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Q&A

How did you become involved in doing research?

My experience working at the Centro Hispano here in Lawrence, where many clients speak an Indigenous Mexican language, and my time spent studying Kichwa (at KU and in Ecuador), provided me with my research idea. Then, to provide the helpful thrust of necessity, there was my Latin American Studies Capstone class (a requirement to graduate), looming closer and closer. Thus, at the nexus of inspiration and obligation, was my project born.

How is the research process different from what you expected?

I had to reformulate my research question profoundly. Also, it turns out that people, in general, are much more helpful than I originally assumed.

What is your favorite part of doing research?

The unexpected discoveries (which can also be maddening!).

On the Translation of Fear: A Study of Ecuadorian Kichwa Speakers and the US Immigration System

Gustin Bova

ABSTRACT

This study addresses the situation of Ecuadorian Kichwa-speaking migrants who, upon arriving at the US border (and being put into Expedited Removal), claim a fear of returning to Ecuador. The study draws data primarily from the Credible Fear Interview stage of this process. The author performed interviews with Kichwa-English interpreters who have worked in Credible Fear Interviews, and complemented this with bibliographic investigation. The study ultimately argues that conflicting understandings grounded in language, class, and culture, along with procedural issues, are likely leading officials to deny the Credible Fear claims, and applications for relief, of Ecuadorian Kichwa speakers at an excessive rate. The study draws on the experience and judgments of interpreters, viewing them as both credible experts and constituents of the process itself. The study concludes with questions for further research and points for practical consideration.

INTRODUCTION

Over the last few decades, Indigenous Latin Americans have migrated to the US in greater and greater numbers (see, e.g., Fox and Rivera-Salgado 2004). Many of these migrants, upon arriving at the US border, speak little to no Spanish. The principal sending regions for these migrants are Southern Mexico, Central America, and, to a lesser extent, the Andes. While these migrants are easily distinguished in their home countries, the United States immigration system has often failed to accommodate their linguistic and cultural distinctness. They have been frequently incarcerated, interviewed, processed and deported in a language they do not command (e.g., Camayd-Freixas 2008, 2009). They have, in criminal trials, been deemed mentally deficient, emotionless, and monstrous due to lack of interpretation.¹ And while recent events, including the “border crisis” of 2014, have brought increased attention to these migrants,² they remain a largely invisible and disadvantaged population within the US legal system.

Although scholars have worked to address closely related issues, there is a dearth of research on this particular topic. For example, legal scholars have worked to establish the right to interpretation in one’s best language, even for undocumented migrants who speak rare languages (Ackermann 2010; Davis et al. 2004; León 2014). And anthropologists and linguists have analyzed the interface of Indigenous defendants and Neo-colonial legal systems—particularly in the Australian and Alaskan contexts (Cooke 2002; Eades 2008; Morrow

1993). And finally, scholars in the field of interpreting/translation studies have done extensive work unsettling notions of interpretation, cross-cultural communication, and language comprehension in legal settings (Hale 2008; Hertog 2002; Mikkelson 2008). However, research remains scant on Indigenous Latin American migrants and the US legal system—on the nature of communication in these encounters and the implications for due process (one exception being León 2014).

In this paper, I seek to examine the interactions of a particular population with a particular aspect of the US legal system: namely, those of Ecuadorian Kichwa-speaking migrants³ with the Credible Fear Interview (and, by extension, the full Merits Hearing). In doing so, I seek not only to expose a problem but to explain its nature in detail, in order to strengthen efforts at reform. I ultimately conclude that conflicting understandings grounded in language, class, and culture, along with procedural issues, are likely leading officials to deny the Credible Fear claims, and applications for relief, of Ecuadorian Kichwa speakers at an excessive rate. While the claim is indeed modest, it accounts fairly for the study’s limitations, and the discussion that supports it applies to a broad array of immigrant populations.

I. METHODOLOGY

To begin, my principle method of discovery for this study was the qualitative interview. I performed 5 one hour-long interviews with three Kichwa-English legal interpreters: Kinti, Charlie Uruchima, and Amy. I performed the interviews primarily in English (although I

also speak Spanish at an advanced level, and Kichwa at an intermediate level). Three of these interviews were performed with one interpreter: Kinti, so the majority of my data come from my conversations with her. Throughout the work, I consider my interviewees’ accounts to be both raw data on legal processes themselves *and* authoritative analysis of those processes (plus related political and cultural phenomena). I attempt to engage both aspects of my collaborators’ contributions in order to illuminate the multi-faceted, historical and transnational interactions that they described for me. Ultimately, the lack of certain quantitative data⁴, the small number of interviewees, and the inability to perform direct observation substantially limit this study, but it is my hope that it will still prove valuable, as the germ of something more.

II. BACKGROUND: ECUADORIAN KICHWA SPEAKERS; THE CREDIBLE FEAR INTERVIEW

Ecuadorian Kichwa

For starters, it is generally agreed upon that there are approximately two million speakers of Ecuadorian Kichwa (e.g., Adelaar and Muysken



Two Kichwa women outside their home.

¹ See the cases of Nicolas Dutan Guaman and María Guaman Guaman, which are discussed in greater detail in a forthcoming MA thesis by Charlie Uruchima (New York University)

² See, for example, “Immigrants Who Speak Indigenous Languages Encounter Isolation” (New York Times 2014), or “Language Barriers Pose Challenges For Mayan Migrant Children” (NPR 2014).

³ A note on terminology: I will switch between the terms ‘migrant’ and ‘applicant’ in this work, depending on what I want to emphasize.

⁴ Namely, the precise success rate of Ecuadorian Kichwa-speakers in the Credible Fear Interview or Merits Hearing. The available quantitative evidence only allows us to see that Ecuadorians in general are relatively unsuccessful at getting *Asylum* in particular (only one part of the overall process), which is suggestive but not conclusive (see: EOIR Asylum Statistics Chart).



