No. ____________

In The
SUPREME COURT OF THE UNITED STATES

October Term, 2026

HERACLIO DURAN-GONZALEZ,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

On Petition for a Writ of Certiori to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR A WRIT OF CERTIORI

LAW OFFICES OF CHRISTOPHER McCAFFREY
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QUESTIONS PRESENTED

1. Whether having no Tarahumara translator at his sentencing hearing amounted to a denial of counsel, allowing Appellant to collaterally attack his 2014 guilty plea being used to elevate Appellant to career criminal status.

2. Whether having no Tarahumara translator at his guilty plea and sentencing hearing amounted to a denial of counsel, allowing Appellant to collaterally attack his 2015 guilty plea being used to elevate Appellant to career criminal status.

PARTIES TO THE PROCEEDING

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges may evaluate possible disqualifications or recusal.

1. Heraclio Duran-Gonzalez, Petitioner and Defendant-Appellant in Court below.

2. United States of America, Respondent and Appellee in Court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Heraclio Duran-Gonzalez respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The published opinion of the United States Court of Appeals for the Fifth Circuit was handed down on June 2, 2026 and is attached. (App. A). The judgment and sentence of the Honorable Judge Davis Counts, District Judge for the Western District of Texas, Pecos Division, dated July 27, 2018 is attached. (App. B).

JURISDICTION

The panel opinion and judgment of the United States Court of Appeals for the Fifth Circuit ("Court of Appeals") was entered on June 2, 2026 in a published opinion and therefore this Petition is timely filed. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Facts and Proceedings in the Trial Court

On December 12, 2017, Appellant was charged by Indictment with one count of a violation of 21 U.S.C. §841(a)(1) and 18 U.S.C. §2 alleging that he, with others, aiding and abetting one another, knowingly did possess with intent to distribute 50 kilograms or more, but less than 100 kilograms of marihuana, a controlled substance. (ROA.21-22)

He plead guilty on January 10, 2018. At this hearing the Appellant had the services of a translator (Derek Taylor) who translated the proceedings and the documents to him in his native language, Tarahumara. (ROA.154,158). Even with the Tarahumara translation, there were instances where it was difficult for the Appellant to understand the proceedings:

> ***THE COURT***: *Has anyone threatened you or forced you in any way to cause you to plead guilty today? Mr. Duran?*
>
> ***THE DEFENDANT***: *Yes.*
>
> ***THE COURT***: *Let me rephrase the question. Has anyone threatened you to cause you to plead guilty today?*
>
> ***THE DEFENDANT***: *No.*
>
> (ROA.149)

After the plea hearing was completed, a Pre-Sentencing Report was prepared. The PSR set his base offense level for aiding and abetting possession with intent to distribute 50 kilograms or more, but less than 100 kilograms of marijuana at 22. He received a two point minor participant downward adjustment but was then, relevant to this appeal, he was enhanced as a career offender due to two prior guilty plea sentences in 2014 and 2015, bringing his offense level to 32. After the application of a three level reduction for acceptance of responsibility the total offense level was assessed at 29. (ROA.173) His Criminal History Score (mainly because of the inclusion of these two prior guilty pleas) was assessed at 7 points, and his guideline range was 151 to 188 months. (ROA.175,177) Appellant objected to these prior offenses being used to enhance his sentence both in a sentencing memorandum and at the sentencing hearing.

He was sentenced on June 18, 2018. At sentencing he once again had the services of Tarahumara translator Derek Taylor. Appellant plead for a downward variance and argued that the District Court should refrain from applying career offender status because Appellant did not have the benefit of a Tarahumara translator in the prior guilty pleas (2014 and 2015) that were used to enhance his sentence to a career offender status.

