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U.S. ASYLUM POLICY: RECONCEPTUALIZING "FUNDAMENTAL FAIRNESS," DUE PROCESS, AND THE RIGHT TO AN INTERPRETER

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LIST OF ABBREVIATIONS

ADA	Americans with Disabilities Act
ASL	American Sign Language
BIA	Board of Immigration Appeals
CFI	Critical Fear Interview
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOJ	Department of Justice
EO	Executive Order
EOIR	Executive Office for Immigration Review
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
LEP	Limited English Proficiency
PSG	Particular Social Group
USC	United States Code
USCIS	United States Citizenship and Immigration Services
UNHCR	United Nations High Commissioner for Refugees

ABSTRACT

This thesis argues that the U.S. asylum system systematically denies non-English-speaking applicants the constitutional guarantees of due process and equal protection by failing to provide adequate language access. Through an applied legal analysis of immigration case law, statutory mandates, and agency policies, it demonstrates how the interpreter requirement for affirmative asylum interviews—specifically, the burden placed on applicants to supply their own interpreters—creates a two-tiered system of adjudication. While individuals in removal proceedings are afforded government-funded interpretation, those pursuing affirmative claims through USCIS are not, resulting in an inequitable and inconsistent experience of justice. This disparity reflects a broader failure to treat language access as fundamental to fairness, instead relegating it to a procedural convenience. Situating the issue within anti-discrimination frameworks and international refugee law, the paper contends that interpreter access must be redefined as a right, not a privilege. The analysis is especially timely considering recent 2025 policy changes under President Trump's second administration, which have weakened federal language access mandates and reduced interpreter availability—amplifying structural exclusion. The thesis ultimately calls for statutory and regulatory reforms to establish interpreter access as an essential safeguard of linguistic equity in asylum adjudication.

Keywords: *U.S. Asylum System, Language Access, Due Process, Interpreter Rights, Fundamental Fairness Doctrine, Equal Protection, Immigration Law, Linguistic Discrimination, Refugee Law, USCIS Policy*

1. INTRODUCTION

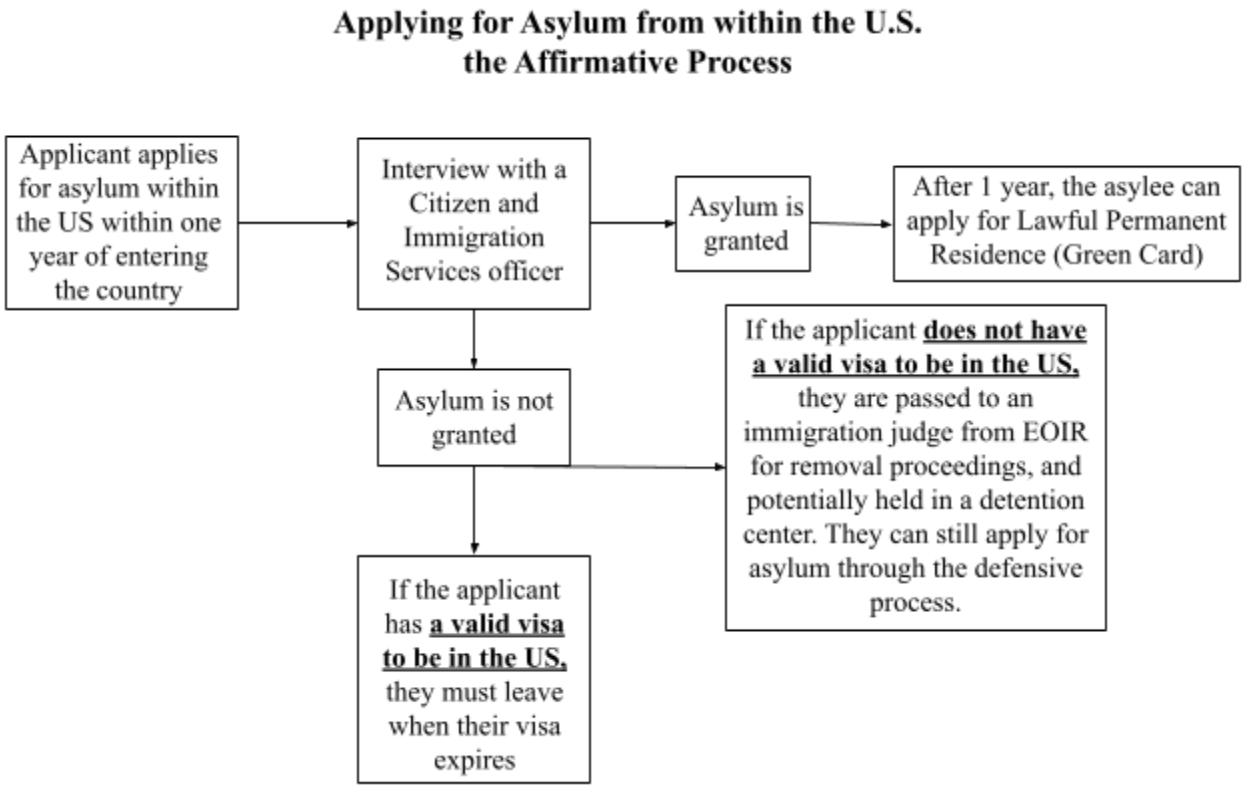
The 1951 United Nations Refugee Convention defines a 'refugee' as someone who is "unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."[1] The provisions under the Convention are "to be applied without discrimination as to race, religion, or country of origin,"[2] which is reflected directly in U.S. asylum law. However, the implications of this anti-discrimination clause have not been extended to discrimination on the basis of language; spoken language, that is. While deaf and hard-of-hearing asylum applicants meet no barriers to securing interpretation services within the U.S. asylum system because of protections afforded their community under anti-discrimination laws, LEP affirmative applicants are required to procure their own interpreter for all asylum proceedings, paid for out-of-pocket.

There are two main ways to seek asylum in the United States: affirmatively and defensively. Affirmative asylum occurs when someone applies for asylum directly with the USCIS, before being placed in removal proceedings. Defensive asylum, on the other hand, is when someone applies for asylum as part of a removal hearing before an immigration judge.

An affirmative asylum applicant can end up in removal proceedings if they proactively applied through USCIS upon their arrival on U.S. territory; or if they applied within one year of arriving in the U.S. on a temporary visa but were determined ineligible for asylum in their CFI by a USCIS asylum officer. Applicants can be deemed ineligible either because they appear to be inadmissible (due to not meeting the requirements for asylum) or deemed deportable (entered the US illegally before applying for asylum or were found to have overstayed their temporary visa).

[1] UNHCR 2010, 14
[2] UNHCR 2010, 3

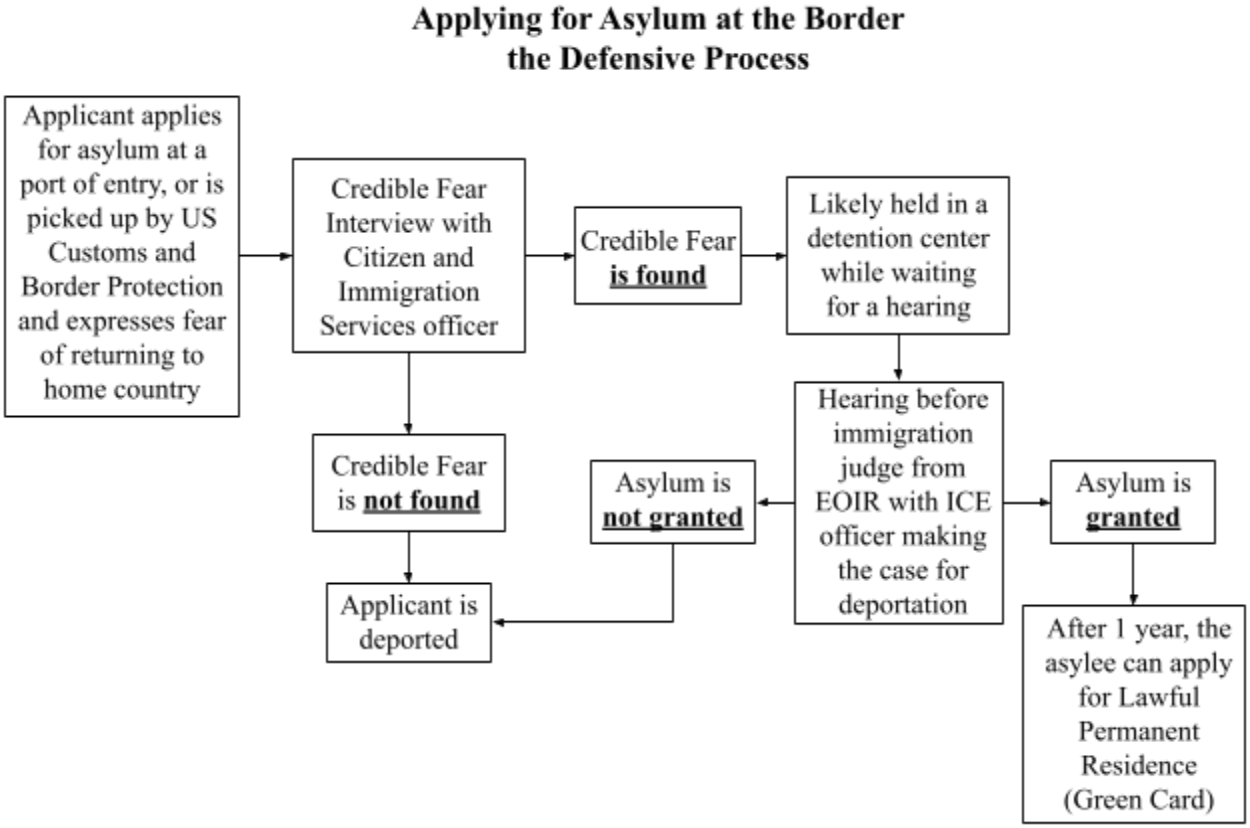
If they are deemed ineligible in either case, they are permitted to appeal to an immigration judge as a defense against removal. In both cases, to qualify for asylum, an applicant must prove a genuine fear of persecution if they were to return to their home country on the basis of race, religion, nationality, political opinion, or belonging to a particular social group.



