in transit, in detention, and under federal custody which necessitates that their interactions be conducted in their primary language. In that vein, this technical review was prepared in conjunction with the Declaration of the Rights of Indigenous Language Speaking Immigrants. The technical review was prepared by Ama Consultants for the originators of the Declaration, the Guatemalan Community in Tucson, Arizona, United States.

Translation:

We speak Mam.

I speak Mam.

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Prepared by Blake Gentry for Ama Consultants

Contents

Preface	2
Glossary and Acknowledgements	4
I. Federal Limited English Proficient (LEP) Policy in US immigration	6
I. LEP Practice in US Immigration System	10
III. ILSI Perspectives on Language Exclusion in the US Immigration System	21
ILSI Families in Short Term Detention	22
ILSI Individuals in Detention	26
ILSI Individuals in Streamline Criminal Court	34
Unaccompanied ILSI Children	38
IV. Conclusion: Legal Myopia about Indigenous Language Rights	46
V. Recommendations for Effective LEP Programs for Indigenous Language Speaking Immigrants.	51
VI. Appendix A: ILSI Language Exclusion in the US Immigration System	56
Endnotes	58

ILSI Language Exclusion Diagrams:

Language Exclusion Contacts for ILSI Families	23
Language Exclusion Contacts for ILSIs in Immigration Court	27
Language Exclusion Contacts for ILSIs in Streamline Court	32
Language Exclusion Contacts for Unaccompanied ILSI Children	43

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



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Glossary of Terms

ILSI (Indigenous Language Speaking Immigrant) family, individual, or unaccompanied child.

DHS (Department of Homeland Security) Sub-Agencies:

CBP (Customs Border Patrol)

BP Station (Border Patrol Station)
BPSPC (Border Patrol Service Processing Center)
FOB (Forward Operating Base)
POE (Port of Entry)

ICE (Immigration and Customs Enforcement)

ERO (ICE Office of Enforcement and Removal Operations)
ERO (Enforcement and Removal Officer)
Family Detention Center (FDC).
LLE (Local Law Enforcement PEP Partners)
PEP/SCP (Priority Enforcement Program/ formerly Secure Communities Program)

USCIS (United States Citizenship and Immigration Services)

AO (Asylum Officer)

(DHHS) Department of Health and Human Services

ORR (Office of refugee Resettlement)

DOJ (Department of Justice)

AG (Attorney General)

BIA (Bureau of immigration Appeals)
EOIR (Executive Office of Immigration Review)
IJ (Immigration Judge)
NTA (Notice to Appear)
OCC (Office of Chief Council)
USAO (United States Attorney Office)

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Purpose

This technical review examines indigenous language speaking immigrants (ILSIs) and Federal Limited English Proficiency (LEP) policy by reviewing LEP policy and practice within the US immigration system, by demonstrating the points of language exclusion contact for indigenous language speaking individuals, families, and unaccompanied children, and by making recommendations for effective language inclusion of indigenous language speaking immigrants.

The size of the indigenous language speaking migrant population affected by immigration enforcement and legal proceedings remains unknown largely due to their persistent exclusion as a racial class and the exclusion of their languages. The operational scope of federal LEP policy appears superficially applied in an irregular program by semi-autonomous federal immigration agencies. Though the origin of federal LEP policy lies in the Executive Office, federal departments' programmatic formulation of the LEP policy initiative has been weak. Therefore, in addition to the main tasks, this review specifically examines both the undefined nature of that gap in policy, and the resulting gap in practice.

Methods

Quantitative estimations of immigrant language populations were based on a sample of immigrant families. Estimations based on that proxy may approximate but not represent unassessed indigenous language populations. Qualitatively, this technical review examined LEP policy documents from the Executive, Departments of Justice (DOJ), Homeland Security (DHS), Health and Human Services (DHHS), and State; Limited English Proficiency Program (LEP) Guidance issued by those Departments and related agency documents of the Department of Homeland Security's Office of the Inspector General, Customs and Border Patrol, Immigration and Customs Enforcement, DOJ's Executive Office for Immigration Review and Office of Chief Judge, DHHS's Office of Refugee Resettlement, and the General Accounting Office. Sources consulted on language exclusion and LEP issues in the immigration system were from the Women's Refugee Commission and Lutheran Immigration Services, Language Access Advocates Network, Guatemala Acupuncture and Medical Aid Project, Florence Immigrant and Refugee Rights Project, NYU Chapter of the National Lawyers' Guild, Migration Policy Institute, ACLU, the White House blog, and media sources. Issues of LEP practice and language rights in international conventions were from the Vera Institute, the Institute for Social and Economic Development, UN Special Rapporteurs Rodolfo Stavenhagen and James Anaya, UN ICCPR, UN DRIP, UNHCR, Enabling Legislation (Homeland Security Act of 2002), Civil Rights Act (Title VI) and published public comments on DHS's LEP policy in the Federal Register. Service provider and US Immigration Court related sources consulted were from the Vera Institute, Florence Refugee and Immigrant Rights Project, the United States Sentencing Commission, and the Institute for the Study of International Migration, Georgetown University. Interviews were conducted in person, via phone and e-mail were conducted with private, pro bono, and non-profit attorneys in Texas and Arizona; with an ORR spokesperson, a Streamline Court interpreter, former UAC and family shelter workers and volunteers, volunteers visiting three detention centers, and immigrants released on bond, paroled, and with expedited removal orders. Two language specialists were consulted regarding language ideology, history, policy, and issues of dialect. Interview sources, with one exception, are dated but not named to preserve the confidentiality of service providers and of immigrants in detention, in Immigration and Streamline courts, in UAC shelters, and at large. All mistakes are of the author.

I. Federal Limited English Proficient (LEP) Policy in US immigration

Origin of LEP Policy

With the advent of the United States Department of Homeland Security (DHS) in 2002, the public functions and inter-agency cooperation of the United States immigration system became more complex. Though immigration enforcement was authorized by congressional legislation agencies in 2003 for Department of Homeland Security and the Department of Health and Human Services (DHHS)¹, immigration law is administered autonomously under the Department of Justice (DOJ). Language policy standards for Limited English Proficient (LEP) persons, however, originated from a separate single executive order. Executive Order 13166 was issued in August of 2000.² By December of that same year, the Department of Health and Human Services submitted their Strategic Plan to Improve Access to [D]HHS Programs and Activities by Limited English Proficient (LEP) Persons to the Department of Justice for review and implementation. The plan called for implementing a two part strategy.³ The first part of the strategy applied to DOJ funded programs for implementation of their own Limited English Proficient programs. The second part of the strategy called on DHS and DHHS to survey needs of its federal sub-agencies, and then phase-in three discrete language services: ⁴

- To create a mechanism to “*assess on a regular and consistent basis*” the “language assistance needs of current and potential customers” and to create a mechanism to assess their “capacity to meet these needs...”
- To provide “*oral language assistance in response to the needs of LEP customers, in both face-to face and telephone encounters*”.
- To translate vital documents in languages other than English where a significant number or percentage of the customers they served or were eligible to be served had limited English proficiency. Translated materials may include paper and electronic documents such as publications, notices, correspondence, web sites, and signs.

The Limited English Proficiency policy is applied to the entire US immigration system of enforcement, detention, and the immigration legal proceedings. Federal departments authorized to carry out immigration enforcement (DHS & DHHS) and immigration law (DOJ) were instructed to follow executive policy for LEP persons. The Department of Homeland Security was tasked with requiring its sub-agencies Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE), and the Coast Guard, vis a vis their own policy directives and other memorandum, to establish appropriate Limited English Proficiency program practices. The Department of Health and Human Services is now involved in provision of resettlement services for children, and LEP policies apply to it as well. For those agencies and for federally contracted immigration legal and detention service providers, a fourfold process for determining how to assess language needs of local LEP populations is offered⁵:

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



- The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee.
- The frequency with which LEP individuals come in contact with the program.
- The nature and importance of the program, activity, or service provided by the program to people's Lives.
- The resources available to the grantee/recipient and costs.

Slow Drip LEP Policy Guidance

In 2002 the Department of Justice issued its Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient ("LEP") Persons to institutions under its jurisdiction. The guidance interpreted language from Title VI of the 1964 Civil rights Act protecting persons against discrimination covering the following minimal conditions:

(a) ...No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies. (b) Specific discriminatory actions prohibited. (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin: (i) Deny a person any service . . . provided under the program; (ii) . . . which is different, or . . . provided in a different manner from that provided to others. . . ; (iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service . . . under the program⁶.

DOJ's Guidance issued in September, 2011, Considerations for Providing Language Access in A Prosecutorial Agency, which suggested that prosecutorial staff (including DOJ's prosecuting attorneys) were instructed that "language accessibility is critical in successfully prosecuting cases involving LEP victims, witnesses, and defendants". Furthermore it stated that "when a defendant is without representation . . . the agency should ensure that their language access plan and policies extend to communication with a defendant."⁷

DHS 2014 LEP Guidance

The Department of Homeland Security originally adopted DOJ's 2002 LEP Guidance for immigrants regarding Title VI *prohibition against discrimination on the basis of* "... race, color, or national origin . . ." Nine years later, DHS then issued its own LEP policy guidance in 2011 to its federally contracted providers. DHS directed its service providers to follow the Executive Order's mandate regarding assessing language needs and creating a mechanism to assess their "capacity to meet these needs" with the novel concept Of establishing:

. . . a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens. . .

Exclusion of Indigenous Language Speaking Immigrants (ILSI)

In the US Immigration System, a technical review.

For twelve years DHS left undefined the degree of “burden” deemed “undue” and failed to establish minimum requirements for non-represented language groups, including indigenous language



speakers from México and Central America. On September 4, 2014, the Department of Homeland Security issued its own LEP policy guidance to cover CBP, ICE, USCIS, and contracted providers (including family detention centers) with several LEP tools to improve their LEP program capacity to meet LEP needs. The 2014 strategies were these:

- “I speak” cards
- “I speak” posters
- “Working with Interpreters: Job Aid for DHS Employees”; a 3 page guide.
- PowerPoint: Language Access Responsibilities, Overview for DHS Employees.
- A Re-Issued 2011 Guidance from 2011 (Federal Register)
- LEP Resource Guide for Law Enforcement

The new guidance encouraged CBP and ICE to employ two approaches with LEP immigrants: to present immigrants with “I Speak” cards translated into 69 languages, and to post “I Speak Posters” “in intake offices that could state that free language assistance is available”.^{8 9} These two recommendations did not consider educational norms for speakers of indigenous languages given most do not read nor write in their indigenous languages. Both recommendations failed to address their most basic LEP language needs. The new LEP Policy Guidance issued in 2014 by DHS, nevertheless stated that ICE Enforcement and Removal Officers had:

... access to telephonic interpretation services to facilitate communications with apprehended and detained LEP aliens. These services are available and utilized for medical consultations, during the book-in process, and for other important communications between ICE staff and aliens.

LEP Policy Arenas

Federal LEP policy is carried out by the sub-agencies instructed from their executive departments. For LEP policy in the US Immigration System, there are two principle policy arenas, immigration and criminal courts, and enforcement and detention.

Immigration Court

The diagram below illustrates the flow of the administrative law system in simplified terms for an adult individual undocumented ILSI in contact with the US immigration system. The United States Department of Justice administers immigration law in US immigration court in *administrative* proceedings.

Streamline Criminal Court

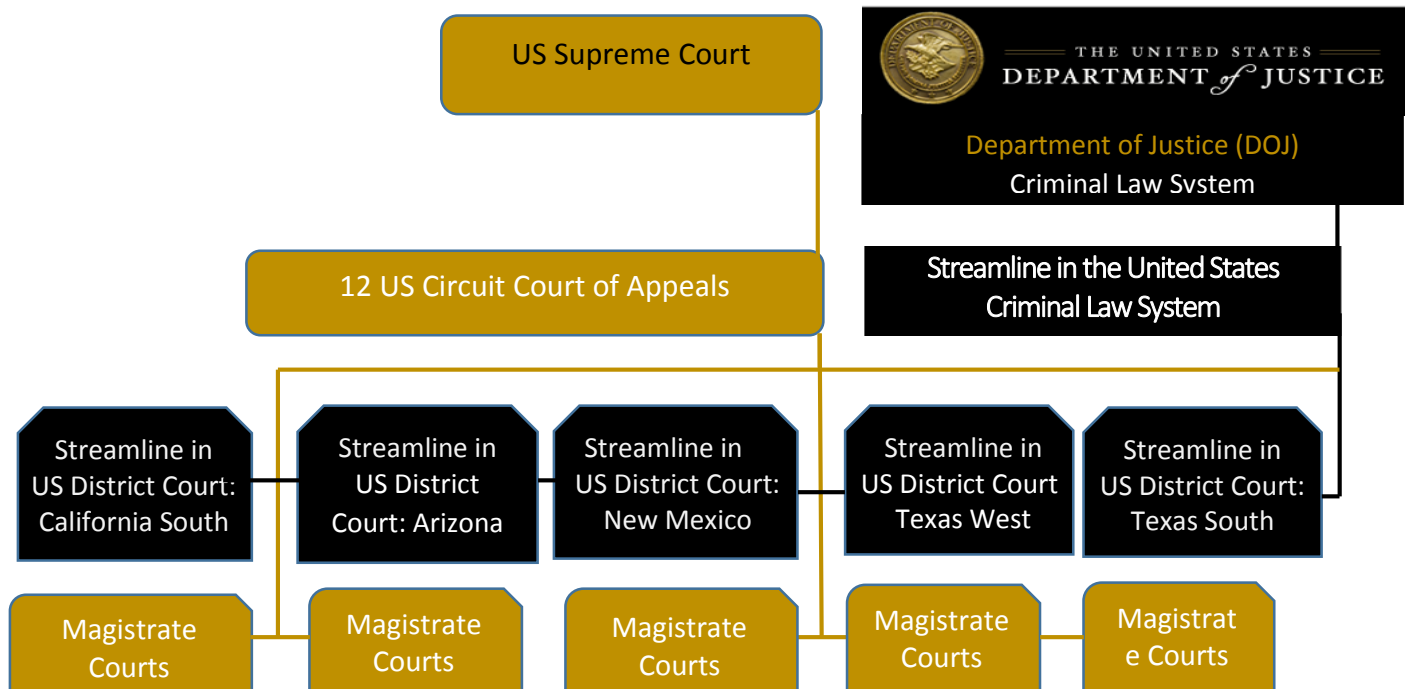
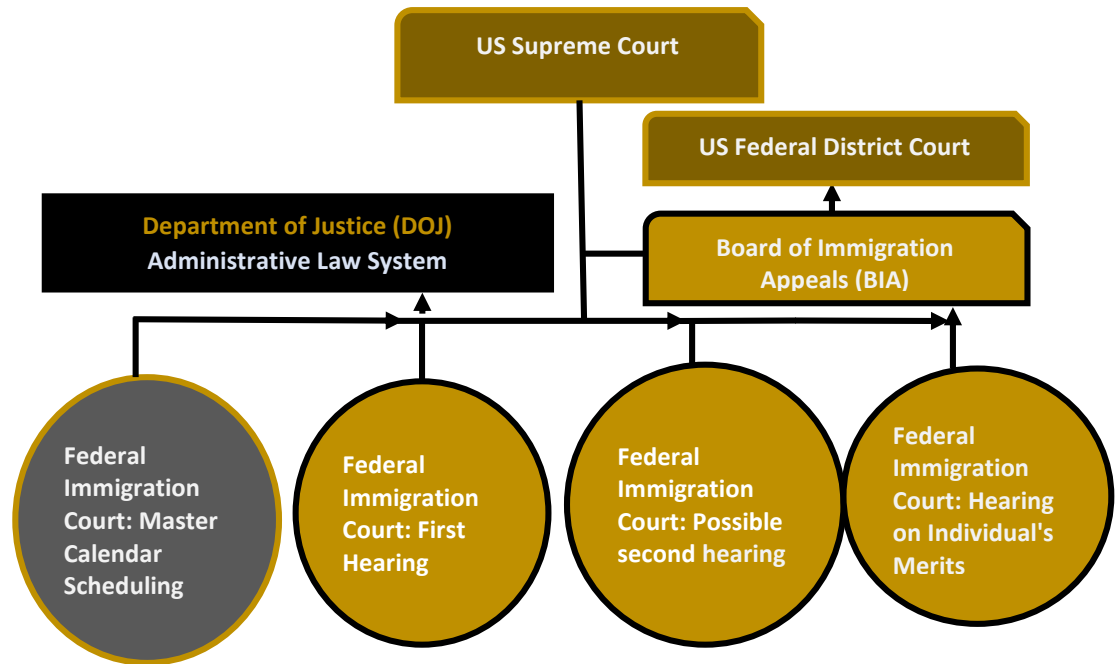
The following diagram demonstrates a different entry point and policy jurisdiction for LEP Indigenous language speaking Immigrants. Adult indigenous language speaking immigrants with criminal charges noted by Customs and Border Patrol and confirmed by Immigration and Customs Enforcement, enter the immigration system through the criminal immigration law court known as – Streamline.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

In Streamline, ILSIs experience an expedited process for removal or then enter long term detention.

Federal immigration courts under the Department of Justice's Executive Office of Immigration Review (EOIR) are held to the 2002 standards

defined for LEP language access requirements in the DOJ Guidance. Administratively DOJ's LEP standards are the responsibility of the Office of the Chief Immigration Judge under EOIR.¹⁰ In 2004, EOIR issued a Tips



Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

from the Field, a resource document of the DOJ. The resource was designed to assist in assessing programmatic capacity for provision of LEP services to local law enforcement and related contacts operating under criminal law.¹¹ Neither the 2002 issue of the “Guidance”, nor the 2004 issue of the Tips from the Field mention assessment of indigenous languages which represent highly significant populations among the largest immigrant groups entering US communities - Mexicans and Central Americans.

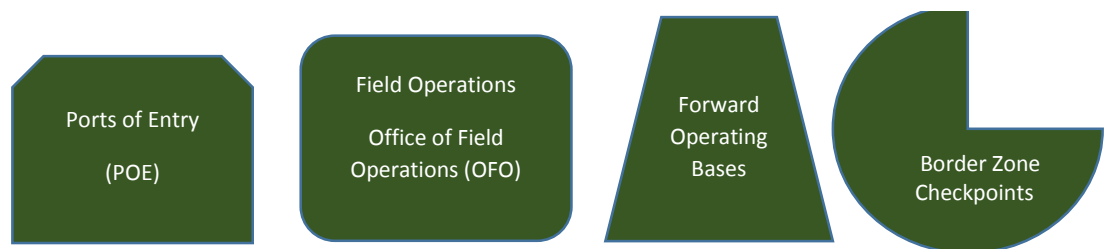
LEP Policy Arena: Immigration Enforcement and Detention

The Department of Homeland Security directs standards for immigrant detention in the United States. Immigrants apprehended in 2014 by Customs and Border Patrol (CBP) at the border and by Immigration and Customs Enforcement in the interior were held in 165 ICE administered and 37 privately contracted detention facilities, along with state and local facilities (often jails) through Intergovernmental Service Agreements, or IGSAs, for a total of 34,000 beds daily.¹²

Three of the Immigration and Customs Enforcement (ICE) facilities are Family Detention Centers (FDCs) with some 1,200 to 2,400 of those beds. In 2015, three family detention facilities were operating in Leesport, Pennsylvania, and in Karnes and Dilley Texas. General operational contacts for indigenous language speaking immigrants with CBP officers and agents and ICE officers are in the adjacent illustrations, while specific contacts where language exclusion takes place are found in Section III Sub-sections for individuals, families, and

unaccompanied children. For immigrants held in ICE contracted facilities federal regulation also mandates non-discrimination in the provision of services regardless of national origin.

Customs and Border Patrol (CBP) Operations Places of Contact



II. LEP Practice in the US Immigration System

Implementation of LEP policy since Executive Order 13166 in the US immigration system has progressed at glacial speed. Federal coordination and compliance is the task of Federal

Immigration and Customs Enforcement (ICE) Places of Contact



Coordination and Compliance Office of the Civil Rights Division of the Department of Justice. The Civil Rights Division historically provided Guidance for other federal agencies in their implementation of LEP

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



programs. The extension of that strategy to Departments of Homeland Security and Health and Human Services however constructed a very thin thread of authority for ensuring compliance. Indeed, the available public record indicates that implementation of the Executive Order 13166 for LEP programs was assigned to large agencies that operate under three federal departments: DHS, DOJ, and, DHHS with ineffectual oversight. Since 2000, implementation of LEP programs in those agencies was pursued with a resource oriented strategy replete with undefined standards which met their institutional limits as policy under DHS. A similar pattern of distributed authority resulted in the slow evolution of LEP agency policies which to date created the appearance of LEP programs, when in practice, LEP departmental policy on the whole has a negligible effect on immigrants who speak indigenous languages in the US Immigration system where agencies operate.

The structure and the duration of federal LEP programs' slow implementation continues to produce inequitable outcomes for indigenous language speaking immigrants fifteen years after the Executive Order was issued. The LEP practices of agencies in the US immigration system negatively affect ILSIs in an accumulative and systematic manner. From a systemic view this review found implementation of LEP policy into practice as inconsistent, incoherent, and often non-existent. On a local administrative level, LEP policies bereft of consequences for staff who did not apply them in practice had little meaning. Several fundamental gaps in LEP practice are outlined in this section, and summarized by department and agency in the Appendix, LEP Practice in the US Immigration System.