1. 2014 Conviction

The first prior offense that was used to enhance Appellant's sentence was 2:14-CR-1655. He pled guilty to that offense and was sentenced to time served. He was represented by counsel and although he had the benefit of a Tarahumara translator at his plea hearing, it was nevertheless plagued by a marked inability to communicate. The following testimony illustrates the communication breakdown that recurred repeatedly in the plea hearing in this case, even with a Tarahumara translator:

> ***THE COURT:*** *Okay, sir. I need you to listen to the question and I need you to answer directly. Are you being treated for any type of physical or mental illness?*
>
> ***THE DEFENDANT:*** *No, I'm not. I don't drink.*
>
> ***THE COURT:*** *All right. Sir, did you understand the question I just asked you? I'm not asking you if you're drinking.*
>
> ***THE DEFENDANT****: Yes.*
>
> ***THE COURT:*** *I'm asking you do you have any sicknesses, sir?*
>
> ***THE DEFENDANT****: No.*
>
> ***THE COURT:*** *Is anyone -- I'm sorry.*
>
> ***MR. SPEAKER:*** *May I check his earphone?*
>
> ***THE COURT:*** *Sure, sure.*
>
> ***MR. SPEAKER:*** *Thank you, ma'am.*
>
> ***THE COURT:*** *Thank you. Is anyone forcing you or threatening you to plead guilty?*
>
> ***THE DEFENDANT****: Guilty.*
>
> ***THE COURT:*** *Okay. I don't think he's understanding my questions.*
>
> ***THE INTERPRETER:*** *The interpreter would be willing to rephrase it.*

MS. MILNER: *Can you please let him know to answer yes or no to her questions?*

THE DEFENDANT: *You mean like if someone ordered me to?*

MS. MILNER: *Can we possibly put this at the end of the calendar, Your Honor?*

THE COURT: *Would the interpreter be available say another half an hour?*

THE INTERPRETER: *I would be, Your Honor.*

THE COURT: *I apologize but we're not seeming to make any progress here.*

THE INTERPRETER: *Yes, Your Honor. The interpreter recognizes the difficulty with which the defendant understands the issues or how to respond.*
(ROA.451-52)

The hearing continues:

THE COURT: *Has anyone made any promises to get you 7 to plead guilty that's not in your plea agreement?*

THE DEFENDANT*: Yes.*

MS. MILNER: *Can we go to the interpreter?*
(Pause)

THE INTERPRETER: *The interpreter requests a rephase in the question.*

THE COURT: *Sure. Has anyone made any promises to get you to plead guilty that are not in your agreement?*

THE DEFENDANT*: Yes.*

THE COURT: *Can we ask him in Spanish again? All right. Has anyone made any promises that are not contained in your plea agreement?*

THE DEFENDANT: *That it was not written?*

***THE COURT**: Right.*

***THE DEFENDANT**: No.*
(ROA.461)

The plea hearing ended with Appellant's counsel giving her opinion that the hearing would not have been possible without the assistance of a Tarahumara translator.

***THE COURT:** Ms. Milner, anything else?*

***MS. MILNER:** Yes. Just for the record, Your Honor, prior to the hearing, we met with the interpreter, the Tarahumara interpreter. I don't think that without his interpretation he would have understood the legal concepts in the plea agreement. So yes –*

***THE COURT:** It was a joint effort so –*

***MS. MILNER**: Right.*

***THE COURT:** Thank you, all.*
(ROA.464)

This 2014 case then proceeded to a sentencing hearing. Disturbingly, counsel for Appellant, despite the prior problems, waived Appellant's right to a Tarahumara translator in his sentencing with the following discussion. The record shows that the plea hearing almost was not successful due to problems in communication.. The Court was also concerned as can be seen:

***THE COURT**: So, will there be any need for a Tarahumara interpreter?*

***MS. MILNER**: No, there will not be, Your Honor. We needed one in order for him to enter his plea. With the help of the interpreter, he understood the* *legal concepts. We tried to plea him twice, and finally the second time it was successful. No. But I spoke with him, I read the report to him. He feels comfortable proceeding in Spanish.*

***THE COURT**: All right. Ms. Milner, I can accept your recommendations, but just so the record is clear, let me just ask Mr. Duran directly.*

Mr. Duran, the proceedings this morning are not held in your native Tarahumara language. We can proceed with the Spanish language only if you can tell me if you understand Spanish sufficiently in order to continue this morning.

***THE DEFENDANT**: Yes.*

***THE COURT**: All right. Then that's the way we'll proceed.*
(ROA.468-69)

This being a sentencing hearing which mainly consisted of discussion among the attorneys and the Court, there were not many instances where one could discern the level of understanding of Appellant. On the one occasion in which Appellant was given the opportunity to speak, however, it appears that he does not understand the question from the Court and is not capable of providing any testimony.