Map of Ecuador—the provinces with the largest Kichwa-speaking populations circled in red. Wikimedia Commons 2015

2004, 620). These speakers are concentrated in the Andean highlands, with greatest prevalence in the provinces of Imbabura, Chimborazo, and the Azuayo-Cañari region. Their language is the Ecuadorian variant of the larger language Quechua, which is spoken throughout the Andean region.⁵ This language owes its expansion to the Incan Empire, which used it as the language of administration. Like all Indigenous communities in the Americas, Kichwa speakers have suffered greatly under colonial and neocolonial regimes, and they continue to face discrimination/ racism from the dominant *mestizo* population. Today, Kichwa survives in rural areas and the commercial tourist center of Otavalo. Many Kichwa speakers also speak Spanish, and all speakers use a certain amount of Spanish loanwords. Currently, Kichwa is endangered in most communities of use. This rather bleak picture is offset by the Indigenous political movements that rocked Ecuador throughout the 1990s,

and Kichwa's status as an official language of Ecuador, but, all in all, Kichwa culture and language face a complex, uncertain future, full of mixing, adaptation, and, *potentially*, great loss.

As for the migration of Ecuadorians to the United States, it is more substantial than many might think. According to 2010 Census data, there are around 665,000 Ecuadorians in the US, making Ecuador the 9th largest source of "Hispanic" migrants in the US (Motel and Patten 2012).⁶ As Jason Pribilsky,

an ethnographer of Ecuadorian migration, reports, approximately 70% of these migrants come from the Azuayo-Cañari region (Pribilsky 2007, 8), a largely rural region with a substantial Kichwa-speaking population. As for these migrants' target location in the US, the Pew Center reports that 66% reside in the Northeast region, with 40% residing in the New York Metro Area (Brown and Patten 2013). There are no concrete statistics on the number of *Kichwa-speaking* Ecuadorian migrants in the US; however, one source (an apparently Evangelical Protestant organization), estimates the New York area Kichwa-speaking population at 10,000 (All Peoples Initiative 2010).

Credible Fear Interview

The Credible Fear Interview process was created in 1991, by the former Immigration and Naturalization Service, to address an influx of Haitians fleeing that year's coup d'état (USCIS 2012a, 9). Then, in 1996, with the amendment of the

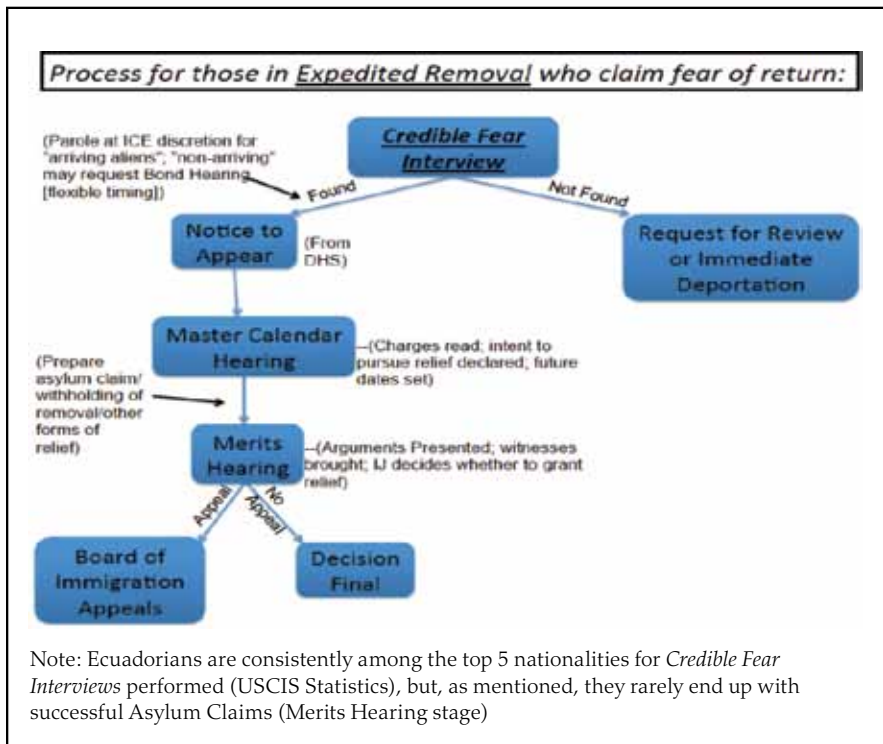
Immigration and Nationality Act, the Credible Fear process took on new importance, as the new legislation created the process of Expedited Removal. Today, after expansions in 2002 and 2004, the Expedited Removal process looks like this: if a migrant arrives without a valid document of entry, or with a falsified document, and is picked up by US Customs and Border Protection (CBP) either at a designated port of entry, at-sea, or within 100 miles of a US land border (without proof of at least 14 days' continuous presence), then CBP may enter that migrant into Expedited Removal (Howard, Accessed 2015). What this means is that the migrant will be swiftly deported, without any hearing before an Immigration Judge, unless he/she⁷ is able to claim an exception. The most common of these exceptions is claiming fear of returning to one's country of nationality. When a migrant makes this claim, CBP refers her to a U.S. Citizenship and Immigration Services Asylum Office for a Credible Fear Interview. Meanwhile Immigration and Custom Enforcement detains her (Campos and Friedland 2014). Ultimately, the result of the Credible Fear Interview will determine whether a migrant gets to have a full hearing before an Immigration Judge. I provide, for reference, Graphic 1 (next page), which lays out the application for relief process that these migrants face.

The Credible Fear Interview itself is typically a 45 minute-1 hour long interview, conducted by an Asylum Officer. In it, the officer follows a somewhat standard script of questions. He asks first about basic background information, including whether the migrant has family members in the US. Then, he asks whether the migrant has a

⁵ It may be more accurate to describe Quechua as a language family, since the differences between 'dialects' can be as great as the differences between the Romance *languages*. Given that interpretation, Ecuadorian Kichwa would be a language unto itself within the larger family.