Limited English Proficiency programs in CBP and ICE have been identified as having inadequate standards, non-mandated, and non-compensated language training for staff. LEP programs lack any viable process for language assessment of indigenous language speaking immigrants. They have not conceived of a language assessment process for indigenous language speaking immigrants beyond instructing their front line staff to complete them. LEP program practice suffers from policy that is "coordinated" but without evaluation and without monitoring for effectiveness. The diffuse nature of agencies in the US immigration system as a whole perpetuate discrimination against ILSIs in every operation that ILSIs encounter, as illustrated in a series of diagrams in Section III.

Unrecognized Indigenous Peoples at "First Contact"

The entry point for indigenous language speaking immigrants into the US immigration system is with agencies under DHS policy authority; CBP and ICE. DHS policy does not explicitly recognize indigenous language speakers' right to communicate in their primary languages. This leads to exclusionary practices. A template for institutional language exclusion in CBP and ICE operations was implemented in May, 2002 on a Native American Reservation in Southern Arizona of the Tohono O'odham Nation.¹³ It is a common crossing place for indigenous language speaking immigrants coming from Altar, Sonora, México. The southern boundary of the Tohono O'odham nation is geographically the international border with Mexico.

Officers receive a two hour orientation to O'odham culture, but that does not include language instruction. In the daily operations they carry out on the Tohono O'odham Reservation Department of Homeland Security personnel are not instructed to speak in Tohono O'odham nor ask for interpreters in their encounters with Tohono O'odham. That practice is a violation of Tohono O'odham sovereignty.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



DHS operates under the assumption that Tohono O’odham tribal members are speakers of English. When Tohono O’odham tribal members arrive from Mexico, that assumption can prejudice their treatment by CBP and ICE under current practice; most Tohono O’odham from Sonora don’t speak English, but may respond in Spanish or the O’odham language. Seniors whose primary language is O’odham [Pima] also face discrimination. That LEP practice by the CBP led to threats for removal of O’odham from their own reservation as reported to the UN Special Rapporteur for indigenous peoples.¹⁴ However CBP Limited English Proficiency practice follows a similar course for indigenous language speaking immigrants at other locations.

DHS’s LEP practice is emblematic for indigenous language speaking immigrants as they proceed into subsequent enforcement operations and legal processes of the US immigration system, not just with DHS, but also with DOJ and DHHS - with a few exceptions. The exceptions invariably are dependent upon individual actions of merit, not the product of a system of equitable treatment. For example, DHS LEP policy recognizes the critical *point of first contact* for ILSI’s and instructs DHS personnel;

“At the point of first contact with an individual [DHS personnel] must determine whether that person is LEP, must determine his/her primary language, and then must procure the appropriate language assistance services available.”

DHHS however does not train its staff in the identification of indigenous language speakers at “first contact”. A counter example of an *inclusive policy* for immigrants with special needs is found in the [Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities](#) issued as recently as May 6, 2014, which mandated “...language assistance services for limited-English proficient detainees, [and] safe detention of family units...” Interpretation services for LEP detainees for the prevention and reporting of sexual abuse and assault is greatly needed. Under that standard, DHS institutionally conceptualized LEP policies as specifically applicable to a recognized class of vulnerable immigrants.

Language assistance services are not conceived of nor are they specifically extended in a direct and systemic manner to indigenous language speaking persons. DHS has therefore not implemented LEP policy to indigenous people as a class of vulnerable persons subject to CBP and ICE practices. That omission reflects DHS’s weakly executed LEP strategy in enforcement and detention.

Uncounted Indigenous Peoples in Detention

In general terms, DHS has not identified aggregated indigenous language speakers as a uniquely vulnerable population within detention. In that, they are emblematic of the business-as-usual language exclusion exercised throughout the US immigration system which includes its counterparts at DOJ and DHHS. *A principle flaw in federal LEP policy is that its Guidance allows local detention and legal service providers to determine their need to assess what comprises local LEP populations.* Based on geographic origin, in 2014, over 94% of apprehended immigrants removed from both the United States’ interior and the southern border were Mexican and Central Americans.¹⁵ Immigrant populations in the United States from the

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

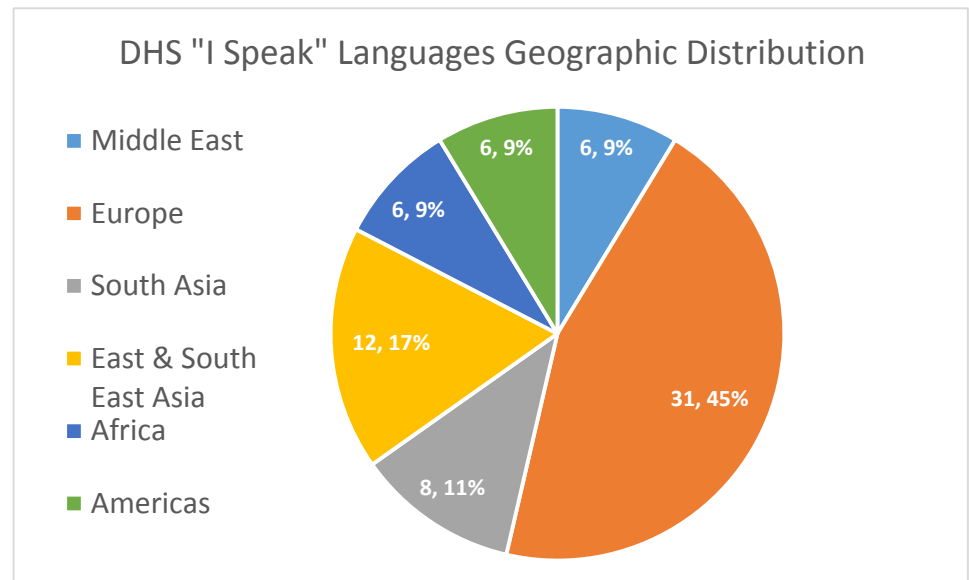


Americas outnumber undocumented immigrants from Europe, South Asia, East Asia, and Africa combined roughly 9:1. Languages from that region, often called Meso-America, however represent less than 7% of languages translated into DHS's new "I Speak" LEP materials. The adjacent graph shows generally associated geographic origins of languages in the "I Speak" language cards and poster. Only four indigenous languages from México and Central America are recognized by DHS's "I Speak" outreach effort.

DHS has named *Kanjopal*, *Quiche*, *Kachiquel*, and *Mam* as Mayan Languages, *but omitted 25 other Mayan languages* spoken in

Mexico, Belize, Guatemala, Honduras, and El Salvador¹⁶; excluding the second largest Mayan language, *Q'eqchi'*, and the third, *Yucatec Maya*. The total number of speakers (not immigrants) in Central America total some 4.25 million indigenous language speakers. The disproportionality between Meso-Americans as migrants at 94% and their language representation at 7% in terms of languages officially

translated by DHS into materials designed for use in first contact is a gross measure of DHS' language "muteness". Not a single Mexican origin indigenous language was included.



DHS' 2014 publication of their "I Speak" materials was a superficial adaptation of the 2004 Census Bureau's "I Speak" public outreach materials; not internally developed for indigenous language communities from Mexico and Central America. DHS's thin effort is a product of the decentralized and resource oriented strategy for LEP program implementation. Though that strategy produced viable outcomes in other federal agencies, *even in correctional institutions and local law enforcement* when adjudicated by the Department of Justice, it has not established viable standards nor compliance mechanisms for LEP practice in the US immigration system.

Verification of viable LEP practice includes meeting international standards for indigenous language rights. Stipulation of the cultural rights (which includes languages) of indigenous peoples as outlined in the 2007 UN Declaration on the Rights of Indigenous People¹⁷ was not reflected in the 2014 DHS LEP Guidance. After its announced implementation date in May of 2014, when Customs and Border Patrol processed ILSI families in the Tucson (Southern Arizona)¹⁸ in the summer of 2014, DHS'S LEP policy abjectly ignored complying with key articles of the internationally recognized Declaration of the Rights of Indigenous Peoples.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Article 33

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 40

Additional international standards are discussed in the conclusion section of this review. A second verification of an unviable LEP practice came under scrutiny in 2010 with a Government Accounting Office's review of the Department of Homeland Security's LEP Policy. That review found substantial structural weaknesses.

GAO Review of LEP in Enforcement and Detention Operations

The Government Accounting Office (GAO) and the Office of Management and Budget (OMB) previously reviewed the foreign language needs of the workforces of the Departments of Defense, of State, and of the Federal Bureau of Investigation.¹⁹ The GAO and the OMB reviewed Limited English Proficiency programs in the enforcement agencies of CBP and ICE in June, 2010. During site visits, GAO researchers spoke with 430 DHS law enforcement and intelligence unit personnel. They observed the use of foreign language skills where foreign language capabilities were deemed vital to meeting those agencies' mission.²⁰

The GAO's and OMB's analysis of CBP's and ICE's LEP program delineated large omissions in their LEP readiness. The GAO²¹ found that DHS personnel were, in effect, insufficiently trained in language skills, and their personnel had low language standards in the Limited English Proficiency policy context. The GAO discovered that at both departmental and agency levels, DHS insufficiently addressed foreign language needs and capabilities for Limited English Proficient populations.

Specifically, DHS had no systematic method for assessing its foreign language needs and did not address foreign language needs in its Human Capital Strategic Plan. Beyond planning, the GAO pointed out several large operational gaps in LEP practice.²² For CBP field personnel assigned to the Office of Field Operations, i.e. Border Patrol agents that apprehend immigrants in open country, *there was no mandated foreign language training other than Spanish*. For Customs and Border Patrol Officers that apprehend immigrants at Ports of Entry (OBP) there was *only partially mandated foreign language training other than Spanish*. No indigenous languages from Mexico or Central America were identified by the GAO as in use by either office at that time.

BP: Low Spanish Language Proficiency

The GAO also examined the quality of the Spanish language oral proficiency of Border Patrol agents, whose stated primary mission is to serve as the front line defense of the United States at its southern border

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



against terrorism. While an unspecified percentage of Border Patrol are assessed as Spanish language speakers, Border Patrol cadets who are not Spanish language proficient must study for eight weeks in the Task-Based Language Training program before graduating.²³ Their Spanish language oral proficiency is then assessed by the Border Patrol as a part of academy training with field updates once on the job.

To pass and qualify as proficient, cadets must pass with a minimum 70% score on 80 items.²⁴ In lay terms, that is a “C” or third tier language capacity. Tellingly, according to the GAO, neither the Office of Border Protection nor the Office of Field Operations rose to the level of the National Defense’s Foreign Language Proficiency assessment exam. Customs officers and Border Patrol agents were not administered that five scale test to determine their Spanish language competency.²⁵ A lack of transparency on the percentage of fluent Spanish speakers among the Border Patrol allows CBP and ICE to avoid scrutiny. Use of the National Defense’s Foreign Language Proficiency assessment exam would reduce their ill-preparedness.

In the interior United States, ICE’s Priority Enforcement Program takes over custody of ILSIs arrested by local law enforcement - much in the vain of the former Secure Communities Program. The GAO study also revealed an obscure and astonishingly informal approach by officers in the largest federal law enforcement force to language interpretation in border security.

While certain offices [of Coastguard, CBP and ICE] have developed lists of staff with foreign language capabilities, component officials told us that their knowledge of foreign language capabilities is generally obtained in an ad hoc manner . . . at each of the seven locations we visited, Coast Guard, CBP, and ICE officials told us that they generally do not use the lists described above to obtain knowledge of their colleagues’ foreign language capabilities. For example, according to ICE intelligence analysts, existing foreign language capabilities in ICE’s Office of Intelligence are not systematically identified in the lists, but the specialists are aware of colleagues who have proficiencies in Spanish, French, Portuguese, and Haitian-Creole.

Though DHS subsequently reported in 2014 the establishment of a foreign language asset database, it did not establish mandatory language competency criterion for language specialists - equivalent to the National Defense’s Foreign Language Proficiency. It now has the capacity to track personnel with self-reported foreign language capacity, but it has not assessed its overall foreign language capacity as an institution as stipulated by Executive Order 13166. The GAO reported one critical effect of the DHS’s deficient LEP planning. It identified an underlying risk to national security among officers in the largest federal law enforcement force.

Component officials stated that the inability to identify all existing capabilities may result in intelligence information potentially not being collected, properly translated, or analyzed in its proper context for additional foreign languages and thus affect the timeliness and accuracy of information. Moreover, they said that this information may be vital in tactical and operational intelligence to direct law enforcement operations and develop investigative leads.²⁶

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Language Transmission

Inherent to CBP arrest and ICE removal operations is an assumption about the cognitive process of language transmission between them and the immigrants they encounter. In practice, the Department of Homeland Security's LEP approach assumes CBP officers and agents and ICE officers are able to communicate with immigrants they encounter. Nevertheless, The GAO study questioned CBP personnel's operational capacity to access proficient foreign language speakers, and the level of Spanish among its Task Oriented Spanish speaking Border Patrol agents. Though the institutional capacity of DHS in assessing the primary language of indigenous language speakers apart from Spanish speakers was not addressed by the GAO study, publicly available documentation of both low and non-transmission of oral language between DHS personnel and ILSIs is abundant.²⁷ Low oral language transmission and non-transmission of language has several etiologies:

- Sub-standard *Task Oriented Spanish* used by Border Patrol agents are prepared to communicate in a highly limited manner to immigrants, but beyond basic commands they have little capacity to respond to immigrants' communication directed to the Border Patrol.
- *Task Oriented* Border Patrol Spanish speakers learn one dialect and are therefore limited when communicating with ILSIs who speak limited Spanish of a different dialect; a difference augmented even further by features of indigenous language speakers.
- Non-transmission of oral language occurs when one party (ILSI) does not speak the second party's operational language, Spanish or English. If an ILSI is monolingual in their indigenous language, the CBP is unable to communicate with them.

Language Identification

It is not uncommon for speakers of Indo-European languages familiar with related Romance or Germanic language families to assume their knowledge about languages they are familiar with is applicable to indigenous languages. Speakers of Spanish and Portuguese, for example, may be able to discern meaning derived from Catalan, based on a similar word order typology for

Indigenous languages in Guatemala ²⁸ and Mexico. ²⁹	Estimated speakers for languages in: Guatemala only*, Mexico only**	Word Order Typology: ³⁰ S =subject, V=verb, O =object.	Number of documented dialects ^d or language variants. ^v
K'iche	2.3 million*	SVO	5 ^d
Q'eqchi	823,000*	VOS	1 ^d
Mam	530,000*	VSO	5 ^d
Q'anjob'al	77,000*	VSO	0 ^d
Náhuatl ³¹	1.5 million**	VSO	30 ^v
Mixtec	476,472 **	VSO	0 ^d /92 ^v
Cora	20,078**	VSO,VOS	14 ^d / 8 ^v
Zapotec	450,431**	21 VSO SVO (zam) VOS or SVO (zaw)	57 ^d 62 ^v
Tepehuan	21,248**	VSO, VOS	4 ^v
word order and dialects from Ethnologue.com , variants from INALI			

subjects³², verbs, and objects despite other differences in lexicon or word choice, and phonetic constructions. English speakers and other Germanic language family speakers would however not have

such facility to derive a similar level of meaning from Spanish, Portuguese, and Catalan. Outside of a language family, such assumptions often prove erroneous. For example, indigenous languages cover a wide diversity of word order or typology. While English follows a *subject–verb–object* typology, indigenous languages from Guatemala and Mexico feature several different typologies, with some variation even within dialects of the same language as the table above demonstrates.

Popular misconception about the status of European *languages* versus indigenous *dialects* by non-language specialists can contribute to language hegemony in practical terms. Novice mistakes regarding dialects, which are variations in language groups due to word typology, phonetic, and lexical differences can compound the situation. There is mutual intelligibility between many dialects of some languages, whereas the triad of language construction can over time and distance make mutual intelligibility impractical for the purpose of interpretation between other dialects. This linguistic knowledge is the realm of professional linguists, which underlines the need for improved competency in language assessment. Language assessment is no different than assessment of other human needs, however it requires distinguishing languages in the aggregate as a baseline count, and then identification of dialects where such differences impede accurate interpretation. Assessment of language populations of indigenous language speakers within immigrant populations is not possible by merely asking people in non-indigenous languages their primary language. It takes more than an “I Speak” card with a singular phrase or calling up an interpreter service which may or may not retain interpreters of an immigrants’ language, or if needed, a specific dialect. Assessment of language populations prior to serving individuals is stipulated in the Executive Order for Limited English Proficient populations.

Language Hegemony and Diversity

Language diversity is a part of the natural world just as are the great varieties of species relative to unique physical environments. Despite the historical process of language hegemony, diversity is still the norm, not the exception. Written grammars arose in the western world within a generation after the invention of the printing press: Castellano in 1492, Náhuatl in 1547, French in 1550, and English in 1586.³³ Initially embraced by missionaries in the sixteenth century under the Spanish crown, indigenous languages in the Americas were later suppressed in 1696, and then by Royal Decree in 1770 throughout the Spanish Empire. Guatemala banned indigenous languages in 1824, and Mexico banned them from 1910 – 1924³⁴ in educational settings. Mexico and Guatemala granted official recognition of indigenous languages in 2003.^{35,36} The Guatemalan statute called for “laws, instructions, notices, provisions, resolutions, [and] ordinances of any kind must be translated and disseminated in Mayan languages, Garifuna and Xinca.”³⁷

Given the common confusion regarding language families, languages, and dialects within the universe of languages, and state responsibility to protect language speakers’ rights, Mexico took an inclusive approach to defining indigenous languages, when it reclassified 68 language families into 364 language variants - as languages.³⁸ The United States, which economically integrated North and Central American markets in 1995 and 2005 respectively, has not recognized the diversity of language populations with which it trades internationally and encounters at its border. It is important to note that some indigenous languages groups are growing, for example in Mexico,

Náhuatl went from 655,680 in 1895 to 1.5 million by 2010. Mixtec languages grew by 31% over the same period to 476,472³⁹, with some 180,000 in the United States⁴⁰ which have notably established transnational language communities which contain many speakers not fluent in Spanish, but in Mixtec.

Language Exclusion during Apprehension of ILSI Families

Customs and Border Patrol's normal practice of associating indigenous migrants with monolingual Spanish speaking immigrants predictably results in unwarranted frustration for Customs and Border Patrol personnel. CBP personnel generally approach encounters of immigrants for apprehension in the field by employing the same tactic; asserting their command and control over immigrants' physical movement. That is communicated through aggressive verbal messaging in English or Spanish. Successfully completing that task assumes a competent level of language transmission. For Indigenous language speakers whose first language is neither Spanish nor English, CBP verbal commands are not received. Immigrants therefore may not know if they complied or not. Command and control is then only weakly established, if at all.

Voices raised vociferously to command immigrants in the open near-border-environment can confuse migrants instead of direct them. When default command communications fail and firearms are drawn, reactions of indigenous immigrants may produce adverse outcomes. CBP staff may misunderstand the body language of ILSIs when attempting to establish command and control. For example, indigenous language speakers' avoidance of eye contact does not necessarily constitute admission of guilt. In many indigenous cultures, it is not a reliable sign of evading a response to a direct question. Rather it may cue recognition of authority and apprehension in an arrest scenario.

Misinterpreting that behavior as defiance by DHS personnel, particularly by those with previous military combat experience, can place both parties at risk. Triggers for physiological trauma also exist among the indigenous migrant populations. Central American immigrants faced civil war in the 1980's, 1990's, and 2000's in their homelands, and many now witness on-going violence. Indigenous in Guatemala, El Salvador, and Southern Mexico experienced national armed forces, armed opposition armies, and currently - drug cartel operations. Hondurans also experienced violence from non-state actors. Command and control tactics used indiscriminately with ILSIs can thus adversely affect indigenous speaking immigrants.

Language Exclusion in Detention

In long term detention and in Family Detention Centers, Immigration and Customs Enforcement Officers from ICE's Enforcement and Removal Office (ERO) consider the risk of non-compliance in setting bonds. They also determine other conditions of detention or alternatives to detention. Without a language assessment to identify an immigrant's primary language, their actions can cause undue harm. Separating children from adults, for example, can provoke trauma for children over perceived vs. real parental loss. Children seek and need parental care in detention. If separated from their mother or father, separation anxiety can lead to trauma for children. A child who is told in Spanish that their ILSI parent is being taken away can provoke a heightened trauma response from an ILSI child who does not speak Spanish. Non-verbal physical clues, the mode of communication when a person cannot speak out, differ across cultures. ICE Officers are not trained to discern what underlying event may provoke trauma for an immigrant child separated from a parent.⁴¹

Language Exclusion in Legal Orientation Programs

Legal orientation programs (LOP) funded by the Department of Justice routinely provide individual detainees: group orientations, self-help workshops, and pro bono referral services for individuals in removal proceedings. Legal orientation programs exist in detention centers at 28 sites nationally, in three Family Detention Sites (Leesport, PA, Karnes City, TX, and Dilley, Texas), and in 14 shelters that house unaccompanied ILSI children.⁴² A former Family Detention Center in Artesia, New Mexico, was closed as the Dilley facility opened in December, 2104.

Local legal orientation programs are required by the National EOIR contractor, Vera Institute, to “provide taped or written orientation materials to detainees who speak other common languages” beyond the most commonly used languages of English and Spanish. While each LOP site may address different detainees at different points in their legal process as detainees, generally group sessions are arranged and detainees names are given to the LOP staff from initial Master Calendar Hearing court docket or new arrival lists, depending on operations at the facility. While Vera Institute translated materials into various foreign languages, none were of indigenous languages from Central America or Mexico.