[Figure 1]

In contrast, a defensive asylum applicant is an individual who is already in removal proceedings in the United States and who is seeking asylum as a defense against being deported. This means they are using asylum as a way to avoid being removed from the country, rather than seeking asylum as their initial way of entering the U.S. Some individuals may enter the U.S. without the proper documentation or visa, or may be apprehended after entering illegally. If they believe they have a well-founded fear of persecution in their home country, they can use the defensive asylum process to try to prevent their removal. Additionally, if an individual's affirmative asylum

application was denied, they are typically referred to the defensive process. Once any individual is detained until their hearing, they qualify for an interpreter to be provided to them at the government's expense.



[Figure 2]

Recent DHS and USCIS policy changes have left affirmative asylum seekers without equal access to language and communication services while building further barriers to successful entry. "USCIS reminds affirmative asylum applicants that, starting Sept. 13, 2023, you must bring an interpreter to your asylum interview if you are not fluent in English or wish to proceed with your interview in a language other than English."[3] Discrimination based on spoken

[3] USCIS 2023

language remains one of the most critical barriers for asylum applicants, undermining their ability to effectively communicate their personal "well-founded fear of being persecuted."[4] This leaves immigration judges to determine "good cause" for interpretation needs on a case-by-case basis, perpetuating inequities in the asylum process.[5]

These new requirements seem reasonable and relatively simple to achieve for any English-speaking individual with access to the internet. But these requirements and the added burden of securing an interpreter for LEP refugees make the process significantly more difficult. These issues are exacerbated further for indigenous communities in Central and South America speaking Ixil, Mam, Quechua, and any of the 881 other indigenous languages spoken in the region who face additional layers of marginalization due to the lack of institutional recognition of their linguistic needs. In many cases, immigration officers and officials are under the impression that indigenous language speaking migrants had been informed of their rights, but it turned out that the migrants weren't communicated to in a language they could understand. "In an unpublished study carried out by two graduate student researchers in Peace and Justice Studies at the University of San Diego, the authors reveal that the DHS 'does not provide any training to its personnel to be able to identify Indigenous languages, … [and has] no standard assessment tools or consistent access to interpretation if that language is identified.'"[6]

Asylum seekers are expected to communicate in a detailed, consistent, and plausible fashion in all proceedings to receive a positive result.[7] The current policies force migrants to hire an interpreter they do not know and have no ability to vet while doing so entirely with the help of machine translation services like Google Translate, notorious for inaccurate translations in

[4] UNHCR 2010, 3
[5] USCIS 2023
[6] Wallace and Hernández 2017, 1-4
[7] King 2016, 11

high-risk settings such as healthcare and law.[8] This has been shown to increase feelings of anxiety and fear in applicants in addition to reducing the ability to build rapport in cross-cultural interpreter-assisted interviews which, in turn, presents a risk to both interview quality and applicant-favorable outcomes.[9] These issues are a problem everywhere around the world, but dialect and language are central to an immigration officer's belief of an asylum seeker's account of the persecution they have experienced. Questions of dialect and sociolect can also lead immigration officials to believe that applicants are gatekeeping or lying during their interviews which leads to problematic prospects for asylum seekers.[10]

Constitutional protections offer additional legal grounds for addressing language discrimination in the asylum system. The Fifth and Fourteenth Amendments guarantee due process and equal protection under the law regardless of race, creed, religion, or other distinguishing characteristics, extending these principles to all individuals within U.S. jurisdiction, including asylum seekers.[11] Legal scholars argue that the Sixth Amendment right to "have the Assistance of Counsel" either retained or appointed in any legal proceeding should be extended to include an asylum applicant's right to free and open access to an interpreter for the duration of asylum proceedings.[12] However, the systemic neglect of language access has effectively withheld these protections from LEP applicants, leaving them unable to meaningfully participate in legal proceedings. Requiring asylum seekers to secure their own interpreters places an undue burden on individuals who are already marginalized and financially constrained, disproportionately

[8] Vieria et al. 2020, 1
[9] Skrifvars et al. 2024, 1
[10] Corcoran 2004, 1
[11] Dadhania 2020, 3
[12] Dadhania 2020, 2

affecting low-income and indigenous populations and compounding existing inequities, thus undermining constitutional guarantees of the fair pursuit of justice.[13]

This paper underscores two key points: First, that language assistance is an essential element of a fair procedure—virtually a *sine qua non* in refugee status determinations across jurisdictions; and second, that language can be central to the refugee claim itself, especially for ethnic minorities, which calls for heightened sensitivity in adjudication. The U.S. asylum system, through the fundamental fairness doctrine and evolving case law, has made significant progress domestically in recognizing the former (language assistance as procedural due process), even if gaps remain (as in the affirmative interview context). It has also allowed for the latter (language as part of protected-group persecution) in substantive law through flexible interpretation of "race" and "particular social group." Language-based discrimination in the asylum process is a real and pressing issue, one that not only harms individual asylum seekers by silencing or distorting their stories, but also potentially runs afoul of constitutional due process, statutory rights, and international commitments. This foundation sets the stage for the legal analysis in subsequent chapters, where we will argue that current interpreter policies should be challenged – potentially by invoking an ineffective-assistance framework (*Strickland*) to analogize an interpreter to "the voice of the asylum applicant." If the interpreter fails, it is as though the asylum seeker had no voice at all, a scenario fundamentally at odds with the promise of a fair hearing. The next sections will build on this understanding to formulate a doctrinal argument for stronger enforcement of language rights in the U.S. asylum system, ensuring that no one is denied refuge simply because they could not *speak* the words of their persecution in English.

[13] Dadhania 2020, 3; Eades 2006, 2

2. METHODOLOGY

This study utilizes legal analysis to investigate the systemic barriers that limit equitable language access in the U.S. asylum system. The argument is rooted in doctrinal legal research, focused on interpreting statutes, case law, and administrative procedure, but is equally informed by critical scholarship across immigration studies, socio-legal theory, linguistics, and critical race theory. Together, these methods allow for a contextualized, practice-oriented assessment of how language-based disparities actively shape asylum outcomes—and whether such disparities amount to a violation of procedural due process under U.S. law.

The legal analysis draws on a broad spectrum of immigration and federal case law, with a focus on decisions by the BIA, the U.S. Courts of Appeals, and, where applicable, the Supreme Court. Case selection is guided by their treatment of interpretation services, language-based credibility assessments, and due process rights under the Fifth Amendment and the INA. But this paper moves beyond a static reading of legal precedent. It interrogates not just what courts have decided, but how these rulings function in the lived experiences of asylum seekers who are asked to navigate a complex legal system without fluent English proficiency. In other words, it focuses on how law operates in practice—not just on paper.

This inquiry is supplemented by an interdisciplinary literature review that includes policy papers, peer-reviewed legal and academic articles, and critical commentary. These sources illuminate the ways in which linguistic discrimination intersects with broader systems of marginalization, especially for Indigenous and other non-dominant language speakers. The literature also examines how legal language norms and expectations—often shaped by Western rhetorical

standards—can disadvantage asylum seekers who are not only translating words, but entire cultural narratives through intermediaries they did not choose.

This analysis demonstrates that unequal language access in asylum proceedings constitutes a foundational breach of procedural fairness. By combining applied legal reasoning with critical, cross-disciplinary insight, the project aims to highlight how entrenched language inequities actively undermine constitutional protections guaranteed under U.S. law. The conclusion calls for legal reforms that treat language access not as a bureaucratic hurdle—but as a fundamental right.

3. BACKGROUND & CONTEXT

3.1 Historical Evolution of Language Access in Asylum Proceedings

The U.S. legal system's approach to language access in immigration has evolved from early indifference to a growing recognition of the need for interpreters as a component of due process. In *Yamataya v. Fisher* the Supreme Court first acknowledged that even arriving non-citizens are entitled to Fifth Amendment due process in deportation procedures.[14] Kaoru Yamataya, a Japanese teenager who spoke no English, was summarily ordered deported under the immigration laws of the era. The Court held that while Congress has plenary power over immigration, deportation cannot proceed without fundamental fairness—at minimum, "a hearing of some kind."[15] Although Yamataya's deportation was ultimately upheld, the case established the principle that language barriers cannot be ignored in determining whether an immigrant received a fair opportunity to be heard. In subsequent decades, lower courts occasionally

[14] Yamataya 1903, p. 99
[15] Yamataya 1903, pp. 99–100

confronted situations where immigrants could not understand English, recognizing that the right to be heard is meaningless if one cannot understand or be understood. As early as 1930, for example, the Sixth Circuit noted that "the right to a hearing is a vain thing if the alien is not understood," insisting that where an interpreter is needed, the interpreter's competence "should be unquestioned."[16] This laid doctrinal groundwork for viewing interpreter access as part of "fundamental fairness" in immigration proceedings.

By the late 20th century, case law had firmly established that removal (deportation) hearings must be conducted in a language the non-citizen understands. In *Tejeda-Mata v. INS*,[17] the Ninth Circuit emphasized that a "competent translation is fundamental to a full and fair hearing", holding that if a person does not speak English, the proceedings must be translated into a language they do understand.[18] This principle was echoed across jurisdictions. The Second Circuit in *Augustin v. Sava* underscored a judge's "duty to scrutinize the scope and accuracy of translations" in asylum hearings and found that inadequate interpretation violated due process, remanding a Haitian refugee's case for a new hearing.[19] Likewise, the BIA recognized that interpretation is essential: in *Matter of Tomas*,[20] the Board reversed a decision where indigenous Guatemalan applicants were forced to proceed with a Spanish interpreter they could not understand, holding that denying a continuance to obtain an interpreter in the right language was a reversible error.[21] By the 1990s, advocacy groups challenged systemic interpreter failings. In *El Rescate Legal Services v. EOIR*, a class-action suit, plaintiffs alleged immigration courts often provided only "partial interpretation" (summarizing or omitting portions of the proceedings). A

[16] Gonzales v. Zurbrick 1930, p. 937
[17] 626 F.2d 721 (9th Cir. 1980)
[18] Tejeda-Mata 1980, p. 726
[19] Augustin 1984, pp. 36–37
[20] 19 I&N Dec. 464 (BIA 1987)
[21] BIA 1987, p. 465

federal court in 1989 held that due process requires full translation of immigration court hearings, issuing an injunction against such practices.[22] On appeal, the Ninth Circuit confirmed jurisdiction to enforce immigrants' Fifth Amendment due process and equal protection rights to language access in removal proceedings.[23] These developments cemented the notion that full interpreter services are part of the baseline procedural safeguards in deportation and asylum adjudications.