⁶ Peru and Venezuela, nearby countries twice the size of Ecuador, both account for fewer US migrants.

⁷ From here on out, I will switch gender pronouns freely.



Graphic 1: The overall process

fear of returning to her country of nationality. If yes, the officer asks a number of follow-up questions.⁸ In doing so, the officer seeks to establish evidence (or lack thereof) that the migrant has a Credible Fear of Persecution and/or Torture. These terms, “persecution” and “torture,” are distinct, legal terms, with a number of Board of Immigration Appeals and federal court decisions informing their interpretation. In a nutshell, “persecution” is the basis on which a person applies for Asylum/Refugee status, and it consists of: “serious harm or suffering inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion,” *specifically when the perpetrator of such harm is “either the government or a non-governmental entity that the government is*

unwilling or unable to control” (USCIS 2012a, 20). In turn, “torture” is the basis on which a person applies for Withholding/Deferral of Removal⁹, and it consists of: “some action that would result in serious physical or mental harm” that is “inflicted by or at the instigation of, or with the consent or acquiescence of, a government official or other person acting in an official capacity” (USCIS 2012a, 35). These are the operational definitions that provide the basis for Asylum Officers’ determinations (and for Immigration Judges’ decisions in full hearings).

A final, important note is that Credible Fear has traditionally been easy to establish, with success rates of over 80% (USCIS Credible Fear Workload Summaries). This is because Asylum Officers do not make full judgments of an

applicant’s case, but instead seek only to establish whether the applicant has a “significant possibility” of establishing eligibility (for Asylum or Withholding) in a full hearing before a Judge (USCIS 2012a). In February 2014, however, the Asylum Division of the USCIS released revisions to their instructional materials for Asylum Officers that raised the Standard of Proof used in Credible Fear Interviews (memo, Lafferty 2014). USCIS workload summaries after February 2014 suggest that these revisions have already led to markedly decreased success rates. The essential context for these revisions, as Campos and Friedland argue in a 2014 article for the Immigration Policy Center, is a conservative political backlash against supposed “asylum abuse” (Campos and Friedland 2014).¹⁰ It is in this politicized context, then, that Ecuadorian Kichwa speakers enter the Credible Fear Interview.

III. MY INTERVIEWS: ISSUES OF LANGUAGE, CULTURE, CLASS, AND PROCEDURE

A. What Kichwa Speakers Are Actually Claiming

To contextualize the following analysis, I want to begin by explaining, in concrete terms, the sorts of persecution/torture that Kichwa speakers are actually claiming. As a jumping off point: Shoshanna Malett writes in an online article that “the most common claims from Ecuador are those of Ecuadorians fleeing gang violence and trafficking, [while] [t] here are also numerous claims of domestic abuse” (Malett, Accessed 2015). Regarding Kichwa speakers in particular, my interviews support

⁸ This questioning is, in theory, “non-adversarial” (USCIS 2012c). But, officers do probe for contradictions in the applicant’s statements, and my interview data suggest that this can turn the interview adversarial, thus making lack of legal counsel (which is the norm, especially for Indigenous migrants) particularly problematic.

⁹ A harder-to-obtain form of relief, that offers fewer benefits than Asylum, but that is available to some who are otherwise barred. Applicants typically apply for Asylum and Withholding simultaneously.

¹⁰ See, for example, the Dec. 2013 U.S. House of Representatives Judiciary Committee hearing titled “Asylum Abuse: Is It Overwhelming Our Borders?”. Or, from Feb. 2014: “Asylum Fraud: Abusing America’s Compassion?”.

the notion that some are making claims based on gang violence, and trafficking/the drug trade. In the most detailed instance, my interviewee Kinti described a man employed as a janitor in central Ecuador who was recruited against his will to work as a drug mule by higher-ups in his company. He faced threats of violence if he attempted to quit, so he fled the country. Additionally, my data support, strongly, the prevalence of domestic violence claims among Kichwa-speaking women.

There are *also*, however, two other common claims among Kichwa speakers that Malett does not recognize: namely, local-level political persecution and religious persecution. Regarding the first claim, in response to a question about what types of situations Ecuadorians are fleeing, my interviewee Kinti offered the following:

K: it has appeared that, uh, few cases have shown that women, or man, have been kind of threatened by the political parties. For example that, there were a few instances I have interpreted that, list 35, which is the government list party, has been threatening to the people: if you don't work for me, this is what's gonna happen, or they just beat up. It's not the government directly acting, acting on the people, but they're locals, local governments, like, small local governments in the communities, for example, who are working for Correa's party, for example. They are the ones who are kind of, um, bullying them, other people who are working with the Pachakutik, for example, and that case has gotten a little too much for some people...

Additionally, Kinti confirmed elsewhere that these local-level intimidations do sometimes reach the level of physical assault,

including surprise group-beatings and even the use of guns. Her explanations, however, are probably opaque without a background of Ecuadorian politics. To give only the basics: *Alianza País* is the dominant political party in Ecuador; it is the President's party, and, while it initially drew support from Indigenous movements, it has ultimately proven unfriendly to Indigenous sovereignty and collective rights. *Lista 35*, or "list 35," is a synonym for the party, representing the party's numerical location on the Ecuadorian ballot. *Pachakutik*, on the other hand, is a leftist, agrarian-Indigenous political party that has had some success in mainstream Ecuadorian politics, and generally opposes the politics of Correa (the President) and his party. With that background in place, we can look at the claim Kinti is relaying: namely, that *Alianza País*, at the local level, is using violence to intimidate Kichwa-speaking Ecuadorians who are involved in *Pachakutik* and refuse to support *Lista 35*. They are doing so without explicit directives from Rafael Correa, but one could argue that they are doing so with implicit permission/*acquiescence* from the government (see persecution definition above).