***THE COURT**: All right. Mr. Duran, would you want to say anything at this time on your own behalf?*

***THE DEFENDANT**: Well, thank you very much.*
(ROA.470)

2. 2015 Conviction

Appellant appeared in Court again in docket number 2:15-CR-4410. His 2015 guilty plea was taken in front of the same magistrate as heard the testimony in the 2014 case. This magistrate witnessed the multiple communication issues in the prior case, including the attorney's statement that proceeding would have been impossible without Tarahumara translation. However, Appellant's plea was taken with no Tarahumara translator present and Magistrate Judge Garza made no inquiry whatsoever into the lack of a translator, counsel's opinion as to proceeding without a Tarahumara translator, and no inquiry of the Defendant as to whether he waived a translator. This plea was different functionally this time in that there were 2 Defendants who merely together answered "yes" to all questions and did not testify otherwise. This most likely accounts for the lack of confusion as Appellant merely parroted what his co-defendant stated.

Similarly, there was no discussion regarding this issue at sentencing, even though the judge at the 2015 sentencing hearing was the also same judge that made a concerned inquiry as to the absence of a Tarahumara translator for this defendant in 2014. Appellant's lawyer at that hearing stated that it was her belief that he believed that although Appellant had no formal education whatsoever, was not a native Spanish speaker, and could neither read nor write in Spanish, that he was somehow able to proceed in Spanish and did not need a Tarahumara translator.

> *And I just wanted to answer what I would anticipate would be the Court's concern, is to how this happens a second time. Mr. Duran is really a very naive person. He has no formal education. Spanish is his second language. He does speak it well enough to proceed in court. I checked that out early on, but Raramuri is his first language. He has a -- He's very unsophisticated,*

and he has a disposition of many Tarahumaras culturally, which is they're not aggressive, they're not -- and I only speak to this because I had an expert witness once on it, that he had studied the Tarahumara culture, and he explained to me that it is not -- it's simply not as confrontational, they are culturally less likely to stand up and say, "No, I don't want to do that." So, unfortunately, he's very easy to take advantage of.
(ROA.494)

It appears that in this case his counsel did not enlist the aid of a Tarahumara translator at any stage at all, leaving one to wonder, considering the obvious difficulties in the 2014 case, how counsel was able to communicate with her client to be able to represent him, discuss his case, render advice, and to represent to the Court that her client had waived his right to having the proceedings translated into Tarahumara, especially after she made great pains to describe how unsophisticated he was. The Court at sentencing, different from the 2014 case, did not inquire of the Defendant himself if he waived his right to a translator in his own language.

3. Current Appeal

In advance of the sentencing hearing in the case currently on appeal Appellant filed a sentencing memorandum that argued in favor of a downward variance based on several considerations, including:

Mr. Duran-Gonzalez never had anything translated or interpreted for him in a language which he understood. He had no interpreter for attorney-client conferences, nor at any stage of the prosecution, up through and including guilty plea, pre-sentence interview, sentencing, his right to appeal, and the notice of the terms of supervised release which he was forced to sign, although he could not, at the time, write his own name. No one explained the terms of supervised release to him in a language that he could understand.
(ROA.414)