According to Vera Institute,

*Depending on the court, the recorded language may actually be the language of the interpreter for either the respondent or the respondent’s witness, as opposed to the respondent’s native or most fluent language.*⁴³

The Vera Institute reports to its funder, the Executive Office of Immigration Review,

*“...the language from the most recent proceeding in the most recent case as the respondent’s language.”*⁴⁴

The Limited English Proficiency program practices of CBP and ICE indicate, indigenous language speaker’s language may be misidentified and recorded while in their custody. Given no independent language assessment is carried out for the LEP population by those agencies at large. Assessments are also not carried out individually, thus ILSIs continue to be misidentified as primary speakers of Spanish. Unless a detained immigrant’s second language Spanish capacity is assessed, that indigenous language speaker does not then have equal access to LOP services.

Without appropriate language interpretation, ILSIs informed through LOP programs about legal rights may be perceived to be have been informed about their legal rights, when they were not. Uneven access to detained families in Family Detention Centers, and non-standard response by ICE to LOP program providers, specifically in facilities at Karnes, Texas and at Dilley, Texas can exclude indigenous language speakers from Central America and Mexico given that access is dependent on ICE or Immigration court generated lists.⁴⁵ Lists provided by ICE to LOP service providers did not consistently list detainees’ primary languages, though at least one LOP provider attempted to distinguish between primary versus secondary languages. Low literacy rates were also reported as common thereby making the “I Speak” Cards used by DHS inoperable for many indigenous language speaking immigrants.⁴⁶

LEP Planning and Evaluation in LOP Programs

Federally funded non-profits providing LOP programs in FY 2015 include Limited English Proficiency program planning requirements. LOP programs are designed to serve LEP populations in detention, and as such LOP programs are the programmatic contacts for EOIR which intends to reduce detention stays through legal education and referrals while meeting DOJ legal requirements. They are front line organizations in contact with detained LEP populations. They are in a position to assess and then serve indigenous language speaking immigrants. LOP program coordinators are often knowledgeable about LEP individuals requesting LOP assistance in other-than-Spanish languages, but their program funder, DOJ's EOIR, does not require LEP assessment by them in order to serve LEP populations, including indigenous language speakers.

Indeed, In a 2008 Vera Institute national evaluation of LOP programs which attempted to ascertain who was served and what beneficial outcomes were produced for immigration adjudication, the national program cited cost efficiencies as an EOIR strategic goal. The evaluation was based on an ex-post time series approach but did not specify the different language groups it served by language.⁴⁷ Legal orientation program coordinators are well aware of the pressure from detainees for more access to their services, especially given that a legal referral may enable a detainees' proper representation, otherwise many detainees face legal proceedings with only *pro se* representation - or none at all. It is more efficient to serve Spanish speaking detainees than it is to seek interpretation services for indigenous language speakers. Requests for policy statements from Vera Institute and EOIR regarding the assessment of languages in legal for planning orientation programs - were left unanswered.

This poses tremendous programmatic challenges for LOP services in detention. If no Limited English Proficiency based language assessment is carried out, then the frequency of indigenous languages as part of the LEP population is never measured. Materials used in legal orientation group presentations, individual follow ups, and *pro se* workshops are then limited to those languages previously translated. Phone line interpretation can and does occur for other language groups, however the coincidence of indigenous language speaking immigrants being detained concurrently in the same facility or in isolation over time in the same facility unduly influences their collective access to LOP services in their languages. It is the result of prioritizing gross access for Spanish language speakers over access for frequent but disparate indigenous language speaking populations. The gap in practice is a notable difference in equity of accessibility across language groups, a fundamental principle of Title VI provisions. However, this common language exclusion practice is not new.

As early as 1999, INS (DHS's predecessor) reported that at the San Pedro Facility in Los Angeles, California, Chinese dialects posed "Barriers To Further Expansion of The Rights Presentation" according to the LOP [Rights Presentation] Program Coordinator who also commented that "although language was sometimes a problem, usually the detainee could identify someone from the population to translate".⁴⁸ EOIR guidelines now prohibit LOP programs from the use of other detainee interpretations in legal matters, but EOIR has not pursued interpretation for Meso-American indigenous languages in LOP programs.⁴⁹

Indigenous language speaking adults migrate from the largest and fastest growing source of migrants entering and living in the United States; Central Americans and Mexicans. While discrimination in LOP

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



programs against ILSIs reflect rationalized choices in an over stretched program unable to serve all the detainees in long term detention, it is discrimination with often highly inequitable judicial outcomes.

Each executive administration has the responsibility for compliance with Title VI provisions, but in the case of ILSIs being equitably served, EOIR appears to be out of compliance with its own mission. In this case, discrimination is culturally bound, but EOIR's linguistic blinders programmatically discriminate Prima facie against the ILSI population. Given the trend toward greater populations in border detention facilities, periodic baseline language assessments for LEP populations is long overdue at LOP sites.

III. ILSI perspectives on language exclusion in the US immigration system

I. ILSI Families Involvement in the US Immigration System

Indigenous immigrant families are not counted by DHS agencies, and therefore their true population is unknown. Disaggregated data from the Department of Homeland Security is not collected given they disregard indigenous language speakers from among the largest region for migration to the United States. In FY 2014, CBP apprehended 486,651 migrants⁵⁰, while ICE removed 315,943; 68% of all removals were from the border region.⁵¹ The remaining 22% of immigrants were deported from the interior. Only 4% of all removals and returns occurred at Ports of Entry.

The Border Patrol increased apprehensions from FY 2013 through FY 2014 by 13.5 %. It was chiefly Central Americans who accounted for a 68% increase in arrests of non-Mexican nationals. Mexico, Guatemala, Honduras, and El Salvador led as countries for migration to the United States. Central American deportations increased by 15%, while Mexicans declined by 10% in the same period. DHS does not report on the numbers of indigenous language speaking families in short term detention, in family detention, or in long term detention.

In terms of enforcement, given about two thirds of migrants are deported from the border area, most indigenous language exclusion contacts also occur there. Based on observations of families released by ICE in Southern Arizona, the vast majority of indigenous language speaking immigrants are Guatemalans, though Mexican and Ecuadoran indigenous language speakers also migrated across the US- Mexico border and also experienced language exclusion.

Among Guatemalan families entering Southern Arizona, some 42% in spring of 2015 spoke an indigenous language as their primary language⁵². As a rough proxy measure, that would have represented 20,055 of total Guatemalan removals of 47,749 in FY 2013, and 22,858 of 54,423 total removals in FY 2014.

Based on the rate of immigrant families reporting as indigenous language speakers in Southern Arizona, an annual average for indigenous language speakers from Guatemala deported in 2013 -2014 was 21,457 individuals.

ILSI Families in Short Term Detention

When Central American or Mexican indigenous language speaking immigrants are arrested, Spanish is routinely used by CBP to establish command and control. Once immigrants are brought in from the field,

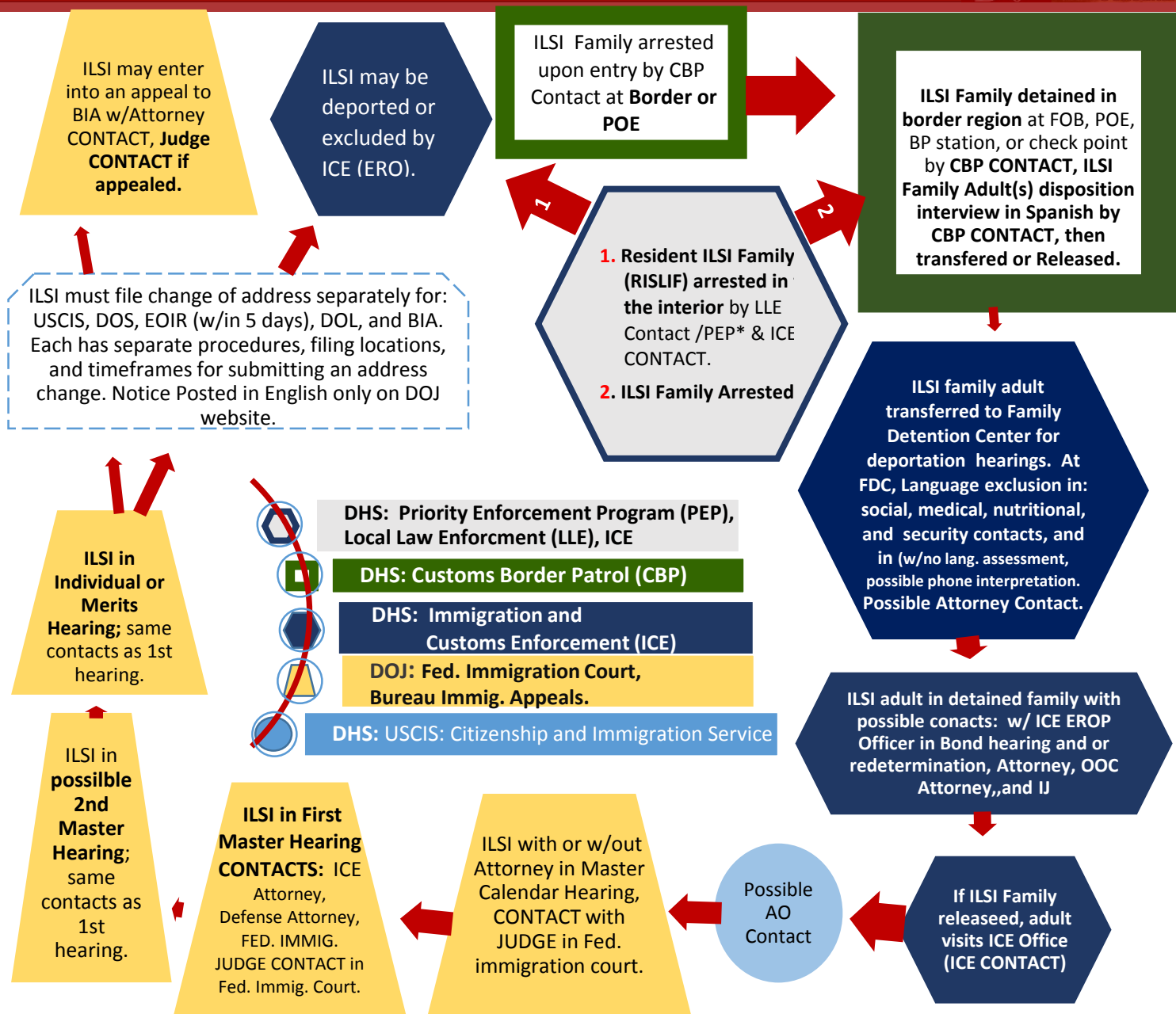
Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



the CBP speaks in Spanish specifically to interrogate immigrants about smuggling criminality and terrorism. For expediency sake, CBP practice is to not assess the primary language of indigenous language speaking migrants it detains. This practice mistakenly screens indigenous language speakers by default as primary speakers of Spanish.

While still in short term detention, ICE Enforcement and Removal Officers then interview ILSIs again generally in Spanish to determine if they should face expedited removal, or grant them a bond, or assign them alternatives to detention. If CBP identified languages of immigrants' who speak an indigenous language on the I-213 and I 831 Disposition forms. ICE could then record it in their Integrated Decision Support database even before being sent to Family detention Centers, paroled, released with removal orders, or released under conditions, e.g. ankle bracelet monitoring 24/7. Indigenous languages could then be assessed according to their Limited English Proficiency Needs. Both CBP's practice and ICE's practice contravene the Limited English Proficiency Policy of the Executive Order for federal LEP programs. The graph on the next page illustrates exclusionary contacts in common scenarios for ILSI families in the US Immigration system.

Language Exclusion Contacts for Indigenous Language Speaking Immigrant Families (ILSI)



Glossary

ILSI (Indigenous Language Speaking Immigrant) Family.

Department of Homeland Security Sub-Agencies: **CBP** (Customs Border Patrol); **BP Station** (Border Patrol Station), **FOB** (Forward Operating Base), **BPSPC** (Border Patrol Service Processing Center), **POE** (Port of Entry). **ICE** (Immigration and Customs Enforcement; **ERO** (ICE Office of Enforcement and Removal Operations); **ERO** (Enforcement Removal Officer), **PEP/SCP** (Priority Enforcement Program/ formerly Secure Communities Program), **LLE** (Local Law Enforcement PEP Partners). **USCIS** (United States Citizenship and Immigration Services). **Family Detention Center** (FDC). **USCIS** (US Citizenship and Immigration Service): **AO** (Asylum Officer)

Department of Justice: US Federal Immigration Court, **BIA** (Bureau of immigration Appeals), **IJ** (Immigration Judge), **OCC** (Office of Chief Council). **NTA** (Notice to Appear)

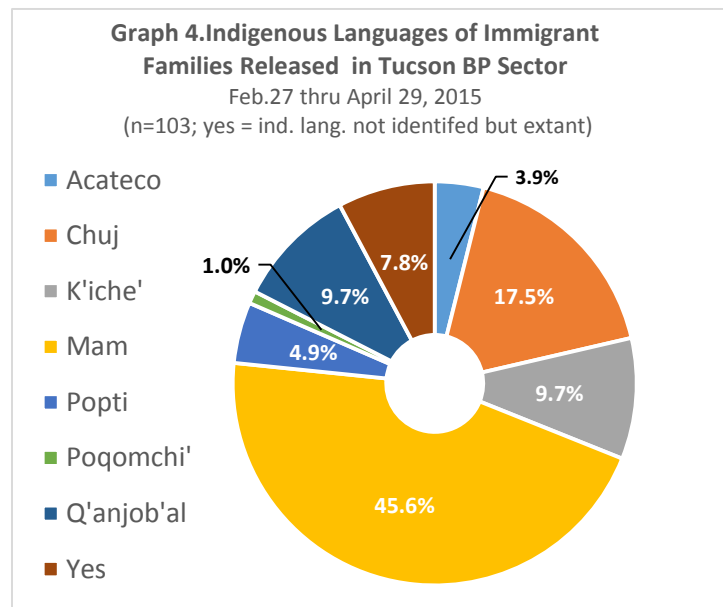
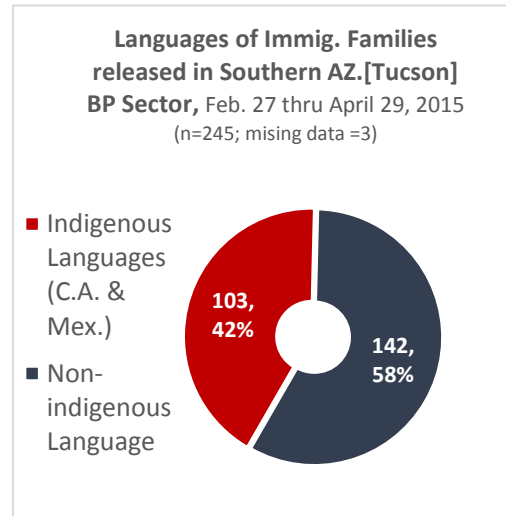
Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Consequences of Exclusionary Effects

One immediate result of CBP language exclusion practice is a rise in violations of due process. A well-seasoned immigration attorney in Southern Texas reported to this author in April of 2015 that⁵³, some CBP officers are abusive and do not try to get interpreters, some detainees are forced by CBP to sign removal papers, and some CBP officers attempt to get other people detained in the same group of apprehended immigrants to translate if there is a shared language.

That Texas attorney's comments resound with findings reported about families arrested in the Southern Arizona border in summer, 2014. That report found some 37% of the 33 immigrant families interviewed were indigenous Maya from Guatemala while 29% of adults spoke an indigenous language.⁵⁴ Sixty-one percent of adults stated that they were not apprised of their right to call their consulate. (n= 36), while forty-seven percent of adults reported being denied a call to a family member (n= 32). Half (50%) of adult migrants responding described not receiving an explanation of the legal papers issued to them in a language they understood. Additional abuses affected indigenous migrants: verbal and physical abuse, sleep deprivation, a lack of food and water, and maternal medical needs.⁵⁵ Indigenous speaking immigrant families released in 2014. Some 83% of families released by ICE in spring of 2014 were Guatemala; 96% were from the Northern Triangle countries of Central America and Mexico.



ILSI Families in Family Detention Centers

Common points of contact in Family Detention Centers are ICE ERO Officers, social workers, attorneys, security staff, food staff, and Immigration Judges. Attorneys, ICE ERO officers and Immigration Judges can request interpretation services, none of which have an assessment tool to determine an adult or child's primary language for indigenous languages.

A temporary Family Detention Facility that opened until April, 2015, at Artesia, New Mexico demonstrated ICE LEP policy in practice where "Pro bono attorneys working with the American Immigration Lawyers Association (AILA) have reported dozens of serious obstacles to meaningful representation of detained clients. These include . . . enormous interpreter concerns where interpreters for indigenous languages are unavailable or underutilized."⁵⁶

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



The consequences of not having an LEP policy with consistent practice led to family separation and violations of due process. For example, The Refugee Women's Commission (RWC) and Lutheran Immigration Service (LIS) reported in 2014 a case of children separated from a mother based on unsubstantiated charges of abuse:

Maribel arrived at a family detention center in September 2014. Traumatized after having suffered abuse at the hands of her husband and his family, she fled her home country with her two-year-old child and six-month-old baby. She and her children struggled to cope with the conditions of confinement, which were exacerbated by tension with the family detained in the same room and trouble communicating in her native language. As she awaited release on bond, it was reported to facility guards that Maribel had abused her children. With no notice or explanation, and with no apparent follow up by a social worker or child welfare professionals, Maribel's children—including the baby that she was breastfeeding—were suddenly taken away from her and transferred out of ICE custody. Maribel was transferred to another detention facility for adults, where she was detained in medical isolation. No one notified her attorneys of the allegations or transfer. To this day, Maribel remains detained, awaiting yet another transfer, and is desperate to understand what has happened to her two small children.⁵⁷

Conducting the credible fear or asylum interviews in English or Spanish for speakers of indigenous languages can deny them the right to seek asylum when their testimony cannot be accurately recorded. Children who remain with mothers in close quarters in Asylum Hearings for indigenous language speaking immigrants can also re-traumatize children if their mothers' testimony requires recalling abuse against them or their children. The same report stated that:

Several women encountered by AILA attorneys at Artesia 'had children who were born as a result of a rape'. While evidence of rape may be critical to a woman's asylum, withholding or Convention Against Torture claim, these women would not state this important fact during their credible fear interviews because their children were with them during the interviews.⁵⁸

Women of indigenous cultures would not customarily permit a disclosure about rape with a child born of rape present unless a safe but separate environment was provided for both mother and child with appropriate interpreters. The practice continues at the new facility built in Dilley, Texas to exclusively serve detained families.

On June 2nd, 2015, a 24 year old Indigenous Mam speaker was interviewed by an interpreter in Spanish with considerable difficulty. The young woman entered Texas the first week of April, 2015. After six weeks in detention, she and her child were taken by the Border Patrol to a cold cell where they were held temporarily until sent to the facility at Dilley. The imprisoned immigrant reported she was not asked what language she spoke when interviewed by the Border Patrol for her credible fear interview, nor by any official since then. When asked if she understood the legal information that was communicated to her, she replied "no".

ILSI Family Language Exclusion Contacts

ILSI Families face a series of language exclusion contacts in the United States Immigration System during apprehension, short term detention, family detention, immigration court, removal, returns, or deportations

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Critical language exclusion contacts occur in short term border detention with CBP agents, and with ICE Enforcement and Removal officers in long term detention. CBP agents document ILSI families' disposition for Expedited Removal or Credible Fear. ICE's ERO officers determine bond and other conditions of detention. For resident ILSI families facing criminal charges in the interior or border regions, ICE Field Operations officers are key.

ILSI families experience a minimum of seven key language exclusion contacts that affect their legal immigration status. When encountering local law enforcement under ICE's Priority Enforcement Program (formerly *Secure Communities*), when detained in family detention centers, and in immigration court hearings, indigenous language speaking immigrant families may experience twelve unique language exclusion contacts that can adversely affect their welfare. ILSI families at the border are commonly separated by force. Fathers are detained, while mothers and children are released. For many ILSI families, the adult male may be the only bilingual bridge they can rely on. Those males are then placed in separate detention centers.

