

No. _____

**In the
Supreme Court of the United States**

ALFONSO PINEDA-HERNANDEZ,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit**

PETITION FOR WRIT OF CERTIORARI

Kyle R. Hosmer
Counsel of Record
Andrew J. Ball
FAEGRE DRINKER BIDDLE & REATH LLP
1144 15th Street, Suite 3400
Denver, Colorado 80205
303.607.3500
kyle.hosmer@faegredrinker.com
andrew.ball@faegredrinker.com

Brian J. Paul
FAEGRE DRINKER BIDDLE & REATH LLP
300 N. Meridian Street
Indianapolis, Indiana 46204
317.237.0300
brian.paul@faegredrinker.com

Counsel for Petitioner

QUESTION PRESENTED

The question presented is an important and recurring one that has not been, but should be, addressed by this Court: Under what circumstances does a live, in-court translation violate a criminal defendant's due process rights?

PARTIES TO THE PROCEEDING

Petitioner Alfonso Pineda-Hernandez was the defendant in District Court Case No. 1:15-cr-00200-JMS-TAB-1, U.S. District Court for the Southern District of Indiana, and was the appellant in Case No. 18-2261, U.S. Court of Appeals for the Seventh Circuit. Respondent United States of America was the plaintiff in the district court proceedings and appellee in the court of appeals proceedings.

Jose Trinidad Garcia, Jr. was the defendant in District Court Case No. 1:15-cr-00200-JMS-TAB-4, U.S. District Court for the Southern District of Indiana, and the appellant in Case No. 18-1890, U.S. Court of Appeals for the Seventh Circuit. The court of appeals consolidated Pineda-Hernandez's appeal with that of Trinidad Garcia for the purposes of briefing and disposition. *See* Case No. 18-2261, Dkt. 16 (consolidating Case No. 18-2261 with Case No. 18-1890).

The court of appeals vacated Trinidad Garcia's sentence and remanded to the district court for resentencing. Pineda-Hernandez's and Trinidad Garcia's convictions stem from related factual circumstances. But the issues Trinidad Garcia raised in his appeal before the court of appeals have no connection with the issues Pineda-Hernandez raised in his appeal or that he raises in this Petition.

RELATED CASES

- *U.S. v. Pineda-Hernandez*, No. 1:15-cr-00200-JMS-TAB-1, U.S. District Court for the Southern District of Indiana, judgment entered May 25, 2018.
- *U.S. v. Trinidad Garcia, Jr.*, No. 1:15-cr-00200-JMS-TAB-4, U.S. District Court for the Southern District of Indiana, judgment entered April 12, 2018.
- *U.S. v. Pineda-Hernandez*, No. 18-2261 (consolidated with *U.S. v. Trinidad Garcia*, No. 18-1890), U.S. Court of Appeals for the Seventh Circuit, judgment entered January 22, 2020.

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INTRODUCTION

At the heart of the right to a fair trial is the requirement that the jury hear and understand the evidence presented. Reliable and timely in-court translation is thus essential to due process when a criminal trial implicates a language other than English—either because a key witness is limited-English proficient (“LEP”) or because the defendant is LEP. However, as the LEP population grows across the country, so too does the risk of a botched translation which can clearly threaten the fundamental fairness of a criminal trial. Yet despite that clear threat, this Court has never articulated a standard to determine when an in-court translation falls short.

This case presents an ideal opportunity to articulate such a standard. Here, a key Government witness in this case testified in Spanish, with three translators present in the courtroom. But after that witness’s testimony, two of the translators felt ethically required to inform the district court that they believed the third translator had mistranslated that key Government witness. The district court responded by replacing the potentially incompetent translator and re-calling the witness to testify again the next day—but the court declined to strike the potentially mistranslated testimony.

The result was badly prejudicial to Pineda-Hernandez. Given a second chance to testify, the Government’s witness reinforced the Government’s theory of the case

and pegged Pineda-Hernandez as the leader of the Government's targeted drug distribution conspiracy. The witness gave an insider's look and testified to the structure of the distribution ring. The jury then convicted Pineda-Hernandez as charged.

This case—coupled with the growing need for in-court translation services across the country—makes clear that there is an urgent need for a uniform standard against which in-court translations can be measured. Only this Court can articulate such a nationwide standard and should grant the writ accordingly.

PETITION FOR WRIT OF CERTIORARI

Petitioner Alfonso Pineda-Hernandez respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Seventh Circuit is reported at 948 F.3d 789 (7th Cir. 2020).