Appellant's condition was eloquently described

> *Among the many pieces of information which could not be conveyed by his attorney were: immigration consequences of his plea, the Government's offer(s), the consequences of the offer, and the possibility of a counter offer, negotiations, or trial. (Padilla). Mr. Duran was denied access to counsel because they could not confer, outside of the times that the Court scheduled hearings: re-arraignment and sentencing. Throughout the prosecution of the case, Mr. Duran could not describe to his defense counsel the circumstances which would give rise to substantial mitigation under USSG 5K2.12, Duress. They simply could not communicate outside of the times that they were at the courthouse, using the services of a bridge interpreting.*
>
> *Mr. Duran speaks some Spanish. But, because he did not have even one day of school in Mexico, his Spanish is sparse and includes no abstractions, like guilt, innocence, immigration consequences, crime, sentencing, or supervised release. Nor does his Spanish afford him the ability to describe the mitigating circumstances surrounding the crime, nor describe his role in the offense, his understanding of the proceedings, the notion of a trial or of a contract. Mr. Duran could not grasp large units of time, such as weeks, months and years.*
>
> *Mr. Duran never learned to read: he could not read nor write his own name. When arrested in the Western District of Texas, agents wrote Mr. Duran's first name, the way that DEA agents expected it to be spelled. They instructed Mr. Duran to copy the characters forming "Heraclio". This is the origin of the misspelling of his name. He was drawing the characters which agents drew for him, to "sign" his name. In the District of New Mexico, the Court learned of Mr. Eraclio's name from the Mexican Consulate. The Mexican Consulate included a middle name "Modesto" which was also not Mr. Duran's name. It was not a name given him by his parents. It was a name given to him by a Protestant minister, in some Protestant or Catholic ritual in which a person takes on another name, like a confirmation name. Mr. Duran-Gonzalez rejects this name, which is relevant here to show how profoundly hampered Mr. Duran was in these proceedings. Until he received the services of properly interpreted court proceedings and attorney-client conferencing, in person, he was in the dark. This name confusion is a microcosm, a holon of the deficiency in Mr.*

> *Duran's prior conviction. Mr. Duran able to participate in his defense, standing up for the name his parents gave him at birth.*
> (ROA.414-16)

The Government's response was simply that the Appellant had lawyers in the prior cases and had been speaking Spanish for 17 years. (ROA.163) This response does not consider that while Spanish is spoken in Mexico, Appellant is from an isolated community that does not speak Spanish and does not have many of the legal concepts that we take for granted in a modern society and language or that at important hearings in the 2014 and 2015 cases the attorney did not use a Tarahumara translator at all.

The District Court in the case on appeal in ruling on Appellant's objection to the inclusion of these prior convictions, made no findings on the validity or invalidity of the inclusion of these convictions to set Appellant's sentencing level and career criminal status, and simply ruled that Appellant's motion for a downward variance was denied with no further explanation or specificity. (ROA.163) The Court sentenced Appellant to 151 months based upon a sentencing level of 29 and a category of VI. Had these prior offenses not been incorporated he would have had a sentencing level of 17 and a category level of II, which translates to a sentencing range of 27-33 months.

On June 2, 2026 the United States Court of Appeals for the Fifth Circuit affirmed the decision of the District Court in an published decision.

United States v. Duran-Gonzalez, (2026 U.S. App. LEXIS 15874 * | 2026 LX 263201 | __ F.4th __ | 2026 WL 1542875).

B. Appellate Proceedings

On appeal Appellant argued that the District Court incorrectly relied on his two prior convictions in treating him as a career criminal under Sentencing Guideline Section 4B1.1(b). Appellant argued that his prior convictions cannot be used to support the career-criminal enhancement because: (1) the absence of translator violated due process; (2) his plea was not knowing and voluntary; (3) he did not have effective assistance of counsel; and (4) lack of a translator effectively denied him his right to appointed counsel under *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed.2d 799 (1963).

The Fifth Circuit, citing *Custis v. United States,* 511 U.S. 485, 487, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994), affirmed the ruling of the District Court, ruling that the absence of an interpreter does not amount to denial of counsel and it is therefore not a valid basis on which to collaterally attack a prior sentence in the context of a career-criminal enhancement. *United States v. Duran-Gonzalez*, (2026 U.S. App. LEXIS 15874 * | 2026 LX 263201 | __ F.4th __ | 2026 WL 1542875).

REASONS FOR GRANTING THIS PETITION

1. The Petition should be granted because having no Tarahumara translator in his 2014 and 2015 cases amounted to a denial of counsel, allowing Appellant to collaterally attack these convictions.

The Court Interpreters Act, 28 U.S.C. §1827, provides a defendant who speaks only or primarily a language other than the English language a statutory right to a "court-appointed interpreter when [his] comprehension of the proceedings or ability to communicate with counsel is impaired." "The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States." 28 USC §1827(c)(2).