The second claim overlooked by Malett, as already mentioned, is that of religious persecution. In one discussion on the topic, Kinti transitioned out of a story about discrimination in Ecuadorian cities, and into the following:

K: It's, the rest is pretty much, either the community, in the community, or religion, because he or she's Protestant—

G: Ohh yeah

K: That's an issue; he or she is Protestant. And the rest are catholic drunkards who are trying to beat them and that kind of thing; that's the kind

of thing that they will say. And besides that... their beliefs change and their parents or relatives, also, are against the change of religion.

This short exchange sums up the overall point well enough. For context: it's been a common practice for decades now for foreign, Evangelical missionaries to pursue Kichwa-speaking Ecuadorians as potential converts. When these Kichwas do convert, from a syncretic version of Catholicism to Evangelical Christianity, they change a number of important behaviors. And furthermore, since it is individuals who convert, rather than whole communities, tensions are created between the converts and their own communities. For example, Kinti's jest about "catholic drunkards" refers to the fact that *evangelicos* give up alcohol—which is, of course, very important in the syncretic Catholic-Indigenous *raymis* (festivals). Beyond simply not drinking, these converts will often not participate at all in community *raymis*, disapproving of the dancing and various forms of "idolatry." This non-participation in essential community functions creates a divide within the *ayllu* (community) that sometimes, as Kinti reports, bubbles over into physical assaults. In sum, then, the four major bases of Kichwa speakers' Credible Fear claims are: drug and gang-related trafficking/violence, domestic abuse, local-level political persecution, and religious persecution.¹¹

B. "Simple" Questions with Complicated Answers: Relocation and Injury

Relocation. I turn now to two interview questions whose explication touches on a host of larger issues. Regarding the first question: at a certain point in the

¹¹ An important note here is that Asylum Officers test all of these claims against Department of State Reports on country conditions. To briefly sum up the Reports on Ecuador: they generally deny government complicity in harm to Indigenous people, and they do not mention the local-level political persecution or Evangelical-Catholic conflicts that Kinti describes (US DoS 2013, 2013, 2014). This downplaying and absence of issues is likely to undermine the strength of some otherwise valid claims.

Credible Fear Interview, after having heard some/all of an applicant's basis for Fear, the Asylum Officer will ask about the possibility of *internal relocation*. For Ecuadorian migrants, the question is typically along the lines of "can you move somewhere else in Ecuador and be safe?," or "why can't you just move to a city in Ecuador, like Quito, or Guayaquil?." This simple question is essential to the Asylum Officer's analysis of the applicant's case, since, as Officers are informed by their instructional materials, the ability to safely relocate internally may be sufficient basis for a negative Credible Fear finding (USCIS 2012a, 23). Furthermore, the February 2014 revisions (mentioned above) to those instructional materials urge Officers to give more weight than before to the possibility of internal relocation (Lafferty 2014). This simple question, then, currently carries more weight than ever.

My primary collaborator, Kinti, quoted a number of the answers that Kichwa speakers usually give to this question of relocation. We discussed the topic a number of times, but the following excerpt is most representative:

G: And when the officer asks, cuz the officer asks, right, like, why can't you just move to Quito? What exactly do people respond to that?

K: If that's the case, then their response most often is that we don't know anybody, uh, for example, the freshest thing I can remember yesterday was a case she said, this woman said you know, I don't have anybody in Quito or anybody close to the cities, I don't have anything, I am indigenous person therefore I am, I am denied all the work possibilities and there's no such jobs or anything. I can't go anywhere. And I don't want to return where they're gonna kill me...

G: ... and it's just, so it's just like, mana

pitachu char-charini [*Translation: I don't ha-have anyone*]? Or how do they say it?

K: They will say mana, mana pita riksinichu, llankanichu, manapi, mana llankayta charinichu, mana pita llaktapi riksinichu nin, mana ayllukunata llaktakunapi charinichu; mishukuna makan nin, mishukuna riman, shina nishpa nin [*Translation: no, no I don't know anyone, I don't work, no one, I don't have work, I don't know anyone there, they say, I don't have family in those places; mestizos hit, they say, mestizos insult, that's what they say*].

We see, then, in Kinti's rendition, that the Kichwa-speaking migrants feel alienated from Ecuadorian cities on three grounds: one, lack of family, two, lack of work, and three, discrimination/abuse. The first ground, lack of family, is given its particular meaning by the context of rural Ecuador. These Kichwa-speaking migrants are from tiny towns in the Andean countryside, where the main support network is the *ayllu*, a community composed primarily of extended family members (although, as Pribilsky argues, migration from Ecuador has been rapidly changing this). Many of these Kichwa-speaking migrants have spent their whole lives in this small-town context, where everyone is related to everyone, and many of them have never traveled to other areas of Ecuador (particularly the women). The second ground, lack of work in the cities, refers to the incompatibility of the rural-agricultural skillset with the big city labor markets. While many Indigenous folks who live close to urban centers travel to sell vegetables in open markets, they can only do so because they have land in a nearby rural area. The prospects for a Kichwa speaker of finding *permanent* work in a city are

bleak. The options largely consist of informal work as an ambulatory salesperson of cheap consumer goods like candy and cigarettes, or folkloric *artesanía*, if one has the time and resources to make it. It's also possible for women to find domestic cleaning work (which is low-paid and unprotected), and for men to find a limited amount of construction work. The issue, however, is not only scarcity/availability of jobs; it's also the discrimination and abuse they face both within urban workplaces and on the street ("mestizos hit"; "mestizos insult"). Kichwa speakers face extensive exploitation and verbal, physical, and sexual abuse at the hands of some *patrones* in the big cities, and, beyond that, they may be subject to abuse by random passersby, simply for being present in the city. This is because Ecuadorian urban society, at its worst, sees these *indios* as filthy, backwards, and, crucially, as belonging only in certain spaces. For all these reasons, Kichwa speakers do not want to relocate internally, particularly to the big cities (which are seen by Asylum Officers as providing anonymity and protection).