JURISDICTION

The U.S. Court of Appeals for the Seventh Circuit entered its judgment on January 22, 2020. Pineda-Hernandez invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

This Petition is timely filed within the extended filing deadline set forth in this Court's March 19, 2020 Order (589 U.S.).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pineda-Hernandez raises a due process claim under the Fifth Amendment to the U.S. Constitution, which reads:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

Pineda-Hernandez was convicted at trial for conspiracy to distribute controlled substances under 21 U.S.C. §§ 841(a)(1), 846, and for conspiracy to launder monetary instruments under 18 U.S.C. §§ 1956(a)(1)(B)(i), (h). These provisions are lengthy and not directly relevant to this Petition and are thus included only in the required appendix. *See* U.S. Sup. Ct. R. 14.1(f), (i)(v).

STATEMENT OF THE CASE

Eyewitness testimony can be the most important—and damning—piece of evidence used in any criminal trial, particularly when that testimony comes from an

alleged co-conspirator or cooperating witness. But when that key cooperating witness is not a proficient English speaker, the trial courts must rely on live, in-court translation of both counsel's questions and the witness's answers. State and federal courts, as well as Congress through the Court Interpreters Act, have developed various systems of translator certification and training to cope with this challenging practical problem.

But however well designed, those systems are under strain. As the country grows more diverse, so too does the population involved in the court system, bringing more and more LEP people—either as parties or witnesses—into courtrooms across the country. And with that growing strain, it's all but inevitable that even the best system of training and certification will eventually (and perhaps regularly) deliver to a jury testimony that is not what it purports to be, thus creating the risk that cases are won or lost on the back of an incompetent translation. While the risk of mistranslation might be present in court proceedings of all stripes, that risk is particularly acute in criminal cases and directly implicates a defendant's due process rights and notions of fundamental fairness.

Indeed, courts around the country have acknowledged as much. *See, e.g., U.S. ex rel. Negron v. New York*, 434 F.2d 386, 389 (1st Cir. 1970) (holding that LEP defendant was entitled to interpreter at trial); *U.S. v. Cirrincione*, 780 F.2d 620, 634

(7th Cir. 1985) (holding that defendant is denied due process where “the accuracy and scope of a translation at a hearing or trial is subject to grave doubt”); *U.S. v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990) (recognizing that in court translation is unacceptable if it undermines the fundamental fairness of trial). Even the district court below recognized that an incompetent translation would have serious due process implications. App. at 53, 72.¹

Yet despite the broad recognition of the risk of harm posed by possible mistranslation, the lower courts are without any guidance from this Court on this key constitutional question. Instead, the lower courts have been left to navigate issues of live, in-court translation on their own, often employing ad hoc or inconsistent approaches—as the court of appeals did here.

This case is about preserving the fundamental fact-finding ability of the nation’s courts. To fail to do so, “in this nation where many languages are spoken” would evince “a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy.” *See Negron*, 434 F.2d at 390. Rather than ignore the practical problems

¹ Citations to “App.” are references to the appendix required by U.S. S. Ct. R. 14.1(i). Citations to “R.” are references to the appendix before the court of appeals.

posed by live, in-court translation, this Court should capitalize on this case to announce a uniform standard and eliminate the disparate approaches deployed by lower courts across the country. In doing so, this Court will resolve a critical question of constitutional fairness: when is a translation at trial violative of due process? Answering that question will preserve the fairness and fact-finding ability of courts across this ever-diverse country.

Proceedings Below. In May 2015, the police stopped a car in the outskirts of Indianapolis, Indiana, and searched the car with the consent of the driver, Jose Araujo Orduno. *R.* at 3. Police discovered more than eighty grams of methamphetamine. *Id.* The investigation that followed was dubbed “Code Red”—a nod to the distinctive red hue of the seized contraband. *Id.* at 2–3.

After relying on confidential informants, controlled drug purchases and payments, and other surveillance a grand jury for the Southern District of Indiana returned an indictment against twelve individuals, including Pineda-Hernandez. The Government then persuaded eleven of the indicted defendants to plead guilty. Niko Cazares-Garcia—a key figure in the distribution ring—was among them. Miguel Barragan-Lopez—a similarly important figure—was also among the settling

defendants. But Pineda-Hernandez did not plead guilty and his trial began on October 30, 2017. The trial court had jurisdiction under 18 U.S.C. § 3231.

In exchange for their plea deals, Cazares-Garcia and Barragan-Lopez agreed to testify against Pineda-Hernandez at trial. R. at 32, 55. Both, however, speak little English and relied on live, in-court translation to understand and answer counsel's questions. *See, e.g.*, R. at 30–32.