The Court Interpreters Act requires, in pertinent part, the appointment of an interpreter when a judge, either *sua sponte* or on the motion of a party, determines that the defendant "speak[s] only or primarily a language other than the English language" and that fact would "inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer." 28 U.S.C. § 1827(d)(1)(A). In other words, an interpreter should be appointed when the district court finds that the "defendant's ability to comprehend the proceedings or communicate with counsel is inhibited by language or hearing problems." *United States v. Perez*, 918 F.2d 488, 490 (5th Cir. 1990). The need for translation of the pretrial proceeding puts the district court on notice of the need to make inquiry regarding the defendant's language competency." *Perez*, 918 F.2d at 490 cited in *United States v. Herrera-Quinones,* 2024 U.S. App. LEXIS 1926 (5th Cir. January 29, 2024)

The Fifth Circuit has recognized that while there is no constitutional right as such to a Court-appointed interpreter in and of itself, the lack of an interpreter could nonetheless lead to the defendant being inhibited from such comprehension of the proceedings or the testimony given against him in English to such an extent as to have made the trial fundamentally unfair. *United States v. Tapia*, 631 F.2d 1207, 1210 (5thCir. 1980). The Fifth Circuit noted that "the basic inquiry on whether or not the failure to provide an interpreter was error still must be whether such failure made the trial fundamentally unfair." *Id*. (emphasis added).

Well-established principles of due process bar trying a defendant, who "lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense" because "though physically present in the courtroom, [he] is in reality afforded no opportunity to defend himself. . . . [This prohibition] is fundamental to an adversary system of justice." See *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975). The right to be meaningfully present at trial is critical to due process. *Rushen v. Spain*, 464 U.S. 114, 117, 104 S. Ct. 453, 78 L.

Ed. 2d 267 (1983) ("Our cases recognize that the right to personal presence at all critical stages of the trial . . . [is a] fundamental right[] of each criminal defendant."). "The Constitution requires that a defendant sufficiently understand the proceedings against him to be able to assist in his own defense. Ensuring that the defendant has that minimum understanding is primarily the task of the trial judge." *Ferrell v. Estelle*, 568 F.2d 1128, 1132-33 (5th Cir. 1978), opinion withdrawn due to petitioner's death, 573 F.2d 867 (5th Cir. 1978).

Appellant challenged the inclusion of the 2014 and 2015 adjudications to increase his criminal history score and to support the career criminal enhancement which was applied. The Fifth Circuit however, citing *Custis v. United States,* 511 U.S. 485, 487, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994), affirmed the ruling of the District Court, ruling that the absence of an interpreter does not amount to denial of counsel and it is therefore not a valid basis on which to collaterally attack a prior sentence in the context of a career-criminal enhancement.

Appellant would urge to this Appeals Court that his case is novel and that due process requires that these prior convictions be held to be invalid for enhancement purposes and that a precedent must be set to stop this situation from occurring again. It is clearly the law, as cited by the Fifth Circuit, that the total absence of counsel makes a prior conviction invalid and subject to collateral challenge. Appellant concedes that he did have an appointed attorney provided for him, but argues that the attorney was counsel in name only and not truly present for him in his defense. If counsel is present but makes no effort to address this issue (as in the 2014 case) or does not get a translator to communicate with his or her client (as in the 2015 case), is that not that same as no counsel at all?

It has been held that the absence of an interpreter can amount to ineffective assistance of counsel. *Gonzalez v. Phillips*, 195 F. Supp. 2d 893, 900-01 (E.D. Mich. 2001) (finding that attorney's failure to request an interpreter <u>constituted deficient performance</u> and that confidence in the conviction was undermined)[emphasis mine]; *Ling v. State*, 288 Ga. 299, 702 S.E.2d 881, 883 n.1 (Ga. 2010) (finding that trial counsel's failure to secure an interpreter was not professionally reasonable when it was based on fear that use of the interpreter might cause the jury to grow impatient and speculative fear of juror bias against non-English speakers); *In re Khan*, 184 Wn.2d 679, 363 P.3d 577, 582 (Wash. 2015) (finding decision to not request an interpreter "is not a meaningful strategy worthy of deference" but that the prejudice prong was still not met).