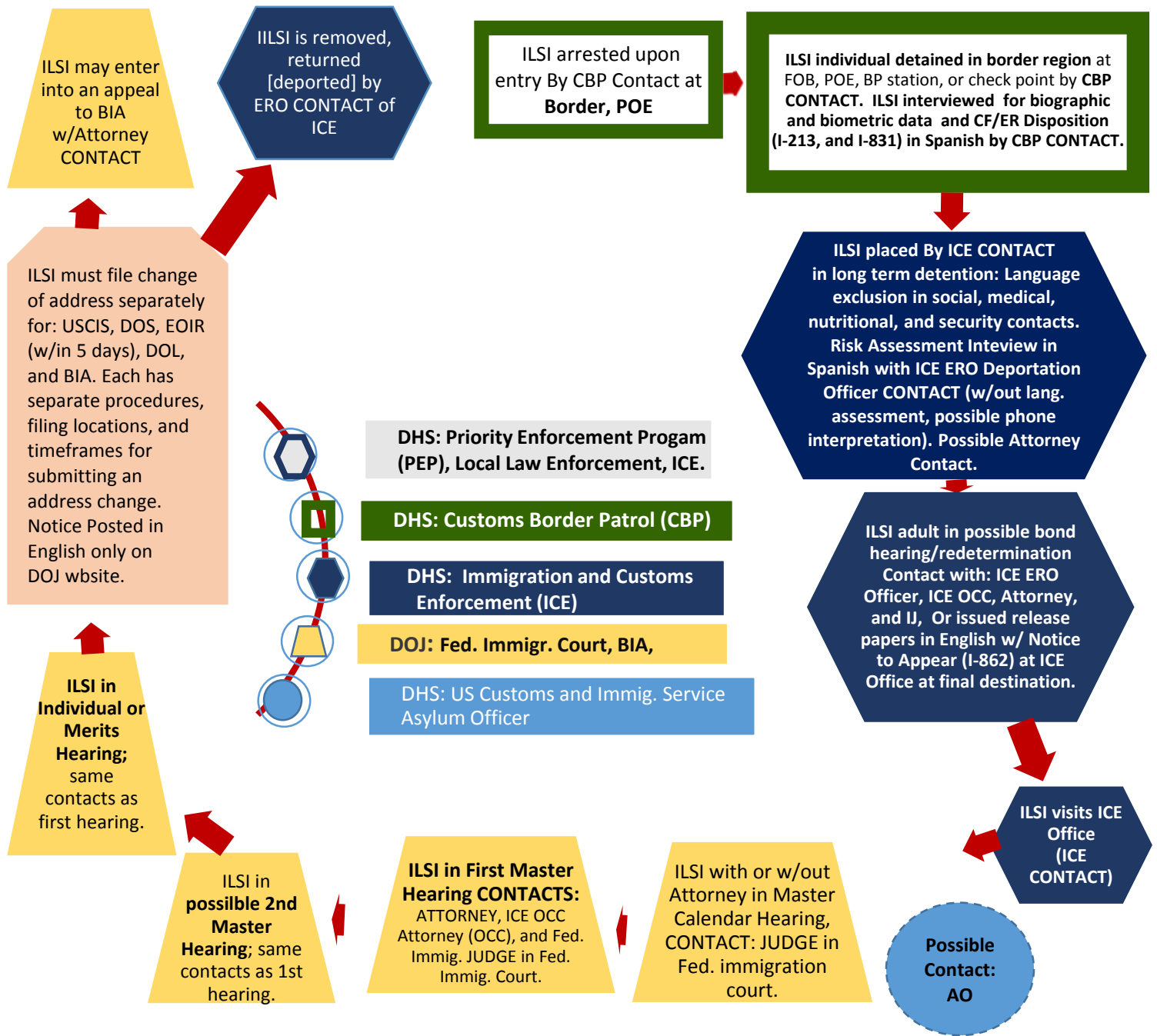
V: ILSI Individuals in Detention

As illustrated in the infographic on the next page, individuals are transferred from short term to long term detention where they are under custody of ICE officers working for the Office of Enforcement and Removal. Given those officers are instrumental in determining bonds and other conditions of release in long term detention facilities, ICE ERO officers are the second key contact for indigenous language exclusion. In long term detention facilities, ICE ERO officers, USAO prosecuting attorneys, Immigration Judges, and Asylum Officers are also key contacts. Other sundry contacts from local law enforcement to detention service and medical personnel add to the exclusion of ILSI families who are denied interpretation in their language.

Risk Assessment

According to a Georgetown University report, ICE developed a Risk Classification Assessment (RCA) that employs 178 items for "assessing humanitarian equities and vulnerabilities"⁵⁹. Thirty-one of the items in their assessment were designed to measure vulnerability. Indigenous languages were not an item in the assessment tool. ICE ERO Officers could opt for detention without placing a bond on the immigrant, detain the immigrant with a bond, or release the immigrant with conditions. For eighteen months every individual entering ICE detention underwent a screening during their initial booking process in long term detention, from July 2012 – Dec. 2013. ICE's use of its 26 indicator assessment tool produced no recommendations for 18.4% of those immigrants, but for 21.9% of times - its own officers overrode the results. When viewed together, those actions did not adequately assess 40% of detainees interviewed.⁶⁰

Language Exclusion Contacts for Individual Indigenous Language Speaking Immigrants (ILSI)



Glossary

ILSI (Indigenous Language Speaking Immigrant)

Department of Homeland Security Sub-Agencies: **CBP** (Customs Border Patrol); **BP Station** (Border Patrol Station), **FOB** (Forward Operating Base), **BPSPC** (Border Patrol Service Processing Center), **POE** (Port of Entry; **CF /ER** (Credible Fear/Expedited Removal).

ICE (Immigration and Customs Enforcement; **ERO** (ICE Enforcement and Removal Operations); **ERO OFFICER** (Enforcement Removal Officer), **OCC** (ICE Office of Chief Counsel); **PEP/SCP** (Priority Enforcement Program/ formerly Secure Communities Program), **LLE** (Local Law Enforcement PEP Partners). **USCIS** (United States Citizenship and Immigration Service): **AO** (Asylum Officer).

Department of Justice: US Federal Immigration Court, **BIA** (Bureau of immigration Appeals), **IJ** (Immigration Judge), **ACC** (Assistant Chief Council)

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



In place of an accurate or functional assessment instrument, officer discretion was then applied. The graph above illustrates the language exclusion contacts for individual ILSIs from apprehension to deportation.

Such officer discretion does not bode well for indigenous language speakers. The Risk Assessment Classification did not cue ICE ERO Officers to inquire about LEP indigenous language speakers as vulnerable populations. ICE's Risk Classification Assessment tool did not record nor externally report an immigrants' language of origin, their primary language where credible fear interviews were conducted. ICE ERO officers nevertheless decided if or when interpretation was needed. If the officer did not request an interpreter for an indigenous language speaker, only partial information would have been elicited from ILSIs, and only from those that may have spoken limited Spanish. Given the low veracity of that approach, subsequent ERO Officers' decisions about conditions of detention or release were then based on weak or non-credible detainee information.

Vulnerability of Indigenous Peoples in Detention

Vulnerability of indigenous language speaking immigrants to abuse in US detention centers has been demonstrated for conditions of families in short term detention.

Wide discretion by Immigration and Customs Enforcement Officers representing the Enforcement and Removal Office in decisions to allow immigrant bonds may have undue influence over ILSIs legal admissibility. Assessment of their vulnerability to social risk if deported to their country of origin is an initial key legal protocol. Language isolation in detention, due to misidentification of primary languages or ignoring Limited English Proficiency mandates can promote human rights violations of indigenous language speakers if their well-founded fears are left undocumented.

Indigenous from Meso-America are social groups often considered historically vulnerable to human rights abuses given their social exclusion in non-immigration matters. One example of a recent attempt at rights advocacy is indigenous language rights' revitalization in El Salvador.⁶¹ The current inequitable social status of indigenous languages in legal proceedings in Guatemala is another example. A third example is their inequitable access to formal education in the indigenous languages of Guatemala.⁶² In addition, extreme poverty in the context of Narco-cartel violence in the predominantly rural indigenous communities of Western Guatemala's San Marcos and Huehuetenango departments continue unabated as of this writing⁶³. As well, further north on Mexico's Pacific Coast state of Guerrero, in traditional Mixtec indigenous communities, assassinations are common.⁶⁴

Given the country of origin conditions and language isolation in detention, ICE officers' contact with indigenous language speakers is the second pivotal threshold for language exclusion. If ILSIs were properly interviewed in their indigenous language, they could then express *credible fear* and be identified as appropriate for release if so assessed through a formal assessment protocol. ICE ERO Officers could also consider alternatives to their detention. Without a formal LEP protocol however, a pattern of routine language exclusion by default often sets up a self-perpetuating chain of re-enforcing institutional behaviors.

If a Border Patrol agent completes an ISLI's "disposition" without identifying an indigenous language speaker's primary language; then detention intake staff, ICE ERO officers, private contractors, contracted legal counsel, and even officers of immigration court - may accept the misidentification each time that changes in custody transpire. Each new misidentification of an indigenous language speaker's primarily language adds a new exclusion. Given

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



their linguistic isolation, each new point of contact for ILSIs in this succession increases their vulnerability. Without due process due to language isolation, ICE has constructed a coercive legal environment in which legal options become more obscure once the ERO Officer interviews an indigenous language speaker.

One such monolingual Ecuadorian Quichua speaking detainee, forcibly separated from his Quichua speaking family at the Arizona border in late May, 2015, languished for three weeks in detention at Eloy, Arizona without interpretation. Once contact was established from the outside and legal representation was obtained, the detainee was shipped abruptly to Washington State on the other side of the country away from the family's residence. The detainee's spouse and child demonstrated signs of trauma both at the time of separation, and once transferred, given the disappearance of their spouse and parent.⁶⁵

A monolingual Mam speaker, a male teenager from Guatemala was detained in Arizona after arrest by the US Border Patrol. He was incarcerated in long term detention in proximity to a bilingual Mam and Spanish speaker, he described signing papers that he did not understand; when the bilingual Mam speaker explained it was an order for his own deportation, he became extremely distraught, fearing his return to San Pedro Necta, Huehuetenango, Guatemala, to which he was deported in May of 2014.⁶⁶

Another area where elusive LEP protocols are pervasive is in detention infirmaries. Health Service Corps staff use a medical intake form to document a patient's language as either English, Spanish or "other". However there is no language resource list identifying indigenous languages to indicate what other language the patient speaks. Then, a medical officer may or may not call an interpretation service which may or may not accurately decipher which indigenous language the patient speaks. Given this practice, an indigenous language speaking patient who is unable to communicate about a medical condition may be placed at risk.

An additional inquiry related to literacy on the same form asks, "Have you ever had difficulties learning or understanding written information?" The form is completed in *English or Spanish*, but neither is likely to be understood by a patient who speaks an indigenous language as his or her primary language. Prescribing medication not understood due to the language barrier poses a serious risk under such circumstances. Not issuing needed medication may pose medical risk as well in specific cases. Language identification is critical to patient care, but current LEP protocols in detention health services do ensure equitable access to medical care.

"Spanish Speaking" Majority in Immigration Court

The current size of the population who speak primarily an indigenous language, and not Spanish, is uncalculated given the lack of a language assessment. With the largest regional increase of border crossers coming from Central America in 2014, the number of indigenous language speaking individuals likely increased in kind compared to previous years. Influxes of their indigenous languages into the US immigration system follow familiar patterns of arrest, detention, and removal of Indigenous language speaking immigrants.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



The Vera Institute reported in 2006 that immigrants labeled as Spanish language speakers were 79% of detained persons with initial Master Calendar Hearings nationally and up to 86% for those assisted in Legal Orientation Programs.⁶⁷ Vera Institute reported that Mexicans represented 59% of “all individuals whose immigration court cases began while they were in immigration detention” and 73% of all detained at LOP sites were Mexican. After Mexicans, El Salvadorans, Hondurans, and Guatemalans were most of the rest of the detained population.⁶⁸ Vera institute did not document any purposeful language screening tool used by federal immigration court, nor in their own Legal Orientation Programs for indigenous languages. Based on 2006 removals as a percentage of Guatemalans alone, at least 8,008 indigenous language speakers were likely among that “Spanish speaking” majority.⁶⁹

Standards for attorneys to carry out an accurate LEP language assessment are not mandated, though best practices in US Department of Justice Model Program training calls on attorneys to state their client’s *language and dialect* for court interpretation in Master Calendar and Asylum hearings⁷⁰.

Finally, Judges in immigration courts may or may not request a language assessment for ILSIs. If language assessments are not requested, then ILSIs are unable to meaningfully participate in decisions made about their legal status. Language access is not optional, it is a legally mandated right in immigration court:

In federal judicial proceedings, the respondent’s right to confidential attorney-client communication through the aid of an interpreter is guaranteed by federal law. 28 U.S.C. § 1827 Interpreters in Courts of the United States (d) (requiring courts to provide interpreter services where the respondent’s LEP status inhibits his “comprehension of the proceedings communication with counsel or the presiding judicial officer.”⁷¹

Language Exclusion Cases

The effects of language exclusion can be subtle but detrimental; the following account demonstrates the use of excessive force and intimidation which physically impaired an immigrant who was traumatized just before a credible fear interview. His actions reflect not being informed in his language about his right to medical attention, and his not being able to express credible fear for a possible asylum claim.

The second week of March, 2013, Alberto migrated from Central Guatemala to be with his wife and child in a Southwest Border state. After entry in the United States near McAllen, Texas in the late afternoon, he traveled with a group of seven other immigrants who were tracked by Border Patrol to the side of a trailer next to agricultural fields and then discovered by a Border Patrol agent on foot who commanded them in Spanish to raise up from their lying positions and to put their hands behind their necks and rise to their knees, which they did. Among the eight, were six male K’ekchi Maya from Cobán, Alta Verapaz, and two Quiché Maya from a Quiche speaking region of central Guatemala. The same officer quickly drew his taser, aimed it directly at the immigrant closest to him, a 20 year old immigrant who was on his knees in a crouched position, and fired a shot of electricity to his middle back. Subsequent to that application of force, all were handcuffed with other agents

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



assisting in their arrest. The tasered immigrant expressed suffering from extreme pain during the incident and to his cell mates. He complained of residual back pain throughout the 2-3 days in cold cells near McAllen and then after being transferred to Harlingen, Texas for six more days until placed in PISPC in Port Isabel, Texas for at least three weeks. The tasered individual was urged by his acquaintances to seek medical help. At no time was he inspected by a medical officer, nor was he offered any medication or medical attention for the tasing. According to one witness, he did not seek help because he feared he would be deported. The region he fled from has been taken over by drug cartels. He was interviewed by a Border Patrol regarding his credible fear interview wearing the same green uniforms as the person who tasered him.⁷²

One example of language exclusion was a deportation hearing for a Mayan Kanjobal speaker from 2007.

[An] Immigration Court [was] forced to reopen a Kanjobal speaker's removal proceeding because interpretation was provided in Spanish for Francisco Juan Martin, who was born in Guatemala, and appeared pro se at a master calendar hearing on August 16, 2007. Although Mr. Martin's native language is Kanjobal, the court interpreter interpreted the proceedings into Spanish only. Consequently, Mr. Martin was unable to understand the judge's order that he must apply for cancellation of removal by September 25, 2007. When he failed to apply by that date, he was ordered removed from the country. It was only after the Bureau of Immigration Appeal heard his appeal that he was allowed to apply for cancellation.⁷³

A second language exclusion legal case from 2007 is for a Maya Mam speaker.

In a case at the Varick Street Immigration Court in New York City, 'a Mam-speaking detainee was provided with only a Spanish interpreter and was therefore unable to comprehend basic questions. The case was continued and the detainee was returned to detention until the later date'.⁷⁴

Language exclusion in state courts that receive DOJ funds are obligated to comply with federal LEP policy and Title VI non-discrimination practices. Two examples of language negligence, one in a criminal case and the other in a civil case involved indigenous persons who were mistakenly assumed to speak Spanish.

One Mexican indigenous Mixtec speaker was held for four years before being released after his language was identified and the prosecutor then cited a lack of evidence. A Quiche speaking Maya woman lost her parental rights due to the Nebraska child protective services having judged her incompetent to care for her asthmatic child after she received instructions in Spanish from a doctor; instructions she could not understand.⁷⁵

Further language exclusion practices in federal immigration courts have been amply documented by the Language Access Advocates Network in a letter sent to Assistant Attorney General Thomas, Civil Rights Division, U.S. Department of Justice on Feb. 2, 2010.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



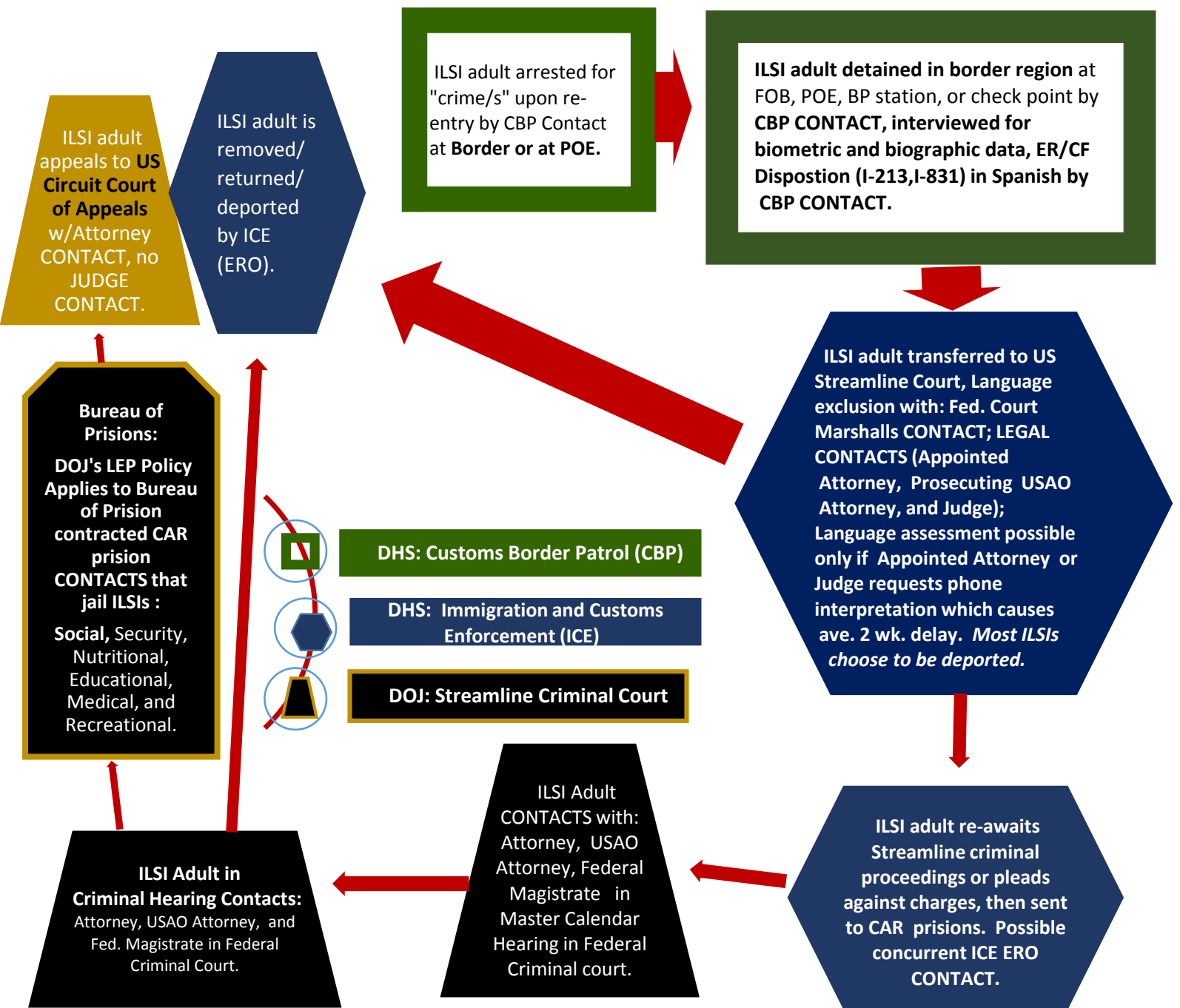
One example was of a Mayan Mam speaker reported on by the New York University chapter of the National Lawyers Guild languished in detention in Varick Street Immigration Court in New York while awaiting an interpreter after the court assumed the detainee a Spanish speaker.⁷⁶

That contrasts with a bizarre if not demonstrative case which occurred in an immigration proceeding in a contracted detention facility in Eloy, Arizona in late February, 2015 when a twenty-three year old Maya Mam woman appeared in her second court appearance before a federal immigration judge. In the first hearing, the same judge identified the immigrant woman as a Maya Mam speaker, and then ordered a delay in the hearing until a Maya Mam interpreter was secured for the proceeding. The woman had no bond. The second hearing was delayed for six months. For six months the detainee awaited an interpreter for the anticipated proceeding. When the new hearing opened, there was still no Maya Mam interpreter secured for telephonic interpretation. However, upon further discussion, when the detainee was allowed to speak freely, she made it abundantly clear while speaking Spanish that she was bilingual in Mam and Spanish and could have readily responded to questions posed in court, six months before, in Spanish.

The presiding judge had identified a potential issue in her consideration of the language needs of an immigrant before the immigration court, but the court and the judge demonstrated that the court is not institutionally competent to make such an assessment even when the need to have an interpreter was assumed - albeit incorrectly.

A different case involved a female monolingual Mam speaker whom reported to the local police repeated threats against her life before she fled Guatemala. As a monolingual Mam speaker during her first detention in Texas - she was never offered interpretation into her language. When she was told to sign papers put before her, she signed without knowing, or being able to ask, what they were for. She was then deported from Houston in September of 2013 after eleven months of incarceration. After a second entry at Nogales, Arizona later in September of 2013 she was arrested and then detained in Eloy, Arizona for another eight months until securing a bond for release in May of 2015. When detained the second time, she worked to learn to speak Spanish while in detention - though she had had not completed third grade as a child. When shown the DHS "I Speak" phrase written in the Mam language, she could not read the "I Speak" phrase in Mam; though the transliteration matched her own dialect.⁷⁷

Language Exclusion Contacts In Streamline Criminal Court for Indigenous Language Speaking Immigrant Individuals (ILSI)



Glossary

ILSI (Indigenous Language Speaking Immigrant) Family.