This explanation, however, even if a Kichwa speaker provides it in detail (which is often not the case), may still prove insufficient. As Kinti recounted during one conversation, the Officer will often turn to questioning how it is that the person can migrate to an entirely different country (the US), but not to a different part of her own country. The answer to this question that would likely *help* Kichwa speakers' cases is that Ecuadorian government officials are systematically persecuting them, and they therefore cannot seek safety elsewhere in the country. That, however, is not the case in Ecuador. Some officials, then, might see that as reason

enough to deny Credible Fear (or relief). However, there is a more subtle, but very real, answer to the question of why Ecuadorian Kichwas would relocate to the US rather than Quito. In my interview with Charlie Uruchima, I reiterated the question about internal relocation, which led to the following exchange:

G: Did—what are your thoughts about that question, did you hear that question?

C: Yeah, I heard that question; I think she [*the Kichwa speaker in a CFI that he interpreted for, on the one occasion that he has done so*] said she didn't know anybody else outside of her town. But that's, I mean, also, migration culture is huge... places like Cañar, people today, that's where you find a lot of, they have a lot of like young people coming, still migrating today, because their parents have migrated already, so, they see migration as... like a reunion.

G: A reunion?

C: Yeah. And I mean I was thinking more like the migration culture, culture aspect of it. But I mean there's also like tangential reasons for it as well. You know it's, it's like well if something happens, and then... especially as traumatizing as like, for example, her case, if something like that happens, then you already know, like, well, everybody else is doing it, so I guess, now I have to do it...

G: I have to, I have to migrate, is that what you mean?

C: Yeah, yeah

G: Ok

C: And that's what I feel like, [?], it makes the decision easier you know?

Charlie, then, who is a graduate student, reiterates the Kichwa speakers' explanation of not knowing anyone in other areas of the country, but then proceeds to introduce a new element: "migration culture." In the academic literature, this term is usually found as "culture(s) of migration." The term refers to how migration can become

"deeply ingrained into the repertoire of people's behavior, and [how] values associated with migration become part of the community's values" (Massey et al. 1998, 47). In his works, Jeffrey H. Cohen clarifies the term further, arguing, in the context of Oaxaca, that a culture of migration exists where: one, "migration is pervasive—it occurs throughout the region and has a historical presence"; two, "the decision to migrate is one that people make as part of their *everyday* experiences [*italics mine*]"; and three, "the decision to migrate is accepted by most... as one path toward economic well-being" (2004, 5). Finally, as Cohen emphasizes in a later work, the idea of cultures of migration is underpinned by the belief that migrants are "rational social actors," and—particularly relevant for this analysis—"[e]ven... refugees who flee cultural, economic, religious, and social problems and persecution in their home communities and nations are typically making calculated decisions about their futures" (Cohen and Sirkeci 2011, 13).

My interviewee Charlie Uruchima, in the passage above, refers to Cañar as a site of "migration culture." We've already discussed that the Azuayo-Cañari region accounts for the majority of Ecuadorian-US migration, but we haven't discussed what that looks like in those communities. Having traveled to Cañar myself, I can vouch from personal experience that some feel as though the middle has been cut out from them. Essentially, the older generation is there, and children are there, but the young adults—those of most productive working age—are gone (hence Charlie's observation of young migrants *following* their parents). As a sign of this, one sometimes observes big US-style houses, built by remittances, to which migrants

have never returned. In his work, Pribilsky discusses this transnational economic system of migration and remittances that Azuayo-Cañari families depend on (Pribilsky 2007). For this reason, when a rural Kichwa speaker in those regions experiences an act of persecution, the notion of migration—as a means of escaping, of achieving, of *reuniting*—is already profoundly present in his mind and social surroundings. We even see Charlie go so far as to suggest that reasons other than migration culture are "tangential," while simultaneously emphasizing the legitimate trauma of the Kichwa speaker he interpreted for. Ultimately, we see him conclude that migration culture and the traumatizing event, together, make the overall migration decision "easier" than it would otherwise be.

The train of thought that Charlie lays out *could* lead one to question the validity of Ecuadorian Kichwa speakers' asylum claims (asylum, after all, exists for the persecuted, not simply for migrants seeking economic well-being).¹² I would argue, however, that it shouldn't do so. As Cohen and Sirkeci argue in the passage quoted earlier, even refugees, when they migrate, are making "calculated decisions about their futures." To grapple adequately with the diasporic and transnational world of today, we have to be willing to accept the complex considerations that motivate both migration *and* requests for protection. We need to look at the claims of, for example, Ecuadorian Kichwa speakers, through a multi-faceted lens. When they experience acts of persecution/torture, these acts are immediately contextualized within patterns of migration that are profoundly economic in nature. The motives may come in many guises. And we have to consider that, for Ecuadorian Kichwa speakers, the closest thing to home, apart from their rural Ecuadorian

¹² With the same logic applying equally to Withholding of Removal and Torture.

ayllu, may not be Quito or another area of Ecuador, but rather New York City. It may be that Spring Valley, NY, for instance, is the only other place where they have blood-relations, and, therefore, accepting community.

Injury. Turning now to the second not-so-simple question, I start with the fact that Asylum Officers—as they seek information about the potential persecution/torture that an applicant has experienced—try to elicit specific information about the *injuries* that the applicant suffered. In doing so, Officers probe for discrete, at-least-vaguely medical injuries to record: “broken wrist,” for example, or “lacerated forehead.” The Officer seeks this information for two reasons: one, to establish the severity of the harm inflicted, and, two, to establish credibility. Regarding the second point, the migrant needs to recall in detail the nature and duration of her injuries, and remain consistent in her story. All of this may seem necessary and unproblematic to the reader, but, on many occasions, Kichwa speakers offer answers that are both unsatisfactory to Officers, and that do not accurately represent their cases. For example, in the case of a beating, a Kichwa speaker may describe what his assailants did to him, but, when pressed for the exact injuries he suffered, simply describe again the actions of his assailants. Kichwa speakers often also give contradictory/vague accounts about when exactly incidents occurred.