3.2 Language Access in Removal Hearings

Due process in the context of deportation hearings requires, at minimum, that the respondent has notice of the charges and a meaningful opportunity to be heard.[24] The Supreme Court in *Yamataya*—known as the "Japanese Immigrant Case"—first recognized that even an unauthorized immigrant is protected by the Fifth Amendment's guarantee of fundamental fairness in deportation proceedings. Notably, however, the *Yamataya* Court rejected the idea of an interpreter right: it held that the Government's failure to provide Ms. Yamataya with translation of the proceedings (she spoke only Japanese) did not violate due process, essentially placing the burden of understanding on the LEP immigrant.[25] Justice Harlan remarked that an alien's inability to understand English was not, by itself, enough to invalidate the hearing – a stance that today seems anachronistic but set the early baseline that due process did not initially guarantee language accommodation.

Over time, federal courts rolled back that harsh view and built a consensus that competent interpretation is a due process necessity in removal hearings. A landmark turning point came in

[22] El Rescate 1989, p. 560
[23] El Rescate 1992, p. 748
[24] 189 U.S. 86, 101 (1903); Benton 2020, 464-465
[25] Harlan, J. 1903, 101; Benton 2020, 465-466

Bassett Augustin v. Sava.[26] In that case, a Haitian asylum seeker's claim was nearly lost because of translation failures – his French-Creole statements were mistranslated as saying he fled due to a "disease" when in fact he was describing political persecution.[27] The Second Circuit condemned the conduct of a hearing "where the alien and the judge are not understood" as fundamentally unfair and held that an asylum applicant "must be furnished with an accurate and complete translation of official proceedings" to have a meaningful chance to present his case.[28] The court explicitly warned that *"to erect barriers by requiring comprehension of English would frustrate the inclusive aim of the U.N. Protocol and the intent of Congress."* [29] In other words, by 1984, the judiciary recognized that forcing LEP to proceed without interpretation effectively denies them the opportunity to be heard, violating both domestic due process. The Second Circuit remanded Augustin's case for a new hearing with proper translation, aligning deportation proceedings with the same basic interpretation standards long required in criminal trials (e.g. *United States ex rel. Negrón v. New York*,[30] which held that failing to provide a Spanish interpreter to a defendant violated due process).

Following this evolving case law, the Executive Branch incorporated interpreter requirements into regulations. Federal regulations today entitle a respondent to an interpreter at government expense during Immigration Court proceedings if they are not fluent in English.[31] Immigration judges are trained to secure an interpreter (in person or by phone) for any Limited English Proficient (LEP) individual and to confirm on the record that the person and interpreter can understand each other.[32] Despite these formal protections, practical shortcomings often

[26] 735 F.2d 32 (2d Cir. 1984)
[27] Ibid.
[28] Newman, J., 1984, p. 288
[29] Ibid. 288–89; Augustin v. Sava 735 F.2d 32 (2d Cir. 1984)
[30] 434 F.2d 386 (2d Cir. 1970)
[31] 8 C.F.R. § 1240.5
[32] EOIR 2018, §4.11(b); Benton 2020, 462

undermine language access. Interpreters provided by EOIR, while generally qualified, may be untrained in specific dialects or specialized vocabulary, leading to errors. A 2011 study by the Brennan Center documented systemic issues: in some cases, court interpreters "frequently limit interpretation" to just the questions posed by the judge, omitting other dialogue, and quality control is inconsistent.[33] Complaints have arisen about faulty interpretation "with great potential to negatively affect the outcome of the asylum-seeker's case."[34] These issues illustrate that having an interpreter is not the same as having *effective* interpretation – a distinction that due process case law also emphasizes.

The Ninth Circuit has been particularly vocal in enforcing the right to competent interpretation as part of a "full and fair hearing." In *Jacinto v. INS,*[35] the court reversed a deportation order against an asylum seeker from Guatemala after finding that the combination of language barriers and lack of explanation denied her a meaningful opportunity to present her case. Ms. Jacinto was a rural Guatemalan woman with little formal education who proceeded without a lawyer. The transcript revealed she was confused about her rights and the nature of the proceedings – at one point, when asked to designate a country of removal, she answered "Washington" because she did not understand the legal question being posed.[36] The immigration judge's rapid-fire questioning and failure to clarify basic procedures (such as the difference between accepting voluntary departure and seeking asylum) overwhelmed Jacinto, who responded incoherently at times. The Ninth Circuit held that her due process rights were violated because the hearing was not "full and fair" – she never truly understood what evidence was required or how to testify to her persecution story.[37] The court noted an immigration judge must be especially solicitous to

[33] Abel 2011, p. 2; Benton 2020, 463; CAP 2023, p. 3
[34] Brennan Center 2011, p. 5; Benton 2020, 465
[35] 208 F.3d 725 (9th Cir. 2000)
[36] Jacinto v INS (9th Cir. 2000)
[37] Tashima, J., 2000, p. 732

unrepresented, LEP applicants, taking steps to ensure they comprehend what is happening.[38] Jacinto's case stands for the principle that linguistic and cultural barriers, if unaddressed, can nullify an asylum seeker's right to be heard just as gravely as the absence of counsel. The remedy in such cases is typically a new hearing with proper safeguards – effectively giving the applicant another chance to tell their story with adequate interpretation and understanding of the process.[39]

Likewise, in *Perez-Lastor v. INS*,[40] the Ninth Circuit overturned a deportation order where a Guatemalan asylum seeker's hearing was riddled with interpretation errors. The petitioner, Mr. Perez-Lastor, spoke Quiché (a Mayan language), and although an interpreter was provided, the record showed numerous instances of mistranslation and confusion. The court identified tell-tale signs of incompetent interpretation: the applicant's answers were frequently non-responsive or seemingly incoherent, indicating he wasn't understanding the questions, and at times he explicitly expressed difficulty understanding.[41] For example, when the Immigration Judge asked where he lived in Guatemala, the interpreter mistakenly implied the judge had mentioned a specific town – leading Perez-Lastor to answer about a town "you just mentioned" even though no town had been named.[42] Such mistakes made the applicant appear evasive or inconsistent when in fact the fault lay with the translation. The Ninth Circuit ruled that this faulty interpretation undermined the fairness of the hearing. It emphasized that all that remained of the petitioner's testimony in the official record was "the garble produced by the translator" – and an asylum seeker cannot be expected to correct the record for errors he doesn't know occurred.[43]

[38] Jacinto v INS (9th Cir. 2000)
[39] Ibid.
[40] 208 F.3d 773 (9th Cir. 2000)
[41] Ibid.
[42] Ibid.
[43] Ferguson, J., 2000, p. 779; 208 F.3d 773 (9th Cir. 2000)

Importantly, the court also discussed prejudice: to warrant relief, an applicant must show that the translation problems potentially affected the outcome of the case.[44] In Perez-Lastor's situation, the errors clearly went to the heart of his credibility and the coherence of his narrative, so the case was remanded for a new hearing. These precedents underscore that inadequate language interpretation is a serious due process violation in asylum cases – one that courts will remedy if shown to have likely impacted the result.[45]

However, not all courts have been willing to extend due process so far as to require proactive language assistance in every scenario. Notably, in the affirmative asylum context (initial interviews with USCIS, before any removal proceedings), some courts have been reluctant to impose a due process obligation on the government to provide interpreters. The Second Circuit in *Abdullah v. INS*,[46] for instance, held that an asylum applicant applying affirmatively for a benefit does not have a constitutional right to a government-furnished interpreter.[47] The court reasoned that the *Mathews v. Eldridge* due process balancing tipped against the applicant in that context: the government characterized asylum interviews as offering a generous benefit rather than adjudicating a deprivation, and thus the individual interest in free interpretation was deemed less weighty.[48] USCIS policy to this day reflects that view – the agency requires affirmative asylum applicants who are not fluent in English to bring their own interpreter to the asylum interview at their own expense.[49] If the applicant fails to do so, the interview and, by extension, the whole asylum application can be delayed or deemed abandoned. This policy effectively

[44] 208 F.3d 773 (9th Cir. 2000)
[45] Ibid.
[46] 184 F.3d 158 (2d Cir. 1999)
[47] Calabresi, J., 1999, p. 165; Benton 2020, 461
[48] Ibid.
[49] Benton 2020. 464

conditions a refugee's access to the asylum process on their ability to secure (and pay for) a competent interpreter, something many newly arrived asylum seekers struggle to do.

During the COVID-19 pandemic (2020–2023), USCIS temporarily provided contract interpreters by phone for many languages at affirmative interviews, but as of September 13, 2023, the prior rule was reinstated – applicants must again supply their own interpreter. The result is a two-tiered system of language access: in immigration court, interpretation is provided as a due process measure, but in the initial affirmative stage, interpretation is treated as the applicant's responsibility. This discrepancy sets the stage for potential unfairness, especially if an asylum seeker's case is weakly presented or even erroneously denied at the interview due to interpretation issues before they ever reach a court. In later sections, this paper will explore whether such USCIS interpreter policies can be challenged as violating fundamental fairness, and whether the *Strickland* test for effective assistance might be a useful analog in assessing interpreter adequacy in these quasi-judicial interviews.