Department of Homeland Security Sub-Agencies: **CBP** (Customs Border Patrol); **BP Station** (Border Patrol Station), **FOB** (Forward Operating Base), **BPSPC** (Border Patrol Service Processing Center), **POE** (Port of Entry). **ICE** (Immigration and Customs Enforcement); **ERO** (ICE Office of Enforcement and Removal Operations; Enforcement Removal Officer), **PEP/SCP** (Priority Enforcement Program/ formerly Secure Communities Program), **LLE** (Local Law Enforcement PEP Partners). **CAR** (Criminal Alien Requirement Private Prisons).

Department of Justice: US Federal Criminal Court, **BIA** (Bureau of immigration Appeals), **IJ** (Immigration Judge), **ACC** (Assistant Chief Council). **USAO** (United States Attorney's Office **NTA** (Notice to Appear).

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Her case illustrates the critical need for language assessment of indigenous languages at the first point of contact, not the second. The incapacity of linguistically untrained DHS personnel to assess that Immigrant's disposition for credible fear points toward a miscarriage of equitable justice. Incarceration of a monolingual indigenous language speaker for eleven months, who was then deported without due process, does not resemble a system of justice, but one of injustice through deliberate language exclusion.

ILSI Individual Language Exclusion

If CBP identified languages of immigrants' who speak an indigenous language on the I-213 and I 831 Disposition forms, their misidentification would decrease dramatically from the onset. ICE could then record individual indigenous language speakers in their Integrated Decision Support (IDS) database even before being sent to Family detention Centers, paroled, released with removal orders, or released under conditions, e.g. ankle bracelet monitoring 24/7.

For individuals from families who were released from CBP border facilitates upon approval by ICE ERO Officers (and in some cases individuals released on temporary parole) with a Notice to Appear (NTA) should be instructed to appear before an ICE office. ICE gives indigenous language speakers verbal instructions about their NTA in Spanish - while their travel documents are issued entirely in English. An indigenous language speaker's subsequent initial visit to an ICE Office does not constitute a legal proceeding, but without registering for that jurisdiction, indigenous immigrants who speak an indigenous language may fall out of compliance and then be issued a deportation order. ICE could then record it in their Integrated Decision Support database even before being sent to family detention centers, paroled, released with removal orders, or released under conditions, e.g. ankle bracelet monitoring 24/7

If an indigenous language speaking immigrant misses their first hearing, they face a minimum of 12 unique exclusionary contacts and at least 17 or more if they pursue asylum or other forms of relief from deportation. Individual ILSIs may also be sent to criminal proceedings in Streamline criminal court. DHS has an obligation under LEP policy to monitor CBP and ICE language assessments of immigrants. They do neither. The Department of Homeland Security's LEP Policy has largely failed ILSI adult individuals in immigration proceedings. As a class of vulnerable immigrants, indigenous individuals are the largest population to experience exclusionary language contacts in the United States' immigration system. A graph of language exclusion for indigenous language speaking immigrants who also face criminal proceedings in Streamline Court is illustrated on the previous page and discussed in the next section.

VI. ILSI Individuals in Streamline Criminal Court

Streamline proceedings were held in five of ninety-four US District Courts⁷⁸, but after December, 2014 Streamline Court was reduced to operating only in Tucson, Del Rio, and Laredo.⁷⁹ Of the 16,556 unlawful re-entry convictions in 2014, 75.4% were concentrated in only five U.S. border districts—the Southern District of Texas, the District of Arizona, the Western District of Texas, the District of New Mexico and the Southern District of California.⁸⁰ All immigrant reentries for the purpose of family reunification are classified as individual criminal offenses subject to prosecution in Streamline Court. Though suspects of "terrorism, violent criminals, gang members, and recent border crossers" were the most recent targets for interior deportations as of 2014 according to the White House,⁸¹ in the border region, reentries dominated the deportations of immigrants from Streamline. The lowest level offenders, Level III, are those who committed one misdemeanor punishable with less than one year. They alone accounted for most judgements in Streamline Court nationally at 27% of all

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



sentences. Level II are immigrants charged with one aggravated felony crime or two crimes punishable by more than one year. Level I offenders are charged with aggravated felonies or two or more felonies punishable by more than one year each.⁸²

When indigenous language speaking immigrants with criminal charges are brought before Streamline court, they face three key legal issues. The prosecution of immigrants attempting to reunite with families can have a pre-determined effect on an indigenous language speaker. ILSIs may have a well-rounded fear of persecution or other grounds and would have a right to seek the safety of the United States to escape threat(s) against his or her life - if so advised in an indigenous language they speak. Other ILSI migrants charged with other non-immigration crimes under the criminal code also have a right to due process.

Streamline: Pre-Trail Council

Shackled immigrants who are speakers of an indigenous languages brought into Streamline proceedings typically see their federally appointed attorneys for a half an hour or less. Most are advised to plead guilty; in effect, to accept in most cases a lesser charge than a felony for re-entry into the United States, whereupon they are placed in the Early Disposition Program and serve six months or less before deportation. Others with additional felonies or with three misdemeanors of a particular class serve more time in long term detention; it total the average detention overall was 17 months in 2014.⁸³ Over 96% of immigrants in Streamline are single male migrants.

While Spanish language interpreters are a mainstay in all Streamline Hearings, only if an attorney or possibly a judge requests a Spanish language assessment by a Streamline Court interpreter, will an immigrant be assessed for their Spanish language proficiency. Officially, the court conducts all proceedings in English, but live interpretation in Spanish is nearly universal. For expediency's sake, if an immigrant is found to be not proficient in the *Spanish language*, then a request can be made for a phone interpreter at a future hearing date; when this occurs the hearing is delayed two weeks on average. On the surface, this appears to be a Limited English Proficiency program with a protocol.

When attorneys do not request a Spanish Language assessment for an ILSI and proceed in defending their appointed clients in court, their clients may categorically not understand charges brought before them. Disregarding the primary language of an ILSI in the pre-trail interview is the first major legal issue of discrimination for indigenous language speaking immigrants in Streamline.

If the ILSI's pre-trial interview was insufficiently interpreted or the indigenous language speaking client was unable to communicate fully their motivation for reentry, they may then not be credibly apprised of their potential legal options to for relief from immediate deportation. This constitutes the second major legal issue for indigenous language speaking immigrants.

The DOJ empowers the United States Attorney's Office to contract attorneys who are given discretion to decide whether to request an interpreter. Requests delay their legal representation of their many clients in court. Case fees are not paid to the attorney until the client is tried. This creates a disincentive to request language assessment. The scale of this deficiency in the Court's LEP approach is noteworthy.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



About half of the federally contracted attorneys were not competent enough in their Spanish language skills to accurately interpret their client's pre-trial intake information - according to a Streamline interpreter.

However interpretation was not then provided to defendants that needed interpretation according to a Spanish language interpreter. The attorneys represented cases without requesting interpretation. When Spanish language assessments were requested of interpreters, some eighty to ninety percent of immigrants did not speak Spanish sufficiently to comprehend court proceedings.

Streamline: Pleading

ILSIs from indigenous cultures may accede to authority when under duress given a complete lack of culturally interpreted alternative options from which they can make a decision. Streamline, given its customary shackling and herding of immigrants into and out of court proceedings is designed to be stressful and humiliating in order to deter immigrants from returning. Unless the judge is able to detect a non-Spanish speaker, an ILSI can be effectively shut out of process of the hearing though nominally saying "Si" [yes] to a series of legal steps reduced to saying "si" or "no". It is often an effect of the humiliation; to avoid the humiliation, the detainee is influenced to agree to any relief from undergoing further threatened incarceration by agreeing to be deported. This is the third major legal exclusion for speakers of indigenous languages as primary languages.

Given the proceedings are held using highly specialized legal terminology in a language they may speak only as a second language, if at all, ILSIs may anticipate only receiving a negative outcome for their status. This effect is an outcome by design for a process that lacks integrity for petition of equitable relief in legitimate claims for asylum, Violence against Women Act (VAWA) provisions or other remedies for indigenous language speakers. When interpretation is not used in the pre-trial interview, indigenous detainees realize that their exclusion is purposeful. Bereft of any meaningful legal information to assess their own situation, ILSIs nominally respond to commands and questions in Spanish. In this cultural and legal context, it is an exclusion that has immediate negative repercussions for indigenous language speakers. For someone familiar with indigenous cultures, the silence of ILSIs ushered through Streamline Court after their initial response of "yes" to being a Spanish speaker, is deafening.

The indigenous cultural response of silence is understood to be equivalent to functionally becoming mute in an environment of the hearing population.

Being able to voice a superficial comprehension of Spanish at pleading may be carried out by the ILSI to protect themselves from further humiliation. It does not necessarily represent a rationale choice to agree to removal or consider the best legal remedy for their situation.

Streamline: Sentencing

Sentencing is largely pro-formula given the federal United States Attorney's Office and the immigrants' attorneys complete from 40 -70 or more cases in one court session. Of the 16,556 re-entry immigrants sentenced in FY 2014, some 25.2% of cases cooperated in the early disposition program (read *expedited removal*). The patterns of reduced charges in exchange for immigrants agreeing to an expedited removal, return, or deportation is familiar to anyone observing Streamline Court. Sentences for those convicted of unlawful re-entry received average sentences of 17 months in fiscal year 2014.⁸⁴ According to the United States Sentencing Commission, the majority of Streamline offenders were Hispanic (98.3%), while Blacks were 0.9%, White 0.8%, and other Races (0.0%). Tellingly, the indigenous race does exist for US Immigration Court.

Reporting of indigenous persons as "Hispanics" in Streamline Court is a direct violation of Title VI for LEP policy as it applies to ILSI individuals in Streamline. Masking indigenous language speakers as Spanish speakers is a second violation of Title VI.

A recent shift has occurred in the frequency of cases in the Streamline Courts. Arizona District led all cases (N=3,873) in 2012 while the Southern and Western Districts of Texas and the New Mexico District surpassed it in 2014.⁸⁵ An overall decline appeared in national cases loads by 14% from FY 2012-2014, with a border shift from Arizona to Texas reflecting a general trend toward the larger volume of all crossings occurring there. The subsequent shuttering of Streamline Court in New Mexico and Southern California reflect lower caseloads there and consolidation of venues. However, the next level for contestation of sentences are the twelve US Circuit Court of Appeals, and ultimately the US Supreme Court. Few cases involving language issues make it to the appeals level given the extreme hardship that indigenous language speaking immigrants face in long term detention.

ILSI Exclusionary Language Contacts in Streamline

ILSIs in criminal proceedings under Streamline's rapid adjudication process are the second most vulnerable group of ILSIs after unaccompanied immigrant children in the US immigration system.

ILSIs in Streamline have an exceptionally brief opportunity to assert their language rights in an atmosphere designed to intimidate and produce terminal deportations. If CBP identified languages of immigrants' who speak an indigenous language on the I-213 and I-831 Disposition forms, and ICE concurred with their language identification, once in Streamline Court delays for immigrants would decrease dramatically before attorneys' clients enter into the physical custody of the US Marshalls.

While ILSIs court appearances are minimal, their detention time may be lengthy, from 30 – 90 days minimum for re-entry and up to 20 years for violent crimes⁸⁶. ILSIs adjudicated in Streamline are housed in Criminal Alien Requirement privately contracted prisons administered by the Bureau of Prisons, a component of the DOJ⁸⁷. Published BOP audits of prisons demonstrated an LEP policy for prisoners with disabilities which made available interpretation phone lines. For ILSI prisoners, no

interpreter phone lines were reported.⁸⁸ ILSIs can experience a minimum of six unique exclusionary language contacts and a maximum of thirteen or more, if incarcerated long term.

IV. Unaccompanied ISIL Children ⁸⁹

Media and CBP hyperbole associated with an unprecedented surge of unaccompanied minors in the summer of 2014 was in reaction to seasonally concentrated migration of unaccompanied minors consistent with the trend of the previous two years. At that time, DHS did not report the exponential and simultaneous increases in family detentions in 2014.⁹⁰ The Obama Administration has since belatedly corrected the record.

Central American unaccompanied children grew from 88% in 2012 to 95% of all unaccompanied children entering the United States by the end of FY2014. Unaccompanied Mexican children who entered declined from 8% to < 2% in the same period. Central American children were exclusively from the Northern Triangle countries of Guatemala, Honduras and El Salvador. Guatemala was the largest sender of unaccompanied children overall from FY 2012-FY 2014 except for FY 2014. However in FY 2014, children from Guatemala were 32% of all unaccompanied children, surpassed only by Honduras at 34%. Several other trends are worth noting. Overall, females increased and males decreased by eleven percent in FY 2014 compared to FY 2013; with 66% being unaccompanied male children and 44% unaccompanied female children. The predominant age group of migrant children traveling unaccompanied was over 14 years old, however a shift toward younger children less than fourteen from 17% to 27% of all children marks a notable change toward younger child immigrant crossings in the same period.⁹¹

If the proxy measure of 42% of Guatemalan children as speakers of indigenous languages were applied only to unaccompanied Guatemalan children, an estimated 7,727 indigenous language speaking youth were held by ORR in 2014.⁹² When a 95% confidence interval is applied, statically, a lower threshold of 36.4% or 6,697 unaccompanied Guatemalan children were Indigenous language speaking immigrants.

The United States Department of Health and Human Services' Office on Refugee Resettlement is tasked with the care of unaccompanied minors and or their resettlement in the United States. In that capacity it contracts for legal services, case management, classroom education, health care, socialization /recreation, vocational training, mental health services, and family reunification. State licensed and Office of Refugee Resettlement (ORR) funded contractors are part of a network that provide facilitates for most unaccompanied minors whose entry into the US originates with crossing the southern border with Mexico. Children are normally in their care for an average of 35 days. ORR managed facilities report directly to the Department of Health and Human Services. A graph of language exclusion contacts for unaccompanied ILSI children is illustrated on page 40.

LEP Practice with Unaccompanied ILSI Children

Standards for normal routine interpretation of indigenous languages do not appear in ORR operational and guidance documents posted on line, including for legal service providers. Nevertheless, extensive and effective language are stipulated in the Standards to Prevent, Detect, and Respond to Sexual Abuse and

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Sexual Harassment Involving Unaccompanied Children⁹³. Section § 411.15 mandates contracted private care providers and operations ensure:

... that UCs who are limited English proficient have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including steps to provide quality in-person or telephonic interpretive services and quality translation services that enable effective, accurate, and impartial interpretation and translation, both receptively and expressively, using any necessary specialized vocabulary.

The standard equal opportunity to “telephonic interpretive services and quality translation” however, does not extend in practice beyond that for the prevention of sexual abuse - to other language needs in a Limited English Proficiency protocol. The provision of a variety of children’s need in shelters and how exclusion affects indigenous language speaking children in United States’ custody is discussed below.

Reunification of Unaccompanied ILSI Children

For the purpose of reunification of foreign unaccompanied minors with their family in the United States, the Office on Refugee Resettlement (ORR) was placed under the Department of Health and Human Services’ program at the time of the Homeland Security Act of 2002⁹⁴. Some 60,000 children entered the Office of Refugee Resettlement (ORR) program under Department of Health and Human Services’ custody in FY 2014.⁹⁵ ORR issued a guidance document in the use of appropriate interpreters that instructs case managers assigned to UAC’s to contact potential family sponsors for unaccompanied minors once detained in the United States.⁹⁶ The provision of Limited English Proficiency to children was mandated by Executive Order 13166 in 2000.

The most critical human need for indigenous children, after food and water, is to gain emotional security by communicating in their primary or only language, most often an indigenous language.

Unaccompanied ILSI children’s initial contact with case managers (discussed below) is quickly followed by a minimum of seven other unique language exclusion contacts for indigenous language speaking children as illustrated on page 42 and discussed below:

- Live legal orientation is given by outside attorneys or legal assistants contracted under ORR contracts for custodians of Unaccompanied Alien Children, in Spanish or English, but not in indigenous languages. No language assessment tool is used ⁹⁷
- Educational classes held in English and Spanish for indigenous language speaking children
- Medical staff examine or make referral for indigenous language speaking children

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



- Youth Care Workers accompany all indigenous language speaking children to each discrete activity
- Food provided by internal staff to indigenous language speaking children
- Case Mgr. & Youth Care Worker assist indigenous language speaking children with family reunification
- Child Psychologist interviews indigenous language speaking child

Just as the Border Patrol agents function as language gate keepers for individuals and families in the border region, case managers employed in privately run shelters under the auspices of ORR play a similar role for unaccompanied indigenous language speaking children. ORR funded staff have primary responsibility to assess children's needs and provide services for their care.

Case Management

Case managers must comply with case file documentation of services for children and youth. Training for case managers serving unaccompanied minor children features an assessment process of the children under ORR's care, with emphasis put on their biological, physical, social, psychological and emotional needs. Case managers carry out needs assessment of UACs by verbally interviewing children, which along with biographical and supporting documentation, contact with relatives, direct observation, and testing, completes an assessment of needs. Following assessment, a service plan is written and used as a guide to individual service provision. This is standard procedure for social workers trained in case management.

In the ORR case management approach for unaccompanied children, no provision nor test is provided to check a child's primary language. Early detection of an indigenous language speaker may depend entirely on the case manager's "cultural sensitivity". Case notes, progress notes, and the updated service plans are required to meet internal and external reporting requirements to meet federal standards and to allow for verification that funded services were provided.⁹⁸

Interpreting services are available, but no assessment tool to determine if a child is an indigenous language speaker is used according to the Office of Refugee Resettlement.⁹⁹ If a child responds only briefly in Spanish, measures taken to assess their language needs can fall to individual ability or incompetence of the case manager. Typically, case managers are hired by contracted providers, such as refugee relief services, which seek out bilingual Spanish and English candidates, but not speakers of indigenous languages. One provider in New York, Catholic Charities, advertised for Spanish speaking Case Managers in the state where the second most unaccompanied children were released in 2014.¹⁰⁰ The agency followed common hiring standards approved of by DHHS.

Vagaries of Sheltering Unaccompanied ILSI Children

Compassionate people appreciate the care and case plans laid out by case managers, as well as the medical attention and structured activities provided to unaccompanied children in publically contracted facilities. It was an improvement over children being warehoused in the three military bases in the summer of 2014. Human migration however is a messy affair. The Dept. of Health and Human Services

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



(DHHS) holds that “the children are provided with basic education services and activities by DHHS grantees”. Thus, “these children do not enroll in local schools while living in HHS shelters.”¹⁰¹ When an indigenous language speaking (ILSI) child does not speak the language of educational instruction, that child is surrounded by other children who do speak the language of instruction, and is nevertheless expected to participate. Children are resilient, but a child who is subjected to seven weeks of that exclusionary educational plan is educationally warehoused, such as an indigenous language speaking child was in Arizona in fall of 2014.¹⁰²

In that period, one ILSI child received daily interpretation from a Youth Care Worker, another ILSI did not. That second ILSI child had no roommates and was isolated in a sleeping unit alone for an entire week without any communication in the child’s language with staff or other children. Eventually that indigenous language speaker was accompanied by a second bilingual (indigenous language and Spanish speaker) child who was then the “interpreter” for the first child since no other interpretation services were offered in direct contravention to Limited English Proficiency policy.

*While visiting a shelter for unaccompanied children in Arizona in the first week of Feb. 2015, one observer recalled that the population reported by the director of the shelter on that day was 40 children; 38 from Guatemala and two from Honduras. During a group activity, the observer spoke with one youth in a Mayan Language and the youth answered in the same Maya language. Though admonished by the director for speaking with the indigenous youth, some 20-25 youth were subsequently identified by the same observer as indigenous youth who spoke the following indigenous languages: Quiche, Kanjobal, Kachiquel, and Mam.*¹⁰³

Health Conditions

Medically examined children or children who may language assistance can be put at risk if interpretation of indigenous languages are not provided. Using male or female Youth Care Workers to interpret for a medical exam or for interviews of opposite sex patients is highly inappropriate for young children as well as for adolescents. It is also culturally unacceptable. That practice can be problematic in cases of abuse which occurred prior to arrival to the shelter.

This low standard of care was acceptable only for an indigenous language speaking youth, it begs the question. Why?