To facilitate that key eye-witness testimony, the Government hired an interpreter—Sam Ramos, who was not federally certified—to provide translation services for Cazares-Garcia and Barragan-Lopez. *Id.* at 31–33. Here's how it worked: Ramos was required to listen to a counsel's question, translate that question into Spanish for the Spanish-speaking witness, listen to the witness's Spanish response, then translate that response back into English for the benefit of the jury, the court, Pineda-Hernandez, and the record. *See id.* There is no record of Ramos's English-to-Spanish translation of counsels' questions. Nor is there a record of the witness's original Spanish responses.

Because of the additional Spanish-speaking participants in the case—Pineda-Hernandez, most notably—the district court also enlisted two interpreters to service the entire five-day trial. *See* App. at 58. Unlike Ramos—whom the

Government selected—these additional interpreters were court appointed and were federally certified (the “court-appointed interpreters”). *Id.* at 52, 59, 66.

The court-appointed interpreters served several roles, including facilitating Pineda-Hernandez’s participation in trial. The court-appointed interpreters translated the proceedings from English to Spanish for Pineda-Hernandez and helped Pineda-Hernandez communicate with his English-speaking trial counsel. All told, while Cazares-Garcia and Barragan-Lopez were on the stand, three translators were in the courtroom.

Barragan-Lopez was a key Government witness. Barragan-Lopez’s testimony not only provided a supposed first-hand look at the structure of the criminal enterprise, *e.g.*, R. at 34–37, but also identified Pineda-Hernandez as a central figure, *id.* at 34. Barragan-Lopez further described tension between individuals involved in the distribution ring, including a description of a key confrontation between several of the alleged co-conspirators. *Id.* at 48–50.

Barragan-Lopez took the stand on the third morning of trial, at the height of the proceeding. *Id.* at 31. From the beginning, the court had issues with its chosen system of translation. *Id.* Those issues continued throughout Barragan-Lopez’s testimony. *See, e.g., id.* at 39–40. Yet despite those red flags, Barragan-Lopez’s testimony went forward.

After several hours, the district court dismissed Barragan-Lopez and returned him to custody. App. at 41. It then recessed trial for a lunch break. *Id.* During that recess both court-appointed interpreters expressed to trial counsel grave doubts about the accuracy of the translation of Barragan-Lopez’s testimony. *Id.* at 41–42. The court-appointed interpreters then raised their concerns with the court. *Id.* at 41–69. The court-appointed interpreters explained that Ramos was translating in “chunk[s]” rather than translating an entire statement or sentence all at once. *Id.* at 48. That translation method often fails to accurately capture the source-language meaning, the court-appointed interpreters explained. *Id.*

Against the backdrop of those pervasive concerns, the court-appointed interpreters also pointed to some specific instances of possible mistranslation. *Id.* at 49–50. And beyond that, the court-appointed interpreters reported that the many possible errors and omissions “started to accumulate.” *Id.* at 49. According to the court-appointed interpreters, Ramos consistently omitted “two to three words” from the end of many questions. *Id.* at 53. Ultimately, the court-appointed interpreters felt duty-bound by their ethical code to bring the issue to the court. *Id.* at 44. And the district court, for its part, recognized that the court-appointed interpreters’ concerns had serious due process implications for Pineda-Hernandez. *See, e.g., id.* at 53, 72.

So, in a supposed effort to “honor[]” Pineda-Hernandez’s due process rights, the district court suggested that it would recall Barragan-Lopez to have him testify a second time with a new interpreter. *Id.* at 53. Yet despite the serious concerns raised by the two court-appointed interpreters, the court didn’t strike Barragan-Lopez’s potentially contaminated testimony. *Id.* at 54.

The district court began the next day of trial—day four of five—with a discussion of the translation errors. *See id.* at 70. The Government offered that the court had only two options to resolve the issue. *Id.* at 71–72. Either the court could recall Barragan-Lopez—risking duplicative and cumulative testimony from a key Government witness. *Id.* Or Pineda-Hernandez could “waive” his right to complain on appeal and stand on Barragan-Lopez’s original testimony—even though the two court-appointed interpreters raised grave doubts about its accuracy. *Id.* Both options presented by the Government required him to bear the risk of harm caused by significant mistranslations by a Government-selected translator for a key Government witness. *See id.*