Tellingly, Officers also always ask whether the applicant saw a doctor, and, if not, then “why not.” And therein lies the issue. In essence, the Officer’s expectations around injuries are rooted in a society (or class within a society) that goes to and listens to doctors. In other words, the Officer bears/represents a particular set of medico-cultural norms. The Kichwa speaker, on

the other hand, has usually not seen a medical doctor because of geographical distance, cultural difference, a language barrier, or the chance that the doctor is prejudiced against *indios*. Without a medical doctor’s diagnosis, the Kichwa speaker may not know exactly what injuries he suffered (or, if he went to a traditional healer [*yachak*], he may have a diagnosis that will not translate well in the Interview context). To make matters worse, without the medical doctor’s visit, he also lacks a record of when exactly the injuries occurred. Taking all of this together, then, the Kichwa speaker may seem imprecise about both the exact nature of his injuries *and* when they occurred, which may, for the Officer, undermine the apparent severity of the case and/or the applicant’s *credibility*.

To make all of this a little more complex, there also exist a number of particularities surrounding gender and gender-based violence. In one interview, Kinti transitioned from a discussion of translating the word “torture” into the following:

K: Even if [they are] wounded, sometimes the person does not want to tell those private things, that’s like an intrusion, private matter can be described in part, another thing, that’s another thing that they don’t want to, especially women, for women to describe all those injuries that they have received; they don’t really wanna tell, they just tell superficial things and they think if they do describe the details of what happened to them, might be, I don’t know, but they don’t want to so...

Kinti, then, moves from a translation difficulty (“torture”) into the issues of privacy and “intrusion.” This demonstrates that communication of harm revolves not only around terminology but also around culturally-situated

communicative competence. Put simply, this concept represents the fact that people learn not only *how* to say things, but also when, where, and with whom to say them, a process labeled acquisition of competence (Hymes 1971). In the case of the Credible Fear Interview, the Asylum Officer behaves incompetently by requesting details that aren’t appropriate for the female Kichwa speaker to give (*particularly* to an often opposite-gendered stranger). And the Kichwa speaker responds by providing only the “superficial” amount of detail that is appropriate. As Kinti stated in another interview, regarding Kichwa speakers talking about physical harm:

K: ... if the man, or somebody has done it, private parts, [it] just... sounds too ridiculous. Even the word doesn’t sound even appropriate to even come up with.

These notions of what is “ridiculous” and “appropriate” are grounded in strong cultural understandings of what can be said, where and to whom. Kichwa-speaking women (particularly without any previous legal advice) are likely to hue to these notions of what’s appropriate during the interview—to the detriment of their cases. Taken altogether, then, when Asylum officers elicit information about harm experienced by Kichwa speakers, they tend to impose a distinct medico-cultural system, and to violate gendered communication norms—and, as a result, they may reach erroneous conclusions about severity of harm, or about an applicant’s credibility.

C. Issues of Interpretation Per Se Terminology. A first lens for looking at issues of interpretation per se in these interviews is that of legal terminology. For starters, any interpreter who needs to translate the peculiar register of Legal English

into a non-European language will encounter substantial difficulty, lacking the assistance of common Latin and Greek roots. And these difficulties are, naturally, much greater when working with a language like Kichwa, whose speakers come from small-scale societies, free of elaborate legal bureaucracies. Here, issues of culture, class and education all intermingle. For instance, on the one hand, many Kichwa speakers maintain a radically distinct legal system, a community justice system that involves public shamings, beatings and cold-water baths,¹³ with its own concepts and rationale. On the other hand, Kichwa speakers are simultaneously subject to the Ecuadorian national legal system, a system that is more-or-less similar to the US legal system. This means that Kichwa speakers *could* have the chance to acquire comparable terminology. However, Kichwa speakers are likely to have had no interactions with that national legal system (or to have had only alienating and antagonistic ones). Arguably, this is because Kichwa Indigeneity, in Ecuador, is simultaneously a class-marker. To speak Kichwa *predominantly* means, unequivocally, to have received very little State education and to have very little money¹⁴, which is a social position from which the official legal system will appear opaque/hostile. These issues of language, culture, class, and education all intertwine to make translating legal terminology into Kichwa especially difficult.

A particularly *interesting* element of this terminological dilemma, for interpreters, is the issue of when to use Spanish terms (and/or *Kichwacized* Spanish terms), rather than attempting a fully Kichwa equivalent. There is, on the one hand,

a fairly unproblematic manifestation of this, in which the Kichwa speaker simply understands the Spanish term more readily than an equivalent Kichwa neologism¹⁵. For example, most Kichwa speakers are more familiar with *gobierno* than the properly Kichwa equivalent *kamachik*. Additionally, another unproblematic phenomenon is when a *Kichwacized* Spanish word has become the norm in a community, and is more precise than a natively Kichwa equivalent. For example, *decidina* is a Kichwacization of the Spanish infinitive *decidir*; a more purely Kichwa equivalent would be *arinina* [literally 'to say yes'], but, since that word may mean to decide, to commit, to agree, or to consent, it may be best to use the more precise, Spanish-derived term. There arises, however, a more problematic situation when a Spanish term may not be understood by the Kichwa speaker, but, since the Kichwa equivalent is equally unclear or would take too long (discussed in greater detail below), the interpreter feels compelled to use the Spanish term anyways. For example, Kinti provides an explanation for the term *única oportunidad*, which she sometimes leaves in Spanish:

K: Única oportunidad. I have, that's only opportunity you have, so, what am I gonna say? Kunan, kaypika tukuyta ninki. Kunanman, chay kipaka mana ima tiyankachu [*Now, here you say everything. After now, there will not be anything*]. Maybe that's it.

As we see, the original term loses precision in the Kichwa version, and the Kichwa version is substantially longer. And since the Kichwa speaker will likely *not* understand the original Spanish term, the interpreter ends up stuck between two undesirable options.