3.3 Removal Proceedings vs. Criminal Trials – Procedural Differences

U.S. deportation (removal) hearings are civil administrative proceedings, not criminal trials, and this distinction carries significant procedural consequences. In criminal court, defendants enjoy robust constitutional protections – for example, the Sixth Amendment guarantees counsel and the right to a jury, and the Due Process Clause mandates that proceedings be comprehensible including the right to an interpreter if needed.[50] By contrast, individuals in removal hearings are not entitled to government-appointed counsel and must face a trained government attorney in an adversarial setting—without the benefit of a jury or the full range of due process protections

[50] Augustin v. Sava (2d Cir. 1984)

afforded in criminal proceedings."[51] The immigration judge (an executive branch official) both presides and makes the decision, and the rules of evidence are more lenient – hearsay is often admissible, and the standard of proof differs (the government must prove alienage and removability by "clear and convincing" evidence, while an asylum applicant bears the burden to prove eligibility).[52] Despite being civil in form, the Supreme Court has acknowledged that deportation can be gravely severe – in some cases "the equivalent of banishment or exile" – and thus these hearings must conform to basic due process requirements.[53]

One key procedural safeguard in immigration court is the regulatory guarantee of interpretation for LEP individuals. In contrast, the Constitution entitles a criminal defendant to an interpreter immediately,[54] while it is statutes, regulations, and case law that entitle the right to an interpreter in immigration proceedings. The EOIR provides interpreters at government expense for any respondent "whose command of the English language is inadequate to fully understand and participate in removal proceedings." [55] In practice, this means that during defensive asylum hearings (as part of removal proceedings), the Immigration Court appoints a qualified interpreter (often via contract or teleconference) to translate the hearing in the asylum seeker's native language, ensuring they can hear the questions and communicate answers in their own tongue. This policy reflects the fundamental notion that a hearing in a language the applicant cannot understand is "of no value" and fails the test of fundamental fairness.[56] However, this protection is not as comprehensive as it appears on paper. Unlike a criminal trial, where a mistranslation can

[51] INA § 240; 8 U.S.C. § 1229a
[52] Jacinto v INS (9th Cir. 2000)
[53] Bridges v. Wixon, 326 U.S. 135 (1945)
[54] Augustin v. Sava (2d Cir. 1984)
[55] EOIR 2018, p. 4.11; Benton 2020, 462
[56] Augustin v. Sava (2d Cir. 1984)

overturn a conviction, in immigration court the burden falls on the non-citizen to show an egregious failure of interpretation that caused prejudice before relief is granted.[57]

Another major difference is the absence of a government-provided attorney for indigent asylum seekers. In criminal cases, *Strickland v. Washington*[58] established that defendants have a right to the effective assistance of counsel, and that convictions can be reversed if counsel's performance was deficient and prejudiced the outcome. By contrast, in removal proceedings non-citizens must secure their own counsel or proceed *pro se* (without legal representation); while they technically have a right to be represented, the government will not provide counsel for them.[59] Immigration judges do have an obligation to inform respondents of their rights and, in the case of unrepresented asylum seekers, to elicit relevant testimony.

But the informality of these civil hearings can obscure power imbalances. Asylum seekers often appear *pro se* – in recent years, only about half of asylum seekers in immigration court had legal counsel, and representation rates are even lower for those in detention.[60] Studies show that lack of counsel dramatically decreases success rates in asylum cases, illustrating how crucial legal guidance is even in a civil context. In effect, the fundamental fairness doctrine in immigration proceedings must fill the gap: it requires that even without all the criminal trial guarantees, the hearing must be fundamentally fair, which includes ensuring the respondent understands the nature of the proceedings and can present their case in a meaningful manner.[61] This doctrine is the lens through which issues of interpretation are evaluated, often analogized to the right to effective counsel – if language barriers prevent an applicant from comprehending or

[57] 208 F.3d 773, 778–79 (9th Cir. 2000)
[58] 466 U.S. 668 (1984)
[59] 8 U.S.C. § 1362
[60] TRAC 2021, p. 2
[61] 18 I&N Dec. 303 (BIA 1982)

communicating, the hearing's fairness is in question in much the same way as if they had no competent legal counsel.

4. FUNDAMENTAL FAIRNESS

4.1 Fundamental Fairness and Due Process

Under Constitutional law, procedural due process guarantees every person a fair opportunity to be heard before being deprived of life, liberty, or property. As applied to asylum adjudications, courts have long held that the Fifth Amendment's Due Process Clause governs immigration proceedings, even though they are civil in nature.[62] A core aspect of this "opportunity to be heard" is the ability to comprehend and participate in one's hearing. When language barriers prevent an asylum seeker from understanding the questions or communicating answers to the immigration judge, the proceeding cannot be said to be truly fair. Numerous courts have explicitly recognized that an inability to speak English triggers due process protections. For example, the Ninth Circuit in *Perez-Lastor v. INS (2000)* stated unequivocally that "If an alien does not speak English, deportation proceedings must be translated into a language the alien understands" – otherwise there is no "full and fair hearing" as due process requires.[63] In that case, involving an indigenous Guatemalan asylum seeker, the court found a due process violation because incompetent interpretation distorted the applicant's testimony and affected the outcome.[64] Similarly, the Second Circuit in *Augustin v. Sava* held that inadequate translation undermined the fairness of the hearing, noting that "a hearing is of no value when the asylum

[62] Mathews v. Diaz 1976, p. 82
[63] Perez-Lastor 2000, p. 778
[64] Perez-Lastor 2000, pp. 781–782

seeker and the judge are not understood."[65] These cases underscore that language access is not a luxury in asylum hearings – it is a constitutional necessity for procedural fairness.

The fundamental fairness doctrine in immigration law further bolsters this point. This doctrine, derived from due process, requires that removal proceedings be conducted in a manner that does not "shock the universal sense of justice" (as early courts phrased it) and that the immigrant has a meaningful chance to present their case.[66] In practical terms, fundamental fairness has been linked to the concept of effective assistance – for instance, ensuring access to counsel or competent translation as needed. In *Jacinto v. INS*,[67] the court reversed a deportation order against an unrepresented Guatemalan asylum seeker, Jacinto, because "the combination of language difficulties and complex procedures" prevented her from understanding her rights and the nature of the proceedings.[68] The Ninth Circuit emphasized that an immigration judge has a duty to develop the record and ensure the applicant understands what is at stake, especially when no attorney is present.[69] Jacinto's case stands for the principle that linguistic barriers, if unaddressed, can nullify an asylum seeker's right to be heard just as gravely as a biased judge or a missing notice would. In effect, failing to account for language differences is a form of procedural unfairness that violates due process. This is why immigration judges are required to inquire about language at the outset of a hearing and provide an interpreter if there is any doubt. The Third Circuit's 2021 ruling in *B.C. v. Attorney General* went so far as to hold that an immigration judge's failure to affirmatively ascertain the need for an interpreter itself violates due process. In Judge Ambro's words, "Failing to provide an interpreter when needed makes meaningless a noncitizen's right to due process. And not making a threshold inquiry into whether

[65] Augustin 1984, p. 37
[66] Bridges v. Wixon 1945, p. 152
[67] 9th Cir. 2000
[68] Jacinto 2000, pp. 728–729
[69] Jacinto 2000, p. 732

an interpreter is needed, in turn, renders the right to an interpreter meaningless."[70] This forceful statement highlights that the right to an interpreter is inherent in the right to a fair hearing – one cannot exist without the other.

Applying these principles to the affirmative asylum context, it is clear that the government's policy of refusing to provide interpreters and requiring applicants to supply their own is incompatible with due process. An affirmative asylum interview may not immediately determine removal, but it is often a decisive adjudication of an applicant's refugee claim – denial means the person could be placed in removal proceedings and ultimately deported to persecution. The stakes (potential return to danger, i.e. loss of a protected liberty interest in staying safe in the U.S.) are life-and-death, analogous in many ways to the stakes in a removal hearing. Yet, the procedural safeguards at the asylum interview are weaker, and no interpreter is provided no matter how vital one is to fairness. If we balance the *Mathews v. Eldridge* factors for procedural due process – the private interest at stake, the risk of erroneous deprivation through current procedures, and the government's interest/burden – the scale tips in favor of requiring government-provided interpreters for these interviews. The risk of error is immense when an applicant must rely on an untrained friend to interpret complex accounts of persecution. Critical nuances can be lost in translation, leading an asylum officer to wrongly reject a credible claim.

The government's interest in saving cost or effort by not providing interpreters cannot outweigh an individual's interest in not being wrongfully returned to persecution, especially when the government already provides interpreters in removal proceedings and even had interpreters monitoring the interviews. In short, there is a compelling due process case that fundamental fairness demands extending interpreter access to affirmative asylum proceedings. Failing to do so

[70] B.C. 2021, p. 312

effectively subjects asylum seekers to a procedural lottery – their chances may hinge less on the merits of their persecution story than on whether they could find a competent interpreter. Such a haphazard approach falls short of constitutional standards for a fair hearing.

4.2 The Emergence of a Two-Tier Interpretation System

Against this doctrinal backdrop, the U.S. practice has effectively created a dual system for language access in asylum cases. On one tier, individuals in removal proceedings (usually defensive asylum claimants) benefit from decades of case law, regulations, and normative pressure that ensure interpretation is provided as a matter of course. On the other tier, affirmative asylum applicants—often equally in need of protection—face a historically laissez-faire approach that treats interpreter assistance as a privilege or burden for the applicant, not an obligation of the state. This dichotomy became especially evident after the 1980 Refugee Act, when asylum applications increased, and affirmative procedures were formalized. USCIS (and its predecessor INS) opted for a regulation in the 1990s that placed the onus of interpretation on the applicant, likely to conserve resources.[71] Meanwhile, EOIR maintained the opposite approach in its domain. The result is that two asylum seekers with identical claims may have very different experiences: one who tells her story through a friend she brought to interpret at an asylum office interview, and another who tells her story through a certified court interpreter in immigration court. This two-tier system has drawn critique for constituting a kind of administrative double standard. Critics note that it undermines the spirit of "fundamental fairness": the government effectively acknowledges in court that interpretation is essential to fairness,[72] yet in the initial adjudication it withholds that very service. Over time, this discrepancy has only grown more

[71] Abdullah 1999, p. 165
[72] Perez-Lastor 2000, p. 780

pronounced. Temporary measures during the COVID-19 Pandemic saw USCIS pilot the provision of interpreters (telephonically) for affirmative interviews to minimize in-person contact—essentially conceding that it could provide interpreters if it chose to. But as of September 2023, that experiment ended and the prior rule resumed, renewing criticism that the U.S. is failing to meet evolving norms of procedural equality.[73]

This historical and contextual landscape shows that language access in U.S. asylum law sits at a crossroads. The doctrine of fundamental fairness in immigration proceedings strongly favors providing interpreters—as seen in case law from *Yamataya* through *B.C. v. Attorney General*—yet a large segment of asylum applicants is still excluded from this protection at the initial stage. This context sets the foundation for understanding that requiring asylum seekers to provide their own interpreters is not only poor policy, but also unconstitutional and discriminatory under the very principles of due process and equal protection that the U.S. purports to uphold.