After Pineda-Hernandez confirmed that he wasn’t waiving any appeal rights, the court brought in the jury. *Id.* at 74, 81–82. Before Barragan-Lopez took the stand, the court explained that “an issue was raised as to the accuracy of the translation” of his initial testimony. *Id.* at 81. The court further explained that the parties had

“agreed” to have Barragan-Lopez testify a second time, with the aid of a different interpreter. *Id.* The court then called Barragan-Lopez to the stand for the second time in roughly twenty-four hours. *Id.*

Given Barragan-Lopez’s repeat appearance, the court later instructed the jury: “Barragan-Lopez testified twice because an issue was raised as to the accuracy of the translation of his first testimony. You should not give any extra weight to Barragan-Lopez because he testified twice. Barragan-Lopez’s testimony should be evaluated in accordance with these instructions.” *Id.* at 82. The court did not strike Barragan-Lopez’s first day of testimony. *See id.* After deliberation, the jury convicted Pineda-Hernandez as charged. *Id.* at 83–87.

Pineda-Hernandez Appeals. After his conviction, Pineda-Hernandez timely noticed his appeal to the Seventh Circuit on June 5, 2018, arguing, among other things, that the grave doubts regarding the translation of Barragan-Lopez raised by the two court-appointed interpreters violated his right to due process. The court of appeals had jurisdiction under 28 U.S.C. § 1291.

The court of appeals heard argument on September 20, 2019 and announced its decision affirming Pineda-Hernandez’s conviction on January 22, 2020. As relevant here, the court concluded—without citation to any precedents from this Court—that the concerns raised by both court-appointed interpreters were

unsubstantiated and that the specific differences between Barragan-Lopez's first and second testimonies were insignificant. *Id.* at 33. The court thus concluded that Pineda-Hernandez's due process rights were not violated and affirmed his convictions. *Id.*

REASONS FOR GRANTING THE WRIT

I. This case presents a critical constitutional question that is unresolved by this Court.

Long ago the Seventh Circuit recognized that inaccurate trial translation threatens a defendant's due process rights. *Cirrincione*, 780 F.2d at 634. And other courts have reached similar conclusions. *See, e.g., U.S. ex rel. Negron v. New York*, 434 F.2d 386, 389 (2nd Cir. 1970) (recognizing that LEP defendant was entitled to live, in-court translation of trial proceedings); *U.S. v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990) (holding that trial translation is acceptable unless it undermines fundamental fairness of the proceedings). But beside generally acknowledging the basic constitutional need for accurate in-court translation—either for the defendant's sole benefit or for a witness—the circuit courts have approached and resolved claims of mistranslation in disparate fashion.

In *Cirrincione*, for instance, the Seventh Circuit held that “a defendant is denied due process when . . . the accuracy and scope of a translation at a hearing or

trial is subject to grave doubt,” a standard principally concerned with uncertainty. 780 F.2d at 634. But the Eleventh Circuit, on the other hand, has approached the issue as a search for an actual inadequacy in the trial translation—rather than uncertainty or doubt. *See U.S. v. Joshi*, 896 F.2d 1303, 1309–11 (11th Cir. 1990) (announcing that the “basic constitutional inquiry” considers “whether any inadequacy in the interpretation made the trial fundamentally unfair” (cleaned up)). And that court put the burden squarely on the defendant to identify and call out any possible mistranslation, *see id.*, a solution that the First Circuit generally rejected, *see Negron*, 434 F.2d at 390 (declining to require that the LEP defendant “thrown into a criminal trial as his initiation to our trial system, come to that trial with a comprehension that the nature of our adversarial processes is such that [the defendant] is in peril of forfeiting even the rudiments of a fair proceeding unless he insists upon them”). These different approaches, on their own, are reason enough to grant the writ. *See U.S. Sup. Ct. R. 10(a)*.

But the vacuum created by this Court’s silence on this question of constitutional fairness has an even more problematic impact on the resolution of claims of mistranslation *within* any given circuit.

Indeed, lacking a lodestar, the Seventh Circuit’s caselaw has developed in haphazard fashion, as illustrated by the opinion below. *See App. 26; see also U.S. v.*

Leiva, 821 F.3d 808, 819–20 (7th Cir. 2016) (acknowledging *Cirrincione*’s “grave doubt” standard but also citing *Joshi*—and its search for actual inadequacies in trial translation, 896 F.2d at 1309—approvingly).