The transcripts from the prior hearings are in the record and this Appeals Court can observe fact that Appellant was unable to understand Spanish to the extent necessary to proceed in his defense. Consider the following exchange from the 2014 case:

THE COURT: *Okay, sir. I need you to listen to the question and I need you to answer directly. Are you being treated for any type of physical or mental illness?*

THE DEFENDANT: *No, I'm not. I don't drink.*

THE COURT: *All right. Sir, did you understand the question I just asked you? I'm not asking you if you're drinking.*

THE DEFENDANT*: Yes.*

THE COURT: *I'm asking you do you have any sicknesses, sir?*

THE DEFENDANT*: No.*

THE COURT: *Is anyone -- I'm sorry.*

MR. SPEAKER: *May I check his earphone?*

THE COURT: *Sure, sure.*

MR. SPEAKER: *Thank you, ma'am.*

THE COURT: *Thank you. Is anyone forcing you or threatening you to plead guilty?*

THE DEFENDANT*: Guilty.*

THE COURT: *Okay. I don't think he's understanding my questions.*

THE INTERPRETER: *The interpreter would be willing to rephrase it.*

MS. MILNER: *Can you please let him know to answer yes or no to her questions?*

THE DEFENDANT: *You mean like if someone ordered me to?*

MS. MILNER: *Can we possibly put this at the end of the calendar, Your Honor?*

THE COURT: *Would the interpreter be available say another half an hour?*

THE INTERPRETER: *I would be, Your Honor.*

THE COURT: *I apologize but we're not seeming to make any progress here.*

THE INTERPRETER: *Yes, Your Honor. The interpreter recognizes the difficulty with which the defendant understands the issues or how to respond.*
(ROA.451-52)

The hearing continues:

THE COURT: *Has anyone made any promises to get you 7 to plead guilty that's not in your plea agreement?*

THE DEFENDANT*: Yes.*

MS. MILNER: *Can we go to the interpreter?*
(Pause)

THE INTERPRETER: *The interpreter requests a rephase in the question.*

THE COURT: *Sure. Has anyone made any promises to get you to plead guilty that are not in your agreement?*

THE DEFENDANT*: Yes.*

THE COURT: *Can we ask him in Spanish again? All right. Has anyone made any promises that are not contained in your plea agreement?*

THE DEFENDANT: *That it was not written?*

THE COURT*: Right.*

THE DEFENDANT*: No.*
(ROA.461)

The plea hearing ended with Appellant's counsel giving her opinion that the hearing would not have been possible without the assistance of a Tarahumara translator. However at the sentencing hearing in this case there was no Tarahumara translator.

In the 2015 case Magistrate Judge Garza, who oversaw the difficult plea hearing in 2014, made no inquiry whatsoever into the lack of a translator, counsel's opinion as to proceeding without a Taramuhara translator, and no inquiry of the Defendant as to whether he waived a translator. Similarly, there was no discussion regarding this issue at sentencing, even though the judge in 2015 was the same as in 2014.

Even more disturbing is that in the 2015 case Appellant's counsel did not enlist the aid of a Tarahumara translator at all, leaving one to wonder how counsel was able to communicate with her client to be able to represent him, discuss his case, render advice, and to represent to the Court that her client had waived his right to having the proceedings translated into Tarahumara, especially after she made great pains to describe how unsophisticated he was. How is this any different from having no counsel at all? Appellant would argue that the record leads to a definite and firm conviction that a mistake has been committed because a counsel that one cannot communicate with is no counsel at all and that these prior convictions be held to be invalid.

2. The Petition should be granted because Appellant Lacked Capacity to Waive his Right to a Translator

It is anticipated that the Government will argue that Appellant, through the actions of his counsel, waived the right to Tarahumara translation in the sentencing hearing in 2014 and both hearings in 2015. Any alleged waiver was insufficient to waive such a fundamental right under the facts in this case because any inquiry of Appellant as to whether he waived this right was conducted in Spanish, not Tarahumara. Only the use of a Tarahumara interpreter would ascertain whether Petitioner knew that the waiver was occurring and agreed to it. Even if Appellant was present and physically standing next to his attorney at the prior hearings, the Supreme Court has held that an Appeals Court cannot assume that Petitioner heard or understood the full ramifications of the waiver because he did not sufficiently understand Spanish. See *Gonzalez v. United States*, 553 U.S. 242, 246-48, 128 S. Ct. 1765, 170 L. Ed. 2d 616 (2008) (the petitioner required an interpreter and the Supreme Court could only assume that he "did not hear, or did not understand, the waiver discussions").