In one facility, six unaccompanied females were pregnant. Their care, if it relied on inappropriate gender interpreter services, could put those patients at medical risk if undisclosed symptoms were not detected and allowed to progress; undisclosed due to the shame of disclosure by an adolescent to a stranger of the opposite sex even when they speak the same language.¹⁰⁴

- **Common medical conditions** experienced by both adults and children in short term detention are dehydration and fever, both were reported to this author for children in a shelter where some indigenous language speaking children had no access to communication with medical personnel regarding such symptoms. Medication, especially in

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

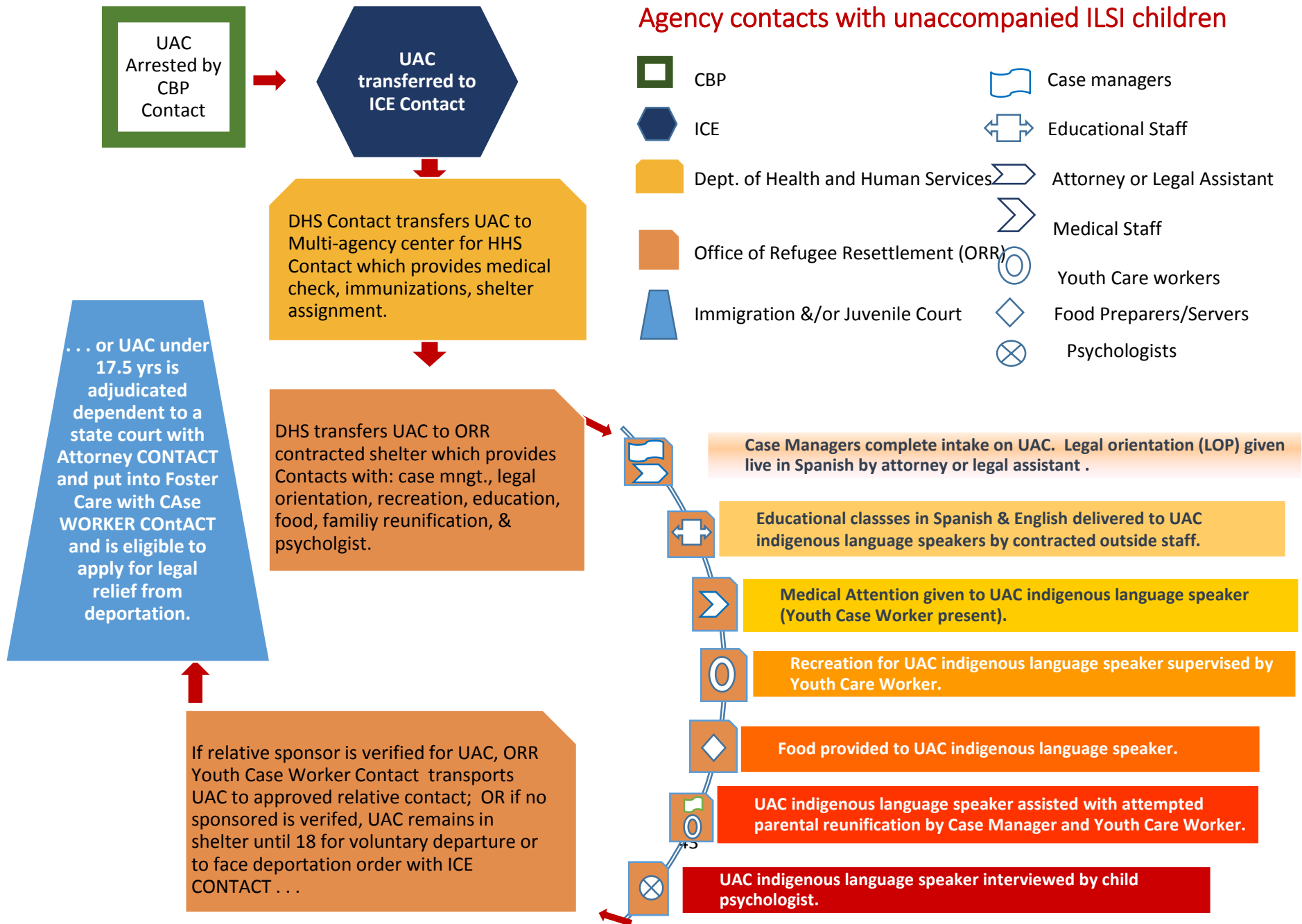


the case of an allergen to penicillin, which could pose unnecessary risk for indigenous language speaking children without interpretation.

- **Food provision** for sheltered indigenous language speakers would appear, at first glance, to not pose insurmountable obstacles. Food allergies, some of which can lead to toxicity, could go undetected given the lack of interpretation of indigenous languages.
- **Length of Stay** without interpretation is an issue for ILSI unaccompanied children under ORR care. The reported ORR average of a 35 day stay for unaccompanied children contains both sooner and later exits for children in ORR shelters. Former contract staff reported to this author that while one indigenous language speaker was given interpretation, another was left without interpretation for two weeks.

While DHHS's Office of Families and Children are responsible for monitoring ORR contracted shelters, there is no evidence that compassionate and well intentioned case managers have the capacity to interpret indigenous languages from Guatemala or Mexico. Nor is there any language assessment tool put at their disposal for use in the general assessment process. That is a decision of the Office of Refugee Resettlement. Children who do not speak Spanish or English are unable to report neglect or abuse to authorities while in the care of persons who do not speak the child's indigenous language. The silence about the neglect of children reported by former staff of ORR contracted facilities is a harbinger for future neglect.

Language Exclusion Contacts for Indigenous Language Speaking Unaccompanied Immigrant Children



Central American Minors Refugee/Parole Program

In reaction to rising numbers of unaccompanied minors from Central America, the US Department of State Launched the In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States. That service tasked to the U.S. Resettlement Support Center (RSC) in Latin America which contracts with the International Organization on Immigration (IOM) to deter unaccompanied minors from migrating to the United States unaccompanied. The IOM conducts initial “prescreening interviews” in the children’s own country to prepare them for an interview with the Department of Homeland Security (DHS)”.¹⁰⁵ Again there is no indication that local languages, twenty one indigenous languages in the case of Guatemala, are used to interview indigenous children who may be at high risk.

While the in-country response was taken to stem the exodus of some children, the problem of separated indigenous language speaking families largely remains, and the language gaps and distances to solving them continue to become larger and more obscured.

Unaccompanied Children in Detention

Given that CBP and ICE do not assess unaccompanied indigenous language speaking children for their primary language, their nominal identification as Hispanic Spanish speaking immigrants misidentifies them upon their transfer of custody from ICE to the Office of Refugee Resettlement on behalf of DHHS.

That exclusive practice can impede the exercise of their right to communicate with their own government and family as was established in the core human rights convention, the UN Covenant on Civil and Political Rights (CCPR: 1976)¹⁰⁶ which applies to children as well as to adults. Currently, unaccompanied children are cared for by the Office of Refugee Resettlement once the minors are transferred from ICE who receives them from the Border Patrol. Again, the initial language identification comes from the Border Patrol. Precedents of abuse against indigenous language speaking children under ICE custody have been documented.

*Tellingly, the 2009 Florence Refuge and Immigrants’ Rights Project revealed that the indigenous ethnicity of minors was associated with a disproportionate percent of them being physically abused. That outcome should have been a red line for a DHS short term detention policy review three years later in 2010.*¹⁰⁷ [Florence Immigrant and Refugee Rights Project]

FIRRP staff also reported that 26% of children interviewed in August of 2009 (N=124) were indigenous language speakers who did not have the language capacity to understand orders for deportation (form I-770) when Border Patrol presented such documents for their signature without explanation to the language of the detained children.¹⁰⁸ Five years later, in July, 2014, DHS had not ensured that CBP personnel followed LEP Guidance with interpretation for indigenous adults or children in the Tucson Sector.

Fifty –six percent of [adult] immigrants who reported they were bilingual in an indigenous language and in Spanish stated they did not receive a reasonable explication of their ICE office appearance date. (n=68) [Deprivation, not Deterrence, Oct. 2014].¹⁰⁹

Twenty –nine percent of those 68 detained adults were speakers of an indigenous language in that same 2014 period. *Both children and adult speakers of indigenous languages in short term detention had similar experiences of language exclusion. While this data is reflective of different settings than ORR contracted shelters where unaccompanied children are placed,* the practice of language exclusion continues to exist even there. It is astounding to observe the lack of concern regarding this systemic practice of language exclusion in the United States immigration system for a country that is a signatory to the UN Covenant on Civil and Political Rights, which points out, detainees' rights:

. . . also comprises the right to opportunely request and receive information concerning their procedural status and the remaining time of deprivation of liberty, if applicable. [UN CCPR, pp 87, p.29]¹¹⁰

ILSI UAC Exclusionary Language Contacts

Unaccompanied immigrant children whose primary language is an indigenous language may face insurmountable challenges in the US Immigration System. Even when some children are identified as indigenous language speakers once in DHHS's custody ,that does not mean private contractors then provide services in their language or even communicate in that language to a child. Unaccompanied children who speak an indigenous language face a minimum of ten and at least a maximum of twelve unique exclusionary language contacts. The Department of Health and Human Services has the legal obligation under LEP policy to monitor contracted UAC shelter service providers in the identification of indigenous language speakers. Without active monitoring and stiff disincentives to prevent on-going language discrimination, unaccompanied indigenous language speaking children remain the most vulnerable population of immigrants in the United States immigration system.

If CBP had an adequate language assessment tool in place, early identification of unaccompanied indigenous language speaking children might prevent neglect and abuse in short term detention and in ORR shelters. Once in shelters, unaccompanied indigenous children's' language and dialect could be verified with interpretation services that are pre-registered for such language and dialect.

IV. Conclusion: Legal Myopia about Indigenous Language Rights

Case examples in this review illustrated language exclusion of ILSIs in border and interior arrests, in short and long term detention, in immigration and Streamline courts, and in shelters for unaccompanied children. Qualitatively, from the point of arrest to deportation (or release from detention), ILSIs face a minimum of 35 and a maximum of 54 language exclusion contacts. Quantitatively and absurdly, after 13 years of federal LEP Policy, the true scope of language exclusion for ILSIs in the US immigration system remains unmeasured by three federal departments: The Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services.

Conceptually, federal LEP policy suffers from five major deficits: 1) It did not convince of a mechanism to make baseline language assessments of encountered language populations at the border; 2. It does not create language assessment tools for individual assessment based on such assessed language needs; 3 It has not planned for nor trained front line personnel for individual language assessment; 4. It does not measure language transmission and makes gross assumptions about human communication; 5. Indigenous language speakers as a vulnerable population are incarcerated in the world's largest prison system where they are allowed to languish in legal proceedings often without redress.

Gap in the LEP Policy Scope

ICE identified 94.5% immigrants they removed in 2014 as coming from the three North Triangle countries of Central America and Mexico,¹¹¹ none of which were Russian or Chinese. Customs and Border Patrol officers and agents, as well as ICE ERO Officers are often unaware, unknowledgeable, and often uncomprehending that the indigenous peoples they encounter speak primary languages other than Spanish. Streamline Court does not officially recognize indigenous as a race distinct from "Hispanic". One method for estimating the scope of the population affected by the gap in language inclusion is to use a proxy measure for families and apply it to individuals and to unaccompanied children.

When applying a 95% confidence interval to the 42% of indigenous language speakers among Guatemalan families (N= 247) released by ICE during spring 2015 in the Tucson Border Patrol Sector for deported Guatemalans nationally, 36.4% or 18,819 is a derived estimate. Using the proxy measure then informs us that some 36%- 42% of adults in immigrant families released by ICE in Southern Arizona in Spring 2015 spoke an indigenous language, or between 18,819 and 22,858 Guatemalan ILSI's deported in FY 2014. For unaccompanied children in 2014, it was between 6,697 and 7,727 indigenous language speakers in the same period. If the proxy measure was used in a similar fashion eight years before in 2006, Guatemalan ILSIs removed were around 8,008 adults.¹¹² If also applied to unaccompanied ILSI children from Guatemala, an estimated 849 UACs were likely in DHHS custody.¹¹³ Excluding ILSIs remaining in detention, the estimated increase for ILSIs over the eight year (2006-2014) period was 70%.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



A conservatively estimated ILSI population that needed language assessment in 2014 was 30,022 adults and children. A better proxy may arrive at a more accurate estimate, but such an estimate is not possible unless language assessments of immigrants from Central America and Mexico are completed.

Given ICE's 34,000 daily mandatory bed count for the detained population, the number of incarcerated adult ILSIs previously arrested and in detention over one year would add significantly to this amount.

The predominance of Central American unaccompanied children in the United States is quite striking, and therefore informative of their exclusion. In 2006, some 86% of UACs in the US immigration system were from Honduras, El Salvador and Guatemala, with only five percentage points of difference among them. By 2014, 96% were from Honduras, El Salvador and Guatemala.¹¹⁴ The Office of Refugee Resettlement requires reporting on an immigrants' language of origin and a child's "preservation of ethnic and religious heritage" but it has not required training of personnel to serve indigenous language speaking children in their language while held in detention, nor has it translated educational materials into any of those languages despite formal education in some indigenous languages in Guatemala since 1996.

Detained ILSIs without proper indigenous language interpretation demonstrated that a diffuse federal LEP policy affected ILSIs far beyond the confines of the border. Because the scope of ILSIs as a LEP population is systematically not recognized, the magnitude of the problem remains undefined. Because it remains undefined - it is never officially measured.

First Contact

DHS's LEP policy fails to grasp major gaps in the first contact phase of its LEP practice. CBP completes ILSI's initial legal dispositions as recorded on I-213 and I 831 forms without recording their indigenous language identification, therefore leaving such identification unknown. Neither CBP personnel or ICE field staff are trained to assess primary languages of indigenous language speakers. By default, CBP and ICE officers often make erroneous assumptions about ILSI's Spanish language capacity for communication. The GAO's review of CBP and ICE Spanish language training level indicates a limited Spanish language capacity among Task Oriented Spanish Language trained staff.

Both the lack of a practical tool to assess for indigenous languages for all CBP and ICE personnel, and the low level of Spanish language capacity among its personnel, disqualifies those agents and officers from making an accurate LEP assessment of an immigrants' capacity to speak Spanish.

In Detention

Despite Limited English Proficiency Program Guidance to the contrary, ICE ERO detention Officers and detention intake staff do not routinely assess ILSIs' languages while in detention, or at intake. There are also no language competency standards in the 2014 Guidance for oral interpretation either for due process or for services that provide legal information. ICE ERO officers' exercise of

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



discretion when interviewing ILSIs is broad and deep. Their use of discretion when coupled with their disregard for the vulnerability of indigenous language speakers as a social class of people produces

adverse and disproportionate outcomes for ILSIs: when setting bonds, in deciding the conditions of detention or release (parole), and when informing asylum officers in immigration court about immigrants' intention to apply for asylum, their expression of fear of persecution or of torture - upon return to his or her home country.

For most ILSI's, the signage posted in Service Processing Centers about immigrants' outside communication rights - are linguistically inaccessible. Only video or audio recordings of the "I Speak" signage in common indigenous languages would credibly translate the terminology of due process into their languages. They do not currently exist in ICE facilities, whether federally administered or privately contracted.

After fifteen years of DHS operation, eight key documents remain untranslated into indigenous languages: Notice of Custody Determination, Notice of Rights, Voluntary Departure, Notice to Appear, Warrant of Arrest, Warrant of Deportation, Notice of Institution Disciplinary Panel Hearing, and the Parole Advisal. Only interpretation of translated documents would assist most indigenous language speaking immigrants.

In Federal Immigration Court

Case examples cited from the Network (in 2010) and National Lawyers' Guild (in 2007) cited herein, plus the additional cases reported in 2014-2015 found that court interpretation was insufficient, incorrect, or absent for speakers of indigenous languages. That practice disproportionally discriminates against ILSIs' equal access to immigration court. Given the historic case level overload of some 445,607 backlogged cases reported federal immigration court in April of 2015, indigenous language speaking immigrants often experience longer waits than the general immigrant population due to non-compliance with Limited English Proficiency Program mandates to identify and provide access in the language of the detainee.

Mistaken Spanish language capacity among speakers of indigenous languages in court is prevalent. An indigenous language immigrant with low or no literacy is an indication that only their primary language should be used to communicate with them in immigration court. Without equitable access to language interpretation, ILSIs experience inequitable access to legal proceedings in immigration court. Streamline court allows for Spanish language interpreters to screen for Spanish language speakers, but that screening practice does not appear to be operable in immigration court. Identification of indigenous languages from the outset is a more productive approach.

In Streamline

Linguistically unassessed and unqualified attorneys are given discretion in requesting a language assessment for their clients. Fifty percent of attorneys were not capable of interpreting in Spanish, let alone an indigenous language according to a court interpreter. Attorneys are incentivized to not request language

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



assessments given it delays court hearings for which they do not get paid. Given the critical legal issues involved in criminal proceedings, without a language assessment for indigenous language speakers, the

intimidating nature of the proceedings imposes inequitable treatment and adverse sentencing for ILSIs given their language exclusion at pre-trial, at pleading, and at sentencing.

In Shelters for Unaccompanied Children

Linguistically unassessed and unqualified staff in the case management function of care for minors exemplifies a language exclusion practice that favors Spanish speakers for services mandated by DHHS in ORR contracted facilities. ORR does not monitor indigenous language speaking child populations for language needs. It allows contractors to exercise discretion; discretion that favors access for the majority Spanish speaking children over and above indigenous language speaking children. This practice ill considers the trauma that is present in indigenous children while they often experience language exclusion in shelters. This short sighted approach ignores the cultural differences and glosses over them much in the same manner as Streamline court does not recognize indigenous as a race, but rather as Hispanic. Limited English Proficiency programs were ordered by President William J. Clinton in 2002. DHS, DHHS, and The DOJ's compliance unit failed to ensure equitable treatment for indigenous language speaking children by 2015.

The budget for DHS in the southern border region was an estimated 8.9 billion dollars in 2014. The \$868 million 2014 ORR budget for unaccompanied children under DHHS did not translate into identifying indigenous language speaking children on the whole; even though \$707 million was designated to shelter expenses, and \$90 million for support services.¹¹⁵

International Standards

Language accessibility in legal proceedings of any kind is not an exceptional request. Denial of language rights under due process is an egregious practice in contravention to cited domestic law and that separates US jurisprudence from extant international standards. DHS's long acquiescence to this CBP practice, amounts to a policy of institutional racism tolerated on a daily basis against indigenous immigrants in violation of the UN Standard of Minimum Rules for the Treatment of Prisoners¹¹⁶ (SMRTP: 1977), and more recently, articles 33 and 40 (cited herein) of the UN Declaration of the Rights of Indigenous Peoples (DRIP 2007)¹¹⁷; standards that the US Department of State and the Obama Administration publicly supported.

*The United States underlines its support for the Declaration's recognition in the preamble that indigenous individuals are entitled without discrimination to all human rights recognized in international law . . . The United States reads all of the provisions of the Declaration in light of this understanding of human rights and collective rights.*¹¹⁸

The executive power did not apply the standards of the UN DRIP to indigenous migrants. Within the human rights framework of the Americas, as a signatory to the American Declaration, Article XXVI obligated the United States Department of Homeland Security and Customs

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Border Protection to respect the right of a person held against their will to an interpreter or translator without charge.¹¹⁹

LEP Policy Erosion

CBP's denial of due process in *short term holding facilities* in the Tucson Sector during the period of this study included denial of two key rights for ILSIs'; the right to communicate with consular authorities¹²⁰, and to contact family members. Such denial violated the Convention of the Rights of Migrant Workers and their Families. DHS's Office of the Inspector General's own 2005 Review of DHS Responsibilities for Juvenile Aliens¹²¹, and Article 36 (1) of the Vienna Convention on Consular Relations. Those rights to outside contacts are held by Inter- American Council on Human Rights as minimal principles; principles denied to 61% and 47% of adult immigrants in short term detention in 2014 in the Tucson Sector of Southern Arizona, respectively/.¹²² Inter-American Principle 87 states that the right to due process is a right of every person. That recent record demonstrates undesirable outcomes from ineffective LEP policy.

The 2014 LEP DHS Policy Guidance did not address structural flaws in LEP policy for ILSIs. After twelve years of DOJ issuing LEP Guidance, DHS superficially recognized the existence of four indigenous languages, *albeit in the wrong form of language for oral indigenous language speaking immigrants* in the US immigration system. CBP and ICE practice in implementation of DHS policy related to the rights of immigrants has been notoriously unreliable in the past. DHS's internal monitoring mechanism, the Inspector General's Office, is still ineffective in bringing about changes in policy for short term detention¹²³ where first contact with ILSIs is most often made.

The Office and Refugee Services and the Vera Institute report monthly on the adults and children they served, to DHHS and the EOIR division of the DOJ respectively. Neither federal department has instructed their agency contracted providers to carry out and publish a language assessment of detained populations. Streamline Court, under DOJ's jurisdiction, does not even recognize indigenous persons: only Hispanics, Blacks, or Whites.

Without public monitoring or congressional reporting, implementation of a universal and equitable LEP Policy will remain elusive. Without a multi-departmental executive level agreement on data sharing for language data, silo operational exceptions to the general pattern of accumulative of indigenous language exclusion will continue.

In a complex system such as the US immigration system, denial of access to substantive legal and contextual information about indigenous language speaking immigrants' legal status and social welfare effectively excludes them from being able to act on their own behalf. Language exclusion for individuals, families, and unaccompanied children can amount to a denial of equitable treatment in the US immigration system; a system that purports to be not only about enforcement and detention, but that seeks:

*to adjudicate immigration cases by fairly, expeditiously, and uniformly
interpreting and administering the Nation's immigration laws.¹²⁴*

In other words, for tens of thousands of indigenous language speaking immigrants, Executive Order 13166 has yet to be substantially implemented.

IV. Recommendations for Effective LEP Programs for Indigenous Language Speaking immigrants.

I. Establishing Viable LEP Standards

General Comment

Human language communities exist across all borders and in every country. Indigenous peoples are original peoples of the Americas who have guarded and fostered their own languages against great odds. Denying the rights of indigenous language speakers may temporarily appear to expedite removals, returns, deportations, and legal proceedings, but it perpetuates an unequal system of justice for immigrants who speak indigenous languages. It increases the number of reentries and separated families. One language is not a substitute for another when an indigenous language is disallowed during the myriad of contacts between indigenous language speakers and the US Immigration system. It merely becomes a fountainhead of injustice.

Asking for cooperation and bringing resources to indigenous language communities to develop needed materials is possible. What is needed are policy makers willing to reach out. That single act can begin to fill the tremendous gap between LEP policy and the exclusionary practices in immigration law enforcement and in immigration courts affecting tens of thousands of indigenous people now present in the United States.