4.3 Interpreter Quality, Strickland, and "Effective" Assistance

Another doctrinal avenue to consider is the analogy between a poor interpreter and ineffective assistance of counsel. In criminal law, the Sixth Amendment guarantees effective assistance of counsel, and the landmark *Strickland v. Washington* test provides that a defendant must show counsel's performance was deficient and prejudiced the defense to establish a constitutional violation.[74] While asylum applicants have no Sixth Amendment right (it's not criminal), the Fifth Amendment due process offers a parallel protection in removal proceedings under the theory of

[73] American Immigration Council 2023, p. 2
[74] Strickland 1984, pp. 687–688

"ineffective assistance" amounting to fundamental unfairness.[75] Lack of an interpreter or a grossly incompetent interpreter can be analogized to having no counsel or an inept one. Both scenarios involve a failure of the mechanism that is supposed to allow the applicant to meaningfully present their case. Indeed, courts have implicitly applied a Strickland-esque prejudice analysis to interpreter errors. The Ninth Circuit in *Perez-Lastor* identified specific criteria for when a faulty translation violates due process, effectively asking whether better interpretation would have likely changed the outcome.[76] This mirrors Strickland's prejudice prong, "reasonable probability that but for counsel's errors, result would differ."

By requiring asylum seekers to bring their own interpreters, the government invites exactly the kind of problems that Strickland guards against in the counsel context. Untrained, unpaid, or ad-hoc interpreters (friends, community volunteers, or even unscrupulous agents) may make critical mistakes like omitting important details, confusing dates, or mistranslating fear or threats which can lead an adjudicator to find the story not credible or not indicative of persecution. For instance, in one documented case, an interpreter mistranslated an asylum seeker's statement about fearing arrest because of an "uncle" into saying he feared arrest because of an "ankle," utterly changing the meaning and undermining the claim.[77] These errors can devastate a case just as much as when a lawyer fails to introduce key evidence or misquotes a statute. Under the fundamental fairness doctrine, if poor interpretation renders the result of a proceeding unreliable, it is as if the applicant had no real opportunity to present their case at all—a due process violation.[78] One could argue that by not providing professional interpreters, the government is effectively shrugging off its duty to ensure a fair process, shifting the burden and blame onto the

[75] Lozada 1988, p. 638
[76] Perez-Lastor 2000, p. 781
[77] Dunn 2019, p. 45
[78] Hartooni 1994, p. 340

asylum seeker for any interpretive failures. This runs counter to the principle, articulated in cases like Jacinto, that the onus is on the adjudicator to ensure comprehension and fairness when an immigrant is pro se or otherwise disadvantaged.[79]

Applying Strickland's logic, if we viewed the interpreter as analogous to "counsel" for the limited purpose of language, the current system would be suspect. Ad hoc interpreters often perform below an objective standard of reasonableness because, unlike professional court interpreters, they may lack certification, be emotionally involved, or unfamiliar with legal terminology. The prejudice is plain: if the interpreter flubs the account of past persecution, the asylum request is likely denied. While this is a conceptual exercise, it serves to underscore that language access is tied to effective representation. Notably, the fundamental fairness doctrine has been cited to require appointed counsel for unrepresented minors or mentally impaired respondents in removal proceedings in certain circuits on due process grounds because they cannot effectively proceed alone. Fundamental fairness requires providing an interpreter to those who cannot proceed in English—it is a precondition to any effective self-representation. In fact, without an interpreter, an asylum seeker with no English is functionally unrepresented. Thus, the interpreter becomes their "voice" in the proceeding. Ensuring that this voice is competent and available is part of the government's obligation to afford a meaningful hearing. Any lesser approach risks constructive denial of counsel/communication, analogous to a Strickland violation in spirit.

[79] Jacinto 2000, p. 731

5. EQUAL PROTECTION

5.1 Protected Grounds in Asylum Law

Language, therefore, plays a dual role: it may form part of the story of persecution (the *substance* of an asylum claim), and it also impacts the procedure by which that story is told (the *process* of the hearing). The former is relevant to the legal standard for asylum (nexus to a protected ground), while the latter is relevant to due process and fairness of the hearing itself. Both aspects are crucial, and both will be foundational to the legal arguments in this thesis. We operate on the premise that when language serves as a proxy for protected grounds, discrimination *based on language* in the asylum process should be seen as no more acceptable than discrimination based on race or nationality directly.

In the context of asylum interpreters, there are two layers of potential equal protection violation: (a) the differentiation between affirmative vs. defensive asylum applicants regarding interpreter provision, and (b) the deeper issue that discrimination based on language may act as a proxy for discrimination based on national origin or ethnicity, which are suspect classifications.

First, consider the two-tier system itself. We have two groups of asylum seekers, both asking for refuge under the same laws and both facing removal if they fail—yet one group (those in removal proceedings) gets the benefit of government-furnished interpretation and the other (affirmative applicants) does not. This government classification (based on the procedural posture of the case) could be viewed as arbitrary and unrelated to any legitimate governmental interest. There is no substantive difference in the need for an interpreter or the importance of accurate fact-finding between an interview and a court hearing—persecution claims are complex

and vital in both. The only difference is bureaucratic: one is handled by USCIS, the other by EOIR. If an affirmative applicant is unsuccessful, their case ends up in EOIR anyway as a "referral" to a judge, at which point the government will then provide an interpreter. It is difficult to discern a rational basis for withholding interpretation at stage one only to provide it at stage two, other than perhaps a deterrence motive or cost-saving at the initial stage. Cost-saving alone is typically not a sufficient justification when it comes to procedures that can affect fundamental rights (see *M.L.B. v. S.L.J. 1996*, striking down a fee that blocked poor litigants' access to appeals). Moreover, affirmative and defensive applicants are similarly situated in all relevant respects—they are all non-citizens seeking asylum protection—and thus deserve equal access to the tools needed to make their case. By denying one subgroup the interpreter aid given to the other, the government policy fails even rational basis review, let alone heightened scrutiny. It creates an unwarranted disparate impact: those who cannot proceed in English but applied affirmatively are more likely to have their claims misunderstood or denied at the first instance, effectively penalizing them for having followed the affirmative process. This irrationality is an unjust form of administrative discrimination.

More profoundly, language-based discrimination can be seen as a proxy for discrimination on the basis of national origin or ethnicity, which triggers strict scrutiny under equal protection. The vast majority of asylum seekers who need interpreters are foreigners from non-English-speaking nations; by definition, they belong to a particular national origin group (e.g. Guatemalans, Cameroonians, Syrians) and often to distinct ethnic or linguistic communities (Maya K'iche' speakers, Anglophone Cameroonians, Arabic speakers, etc.). U.S. law has recognized in other contexts that disparate treatment due to language implicates national origin discrimination. In *Lau v. Nichols*, for example, the Supreme Court treated the failure to provide English language

instruction to Chinese students as national origin discrimination under Title VI of the Civil Rights Act, noting that language is intimately tied to national origin.[80] The Department of Justice's regulations implementing Title VI explicitly state that organizations receiving federal funds must ensure meaningful access for LEP persons to avoid national origin discrimination.[81] Although asylum applicants are not invoking Title VI, the principle is analogous: if a government policy systematically disadvantages individuals who speak a foreign language, it effectively targets individuals based on the country and culture they come from. It is difficult to argue that the interpreter disparity serves any compelling governmental interest. Rather, interests of the highest order are being violated: the interest of refugees in not being returned to persecution, implicating the right to both life and safety.

One illuminating comparison is with education and voting rights cases. In *Meyer v. Nebraska*, the Supreme Court struck down a state law banning the teaching of foreign languages to young children, finding it violated the Fourteenth Amendment. While *Meyer* was decided on substantive due process grounds (the liberty to acquire knowledge), it was infused with a recognition that linguistic intolerance is antithetical to American ideals of liberty and equality. The Court acknowledged that Nebraska's law, aimed at forcing linguistic homogeneity, was an overreach: "The protection of the Constitution extends to all, to those who speak other languages as well as to those who speak English."[82] Later, in *Oyama v. California* and *Hernandez v. Texas*, the Court made clear that laws or practices targeting persons of a certain ancestry or culture, even if not explicitly racial, are subject to strict scrutiny. Disfavoring someone for speaking Spanish or Arabic is not formally the same as disfavoring them for being Mexican or Syrian, but in practice

[80] Lau 1974, p. 569
[81] DOJ LEP Guidance 2002, p. 41459
[82] Meyer 1923, p. 400

it is extremely difficult to separate language from ethnic identity. The asylum interpreter requirement can therefore be seen as a form of structural discrimination: it places a heavy burden on LEP asylum seekers that English-speaking applicants do not face. In effect, it advantages asylum seekers from anglophone countries over those from non-anglophone backgrounds. This kind of disparate outcome along nationality or ethnic lines is exactly what equal protection is meant to guard against. If challenged in court, a reviewing court would likely probe whether there is a substantial justification for such uneven treatment. Given that providing interpreters in removal proceedings has not been deemed unduly burdensome, it would be hard for the government to justify why it cannot extend similar facilitation in affirmative cases. The policy appears arbitrary—if fairness and accuracy matter in court, they matter in the asylum office as well.

Additionally, equal protection is also violated in spirit by what can be characterized as a selective denial of a fundamental procedural right. The Supreme Court held that access to courts and judicial processes must be equal if the issue at stake is fundamental. While asylum interviews are not courts per se, they are an integral part of the adjudicative process for a fundamental humanitarian protection. They illuminate cases, such as *Griffin v. Illinois (1956)*, where the Court required states to provide trial transcripts to indigent criminal defendants for appeals – reasoning that a state cannot make a right (appeal) turn on one's ability to pay. Here, the ability—and right—to effectively seek asylum should not hinge on one's ability to pay for an interpreter or have English-speaking friends. Such a requirement essentially conditions the exercise of a legal right on linguistic (and potentially by extension, economic and cultural) privilege, which is at odds with the egalitarian purpose of the Refugee Act. In sum, viewing language-based burdens through an equal protection lens reveals them to be suspect, discriminatory, and lacking in

justification. The interpreter disparity treats LEP asylum seekers as second-class applicants—a result difficult to reconcile with the Constitution's guarantee of equal justice under law.

