

No. 24-6300

IN THE SUPREME COURT OF THE UNITED STATES

PABLO GUTIERREZ, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

REPLY BRIEF FOR THE PETITIONER

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ARGUMENT

Respondent asserts four reasons for denying the writ. These will be discussed below.

I. The State courts were alerted to the federal constitutional issue.

In its brief in opposition, Respondent claims the Florida courts were not alerted to the constitutional issues. However, in the trial court the defense argued the due process violation of not being present during a critical stage of the evidence presentation. Defense

counsel emphasized these were constitutional issues 2ap,4ap. Thus, the trial court had been alerted. The trial court told defense counsel she had her appeal and had made a record as to the constitutional violations 2ap,4ap. Thus, the trial court was alerted and the constitutional issues preserved.

On appeal Petitioner argued that he was deprived of his constitutional rights including due process, a fair trial, and other rights guaranteed by the Sixth and Fourteenth Amendments where the interpreter was prohibited from translating recordings played to the jury during the State's case against him. The heading of the appellate argument was :

RECORDED EVIDENCE PRESENTED AGAINST APPELLANT WAS NOT TRANSLATED FOR APPELLANT THUS DEPRIVING HIM OF HIS CONSTITUTIONAL RIGHTS

1ap. In the brief the argument was :

.... due to the lack of translation, Appellant was effectively absent during the most critical stage where the State was presenting evidence against him. Appellant was denied his rights to confrontation, equal protection, due process, and a fair trial....

.....As argued above the lack of an interpreter translating violated his constitutional right to be present, to confront, and to communicate with his attorney about the recording as it was presented. Also, it was made clear that the lack of translation impacted the decision as to

Appellant's right to testify....

3ap. The argument concluded:

The error deprived Appellant's rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution....

5ap.(emphasis added). State cases were cited in support that the constitutional rights were violated. But, there are no Florida laws or rules requiring an interpreter for a defendant.

Furthermore, Respondent's Answer Brief reflected it was alerted, and opposed, to federal constitutional claims made by Petitioner:

Appellant asserts that his rights were violated when the interpreter did not interpret the recordings played for the jury. (IB 20.) "A non-English speaking defendant has the right to an interpreter, a right grounded on due process and confrontation considerations of the Constitution." Rivera, 182 So. 3d at 863. That does not mean, however, that any lapse in interpretation violates those rights. Id. There must be a proper balancing of a defendant's "constitutional rights to confrontation and due process against the public's interest in the economical administration of criminal law." U.S. v. Bennett, 848 F.2d 1134, 1141 (11th Cir. 1988)(rev'd on other grounds), citing Martinez, 616 F.2d at 188.

8ap.

II. *Respondent's claim that simultaneous translation is not required by the United State Constitution and there are no conflicts in*

the lower courts.

In the brief in opposition, Respondent actually explains there are conflicts in the lower courts as to the degree of interpretation is required:

While other federal courts have found the right to an interpreter exists via the Due Process Clause, *see e.g. United States v. Mayans*, 17 F.3d 1174 (9th Cir. 1994), those courts have differed on the degree of interpretation they are willing to say is required to protect a defendant's rights.

Respondent's Brief at 6-7.

Respondent asserts simultaneous translation is not required and a partial or summary translation suffices. A simultaneous translation requirement is simple and workable. A partial or summary translation is not workable. It requires the interpreter not to simply translate words, but to make judgments as to which words or content should be translated. This is well beyond an interpreter's function. It would not have been sufficient, after 3 to 4 hours of recordings played during trial, for the interpreter to simply summarize and tell the defendant the victims say they were abused. Non-simultaneous translation also exacerbates the conflicts in the courts as to the degree of translation that is required.

Respondent also asserts there is no constitutional violation where the defendant is able to communicate with his attorney about the recording. Communicate about what? The recording was not translated for Petitioner at trial.

Respondent also asserts translation was not required at trial because of an earlier hearing and discovery. However, the recordings were never played at an earlier hearing. Respondent also argues that in discovery the recordings were translated for Appellant. But there is no evidence of this. Furthermore, even if at some point recordings had been translated during discovery – it is not known if this occurred years before or if it involved the same edited version as was presented at trial. In fact, at trial the jury was instructed they were going to hear an edited version of the recording. Respondent's logic results in the flawed conclusion that a defendant's involuntary absence at trial does not violate due process because discovery is a substitute for presence at trial.

Respondent also asserts the live testimony eliminated the need for the translation of the 3 to 4 hours of recorded statements. However, the live testimony was not the same as the recorded statements. There were a number of times the recorded statements

were inconsistent with the live testimony as to what occurred. Moreover, the failure to translate not only impacted Petitioner's knowledge of what evidence was presented against him, it also impacted his decision as to whether he should testify.

III. Complete simultaneous translation is required.

Respondent relies on the following from a Federal Court Interpreter Manual to claim that simultaneous translation of a recording to claim the translation was not required in this case:

The Administrative Office of the United States Courts publishes a Federal Court Interpreter Orientation Manual and Glossary, which was revised in December 2024. Federal Court Interpreter Orientation Manual and Glossary, Administrative Office of the United States Courts, Court Services Office (Revised December 2024), https://www.uscourts.gov/sites/default/files/2024-12/2024-federal-court-interpreter-orientation-manual_0.pdf. This manual acknowledges that while interpreters may "occasionally be requested to simultaneously interpret the contents of an audio file on the record," interpreters "should refrain" from providing this type of interpretation **"[w]henever possible."** *Id.* at 25.

Brief in Opposition at 11(emphasis added). This actually refutes Respondent's claim. The operative term is "whenever possible". Where translation is required, interpreters cannot refrain from translating. In this case translation of the recording was constitutionally required to ensure due process rights so Petitioner

knew and could confront the evidence used against him.

Petitioner also refers to audibility and sound quality of the recording. However, the court reporter was able to translate from audio to paper. Likewise, the interpreter could have translated from English to Spanish. If a recording is not audible, it is not admissible.

IV. Respondent's claim the lack of translation was not fundamentally unfair.

As explained in the Petition, the error is a structural error. It certainly was not harmless error. Respondent's claim that it was not fundamentally unfair to hold 3 to 4 hours of trial in the defendant's absence by not translating recorded statements is without merit. As discussed in section II above, discovery, live testimony, etc., does not eliminate the deprivation of due process that occurs by keeping Petitioner in the dark. Again, Petitioner's subsequent action of deciding whether to testify was based on a lack of knowledge as to what was being introduced at trial. The lack of translation was structural error, harmful error, and was fundamentally unfair.

In light of the foregoing, this Court should grant the petition,

support the due process right of a defendant not to have the evidence made invisible to him due to the lack of translation and to reverse Petitioner's convictions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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