The United States Departments of Justice, of Homeland Security and Health and Human Services can set a unified standard of interpretation in relation to indigenous language speakers. The DOD has adopted a credible standard for qualifying Spanish speakers, but those agencies have not.

There is a missing principle in the attempts to implement LEP policies in the piece meal fashion that best characterizes LEP policy after the issuance of Executive Order no. 13166 in 2000. There is no official recognition of a need to screen for the human presence of indigenous language speakers as part of the majority flow of immigrants from Mexico and Central America to the United States by DHS, DOJ or DHHS.

Immigration enforcement often follows modern economic and development planning which assumes that when under duress, different peoples act in similar ways. Indigenous peoples come from and sustain unique cultures that act in accordance with a millennium of experience. Their migration is not unique, but their cultural expressions are.

Goal 1: Recognize International Standards in Indigenous Language Rights under Due Process

Objectives:

1. Executive Administration states unequivocally its recognition of the existence of indigenous peoples as immigrants who have language rights in the United States' immigration system.
2. Instruct the executive departments tasked with immigration enforcement and detention (DHS, DHHS), and immigration law (DOJ/BOP) to recognize that right as a part of stated LEP policy.
3. The Executive Administration delineates the 80 indigenous languages native to Mexico and Central America and instructs DHS, DHHS, and DOJ to incorporate those languages in their LEP Policy.

Goal 2: Bid a contract for the creation of an audio device that contains recordings for use in screening 29 indigenous languages [in Phase I] with major dialects from teams of linguists, anthropologists, and an evaluation specialists. Contract for an oral language tool roll out on a continuous basis with new languages released at 3, 6, 9 and 12 month periods.

Objectives: Phase I

1. Use a series of language clues with higher and lower registers and common tenses on a pilot basis by the 4th month for four indigenous languages with testing in BP stations, Long Term Detention, family detention centers, immigration court, and in Streamline. Require two alternate language batteries for screening. Recorded results to be scored for congruency of match including gender and age differences (children, adolescents and adults). Adjust for any language or dialect not accurate for matches of > 5% for at least 50 ILSI speakers in that language or language dialect.
2. Modifications are made on the pilot screening tool's audio recordings within a 15 month framework and submitted as improvement results for the final version due in the end of the 15th month.
3. Once matches at required rate for four indigenous languages are completed, the screening tool is developed for five languages per quarter until completed month 15.

Objectives: Phase II

1. Develop a screening tool for the 20 most frequent non-Mayan indigenous languages in Mexico assessed in long term detention, in Border Patrol dispositions, in family detention centers, and in Streamline according to specifications in objectives 1, 2, and 3 for a contract of 14 months.

Goal 3: Implement a Strategy to address Critical ILSI Points of Contact for Assessing Primary language Identification.

Objectives:

1. Develop agency specific protocols for use of the language assessment tool (APLI: Assessed Primary Language Identification tool) for indigenous languages from Central America and Mexico

(see goal 1). The best tool will be portable, have a recorded response feature for audio record tracking, and be able to be verified by a speaker of that language from an independent language service. Randomized probes (targeted questions) can be used to demonstrate veracity with independent interpreter at onset of interpretation session. A Spanish language assessment tool can be used to determine first if a detainee is a Spanish speaker but only if done by a trained language specialist.

2. The APLI tool is then orally administered and only by a trained language specialist.

3. Incorporate Assessed Primary Language Identification tool [APLI] into immigrant biometric information used by DHS, DHSS, and DOJ for all immigration enforcement, detention, and legal services: at first contact, in detention, and in pre-trial intake for immigration and criminal court.

4. After pilot program is completed, develop internal agency specific training based on lessons learned from the agency specific protocols. Use an inter-agency approach in training to stress the initial assessment and verification system approach is an –inter-agency responsibility.

Goal 4: Provide legal language and applied language training for Indigenous Language Interpreters. Under contract by the EOIR of the DOJ, The program might take place at Tulane University, under the University of Arizona ALDI Program, or another viable indigenous language university language program a four week paid training program of indigenous language speakers involving both male and female indigenous adult language speakers, giving preference to those who have interpreted for courts and or from local indigenous communities and are at least 18 years old. Major dialects within indigenous languages identified during the on-going screening tool development - are additional identified. Indigenous language interpreters are then recruited for specialized training and interpretation program.

Objectives:

1. Provide indigenous language trainees access to oral and written legal information over the rights and process of long term detention including for BP biometric/biological and disposition info., bond hearings, master calendar, and asylum hearings.
2. DOJ's Office for Civil and Human Rights certifies interpreters with an 85-90% competency level or higher upon completion of training by rights.
3. Post training, offer incentive pay for re-contracting in three month contracts. Pay rates to be valued as the same rate for Spanish language interpreters in Streamline Court.
4. Outreach to local indigenous language speakers in local immigrant communities through indigenous cultural groups, NGO's and consulates. Offering 24 half time paid internships during a six month training program for immigration and criminal court certification in the SW border area, and six paid internships for two each under West Coast, Midwest and Mid Atlantic, and East Coast locations based on highest frequency indigenous language population counts.

Goal 5: Launch an inter-agency Pilot Program (CBP, ICE, EOIR, ORR) in locations and evaluate the program's indigenous language assessment outcomes in light of LEP policy and practice, with coordination of Pilot Program is under the EOIR's LEP mandate.

Objectives:

1. Phase-in APLI Tool *with newly trained indigenous language interpreters or certified language specialists* in various locations for a 14 month pilot program with language assessment and recording of identified languages at these critical contact points:

a. At First Contact

During initial documentation by BP agents in five short term detention facilities before ICE's Credible Fear interview. [Douglas, AZ and Casa Grande, AZ, Laredo, TX, McAllen, TX, and San Isidro, CA].

b. In Detention

In the initial interview by ICE ERO Officers with immigrants at six facilities, and then use on line interpreter verification with reporting to the DHS Office of Civil Rights and Civil Liberties [In six facilities: One ICE administered and a privately contracted in: Eloy and Florence, Arizona; in Family facilities in Karnes and Dilley Texas, and in San Antonio, TX, and Cibola Co. Milan, NM; for six total locations.

c. In Streamline:

In two Streamline immigration courts with Spanish language interpreters, screen ILLs's prior to the pre-trial interview with an attorney, and then verify during initial contact with on-line interpreters with APLI screening tool made available to interpreter prior to court session. [1 in South Texas and 1 Southern Arizona]

d. In Immigration Court

On-line language verification for UAC's languages at ORR contracted UAC / UC shelters to be carried out by indigenous language interpreters/specialists certified in use of APLI working with Case Managers; On -line language verification by indigenous language interpreters/specialists in the Clerk of Courts or equivalent office in pre-trial process for Streamline and immigration courts.

2. The DOJ's EOIR program contracts an independent social linguist and evaluation team with a PhD principle project manager to: 1. Conduct an evaluation of the validity of indigenous language assessment, to construct a replicable oral language validation process of independent contracted interpreters, 2. To ensure input from indigenous language communities through field visits, 3. Create an operational template for a verification process for the 8th most frequent and lower frequency indigenous languages for further development, and 4. Submits written comments to an inter-agency post evaluation review of the evaluation.

Evaluation activities also include: 1. A review of quarterly reports to Congress by DHS's Office of Civil Rights and Civil Liberties' ILSI language assessments recorded by ICE ERO Officers and LOP programs, 2. Indigenous language communities consultations for top seven indigenous languages identified to receive input through consultation regarding oral interpretation standards with language experts in U.S., Mexican, and C.A. universities. The contracted person must be given

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



access to detainees and released immigrants for whom interpretation was provided, and contact information, and official DHS credentialing for interviews with contracted interpreters.

4. DHS, DHSS and DOJ jointly review pilot program evaluation findings.

5. DHS, DHSS and DOJ modify pilot program based on evaluation findings from an inter-agency review according to best productive application of APLI in pilot program in locations, settings, and jurisdictions, and on incorporating the independent social linguist's recommendations. They provide the evaluator with a draft report, and incorporate the evaluator's comments in a final review.

Goal 6: Implement an LEP program that incorporates indigenous language assessment system wide in DHS, DHSS, and DOJ sub agencies: CBP, ICE, ORR, Streamline, Federal Immigration court, and in all contracted service providers.

Objectives:

1. Mandate sub-agencies to delineate in their annual budgets to funding for training of language specialists in the purpose of assessing indigenous primary languages at threshold contact points (during apprehension, before Credible Fear Interviews in short and long term detention, before Bond hearings, and before Streamline and their 1st Master Calendar hearing) and on-going reporting to their respective departments. This means: CBP, ICE, USCIS, ORR, Streamline, and Immigration Court.

2. Phase in training for Native Spanish speaking CBP and ICE officers to dovetail with a phase out of specialists in 18 months.

3. Quarterly monitoring by indigenous language experts independently contracted by the Compliance Office for DOJ, for the first 12 months of assessed indigenous language speakers and the frequencies of the languages in the pilot programs, with EORI of the DOJ providing an annual monitoring report after that.

4. Use of on-line language tools and websites by language specialists and trained Native Spanish speakers to identify languages and distinguish languages from dialects.

5. Congressional legislation to provide incentive pay increases for CBP and ICE personnel once trained in language assessment - is key.

Goal 7: Improve Transparency in LEP Program reporting.

Objectives

1. Annual external public reporting by the EOIR of the DOJ on findings on the Inter-Agency Language Assessment Program (training and APLI screening tool development results from pilot programs) for three years, to be issued in the 9th month of the fiscal year.

2. Publication of LEP program revisions made by DHS, CBP, and ICE agency heads, DOJ's EOIR and CRCL Offices, and DHHS's Family and Children Administration with published plans made public for full extension

of the screening and interpretation services (with specific languages named) within 3 months of the end of the 1 year pilot. Publisher to be EOIR of the DOJ.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

Appendix: ILSI Language Exclusion in the US Immigration System, p.1

Department Agency	DHS		DOJ			DHHS
	CBP	ICE	Immigration Court	Streamline Court	LOP/Know your rights programs	ORR
LEP Policy Mandates: 1. Create a mechanism to “assess on a regular and consistent basis” the “language assistance needs of current and potential customers” and to create a mechanism to assess their “capacity to meet these needs...”	This is not normally carried out by CBP. DHS instructs CBP to assess language at “First Contact”; but has no monitoring mechanism to validate assessment of ILSIs, no language reporting requirement in its Disposition Form, and has not published a public record of a BP Sector’s language assessment survey.	ICE temporarily used a Risk Assessment Classification tool, but the tool contained no language assessment component, now again solely at the discretion of ICE ERO Officers. Health Corps may record ILSIs’ foreign language but have no lang. protocol to determine if medical info. is adequately interpreted.	ICE ERO officers, Attorneys, Asylum Officers, and Judges Do not have an indigenous language assessment tool to use, let alone on a consistent basis.	Contact attorneys given wide discretion in requesting Spanish language competency assessment from Spanish language interpreters. Requesting lang. assessment increases detention 2 wks. on average if interpretation service is arranged.	LOP Programs are contracted to serve detained immigrants. Limited access in detention restrains time for lang. assessment for adults; none is administered. UAC children are not restrained by time for access; but DOJ does not require a lang. assessment.	ORR assigns the language assessment of unaccompanied ILSI children to Case managers during intake at point of entry in contracted shelters. Case Managers are unqualified linguistically to complete a language assessment, and they have no tool to carry one out.
2. To provide “oral language assistance in response to the needs of LEP customers, in both face-to-face and telephone encounters”.	CBP systematically does not provide language interpretation for ILSIs in Short Term Detention. On Line interpretation provided only at the discretion of linguistically unqualified CBP officers /agents; evidence suggests no lang. assessment protocol is used nor exists.	1. Long term detention intake staff are instructed to note detainee language without any lang. assessment tool to identify foreign languages; 2 Left up to the Discretion of ICE ERO Officers w/out language assessment for indigenous languages.	Spanish interpreters often allowed to interpret in Spanish for primary speakers of indigenous languages. Interpretation requests made at the discretion of ICE ERO officers, Attorneys (private, Panel, and Pro bono) Asylum Officers, and Judges. Only Asylum Officers are trained to consider cultural practices including language.	Judges may request On - Line indigenous language interpreters but are also untrained in language assessment. No indigenous lang. interpreters are employed for regular Streamline court sessions despite high numbers of indigenous speakers in court.	LOP programs largely focus on Spanish speaking group presentations with smaller ILSI populations possibly receiving interpretation; or if an individual’s language is detected in one-on-one mtgs. interpretation may or may not be offered.	For most ILSIs who speak an indigenous language, no interpretation (live or on- line) is provided. limited on- site interpretation provided only if a staff person speaks an indigenous lang. of an ILSI in custody. Use of other children as interpreters allowed except of psycho logical assessment.

**Exclusion of Indigenous Language Speaking Immigrants (ILSI)
In the US Immigration System, a technical review.**

Appendix: ILSI Language Exclusion in the US Immigration System, p.2

Department	DHS		DOJ			DHHS
Agency	CBP	ICE	Immigration Court	Streamline Court	LOP /Know your Rights programs	ORR
<p>LEP Policy Mandates:</p> <p>3. To translate vital documents in languages other than English where a significant number or percentage of the customers they served or were eligible to be served had limited English proficiency.</p>	Systematically issued only in English, occasionally in Spanish, but recently announced written “I Speak” poster and cards were ill - suited to oral language speakers illiterate in indigenous languages.	Key documents not translated into Indigenous languages; but oral translation is the most appropriate format given illiteracy in indigenous languages.	Key documents not translated into Indigenous languages; but oral translation is the most appropriate format given illiteracy in indigenous languages.	Key documents not translated into Indigenous languages; but oral translation is the most appropriate format given illiteracy in indigenous languages.	Oral live LOP Group presentations not translated into Indigenous language with translated visuals; no working documents translated nor presented with audio aids for illiterate ILSIs.	Generally N.A. to minors. Case managers use oral interpretation when UAC ILSI is identified while in custody.
4. Translated materials may include paper and electronic documents such as publications, notices, correspondence, web sites, and signs.	None except for the single Phrase: “I Speak”	None.	None.	None.	None.	None.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Endnotes

¹ “On March 1, 2003, the Homeland Security Act of 2002, Section 462, transferred responsibilities for the care and placement of unaccompanied children from the Commissioner of the Immigration and Naturalization Service to the Director of the Office of Refugee Resettlement (ORR)”. <http://www.acf.hhs.gov/programs/orr/programs/ucs/about>, accessed 10 May, 2015

² See: Executive Order 13166 Improving Access To Services For Persons With Limited English Proficiency, <http://www.justice.gov/crt/about/cor/Pubs/eolep.php>. accessed 10 May, 2015

³ See: Strategic Plan To Improve Access To HHS Programs and Activities By Limited English Proficient (Lep) Persons, <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/lepstrategicplan2000.pdf> accessed 5 April, 2015.

⁴ See: <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/lepstrategicplan2000.pdf> accessed 18 March, 2015

⁵ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, DEPARTMENT OF HOMELAND SECURITY [DHS Docket No. DHS–2009–0032, Office for Civil Rights and Civil Liberties, DHS. http://www.dhs.gov/sites/default/files/publications/crcl_lep_guidance_0.pdf accessed 19 April, 2015.

⁶ See: 5 U.S.C. 310, 42 U.S.C. 2000d– 2000d–7. SOURCE: 68 FR 10904, Mar. 6, 2000. 6 CFR 21 - NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF HOMELAND SECURITY. <http://www.gpo.gov/fdsys/pkg/CFR-2014-title6-vol1/pdf/CFR-2014-title6-vol1-part21.pdf> accessed 22 April, 2015.

⁷ See cited quotes from page 2 in: http://www.lep.gov/resources/092111_Prosecutors_Planning_Tool.pdf

⁸ See; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, p. 21766. , accessed 10 May, 2015 http://www.dhs.gov/sites/default/files/publications/crcl_lep_guidance_0.pdf

⁹ Ibid. p. 21760 the LEP Policy sets out mandates:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service provided by the program to people’s lives; and
4. The resources available to the grantee/recipient and costs.

¹⁰ “The Office of the Chief Immigration Judge (OCIJ) provides overall program direction . . . for over 260 immigration judges in 58 immigration courts . . . The Chief Immigration Judge carries out these responsibilities with Deputy and Assistant Chief Immigration Judges, a Chief Clerk’s Office, a Language Services Unit, and other functions that coordinate management and operation of the immigration courts”. See: <http://www.justice.gov/eoir/ocijinfo.htm> accessed 4/14/15. accessed 25 April, 2015.

¹¹ Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools From The Field, DOJ. Sept. 21, 2004, page 1, <http://www.justice.gov/crt/about/cor/lep/Final%20Tips%20and%20Tools%20Document.%209%2021%2004.pdf> accessed 25 April, 2015.

¹² See the National immigrant Justice Center’s chronology on the bed count quota: http://immigrantjustice.org/sites/immigrantjustice.org/files/Immigration_Detention_Bed_Quota_Timeline_2014_03.pdf accessed 24 April, 2015.

¹³ Operation Desert Grip was initiated on the Tohono O’odham Nation in 2002 in response to the 9-11 events. See: <http://america.aljazeera.com/multimedia/timeline/2014/5/tohono-o-odham-timeline.html> and general background, see: U.S.-Mexico border wreaks havoc on lives of an indigenous desert tribe, Kate Kilpatrick, Al Jazeera, 25 May, 2014, <http://america.aljazeera.com/articles/2014/5/25/us-mexico-borderwreakshavocwithlivesofanindigenousdesertpeople.html>

¹⁴ See: Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in the United States of America, 30 August 2012, see items no. IA8, 87-90, 92. accessed 27 April, 2015.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

- ¹⁵ ICE Enforcement and \ Removal Operations Report, Fiscal Year 2014, December 19, 2014
http://www.dhs.gov/sites/default/files/images/ICE%20FY14%20Report_20141218_0.pdf accessed 28 April, 2015.
- ¹⁶ See: http://en.wikipedia.org/wiki/List_of_Mayan_languages . Wikipedia data is based on [Ethnologue.com](http://ethnologue.com) accessed 19 April, 2015.
- ¹⁷ See: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf accessed 28 May, 2015.
- ¹⁸ See the Report Deprivation, not Deterrence by author, see pages: 3-4, 15.
<http://www.guamap.net/uploads/544f3e9ad7ba4.pdf> accessed 4/28/15. Last accessed 10 June, 2015.
- ¹⁹ DHS Needs to Comprehensively Assess Its Foreign Language Needs and Capabilities and Identify Shortfalls, a GAO report to Report to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate, 2010, pgs. 32, 40, 41.
<http://www.gao.gov/assets/310/305850.pdf> accessed 14 May, 2015.
- ²⁰ Ibid p.30
- ²¹ GAO: DHS Needs to Comprehensively Assess Its Foreign Language Needs and Capabilities and Identify Shortfalls,
<http://www.gao.gov/assets/310/305850.pdf> accessed 18 May, 2015.
- ²² GAO DHS Needs to Comprehensively Assess. . . Ibid, see table 4.
- ²³ See US Border Patrol, Spanish TBLT program, <http://www.cbp.gov/careers/join-cbp/which-cbp-career/border-patrol-agent/cbp-bp-academy> accessed 18 April, 2015 15.
- ²⁴ GAO DHS Needs to Comprehensively Assess . . . , ibid, p. 20.
- ²⁵ GAO DHS Needs to Comprehensively Assess . . . , ibid See footnote c, table 4. Components' and Offices' Foreign Language Programs and Activities, p. 20
- ²⁶ GAO DHS Needs to Comprehensively Assess . . . ibid, 16-17.
- ²⁷ See Section III: Language Exclusion of ILSI Individuals, Language Exclusion Cases, and Language Exclusion of Unaccompanied ILSI Children, Vagaries of Sheltering Indigenous Unaccompanied ILSI Children.
- ²⁸ See: Ethnologue entries: [Q'anjob'al](http://www.ethnologue.com/search/search_by_page/Guatemala), [Mam](http://www.ethnologue.com/search/search_by_page/Guatemala), [Q'eqchi](http://www.ethnologue.com/search/search_by_page/Guatemala), [K'iche'](http://www.ethnologue.com/search/search_by_page/Guatemala). All Guatemalan indigenous languages:
https://www.ethnologue.com/search/search_by_page/Guatemala, accessed 1 June, 2015.
- ²⁹ For indigenous languages in México, see: *Lenguas Indígenas Nacionales en Riesgo de Desaparición*, Instituto Nacional de Lenguas Indígenas, 2000, page. 21-24.
http://site.inali.gob.mx/pdf/libro_lenguas_indigenas_nacionales_en_riesgo_de_desaparicion.pdf , accessed 1 June, 2015.
- ³⁰ Source Ethnologue, <https://www.ethnologue.com/browse/names/k> , accessed June 1, 2014.
- ³¹ See Variants and classification see: Kaufman, Terrence (2001). ["The history of the Nawa language group from the earliest times to the sixteenth century: some initial results"](http://www.ethnologue.com/language/azz) (PDF). Revised March 2001. Project for the Documentation of the Languages of Mesoamerica. Retrieved 2007-10-07. For Morpho-syntax see:
<https://www.ethnologue.com/language/azz> , accessed 1 June, 2015.
- ³² For discussion on word order typology, see Chapter 4 in *Describing Morpho-Syntax*, Thomas E. Payne, Cambridge University Press, 1997. pp: 71-74.
- ³³ For Náhuatl and French grammars see: See: Fernand De Varennes (ibid, p. 5), and Linn, Andrew (2006), "English grammar writing", in Aarts, Bas; McMahon, April, *Handbook of English Linguistics*, Wiley-Blackwell, p. 47, For first Spanish Grammar, see: Henry Kamen, *Empire: how Spain became a world power, 1492-1763*, 2002:3.
- ³⁴ Fernand de Varennes, *Language, Rights and Opportunities; The Role of Language in the Inclusion and Exclusion of Indigenous Peoples*, 17 February 2012, page 5, 7; unpublished (used with permission).
- ³⁵ See: Ley General De Derechos Lingüísticos De Los Pueblos Indígenas,
<http://www.diputados.gob.mx/LeyesBiblio/pdf/257.pdf> , accessed 6-1-15.
- ³⁶ For Guatemala, see the 2003, National Languages Act, Decree No. 19.[Ley de Idiomas Nacionales Decreto No. 19-2003], Chapter III, Article 9 in: *Primer on the Rights of Indigenous Peoples - Guatemala: PDH, 2011* [Cartilla de los Derechos de los Pueblos Indígenas --Guatemala: PDH, 2011].
<http://www.pdh.org.gt/archivos/flips/cartillas/cartilla10/cartilla01.pdf> accessed 1 June, 2015.
- ³⁷ See: Chapter III, Article 9 in: *Primer on the Rights of Indigenous Peoples - Guatemala : PDH , 2011* [Cartilla de los Derechos de los Pueblos Indígenas --Guatemala: PDH, 2011]. accessed 3 June, 2015
<http://www.pdh.org.gt/archivos/flips/cartillas/cartilla10/cartilla01.pdf> accessed 6-1-15.
- ³⁸ Mexico's linguistic rights law has antecedents in the Ley General de Derechos Lingüísticos de los Pueblos Indígenas and in the Ley Orgánica de la Administración Pública Federal; Articles, 1,2, and 11 in the Ley Federal de las

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



Entidades Paraestatales, and in regulatory law: Articles 1 and 10, Section II of the Estatuto Orgánico del Instituto Nacional de Lenguas Indígenas. See: INSTITUTO NACIONAL DE LENGUAS INDIGENAS CATALOGO de las Lenguas Indígenas Nacionales: Variantes Lingüísticas de México con sus autodenominaciones y referencias geoestadísticas, page 31, http://dof.gob.mx/nota_to_pdf.php?fecha=14/01/2008&edicion=MAT accessed 4 June, 2015

³⁹ See Table 1[cuadro 1] in México: Lenguas Indígenas Nacionales en Riesgo de Desaparición, Instituto Nacional de Lenguas Indígenas, 2000, page. 23
http://site.inali.gob.mx/pdf/libro_lenguas_indigenas_nacionales_en_riesgo_de_desaparicion.pdf , accessed 6 June, 2015.