5.2 Language as a Particular Social Group

Lastly, it is worth examining language access through the lens of asylum law's own protected grounds. Language can constitute membership in a PSG—one of the five grounds for persecution protected by refugee law (alongside race, religion, nationality, and political opinion). While language per se is not explicitly listed, it often overlaps with ethnicity or nationality. Under the BIA's *Matter of Acosta (1985)* definition, a PSG is a group whose members share a common immutable characteristic that is socially distinct and particular.[83] One's native language can be argued to be immutable because a person could always learn new languages but cannot change one's birthplace and early-life linguistic heritage. It is also particular and can be socially distinct (language minorities are often recognized and targeted as such in society). There have been asylum claims based on language—for instance, people persecuted for speaking a forbidden language or belonging to a linguistically distinct minority. In *Matter of S-E-G- (2008)*, the BIA left open the possibility that linguistic groups could be PSGs if the society perceives them as a distinct group.[84] If language can render someone eligible for asylum as a PSG, then denying accommodation for language within asylum procedures is inconsistent to the point it strains sound logic and contradicts the humanitarian spirit of refugee protection.

[83] Matter of Acosta 1985, p. 233; refined by Matter of M-E-V-G- 2014, p. 237
[84] BIA 2008, p. 584

6. DISABILITY

Factor	Disability	Limited English Proficiency
Legal Basis for Accommodation	Section 504 of the Rehabilitation Act; ADA Title II	Title VI of the Civil Rights Act (interpreted to include language access); Executive Order 13166
Type of Barrier	Inability to hear or communicate due to physical impairment	Inability to understand or speak English
Obligation to Accommodate	Mandatory and enforceable under civil rights laws	Often discretionary; subject to agency regulations and inconsistent enforcement
Cost of Accommodation	Covered by the government	Often borne by the applicant (e.g., in affirmative asylum interviews)
Examples of Accommodation	ASL interpreter, captioning, assistive listening devices	Interpreter (when available), translated documents (not guaranteed)
Default Policy in Asylum Proceedings	Interpreter must be provided before proceeding	Applicant must provide own interpreter (affirmative asylum); EOIR may provide in court
View in Legal Doctrine	Considered essential to due process and nondiscrimination	Often treated as a logistical support, not a legal right
Consequences of Lack of Accommodation	Proceeding paused until access is secured; denial considered discriminatory	Hearing may proceed regardless; risks include misunderstanding, adverse rulings
Framing in Case Law	Protected under Equal Protection and Due Process (*Tennessee v. Lane*)	Tied to national origin discrimination (*Lau v. Nichols*), but weak enforcement
Cultural/Policy Assumptions	Disability is immutable and rights-triggering	Language is treated as a personal responsibility or deficiency

[Figure 3]

6.1 Lessons from Disability Accommodation Frameworks

The unequal treatment of language barriers can be further illuminated by comparing it to the U.S. legal framework for disability accommodations. As discussed, a deaf asylum seeker or one with a speech impairment is accommodated under federal law—they are provided interpreters or auxiliary aids without charge. This stems from a recognition that to have a fair and meaningful

proceeding, someone with a hearing disability must be assisted to the same communicative level as others. No one would suggest that a deaf person "bring their own interpreter"; that would be anathema to our disability rights regime. The Rehabilitation Act's mandate in federally conducted programs (like immigration agencies) is clear: agencies cannot exclude or disadvantage an individual due to disability and must take reasonable steps to ensure effective communication.[85] These steps include providing qualified interpreters for the deaf or hard of hearing. Failure to do so would be deemed discrimination. The key insight here is that communication ability is seen as something the state may need to equalize to give everyone a fair shot.

Now consider the plight of an asylum seeker who is perfectly able-bodied but speaks a rare foreign language. Functionally, in an English-only legal setting, they are as unable to communicate as a hearing-impaired person would be without an interpreter. Yet, because LEP is not considered a "disability," the law imposes no affirmative duty on agencies to assist. This creates an odd moral inconsistency because the system acknowledges a duty to accommodate one kind of communication barrier but not another. One might argue that the distinction is merely categorical (disability vs. non-disability) and not intended to harm. However, the effect is that LEP migrants are left just as handicapped in the process as someone with a disability, but without the corresponding aid. There is a growing scholarly view that language should be seen through the lens of accommodation. Pooja Dadhania, for instance, argues that "language, like disability, can put individuals at a severe structural disadvantage in legal processes, and there is little principled reason to accommodate one but not the other."[86] Under this reasoning, providing interpretation services is not a matter of special treatment; it's about leveling the playing field –

[85] 28 C.F.R. § 39.160
[86] Dadhania 2021, p. 370

ensuring that an asylum seeker who speaks Kinyarwanda has the same genuine opportunity to convey their story as one who speaks English or is provided an ASL interpreter.

The disability analogy also ties into constitutional law. In *Tennessee v. Lane*, the Supreme Court upheld Title II of the ADA (access to courts for disabled persons) as a valid enforcement of the Fourteenth Amendment, recognizing a history of unconstitutional treatment of the disabled community in public services, including courts. The Court there noted that the fundamental right of access to courts triggers heightened scrutiny when unequal. If we transpose that principle: if disabled individuals have a fundamental right to reasonable access in court, surely linguistic minorities have a fundamental interest in access to refugee protection procedures. Denying interpretation to a language minority is conceptually similar to holding a trial on the second floor of a courthouse with no wheelchair ramp—it is a procedural hurdle that systematically disadvantages one group. Just as the ramp must be built, the interpreter should be provided.

In practice, some government policies implicitly acknowledge this parallel. EO 13166 (2000) requires federal agencies to improve access for LEP persons, treating language access as a civil rights obligation tied to national origin discrimination prevention. Pursuant to this, DOJ and DHS have language access plans. Yet, paradoxically, USCIS's interpreter rule stands as an outlier, carving out affirmative asylum interviews away from the usual expectation of accommodation.[87] The Rehabilitation Act's ethos of inclusion suggests that the government should err on the side of assistance where communication is at issue. If we truly applied the same logic to language, an asylum interview without an interpreter for an LEP individual would be seen as unthinkably unfair—just as a sign-language dependent person left without an interpreter would be. This comparative lens reinforces the argument that it is time to reconceptualize

[87] USCIS 2024, 7

language access as a right—not merely a convenience. The law's protective instinct for the vulnerable (like the disabled) should extend to linguistic minorities facing the complex, high-stakes asylum process. Treating language differences as deserving of accommodation would align U.S. practice with the principle of nondiscrimination and reasonable adjustment that is the hallmark of modern human rights law.

6.2 Accommodations for Communication Barriers

While language access in immigration has been historically tenuous, U.S. law has long mandated accommodation for communication barriers due to disability. For example, a deaf or hard-of-hearing asylum seeker is unequivocally entitled to a sign language interpreter or other aid at government expense under disability rights statutes. The Rehabilitation Act of 1973 (§504) and the ADA require federal agencies and courts to provide reasonable accommodations to ensure equal participation, which includes sign-language interpretation for those who need it.

In immigration courts and asylum interviews, authorities routinely arrange qualified sign language interpreters as a matter of legal obligation. By contrast, no parallel statutory protection exists for foreign-language speakers who cannot communicate in English. In practice this creates an odd discrepancy: a deaf asylum applicant will have an interpreter provided, but a Dari- or Spanish-speaking applicant must procure their own. This divergence is evident in agency policies. The DHS explicitly exempts sign-language interpreters from its rule requiring asylum applicants to supply their own interpreter, acknowledging that the agency must furnish sign-language services as an accommodation.[88] Spoken language, however, is treated not as a right or accommodation but as the applicant's own responsibility. This contrast reveals a

[88] USCIS 2023, p. 412

troubling inconsistency. Both disability and LEP present comparable barriers to understanding in a legal proceeding; yet only the former is treated as warranting affirmative government assistance.

The historical denial of language support for LEP applicants, while aggressively enforcing disability access, suggests that language barriers have been viewed as a lesser obstacle, rooted perhaps in assumptions that learning English is a personal obligation. This paper questions that assumption, aligning with scholars who argue that language should be viewed as an integral part of one's identity—no less immutable or deserving of respect than a physical condition.[89] The differing treatment in law and policy sets the stage for examining whether language-based disparities amount to prohibited discrimination.

6.3 Language Barriers vs. Disability Accommodations: A Fundamental Fairness Analogy

The concept of fundamental fairness in immigration proceedings demands that all individuals have a reasonable opportunity to participate in their hearing—an idea closely related to ensuring equal access regardless of personal characteristics that might impede participation. U.S. law has made significant strides in accommodating people with disabilities in removal proceedings. For example, a respondent who is deaf or hard-of-hearing is entitled to a sign-language interpreter or other appropriate accommodation under Section 504 of the Rehabilitation Act of 1973,[90] which must be applied because immigration courts are federal programs that must not discriminate on the basis of disability. In practice, this means a deaf asylum seeker will be provided an ASL interpreter (or another sign language, if needed) at government expense and without question—their hearing would not proceed until effective communication is secured. By contrast,

[89] Dadhania 2021, p. 365
[90] 29 U.S.C. § 794

an asylum seeker who is simply not proficient in English but not disabled has no equivalent statutory guarantee; their access to an interpreter is grounded only in the regulatory and due process principles discussed above, not in a specific civil rights law. The discrepancy is striking: both a deaf person and an LEP individual face the same functional barrier—they cannot understand spoken English in the courtroom—yet one is protected by explicit disability rights laws, while the other relies on the sometimes less muscular protections of immigration regulations and constitutional due process. To reiterate, under current policy deaf and hard-of-hearing asylum applicants meet no barriers to securing interpretation services while LEP affirmative applicants are required to procure their own interpreter. This raises the question: should language-based limitations be treated with the same seriousness as disabilities under fundamental fairness doctrines? Many scholars argue yes, pointing out that both situations involve an extrinsic barrier to communication in court that the individual cannot overcome alone.[91]

The fundamental fairness doctrine in immigration law has been compared to the ADA's guarantee of "reasonable accommodations" for disabled individuals. In both cases, the goal is to enable meaningful participation in a legal process. For instance, immigration judges have developed mental competency safeguards for respondents with cognitive disabilities after the decision in *Matter of M-A-M-*.[92] In *Matter of M-A-M-*, the BIA held that if an individual "lacks sufficient competency to proceed," the Immigration Court must take measures to protect the fairness of the hearing—ranging from providing a guardian ad litem to, in extreme cases, terminating proceedings until the person is deemed "competent."[93] This stemmed from the

[91] Skrifvars et al. 2024, p. 1
[92] 25 I&N Dec. 474 (BIA 2011)
[93] id. at 479–80

recognition that proceeding normally against a person who cannot understand the nature of the hearing would be fundamentally unfair and a violation of the INA's procedural rights as well as due process. While not speaking English is of course not a disability, in both cases there is an obvious need for accommodation if the requirement is to enable meaningful participation in a legal process. Both are conditions extrinsic to the merits of the asylum claim, not the fault of the applicant, and yet crucial to whether the claim can be fairly heard.