Again, the Seventh Circuit’s long-standing rule states that a defendant is denied due process when “the accuracy and scope of a translation at a hearing or trial is subject to grave doubt.” *Cirrincione*, 780 F.2d at 634; App. 26. That standard, by its own terms, does not require certainty that there was a mistranslation, but is instead concerned with *doubt* as to the accuracy of in-court translation. *See, e.g.*, *Leiva*, 821 F.3d at 820 (holding that hiccups in in-court translation did not create grave doubt that the translation was inaccurate). Indeed, that focus on doubt—on uncertainty, rather than certainty of error—makes some practical sense given that in many instances (as was the case here) there is no record of the non-English language spoken at trial. *See, e.g.*, App. at 9. Thus, in most cases, certainty of error is a practical impossibility.

But against that long-established backdrop, the Seventh Circuit has regularly upped the required showing, to instead require indications of actual error. *See Leiva*, 821 F.3d at 820; App. at 26. In fact, while the court below began its analysis by nodding to the grave doubt standard announced in *Cirrincione*, it then departed from that standard and began a search for certainty of error in a fundamental

misunderstanding of Pineda-Hernandez’s main argument and the court’s own precedents. *E.g.* App. at 26–31 (citing *Joshi*, 896 F.2d at 1309–11). The court characterized Pineda-Hernandez’s argument as a claim that there was “widespread error”—that there was certainty of error—rather than whether the accuracy of the translation was subject to mere grave doubt. *Compare id.* at 27 with Def. Reply Br. at 13. The court asserted that Pineda-Hernandez had “the burden to support his claim of widespread error,” App. at 27, and that there were “no widespread or particular interpretation errors,” App. at 31. And finally, the court concluded that “Pineda-Hernandez’s claims of grave widespread misinterpretations are unsubstantiated.” App. at 33.

But not only did Pineda-Hernandez’s argument not turn on whether there was actually widespread misinterpretation—the thrust of his argument was not a claim of certainty²—but that reasoning is a fundamental departure from *Cirrincione*, the Seventh Circuit’s own decades-old precedent. As Pineda-Hernandez explained:

[T]he question is whether there are critical differences between the testimony such that there are simply grave doubts as to the accuracy of

² Of course, evidence of clear mistranslation is a potent spring of grave doubt, and Pineda-Hernandez rightly pointed to several discrepancies in the key witness’s first and second days of testimony. *E.g.*, Def. Reply Br. at 13–15. But he pointed to those discrepancies not necessarily as definitive evidence of mistranslation, but instead as possible manifestations of the grave doubts raised by both court-appointed interpreters. *Id.* at 12–13.

the translation at trial. [The Seventh Circuit] did not require certainty of error when it first announced the framework for this inquiry in 1985, only grave doubt. [The court] should not elevate the standard simply because it is now confronted with grave doubt.

Def. Reply Br. at 13. The court's muddling of its own standard dilutes the protections *Cirrincione* implemented to preserve the fundamental fairness of trial proceedings and begs for final resolution from this Court.

But that's not all. In their quest for certainty of error, both the Government and the court below effectively concluded that the persistent and pervasive complaints of the two court-appointed interpreters were unfounded or not credible. *See, e.g.*, Gov. Br. at 43 ("Pineda-Hernandez's suggestion that every question was tainted is a nonstarter; while the interpreters made that allegation, it was hardly credible and never substantiated."). Yet neither the Government nor the court wrestled with the implications of that conclusion.

If the two court-appointed interpreters—who were tasked with translating the trial for the benefit of *Pineda-Hernandez* (a constitutionally required benefit)—were themselves incompetent, that would necessarily call into question the fundamental fairness of Pineda-Hernandez's trial, just from a different angle. *See Cirrincione*, 780 F.2d at 634 ("We hold that a defendant in a criminal proceeding is denied due process when . . . what is told him is incomprehensible [or when] the nature of the proceeding is not explained to him in a manner designed to insure his full comprehension."). In

other words, if the Government is right, and the two court-appointed interpreters were not credible, then it is likely that Pineda-Hernandez was in fact unable to understand the proceedings against him, a clear violation of his constitutional rights. *Id.* But again, neither the Government nor the court contemplated—much less resolved—this key knock-on impact of their shared conclusion.

In *Cirrincione*, the Seventh Circuit established a clear, commonsense rule: a defendant in a criminal proceeding is denied due process when “the accuracy and scope of a translation at a hearing or trial is subject to grave doubt.” 780 F.2d at 634. If that holding is to mean anything, it should apply here. Unfortunately, the court abandoned that principle, instead favoring a search for certainty. The court’s departure from its own long-standing circuit principle—on this question of fundamental fairness—illustrates the need for definitive guidance from this Court.