⁴⁰ Related to NYC and California Mixtec community see: <http://www.utsandiego.com/news/2011/may/28/some-ny-immigrants-cite-lack-of-spanish-as-barrier/> ,accessed 1 June, 2015.

⁴¹ For diagnosis of children trauma and PTSD, see: <http://www.mentalhealth.com/home/dx/posttraumaticstress.html>

⁴² See EOIR: <http://www.justice.gov/eoir/pr/eoir-expands-legal-orientation-program-sites> accessed 18 may, 2015.

⁴³ See Vera institute, Legal Orientation Program Evaluation and Performance and Outcome Measurement Report, Phase II, 2008, http://www.vera.org/sites/default/files/resources/downloads/LOP_evaluation_updated_5-20-08.pdf , p. 87, accessed 18 may, 2015.

⁴⁴ Vera Institute, Ibid.

⁴⁵ Vera Institute, Ibid. p 21.

⁴⁶ LOP program information based on an interview with a CEO of a South Texas LOP provider. Interviewed on 5-21-15.

⁴⁷ See Vera institute, ibid. pp. 14-18, 87.

⁴⁸ Cost Savings Analysis - The EOIR Legal Orientation Program (Updated April 4, 2012) cited a 1999 EOIR LOP study, U.S. Department Of Justice Executive Office For Immigration Review, Evaluation Of The Rights Presentation.

<http://www.justice.gov/sites/default/files/eoir/legacy/2013/04/18/rtspresrpt.pdf> accessed 20 may, 2015

⁴⁹ This conclusion is based on conversations with attorneys at LOP providers in Arizona and Texas; interview dates 16 March, 2015, and 14 May, 2015 respectively. The attorneys have a combined experience of over twenty years in immigration law.

⁵⁰ See: DGS website: <http://www.dhs.gov/news/2014/12/19/dhs-releases-end-year-statistics> accessed 27 May, 2015

⁵¹ See DHS Website for 2014 ICE deportations/removals. <http://www.ice.gov/removal-statistics#ft4> accessed 28 May, 2015.

⁵² The 42% of released immigrant families (n=247) was from data derived from interviews with adults from 2-27-15 through 4-29-15 at the Catholic Community Services *Alitas* Program in Tucson, the only overnight hospitality shelter in Tucson, Arizona, the headquarters for the Tucson Border Patrol Sector [read: southern Arizona] where families were typically released.

⁵³ Interview on 4-11-15 with an immigration attorney with over 14 years' experience in US immigration court in Texas. The attorney requested name withheld given on –going cases and the need for client confidentiality.

⁵⁴ Other immigrants represented were: Hondurans 24%, with Salvadoran and Mexican adults, less than 6% each. See: Deprivation, Not Deterrence, Blake Gentry, Guatemala Acupuncture and Medical Aid Project, Oct. 2014. pages 1-2, <http://www.guamap.net/uploads/544f3e9ad7ba4.pdf> accessed 28 May, 2015

⁵⁵ Ibid.

⁵⁶ Family Detention Report, October 2014, Locking Up Family Values, Again. A Report On The Renewed Practice of Family Immigration Detention by Lutheran Immigration & Refugee Service and the Women's Refugee Commission.p.17.

⁵⁷ Ibid. Family Detention Report, October 2014. p.6

⁵⁸ Ibid. Family Detention Report, October 2014. p. 12.

⁵⁹ *Detention and Removal: What Now and What Next?* Institute for the Study of international Migration, Georgetown University. Pages: i-ii, 3.

<https://isim.georgetown.edu/sites/isim/files/files/upload/Detention%26Removalv10%20%281%29.pdf> accessed 28 May, 2015.

⁶⁰ See: U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised), DHS Office of the Inspector General, pages 11, 29, 30. http://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf accessed 28 May, 2015.

⁶¹ See for example, *Idiomas y Cultura* [p. 17] on the language status of Náhuatl o Pipi speakers and other indigenous language groups in El Salvador; *The situation of indigenous peoples in El Salvador*, Report to the UN Human Rights Council, Twenty-fourth session, *United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya*. 25 June 2013. <http://unsr.jamesanaya.org/docs/countries/2013-report-elsalvador-a-hrc-24-41-add2-en.pdf> accessed 18 May, 2015

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



⁶² See: Human Rights and Indigenous Issues, Report of the Special Rapporteur for Indigenous Peoples on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/57 to the Human Rights Commission. 24 February, 2003, <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/G03/111/33/PDF/G0311133.pdf?OpenElement> accessed 25 May, 2015

⁶³ Guatemala: la cambiante cara del narco, Julie Lopez, 30 July, 2013. <http://es.insightcrime.org/analisis/guatemala-la-cambiante-cara-del-narco>, accessed 26 May, 2015

⁶⁴ See the following account in Spanish about murders in three separate jurisdictions in Guerrero State; one young couple and separately, two men in Iguala, a taxi driver on the outskirts of Chilpancingo, and two men in the rural area of Las mesas, San Marcos, Guerrero, Mexico. [Siete muertos por la narcoviolencia en Iguala, San Marcos, Ixcapuzalco y Chilpancingo, El Sur, Periódico del Guerrero \[México\]](#), 2 abril 2015, accessed 19 April, 2015.

⁶⁵ The author's personal knowledge through contact with the family affected in late May, 2015.

⁶⁶ Author interview with an ICE released bilingual Maya Mam male in the first week of June, 2015 in Tucson, Arizona.

⁶⁷ In 2006, detained persons awaiting a Master Calendar Hearing were: n=279,325. VERA Institute LOP program recipients were: n=15,747. [Legal Orientation Program, Evaluation and Performance and Outcome Measurement Report](#), Phase II, Vera Institute, Nina Siulc, Zhifen Cheng, Arnold Son, Olga Byrne, 2008. 34-35.

⁶⁸ Ibid. Vera Institute.

⁶⁹ Total ICE removals in 2006: 272,389. Guatemalans as a percentage of removals: 7%. 2015 ILSI Proxy among Tucson BP Sector released families: 42% of all families released. $272,389 \times .07 \times .42 = 8,008$. ICE figures available at: https://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_06.pdf accessed 19 May, 2015.

⁷⁰ Model hearing Program, US DOJ, 2014. See:

http://www.justice.gov/sites/default/files/eoir/legacy/2014/05/06/Model_Hearing_Program_Manual.pdf

⁷¹ [Language Access Problems Among DOJ's State Court Grantees](#), National Language Access Advocates Network, Feb. 2, 2010. p.4. last accessed 23 June, 2015.

⁷² From 19 June, 2015 interview. "Alberto" is an assigned name for a 20 year old Quiche speaker from Guatemala.

⁷³ [Language Access Advocates Network letter to Assistant Attorney General Thomas](#), 2010, ibid. p. 4.

⁷⁴ Detainee Working Group of the New York University Chapter of the National Lawyers Guild, [Broken Justice: A Report on the Failures of the Court System for Immigration Detainees in New York City](#) (Vol. I: Sep. 2006-May 2007), p. 18 accessed 20 May, 2015.

⁷⁵ Language Access Problems Among DOJ's State Court Grantees, Feb. 2, 2010. p. 4, IBID. <http://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/FactSheet.LA-StateCourts.pdf> last accessed 23 June, 2015.

⁷⁶ National Lawyers Guild, ibid. p 3.

⁷⁷ Interview with the immigrant occurred on 16 May, 2015 in Tucson, Arizona.

⁷⁸ Arrested on Entry: Operation Streamline and the Prosecution of Immigration Crimes, Migration Policy Institute, Donald Kerwin, Kristen McCabe, April 29, 2010, <http://www.migrationpolicy.org/print/4371#.VR-S2OGm3Yo> accessed 3 April, 2015.

⁷⁹ "Yuma, El Paso, and Rio Grande Valley sectors discontinued using Streamline between 2013 and 2014.", both citations from: [Streamline: Measuring Its Effect on Illegal Border Crossing](#), Office of Inspector General, DHS., May 15, 2015. https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf accessed 1 June, 2015.

⁸⁰ See United States Sentencing Commission report 2014. http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts_Illegal-Reentry_FY14.pdf accessed 3 June, 2015

⁸¹ FACT SHEET: White House Blog: Immigration Accountability Executive Action, Nov. 20, 2014. <https://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action> accessed 3 June, 2015

⁸² Issue Brief: Interior Immigration Enforcement by the Numbers, p 6. <http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/files/Interior%20Immigration%20Enforcement.pdf>, Level I offenses defined in § 101(a)(43) of the Immigration and Nationality Act. <http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf> accessed 5-9-2015. accessed 4 June, 2015

⁸³ US Sentencing Commission. Quick Facts Illegal Reentry Offenses 2014, http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts_Illegal-Reentry_FY14.pdf, accessed 3 June, 2015.

⁸⁴ See: United States Sentencing Commission report 2014. Ibid.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

- ⁸⁵ See United States Sentencing Commission report 2015 (2014 data). See Immigration / Illegal re-entry, and Archives for 2012-2013. <http://www.ussc.gov/research-and-publications/quick-facts> , accessed 2 June, 2015.
- ⁸⁶ See: ACLU: https://www.aclu.org/files/assets/operation_streamline_issue_brief.pdf accessed 4 June, 2015
- ⁸⁷ See: <http://www.lep.gov/13166/lepqa.htm> accessed 4 June, 2015
- ⁸⁸ See: Federal Bureau of Prisons: Search for "Limited English Proficient". Author reviewed eight audits, four for private facilities and four Federal one. http://www.bop.gov/about/facilities/contract_facilities.jsp accessed 3-4 June, 2015
- ⁸⁹ Contacts for Diagram taken from DHS: Unaccompanied Children on the Southwest Border. <http://www.dhs.gov/unaccompanied-children> [accessed 3/28/15], and author's interview with anonymous former UAC staff at UAC ORR contract facility in the Southwest border region. Interview competed on March 25, 2015. Contractor's non-disclosure agreements disallow identification of source.
- ⁹⁰ What the Border Patrol did not disclose at that time was the 412% annual increase in the total number of family members crossing the southwest border during the same time. See Deprivation, Not Deterrence. By the author. P.38. <http://www.guamap.net/uploads/544f3e9ad7ba4.pdf>
- ⁹¹ All statistics taken from the Office of Refugee Resettlement, <http://www.acf.hhs.gov/programs/orr/programs/ucs/about#stats> accessed on 19 March, 2015
- ⁹² Proxy calculation based on three month population for ILSI families (N =247) in Tucson BP sector released in Spring 2015 of 42% [n=103]. (.32 [Guat. Children] x 57,496 total UAC in 2014). There are differences between numbers of UACs arrested and detained from those deported. For 2013 stats see: https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf accessed 26 June, 2015.
- ⁹³ The Child and Families Administration issued a final rule on 12/24/14 for Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children. Section § 411.22 in for Policies to ensure investigation of allegations and appropriate agency oversight. <https://www.federalregister.gov/articles/2014/12/24/2014-29984/standards-to-prevent-detect-and-respond-to-sexual-abuse-and-sexual-harassment-involving#h-17> accessed 6 June, 2015
- ⁹⁴ See Office for refugee Resettlement, Office of the Administration for Children and Families, Department of Health and Human Services. <http://www.acf.hhs.gov/programs/orr/programs/ucs/about> accessed 4/28/15. accessed 5 June, 2015
- ⁹⁵ See: [Detention and Removal: What Now and What Next?](#) p. ii. last accessed 25 June, 2015
- ⁹⁶ see: Children Entering the United States Unaccompanied: Section 2; Safe and Timely Release from ORR Care , 2.2.2 Contacting Potential Sponsors, January 30, 2015, <http://www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied-section-2> accessed 8 June, 2015
- ⁹⁷ Information confirmed in an interview with an Arizona based immigration attorney familiar with the program on 16 March, 2015. The program is managed by the Office of Refugee Resettlement. <http://www.acf.hhs.gov/programs/orr/programs/ucs/about> (accessed 28 May, 2015); also confirmed from written e-mail correspondence from Vera Institute's UAC program coordinator, Annie Chen on June 1, 2015.
- ⁹⁸ Case Management, Institute for Social and Economic Development, Washington D.C. Pdf file undated. See; http://www.acf.hhs.gov/sites/default/files/orr/case_management_508.pdf accessed 28 April, 2015.
- ⁹⁹ ORR Policy provides for interpretation services within contracted shelters, but no language assessment tool is used according to Thomas Pabst, Policy Division, Office of Refugee Resettlement, phone interview on March 20 and March 23, 2015.
- ¹⁰⁰ See the Case Manager position advertisement from the Catholic Charities Diocese of New York, the location where more unaccompanied children were released to their relatives than in any other state in 2014. <http://www.catholiccharitiesny.org/media/files/Case%20Manager%20UMP%20-%202003093%20POSTING%20%282%29.pdf> accessed 9 June, 2015
- ¹⁰¹ Orr website, FAQ's, <http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html> accessed 3/29/15
- ¹⁰² Interview with a trilingual youth care worker who served in an Arizona privately contracted provider. March 25, 2015. Name withheld by request due to corporate confidentiality requirements.
- ¹⁰³ Interview with the Mayan Language speaker was carried out in 9 May, 2015. Identification is withheld due to need for confidentiality of the detained unaccompanied children, and of the observer present.
- ¹⁰⁴ Interview with a trilingual youth care worker, Ibid., March 25, 2015.

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.

¹⁰⁵ In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States Fact Sheet, November 14, 2014.

<http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm> accessed 19 March, 2015.

See also: [Dept. of] State Letter 15-01, In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States – Eligibility for ORR Benefits and Services Published: January 7, 2015. <http://www.acf.hhs.gov/programs/orr/resource/state-letter-15-01#Attachment> accessed 19 March, 2015.

¹⁰⁶ UN International Covenant on Civil and Political Rights [UNICCPR] (1976) see Article 14. (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> accessed 2 June, 2015.

¹⁰⁷ FIRRP reported 26% of unaccompanied minors interviewed spoke a Mayan Language (see FIRRP, *ibid.* p. 20).

Deprivation, not deterrence documented 28% of adult immigrants spoke an indigenous language, while 26% spoke a native language as their first or only language. Seeking Protection, Enduring Prosecution; The Treatment and Abuse of Unaccompanied Undocumented Children In Short-Term Immigration Detention, Florence Immigrant and Refugee Rights Project, Ana Arboleda and Dorien Ediger-Seto, 2009: 6. <http://www.firrp.org/media/BPAbuseReport.pdf>

¹⁰⁸ FIRRP. *Ibid.* p. 16

¹⁰⁹ Deprivation, not Deterrence, by author, p.4 see: <http://www.guamap.net/uploads/544f3e9ad7ba4.pdf> accessed 3 June, 2015

¹¹⁰ UNICCPR, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> *Ibid.* pp 87, p. 29. accessed 11 June, 2015

¹¹¹ ICE Enforcement and Removal Operations Report, Fiscal Year 2014, December 19, 2014

http://www.dhs.gov/sites/default/files/images/ICE%20FY14%20Report_20141218_0.pdf accessed 10 June, 2015

¹¹² Based on calculation of 42% ILSIs from a population of 54,423 Guatemalans removed in FY 2014. See: Table: FY 2014 Demographic Shift for ICE Removals, Shifting Migration Patterns and Demographics, ICE.

<http://www.ice.gov/removal-statistics> accessed 10 May, 2015

¹¹³ UAC's detained in 2006; 7,746 x 26.1% (Guatemalan children) x (42% 2015 proxy for ILSI children in Tucson BP sector) = 849 ILSI children in detention. Data Source. Report to Congress 2006, ORR, Admin. of Children and Families, DHHS, http://www.acf.hhs.gov/sites/default/files/orr/annual_orr_report_to_congress_2006.pdf, pages ii and p. 52 (Table: FY 2006 UAC Countries of Origin), accessed 11 June, 2015.

¹¹⁴ See: Office of Refugee Resettlement Year in Review - FY2014, January 16, 2015;

<http://www.acf.hhs.gov/programs/orr/resource/office-of-refugee-resettlement-year-in-review-fy2014> accessed 11 June 2015.

¹¹⁵ Caring for thousands of children crossing illegally into the U.S. to cost \$868 million in 2014, Borderzine, Hecho Flores, June 4, 2014. <http://borderzine.com/2014/06/caring-for-thousands-of-children-crossing-illegally-into-the-u-s-to-cost-868-million-in-2014/> accessed 13 June, 2015

¹¹⁶ See Article 30. (3) *Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter of physical or mental health.*

https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf accessed 8 June, 2015.

¹¹⁷ See: UN DRIP, Article 13. 2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf accessed 8 June, 2015.

¹¹⁸ Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples, undated by the US Dept. of State, <http://www.state.gov/documents/organization/184099.pdf>, See also the White House fact sheet on US interests at the UN, the DRIP statement undated as well. See: <http://www.whitehouse.gov/the-press-office/2011/09/20/fact-sheet-advancing-us-interests-united-nations> For the actual date of Dec. 16, 2010, see the unofficial release from ACHP,

<http://www.achp.gov/docs/UN%20Declaration%20background%20info%20Mar%202013.pdf>, all last accessed 9 June 2015.

¹¹⁹ Furthermore the Article XXXVI was reaffirmed by Article 8 of the American Convention, IACHR Report, pp 20, p 57.

¹²⁰ See: UN Convent on the Rights of Migrant Workers and Members of their Families. 7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other

Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review.



manner: (a) The consular or diplomatic authorities of his or her State of origin or of a State, ... if he or she so requests, be informed without delay of his or her arrest or detention . . . ; (b) The person concerned shall have the right to communicate with the said authorities, and he or she shall also have the right to receive communications without delay; (c) The person concerned shall be informed without delay of this right . . .to correspond and to meet with representatives to make arrangements with them for his or her legal representation.

<http://www2.ohchr.org/english/bodies/cmw/cmw.htm> last accessed 10 June, 2015

¹²¹ See under: A Review of DHS' Responsibilities for Juvenile Aliens, Office of the Inspector General, Department of Homeland Security, September 2005, pg. 12. http://www.oig.dhs.gov/assets/Mgmt/OIG_05-45_Sep05.pdf last accessed 14 June, 2015.

¹²² See; IACHR Report, pp79,p.26-27

¹²³ See: Ephemeral Standards for Short Term Detention, Deprivation, not Deterrence, Oct. 2104. Guatemalan Acupuncture and Medical Aid Project., <http://www.guamap.net/uploads/544f3e9ad7ba4.pdf> , See also: Freezing cells and sleep deprivation: the brutal conditions migrants still face after capture, the Guardian. Dec. 2014. Last Accessed 18 June, 2015

¹²⁴ DOJ's EOIR Mission statement: <http://www.justice.gov/eoir> accessed 21 June, 2015