There is a legal bridge connecting language and disability accommodation: national origin discrimination law. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of national origin by any entity receiving federal financial assistance. The Supreme Court and federal agencies have interpreted "national origin" discrimination to include language-based discrimination, since language is so closely tied to ethnicity and origin (*Lau v. Nichols*[94] famously held that a public school's failure to provide English language instruction to LEP students was national origin discrimination under Title VI). In August 2000, President Clinton issued EO 13166, requiring federal agencies to ensure LEP individuals have meaningful access to services, effectively mandating that agencies create Language Access Plans.[95] The Department of Justice, which oversees immigration courts, accordingly recognizes language access as a civil right. In theory, this policy puts language on par with other protected characteristics—a recognition that someone's inability to speak English should not impede their access to justice. Indeed, the Department of Homeland Security's own regulations and guidance instruct officers to obtain interpreters when needed and to provide translations of vital documents, underscoring that "language access is a civil right and is guaranteed under the Due Process Clause."[96]However,

[94] 414 U.S. 563 (1974)
[95] Clinton, 2000, §1-2; CAP 2023, p. 3
[96] CAP 2023, p. 3

enforcement and consistency have lagged. The CAP recently reported in 2023 that despite these legal frameworks, the "significant failure of the asylum system to ensure that everyone has access to information in a language they understand" persists due to increasing linguistic diversity and shortage of qualified interpreters.[97] The report cites numerous complaints filed on behalf of detained LEP individuals denied meaningful language access in ICE detention—akin to a disabled person being denied a needed accommodation—and argues that language access should be seen not as a luxury but as a right on the same level as disability access.[98]

This disparate treatment has real impacts. It means a LEP asylum seeker without resources or community connections might have no effective access to the asylum process, whereas a similarly situated deaf asylum seeker would receive help. This discrepancy could be viewed as a form of unequal treatment under the law—in essence, a procedural discrimination based on language. The fundamental fairness doctrine arguably should encompass both scenarios: just as it would be unacceptable to force a deaf person to proceed without interpretation, it should be unacceptable to force an LEP individual to do so. Some commentators have pointed out that the consequences of failing to accommodate language are analogous to failing to accommodate disability—in both cases, the individual is silenced in a proceeding that determines their rights.[99] In fact, one could argue that failing to provide language services to LEP asylum seekers *is* a form of national origin discrimination, since language is inherently tied to origin. This perspective aligns with the Refugee Convention's injunction against discrimination "as to…country of origin"—if English-speaking asylum seekers (from, say, Canada or India) can navigate the

[97] CAP 2023, p. 4
[98] Ibid
[99] Corcoran 2004, p. 45

system more easily than LEP migrants (from Syria or Honduras), the process itself risks discriminating indirectly on the basis of origin.

The U.S. has begun to acknowledge this parity in some areas. In 2013, the DOJ's EOIR launched a pilot program to assign counsel to mentally incompetent detained immigrants (a result of the *Franco-Gonzalez v. Holder* settlement[100]). Around the same time, there were calls to similarly bolster interpreter quality and availability in courts. While a right to state-appointed counsel for the indigent in immigration proceedings is not yet recognized, the BIA does allow claims of ineffective assistance of counsel (IAC) in immigration—a doctrine derived from fundamental fairness.[101] If a person's attorney was so incompetent that it prevented a fair hearing, the case can be reopened. This is essentially the *Strickland* test applied in immigration via due process: was counsel's performance deficient and did it prejudice the outcome? By analogy, if an interpreter—who is effectively the "voice" of the asylum seeker—performs deficiently, one can argue the same two-prong test should apply. A Strickland-like framework for interpreters would ask firstly, was the interpretation below an objective standard of competence, and secondly, did those failures prejudice the asylum seeker's case, such as by causing an adverse credibility finding or omission of key facts? Courts like the Ninth Circuit in *Perez-Lastor* essentially applied this analysis without labeling it "Strickland," finding prejudice where the record was a "garble" that likely affected the outcome.[102]

The right to effective interpretation should be considered as important as the right to effective counsel and disability accommodation. If due process tolerates no less for those who cannot hear or who lack mental competency, it should equally protect those who cannot speak English.

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[100] C.D. Cal. 2013
[101] 19 I&N Dec. 637 (BIA 1988)
[102] 208 F.3d 773 (2000)

7. CONCLUSION

Considering all the above—constitutional due process, equal protection, disability law analogies, case law on fairness, and international norms—a clear theme emerges: language access should be reconceptualized as a fundamental right in asylum proceedings. This means viewing interpretation services not as an optional benefit provided by the government, but as something to which asylum seekers are entitled by virtue of the principles of fairness and equality. Such a reconceptualization is supported by key cases and doctrines we have surveyed. In effect, the trajectory of the law is pointing toward this conclusion. *B.C. v. Attorney General*[103] is a recent milestone, as it recognized a right to inquiry and provision of interpreters even for those who speak what might superficially appear to be English (Pidgin English, in B.C.'s case), thereby expanding the understanding of who needs language accommodation.[104] *Meyer v. Nebraska*, though a century old, reminds us that linguistic minorities have long been part of the American fabric and that attempts to suppress or penalize language differences are inconsistent with our constitutional values.[105] The fundamental fairness doctrine, as applied in *Jacinto, Augustin, Perez-Lastor*, and other cases, has established a de facto right to competent interpretation in immigration courts. Extending that right to all stages of asylum adjudication is a logical next step.

Reconceptualizing language access as a right would have practical and doctrinal implications. It would mean agencies like USCIS must change regulations[106] to provide interpreters for affirmative asylum interviews, just as EOIR does in court. It also indicates that if an asylum

[103] 3d Cir. 2021
[104] B.C. 2021, p. 315
[105] Meyer 1923, pp. 400–401
[106] 8 C.F.R. § 208.9(g)

seeker did suffer an adverse decision due to lack of an interpreter, courts should be willing to overturn that decision as "contrary to law" or unconstitutional. One can analogize this to the way courts view denial of counsel or other fundamental procedural flaws. For example, if an asylum officer denied a claim because the applicant couldn't express themselves well in English and no interpreter was present, a reviewing court (via habeas or APA review) could find that decision invalid for failing to observe required procedure[107] and remand a rehearing with interpretation—much as the Second Circuit did in Augustin's case decades ago. On a constitutional plane, recognizing language access as a right would affirm that due process in the immigration context has an equality component—that all individuals, regardless of language, must stand on equal footing before the law. This resonates with the Equal Protection Clause's guarantee that laws and proceedings not arbitrarily favor one class over another.

Requiring asylum applicants to provide their own interpreters is not just a minor administrative rule, but a practice with grave constitutional and ethical implications. It constitutes discrimination in effect, burdening those of different national origins, and violates fundamental fairness by impairing due process. By synthesizing case law (from *Yamataya* to *B.C.*), constitutional analysis (due process and equal protection), and doctrinal interpretation (fundamental fairness and social group theory), this thesis argues for a paradigm shift: language access must be recognized as a right in U.S. asylum proceedings, underpinned by both domestic law and international norms. Such a shift would ensure that no person is denied refuge or a fair day in court simply because of the language they speak, thereby honoring the letter and spirit of equal justice under law.

[107] 5 U.S.C. § 706(2)(D)

The developments of early 2025 underscore the central argument of this thesis and impart a new urgency to its call for reform. We have seen that language access in asylum proceedings is not a theoretical concern but a concrete battleground for due process. The Trump administration's recent actions—from enshrining English as the nation's sole official language to rolling back interpretation services—bring into sharp relief how easily the rights of LEP asylum seekers can be curtailed by policy choices. These measures effectively sanction what this thesis terms interpreter discrimination, treating the inability to speak English as a lawful ground to withhold or limit procedural protections. In doing so, they threaten to make a person's language—an immutable facet of identity tied closely to national origin—a decisive factor in the outcome of their asylum claim. Such a regime stands in direct tension with the principle of nondiscrimination embedded in both domestic law and international refugee norms. It also starkly contradicts the fundamental fairness doctrine, which holds that even at the nation's gates we must uphold "immutable principles of justice" for all persons within our jurisdiction. As Justice Harlan cautioned in *Yamataya v. Fisher*, the power to control our borders does not excuse procedures that shock the universal sense of justice, and in the modern era, failing to account for language barriers is precisely such a shock. Recent events confirm that without deliberate safeguards, fundamental fairness can be eroded in the very forums where it is most needed—the hearings that decide whether an individual fleeing persecution will find refuge or be sent back to danger.

Considering these new challenges, the core argument of this paper is more salient than ever: language access must be reconceptualized and codified as an integral component of due process in U.S. asylum law. Earlier chapters demonstrated that requiring asylum applicants to furnish their own interpreters is not a mere administrative inconvenience but a practice with grave

constitutional and ethical implications. It creates a two-tier justice system—one for English speakers and one for everyone else—thereby contravening the spirit of equal protection as well as the statutory promise that asylum adjudications be fair and just. Now, the swift policy shifts of 2025 show how this two-tier system can deepen: without intervention, we risk normalizing a landscape where linguistic minorities face systematic disadvantages at each stage of the asylum process. Courts have begun to push back, as evidenced by decisions like B.C. v. Attorney General, in which the Third Circuit forcefully held that an immigration judge's failure to ensure a needed interpreter "rendered the right to an interpreter meaningless" and deprived the asylum seeker of due process.[108] But judicial rulings alone cannot safeguard rights in the face of executive policies designed to sideline language access. It is therefore imperative that other branches of government, and policymakers at large, act decisively to reaffirm and protect the right to be understood.

