

# Silenced Voices:

## Indigenous Asylum Seekers in the U.S. Immigration System

By Amy Y. Chin-Arroyo

### INTRODUCTION

On December 8, 2018, 7-year-old Jakelin Caal Maquin from Guatemala died in U.S. Border Patrol custody in New Mexico. She was vomiting and had a fever of 105.9 degrees before she stopped breathing.<sup>1</sup> Sixteen days later, 8-year-old Felipe Gomez Alonzo, also from Guatemala, died in Border Patrol custody in New Mexico on Christmas Eve. Like Jakelin, Felipe vomited and had a fever before he died.<sup>2</sup> Both children traveled to the U.S. with their fathers, indigenous Guatemalans who do not speak English or Spanish. Jakelin's family speaks Q'eqchi', and Felipe's family speaks Chuj.<sup>3</sup> Autopsy reports revealed that both children died of multiple organ failure resulting from bacterial infections.<sup>4</sup>

Scant attention has been paid to the unique challenges the U.S. immigration system poses for indigenous migrants who do not speak Spanish.<sup>5</sup> In recent years, the majority of migrants crossing the southern U.S. border have been families and unaccompanied children from Central America.<sup>6</sup> Nearly half of these migrants hail from Guatemala, where forty percent of the population speaks an indigenous language.<sup>7</sup> Since 2015, the Guatemalan indigenous languages K'iche', Mam, and Kanjobal have consistently appeared on the U.S. Department of Justice's (DOJ's) list of top 25 languages spoken in immigration court.<sup>8</sup> Although the DOJ and the Department of Homeland Security (DHS) have known about the growing numbers of indigenous migrants entering the U.S. for the past few years, they have failed to provide adequate language access, healthcare, and due process for indigenous migrants in the U.S. immigration system.

This paper sheds light on the civil rights and due process violations perpetrated by the U.S. government against indigenous migrants. Part I provides an overview of U.S. asylum law, language access as a civil and constitutional right, and the recent surge in indigenous migration from Guatemala to the U.S. Part II outlines the civil rights and due process violations that indigenous migrants suffer within the U.S. immigration system. Part III proposes recommendations to mitigate the civil rights and due process violations against indigenous migrants. ■

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1 Perla Treviso, Deaths of 2 children in immigration custody highlight indigenous communication problems, Arizona Daily Star (Jan. 12, 2019), [http://tucson.com/news/local/deaths-of-children-in-immigration-custody-highlight-indigenous-communication-problems/article\\_54bd562d-74a0-5d7c-877d-97e2f97e38d5.html](http://tucson.com/news/local/deaths-of-children-in-immigration-custody-highlight-indigenous-communication-problems/article_54bd562d-74a0-5d7c-877d-97e2f97e38d5.html); David Taylor, Why did a little Guatemalan girl die after crossing the U.S. border?, Guardian (Dec. 17, 2018), <https://www.theguardian.com/us-news/2018/dec/17/guatemalan-girl-jakelin-caal-maquin-death-crossing-us-border>.

2 Maria Sacchetti, Official: Guatemalan boy who died in U.S. custody tested positive for influenza B, final cause of death remains under investigation, Washington Post (Dec. 28, 2018), [https://www.washingtonpost.com/local/immigration/father-whose-son-died-in-custody-knew-bringing-him-would-leave-entry-into-us/2018/12/27/4c210bfc-0a1d-11e9-85b6-41c0fe0c5b8f\\_story.html?utm\\_term=.b0f183b848a9](https://www.washingtonpost.com/local/immigration/father-whose-son-died-in-custody-knew-bringing-him-would-leave-entry-into-us/2018/12/27/4c210bfc-0a1d-11e9-85b6-41c0fe0c5b8f_story.html?utm_term=.b0f183b848a9).

3 Tom Jawetz and Scott Shuchart, Language Access Has Life-Or-Death Consequences for Migrants, Center for American Progress (Feb. 20, 2019), <https://www.americanprogress.org/issues/reports/2019/02/20/466144/language-access-life-death-consequences-migrants/>.

4 Mary Hudetz, 8-year-old Guatemalan boy who died in U.S. Border Patrol custody had flu infection, autopsy report says, Chicago Tribune (Apr. 3, 2019), <http://www.chicagotribune.com/news/nationworld/ct-guatemalan-boy-border-death-20190403-story.html>.

5 Jawetz and Shuchart, supra note 3.

6 Joel Rose & John Burnett, Migrant Families Arrive in Busloads As Border Crossings Hit 10-Year High, NPR (Mar. 5, 2019), <https://www.npr.org/2019/03/05/700428069/migrant-families-arrive-in-busloads-as-border-crossings-hit-10-year-high>.

7 Jawetz & Shuchart, supra note 3; U.S. Border Patrol Apprehensions by Sector Fiscal Year 2019, U.S. Customs and Border Protection, <http://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>

8 U.S. Department of Justice Executive Office for Immigration Review (EOIR), Statistics Yearbook Fiscal Year 2017 at 18. Available at <https://www.justice.gov/eoir/page/file/1107056/download>. Kanjobal is also spelled as Konjobal and Q'anjob'al. For the sake of consistency, I use "Kanjobal" when referring to this language. Although the EOIR lists K'iche' as "Quiche", I use K'iche'.