Fundamentally, this issue hinges on the opaque nature of the legal register, which is further exacerbated in the Kichwa language context.

The Ontology of Harm. Building on the issues just discussed, a more profound translation problem exists around the concept of "harm"—an essential component of the persecution and torture definitions listed earlier. In the Asylum Officers' instructional materials, we find that either physical *or* mental harm may be the basis for a persecution claim or a torture claim (USCIS 2012a). The underlying philosophical notion, then, is that the realms of the physical and mental are distinct, *but* both can be the site of something called "harm." Furthermore, in a legal sense, this "harm" may or may not be sufficient to ground a persecution/torture claim. It is the Asylum Officer's job to elicit information about the type of harm experienced and its severity.¹⁶ My collaborator Kinti and I discussed the issues around communicating harm in all three of our interviews. By the time we had the following exchange, I had already understood the basic idea, and was trying to elicit the actual language involved:

G: Um, so you're saying one, one hard thing is like the idea of harm, like harm in Kichwa is a general—

K: Harm in Kichwa. Idea... is like Chukriy

G: Chukriy

K: Chukriy is the harm, physical harm... now Chukriy in the psychological, there is no description for it ...

G: You can't say chukriy umapi [*harm in the head*] or something like that?

K: You can say chukriy umapi, so umapi will be physical wound on your head

G: Oh, right.

¹³ Altogether called *La ley indígena*, as recognized in the Ecuadorian constitution.

¹⁴ With the possible exception of the *Otavaleño* merchant class.

¹⁵ Words typically developed and promoted by (bilingual) Kichwa professors and Indigenous activists that often do not take hold in rural Kichwa communities.

¹⁶ On a related note, in the earlier mentioned 2014 memo, the Asylum Division chief described new specifications as to *what* mental pain or suffering may constitute torture. Given the memo's political context, we know that this means new limitations on what claims can constitute torture—thus encouraging officers to reject more claims and/or restrict their questioning to physical harm.

K: So, it wouldn't be, it might be shunkupi [*in the heart*] (laughs)

G: Shunkupi

K: Shunkupi, maybe that might be the only word might suit for that because *chukriy* is emotional, mental, everything, hm-mm, it's all included in there, it's a bundle ... and the only word that I can use for emotional or psychological is 'have you become crazy because of it?'

G: Uh-huh

K: ... 'did you get like crazy,' 'you are lost your mind or something?'

G: What's-what's--

K: Uma-uma-uma illak tukurkanki? [*Did you become cra-cra-crazy? Literally: without a head*] (laughs)

G: Uma illak tukurkanki, uh-huh

K: Shunku illak. Uh, chinkarishka tukurkanki. [*Without a heart. Uh, did you become lost?*]

G: That, ok, sure.

K: So, uh, those kinds of things might reflect them to think differently from the physical harm.

G: Hm-mm. That, so that might sort of work, but...

K: Sort of not quite exactly.

We see, then, in Kinti's explanation, that *chukriy's* principal meaning is physical harm; however, the term's full meaning includes psychological/mental/emotional harm as well. The particular difficulties arise when one needs to *distinguish* types of harm. Altogether, I theorize from my interviews that the concept of harm leads to a two-fold problem in Credible Fear Interviews with Kichwa speakers:

1. The Officer asks about general "harm" experienced, implicitly seeking either physical or psychological harm, but the translation into Kichwa leads to responses exclusively about physical harm, *or*
2. The Officer asks specifically about psychological harm/

torture, but the distinction cannot be effectively translated.

In the first case, while both types of harm are absolutely relevant to the claim, the simple term *chukriy* may elicit only part of a person's story, and, if the Officer does not ask more follow-up questions, that part may be lost. In the second case, if the Officer *does* try specifically to elicit information about non-physical harm, and does so using phrases like psychological or emotional pain/harm/torture, the interpreter has a difficult time translating the phrases. Kinti recounts that sometimes she has had to ask the person if she went crazy, as the best way to get across the notion of psychological harm. This, as she explained in another interview, has its own consequences, since the person will often get defensive and reply in the negative. All of this has serious implications, since this 45 minute-1 hour long interview is generally an applicant's *única oportunidad* to get their story across, and if miscommunications occur around the nature and severity of harm inflicted, it may sink an entire claim. In fact, a central point that Kinti re-iterated to me, throughout our talks, was that many Kichwa-speaking applicants, especially women, *have* experienced psychological torture, but that lack of awareness about what is relevant to their claims, lack of vocabulary and education around issues of mental illness, and, sometimes, lack of specific, sensitive, or appropriate questioning on the part of the Officer, prevent them from adequately explaining their experience.

Language Ideology and Time.

Operating as context for the previous two points are the interrelated issues of language ideology and time. I define "language ideology" here, simply, as users' beliefs (often wrong) about the nature of language

(Silverstein 1979; Wooland and Bambi 1994). By "time," I refer to the amount of time an interpreter takes to communicate a given chunk of language. John Haviland, an anthropologist and Tzotzil interpreter, is quoted in an *LA Times* article as saying:

"[Court officials] can get very impatient—they can't see why a simple question like 'Do you waive your right to a jury?' takes three paragraphs to translate... [i]n the case of someone from an Indian village, there is nothing equivalent to a trial or a jury or a legal right... I usually have to tell a little narrative about what the issues are." (Kim 2009)

His quote sums up well the issue at hand. Court officials become "impatient," reflecting a judgment grounded in a belief about language, when the interpreter seems to take too long to translate a given phrase. The underlying belief in question, then, must be that languages in general are more-or-less similar—*particularly in that* a relatively short phrase in one language should translate into a comparably short phrase in another. This belief clashes with the reality of English(Spanish)-Kichwa interpretation, leading to frustration, loss of meaning, and, perhaps, denial of due process.