Moving forward, several reforms demand urgent consideration. First, there is a need to restore and strengthen language access policies that have been rescinded. The Biden-era framework—from agency language access plans to the now-revoked EO 13166—should be reinstated at the earliest opportunity, sending a clear message that no person will be denied critical information or a fair hearing due to the language they speak. A broad coalition of language professionals already urged the administration to 'rescind EO 14224' and renew the government's commitment to inclusive services.[109] Beyond undoing new harm, however, lies the task of affirmative reform. Congress should consider codifying the right to an interpreter in all immigration proceedings that implicate an individual's life or liberty, including affirmative asylum interviews and credible fear screenings. Such legislation would close the loophole that

[108] B.C. v. Attorney General of the United States, 3rd U.S. Circuit Court of Appeals, No. 19-1408
[109] American Translators Association, 2025

currently allows agencies like USCIS to shirk providing interpreters for asylum seekers at the initial adjudication stage. It would also cement what courts have long implied: that meaningful access is a prerequisite to any semblance of justice. In tandem, regulatory changes could mandate uniform standards for interpreter quality and availability, ensuring that "the high standard of guaranteed interpretation" applies across the board, not only in court but in every interaction an asylum seeker has with the immigration system. This would eliminate the untenable disparity whereby a deaf asylum applicant immediately receives an interpreter as a disability accommodation, while a Spanish-speaking applicant must scramble to find (and pay for) one. Treating language access as a fundamental right means extending the same dignity and assistance to all who cannot communicate effectively in English, regardless of the reason. It also means recognizing, as this thesis has argued, that linguistic exclusion is tantamount to discrimination on the basis of national origin or ethnicity—a realization that would bring U.S. practice closer to its obligations under international law and the Refugee Convention's anti-discrimination mandate.

Finally, urgent reform must involve funding and infrastructure to support language access. Declaring a right to an interpreter is an empty gesture if not paired with resources to train interpreters, translate legal materials, and deploy technology for multilingual communication. Policymakers should treat this as a national priority integral to the integrity of our asylum system. The cost of inaction is measured in unjust deportations and lives lost: every asylum seeker who cannot articulate their claim due to language barriers represents a potential refoulement in violation of our legal and moral duties. As advocates have stressed in the wake of Trump's EO, language access is "essential to ensuring fairness in immigration courts" and beyond—without it, thousands will "risk unjust deportations."[110] The same is true of affirmative

[110] Tribune News Service, 2025

asylum interviews and border screenings: fairness requires that those fearing persecution understand the questions asked of them and can convey their stories fully. Thus, the call to action is twofold: immediately halt the regression in language access we have witnessed in 2025 and proactively build a framework that guarantees interpreters and translated information for all asylum seekers who need them. This is not a radical demand but rather the fulfillment of a long-neglected promise. It heeds the lesson of history and case law that "the right to be heard" means little unless one can be heard in a language one understands. It also aligns with the foundational ideal of equal justice under law—that no person's fate in a court or administrative proceeding should turn on attributes, like language, that have nothing to do with the merits of their claim.

In conclusion, the crisis of language access in U.S. asylum policy has reached an inflection point. The confluence of a renewed restrictionist agenda and the persistent gap in interpreter services has laid bare the urgent need for a paradigm shift. This thesis has argued for reconceptualizing language access not as a luxury or afterthought, but as a right anchored in fundamental fairness, due process, and nondiscrimination. The events of 2025 tragically illustrate what is at stake: without deliberate correction, we will continue to witness asylum seekers denied a fair chance simply because of the language they speak. That outcome is unacceptable in a nation that professes commitment to humanitarian protection and the rule of law. A reimagined asylum regime—one that reconceptualizes "fundamental fairness" to include the right to an interpreter—is not only legally and morally justified but urgently needed. By acting now to enshrine robust language access measures, the United States can reaffirm its dedication to justice and compassion, ensuring that no refugee is ever turned away or denied refuge due to a barrier of

language. In doing so, we would honor both the letter and spirit of our due process tradition and our international obligations, upholding a more equitable asylum system for generations to come.

8. GLOSSARY

8.1 Terminology

- **Affirmative Asylum** – A proactive asylum application filed with USCIS before the applicant is placed in removal proceedings.
- **Anachronistic** – Describes policies or practices that are outdated and no longer suitable for current legal or social contexts.
- **Appeal** – A formal request for a higher authority to review and potentially reverse a lower court or agency decision.
- **Applicant-Favorable Outcome** – A result in asylum proceedings that allows the applicant to remain in the U.S. legally.
- **Credible Fear Interview** – A screening to determine if an asylum seeker has a significant possibility of proving persecution.
- **Defensive Asylum** – An asylum application submitted during removal proceedings to avoid deportation.
- **Deportability** – Legal grounds for removing a noncitizen who has already been admitted to the U.S.
- **Doctrine** – A principle or framework established through legal precedent or legislation.
- **Due Process** – The constitutional right to fair legal procedures, including notice and a meaningful opportunity to be heard.
- **Effective Interpretation** – Interpretation that ensures full, accurate communication during legal proceedings.

- **Fundamental Fairness Doctrine** – A due process principle requiring immigration hearings to be fair and comprehensible.
- **Harsh Scrutiny** – A strict judicial standard requiring a compelling government interest and narrow tailoring.
- **Immigration Judge** – A DOJ official who presides over immigration court and decides removability and relief.
- **Inadmissibility** – Legal grounds barring entry into the U.S. for noncitizens who haven't been formally admitted.
- **Intermediate Scrutiny** – A judicial review standard requiring that a law further an important interest in a related way.
- **Interpreter** – A person who orally translates spoken language in real time during legal proceedings.
- **Judicial Review** – A court's power to examine and overturn decisions made by administrative agencies or lower courts.
- **Language Access** – The right to interpretation or translation to ensure meaningful participation in legal processes.
- **"On its Face"** – Refers to the inherent qualities of a law or policy as written, without regard to application.
- **Persecution** – Serious harm inflicted on an individual for a protected ground.
- **Plaintiff** – The party who initiates a lawsuit in civil court.
- **Plenary Power** – Near-total authority granted to the political branches over immigration law and policy.

- **Prosecution** – The government's pursuit of legal action against someone for a law violation.
- **Rational Basis** – A low standard of review requiring only that a law be reasonably related to a legitimate interest.
- **Removal Proceedings** – Legal proceedings to determine whether a noncitizen should be deported.
- **Representation** – Legal advocacy provided by an attorney or accredited representative.
- **Translator** – A person who converts written text from one language to another.
- **Writ of Habeas Corpus** – A legal action demanding justification for a person's detention.

8.2 Case Law

- **Abdullah v. INS (1999)** – The Second Circuit held that affirmative asylum applicants are not constitutionally entitled to government-provided interpreters, framing asylum as a discretionary benefit rather than a deprivation of liberty.
- **Augustin v. Sava (1984)** – A Haitian asylum seeker's claim was remanded due to translation errors; the court emphasized that accurate interpretation is essential for due process in asylum hearings.
- **Gomillion v. Lightfoot (1960)** – Cited historically for equal protection principles, though its direct relevance to language access in immigration is minimal in the context of this paper.

- **Bridges v. Wixon, 326 U.S. 135 (1945)** – Recognized that deportation can be as severe as exile, reinforcing that due process protections must apply even in civil immigration proceedings.
- **Franco-Gonzalez v. Holder (2013)** – A settlement case establishing that mentally incompetent detained immigrants are entitled to legal representation, expanding due process protections.
- **Griffin v. Illinois (1956)** – Held that equal access to appellate review is a right regardless of economic status, used in the paper as an analogy for ensuring fair access to interpreters.
- **Jacinto v. INS (2000)** – The Ninth Circuit overturned a deportation due to failure to ensure the applicant understood the proceedings, affirming that due process includes language and cultural comprehension.
- **Perez-Lastor v. INS, 208 F.3d 773 (9th Cir. 2000)** – Found that severe interpretation errors undermined the fairness of removal proceedings and remanded for a new hearing.
- **Lau v. Nichols (1974)** – Established that failure to accommodate language needs in public education can constitute national origin discrimination; cited to support language access claims in asylum.
- **Marincas v. Lewis, 92 F.3d 195 (3d Cir. 1996)** – The court warned that requiring English fluency in asylum screenings would contradict congressional intent behind refugee protections.
- **Tejeda-Mata v. INS (1978)** – Reaffirmed that immigration hearings must be conducted in a language the applicant understands; failure to do so can constitute a due process violation.

- **Mathews v. Diaz (1976)** – Recognized broad congressional authority in immigration but noted that noncitizens within the U.S. are still entitled to constitutional protections.
- **Mathews v. Eldridge (1976)** – Provided a balancing test for due process claims, used by courts to weigh government interests against individual rights in interpreter access.
- **Meyer v. Nebraska (1923)** – Found that laws restricting language education violated due process, used to analogize the constitutional importance of language rights.
- **Niang v. Gonzales (2006)** – Recognized that ethnic and linguistic identity could constitute a "particular social group" for asylum purposes, even if persecution is not solely language-based.
- **Oyama v. California (1948)** – Cited as part of a line of cases recognizing language and ancestry-based discrimination as potentially unconstitutional.
- **Perera v. Minister for Immigration (Australia)** – Used in comparison to U.S. law to argue that English-only requirements may amount to discrimination without accommodation.
- **El Rescate Legal Services v. EOIR (1992)** – A class action challenging systemic interpreter failures in immigration courts, emphasizing that limited interpretation violates statutory and due process rights.
- **Strickland v. Washington, 466 U.S. 668 (1984)** – Established the right to effective legal counsel in criminal cases; cited analogously to argue for a right to effective interpretation in asylum hearings.
- **Tennessee v. Lane (2004)** – Affirmed that public institutions must ensure access for individuals with disabilities; cited to draw parallels to the need for meaningful language access in court.

- **Yamataya v. Fisher, 189 U.S. 86 (1903) –** Early immigration case that acknowledged due process rights for noncitizens but upheld a deportation despite the lack of interpretation—later criticized as outdated.

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