The Seventh Circuit decision here further decided an important question of federal law that has not been settled by this Court and deployed an approach different from that of other circuit courts. *See U.S. Sup. Ct. R. 10(a), (c).* That decision warrants this Court’s review. *Id.*

II. The need for in-court translation—and thus the risk of mistranslation—is increasing.

The question—unanswered by this Court—of when live, in-court translation is violative of due process, including whether such a claim requires a showing of actual

error, grave doubt, or something else, is not just one of fundamental constitutional importance. But it is a question that will come up with increasing regularity. The LEP population in recent years in the United States has nearly doubled, growing from 14 million people in 1990 to more than 25 million people in 2013. Zong, J., Batalova, J., *The Limited English Proficient Population in the United States*, Migration Policy Institute (July 2015).³

And the growth in the general LEP population has brought about a corresponding growth in the use of interpreters in U.S. courts. See Admin. Office of the U.S. Courts, *Federal Court Interpreter Orientation Manual and Glossary* (last revised May 8, 2015).⁴ In 1990, there were more than 66,000 judicial proceedings that required the use of interpreters—a significant number in its own right. *Id.* at 7. But that number has ballooned in recent years, climbing nearly five-fold to 325,000 judicial proceedings. *Id.*

State and federal courts, alongside non-government groups like the American Bar Association, have worked to confront this growing need for court translation services. *E.g., id.*; Am. Bar Ass'n., *Standards for Language Access in Courts* (Feb.

³ Available at: <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>.

⁴ Available at: https://www.uscourts.gov/sites/default/files/federal-court-interpreter-orientation-manual_0.pdf.

2012).⁵ And Congress has adopted the Court Interpreters Act. But with the number of cases using interpreters likely approaching half a million, it is all but inevitable that the lower courts—at the trial and appellate level alike—will continue to see claims of incompetent translation. Resolution of this issue by this Court now will thus address that growing public need while ensuring that the country’s trial courts maintain the basic elements of fairness guaranteed by the Constitution.

III. This case provides a critical opportunity to answer this question of first impression.

Although this case illustrates a likely common and growing question facing courts around the country, this case is at the same time exceptional and thus provides the Court with an important opportunity to address this question of fundamental fairness. *See U.S. S. Ct. R. 10(c).*

In many cases where there is a claim of mistranslation, the primary source of that claim comes from the defendant. *See, e.g., U.S. v. Sandoval*, 347 F.3d 627, 632 (7th Cir. 2003). And reviewing those typical claims of mistranslation is hampered by the fact that the non-English language used at trial is often not captured by the trial transcript or elsewhere. As a result, courts often dispose of claims of mistranslation

⁵ Available at: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf.

out-of-hand, concluding that the only claim of mistranslation comes from a biased party, the defendant. *See id.*

But this case is different. Because of the method of translation chosen by the trial court, there were two disinterested, court-appointed interpreters in the room who were effectively fact checking the translation of Barragan-Lopez's testimony in real time. *See App. 8–9.* And those two federally certified translators that the district court appointed to service Pineda-Hernandez felt that the potential mistranslations of Barragan-Lopez's testimony were “so great that they didn’t want to continue” proceedings without bringing the issue to the court’s attention. *Id.* at 43. In other words, the interpreters “noticed great differences in meaning” so “felt the need to interfere” with trial. *Id.*; App. at 48 (“[T]here were a lot of omissions . . . towards the end of every, of every question, of every answer back into English or questions into Spanish.”). All told, the court-appointed translators felt duty bound by “the first canon of [their] code of ethics”—accuracy—to report the possible errors by the Government’s hired interpreter. App. at 44.

Put differently, the presence of the two court-appointed interpreters displaced the need for an after-the-fact record of the Spanish that was spoken. The quality of the translation was tracked in real time and it was found wanting. That procedural

reality makes this case the perfect candidate for resolving this recurring, important, and unresolved question of Federal law.

CONCLUSION

The writ should be granted.

/s/ *Kyle R. Hosmer*

Kyle R. Hosmer
Counsel of Record
Andrew J. Ball
Faegre Drinker Biddle & Reath LLP
1144 15th Street, Suite 3400
Denver, Colorado 80202
303.607.3500
kyle.hosmer@faegredrinker.com
andrew.ball@faegredrinker.com

Brian J. Paul
Faegre Drinker Biddle & Reath LLP
300 N. Meridian Street
Indianapolis, Indiana 46204
317.237.0300
brian.paul@faegredrinker.com