To make matters more complicated, this belief (like any belief) does not operate on its own. Instead, it is intensified by two external factors. First, as my interviewee Amy pointed out to me: in legal proceedings, time is money. Asylum Officers, for example, are pressured to keep Credible Fear Interviews to one hour or less, in part because of demands on productivity and keeping labor costs down. This is particularly the case when an interpreter is present, since interpreters receive a high hourly wage and are paid by the

minute.¹⁷ And second, the Asylum Officers' instructional materials specifically indicate that one sign of "misinterpretation" is that "[t]he interpreter uses many more words to interpret the question than the question appears to have required" (USCIS 2012e, 17). Conversely, the lesson says nothing about interpreters needing additional time/words depending on the language. These two external factors, then, exacerbate the effects of a misguided belief about the nature of interpretation and linguistic diversity. One interviewee even reported a story in which s/he was interpreting telephonically, and, because of perceptions around length of interpretation, was cut off without notice by an Immigration Judge, and later reprimanded by his/her employer. As my collaborator Amy stated, regarding Kichwa interpreting in general:

A: The idea can be interpreted, I just think that you have to have a much wider latitude as to what the interpreter can do in order to make [the languages] mesh. Not even mesh, that they're understood. That the client understands what—that both parties understand what's going on.

For this section's purposes, it is sufficient to note that, for Kichwa, the "wider latitude" Amy refers to must include extra time, and a tolerance for *seemingly* lengthy interpretations.

Other Working Conditions. Finally, a few assorted issues around working conditions remain to be addressed. First, there is the issue of training. Sometimes, interpreters of Indigenous languages have no training at all; for example, they are, occasionally, recruited at local restaurants and hired on a one-time-only basis. Other times, as with Amy and Kinti, their training

does not contain specific content about working with Indigenous languages. Following Marisol León, I believe that more training programs for Indigenous languages are needed (León 2014). While creating programs for each distinct language may not be realistic, interpreters for all Indigenous languages are bound to face similar problems, so generalized trainings should be feasible. Second, there is the issue of recognizing dialectal variation. All three of my interviewees reported either interpreting, or being asked to interpret, dialects of the Quechua language other than Ecuadorian Kichwa. As stated before, the difference between these "dialects" can be as great as those between the different Romance "languages." Inter-dialectal interpretation may be acceptable in a cooperative medical setting, for example, but it should never be used in high-stakes, typically adversarial legal settings (Mikkelson 2008). And third, there is the issue of breaks. Put simply, my interview data suggest that Indigenous language interpreters, probably due to their scarcity, are sometimes asked to work for multiple hours without a break. Interpretation scholars and the National Association of Judiciary Interpreters and Translators (NAJIT) agree that interpreters need regular, frequent breaks in order to continue interpreting effectively (e.g. NAJIT 2007). While these assorted working conditions do not point to issues as profound as the previous themes discussed, they are absolutely capable of undermining a proceeding's fairness. They, therefore, merit consideration, and present easy targets for reform.

IV. CONCLUSION

In conclusion, via all of the above, I have sought to support the claim that intermeshed issues of

language, culture, and class, along with various procedural issues, are *likely* leading officials to deny Kichwa speakers' Credible Fear claims, and applications for relief, at an excessive rate¹⁸. In doing so, I have had to face the complexity of analyzing a charged legal proceeding informed by various histories and larger contexts. It is, for example, imprudent to discuss a Kichwa speaker's utterances in a Credible Fear Interview without an understanding of what it *means* to be a monolingual Kichwa speaker in the Ecuadorian context. By the same token, it is impossible to understand an Asylum Officer's positive or negative Credible Fear determination without understanding the current US political climate regarding immigrants. I have done my best to provide the necessary context to make intelligible these interactions between Kichwa speakers and the US immigration system. There remains, however, substantial room for research on both my particular topic and related topics. For example, sociolinguistic studies of Credible Fear Interviews that are based on *direct observation* are necessary for understanding the specific mechanisms through which claims are (or are not) unjustly denied. And furthermore, such studies are necessary for determining the effects of the Asylum Division's 2014 changes in protocol. Direct observation-based analysis of Asylum Merits Hearings would be equally valuable, and, in all cases, such research is *especially* crucial for cases where Indigenous language interpretation is used (i.e. where the chances for miscarriage of justice are higher). Ultimately, my hope would be that such research would serve the Indigenous applicants themselves, not in an isolated sense, but as part of a larger effort to create a more humane immigration system:

¹⁷ In immigration proceedings, payment for interpreters is likely coming from the Lionbridge corporation, which received a \$100,000,000 DOJ contract in 2009 to provide interpreting services for the EOIR.

¹⁸ Again, I base this claim on my qualitative data and the available quantitative evidence.

one that recognizes the transnational and diasporic nature of the world today. One that, for example, allows Kichwa speakers who have suffered harm in their communities to decide to migrate to the US, where they can reunite with family—rather than sending them back to those who hurt them, or insisting that they should relocate to unfriendly cities in their “home” country.

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APPENDIX A

Practical Recommendations

- Extra latitude and time to interpret for Indigenous language interpreters as a matter of common practice
- Regular breaks for all interpreters
- More thorough education on country conditions for asylum officers, including relevant languages and migrant networks
- Critical consideration of Department of State’s Country Report which downplays Ecuadorian State complicity in oppression

- Use of interpreter *pre-CFI* so applicant can receive legal counsel
- Accommodation for narrative preferences (essentially: allowing applicant to tell her story freely, rather than structuring through rigid Q & A) (see Conley and Barr 1990; Cade 2011)
- Release on own recognizance as default for Indigenous language speakers so they may access resources through community¹⁹
- Development of specialized training for Indigenous language interpreters
- Conferences for Indigenous language interpreters, and, thereby, creation of network among interpreters (a suggestion I owe to my interviewee, Amy)

¹⁹ A suggestion I owe to Virginia Raymond, JD, who requested such in a Dec. 10, 2014 letter to Jeh Johnson and Eric Holder.

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