Without indication that an interpreter was present at the bench conference as well, Petitioner's mere physical presence at the bench conference has no significance. *Garcia v. Davis,* 2018 U.S.Dist. LEXIS 193380 (SD Tex. [Mcallen] August 1, 2018) The use of an interpreter most likely falls among those "basic trial choices" which "are so important that an attorney must seek the client's consent in order to waive the right," yet would not require personal participation in the waiver. *Gonzalez*, 553 U.S. at 247-48.

> "Concerning [exercise or waiver of basic trial rights], an attorney must both consult with the defendant and obtain consent to the recommended course of action." *Florida v. Nixon*, 543 U.S. 175, 187, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004). Such examples include "whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal." *Id*. An interpreter, key to the defendant's ability to understand the proceeding around him, is also appropriate for this category.

Although the Magistrate and District judge were familiar with this Defendant and his need for Tarahumara translation due to the 2014 case, there is no mention of whether 2015 counsel even made an inquiry in Appellant’s native language as to whether Tarahumara translation was waived. Appellant’s rights were knowingly ignored by court and counsel, and Appellant was in no position to speak up for himself when his attorney stood silent.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 14th day of July, 2026.

LAW OFFICES OF CHRISTOPHER McCAFFREY

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ATTORNEY FOR PETITIONER

Appendix "A"

United States Court of Appeals for the Fifth Circuit

No. 22-51055

United States Court of Appeals
Fifth Circuit
FILED
June 2, 2026
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

HERACLIO DURAN-GONZALEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:17-CR-356-3

Before ELROD, *Chief Judge*, and WILLETT and WILSON, *Circuit Judges*.

JENNIFER WALKER ELROD, *Chief Judge*:

Heraclio Duran-Gonzalez appeals his sentence, arguing that the prior convictions on which it was based are invalid because he was not provided with an interpreter. Regardless of the standard of review, this challenge constitutes a collateral attack barred by Supreme Court precedent, and we therefore AFFIRM his sentence.

I

Heraclio Duran-Gonzalez twice pleaded guilty to and was convicted of conspiring to possess with intent to distribute marijuana in the District of

New Mexico, once in 2014 and once in 2015. *See* 21 U.S.C. § 841. In both proceedings, he had the assistance of counsel. In late 2017, while on supervised release for the two prior convictions, Duran-Gonzalez was arrested in Texas and charged with possession with intent to distribute 50 kilograms or more of marijuana. He pleaded guilty again, and the presentence report recommended applying the career-criminal enhancement based on his two prior convictions per Sentencing Guideline § 4B1.1(b). *See* U.S. Sent'g Guidelines Manual § 4B1.1(b) (U.S. Sent'g Comm'n 2016).

On June 18, 2018, the day of Duran-Gonzalez's sentencing hearing, his counsel filed a sentencing memorandum requesting a downward variance, while noting that Duran-Gonzalez had no objection to the PSR. The memorandum argued that at least one of Duran-Gonzalez's prior convictions was invalid because, despite Duran-Gonzalez's primary language being Tarahumara, a trained Tarahumara interpreter was not present at the proceedings.[1] The memorandum maintained that the absence of an interpreter constituted an effective denial of counsel and consequently that at least one of the prior convictions was unconstitutional. The district court overruled the motion for downward variance and imposed a bottom-of-the-Guidelines prison term of 151 months and three years of supervised release.

On appeal, Duran-Gonzalez argues that the district court incorrectly relied on his two prior convictions in treating him as a career criminal under § 4B1.1. He asserts that his prior convictions cannot be used as predicate convictions to support the career-criminal enhancement because: (1) the absence of a translator violated due process; (2) his plea was not knowing and voluntary; (3) he did not have effective assistance of counsel; and (4) lack of

[1] Tarahumara is an unwritten Uto-Aztecan language, spoken in an isolated, mountainous region of Mexico but linguistically separate from Spanish. The parties dispute Duran-Gonzalez's proficiency in Spanish as a second language.

a translator effectively denied him of his right under *Gideon v. Wainwright*, 372 U.S. 335 (1963), to appointed counsel.[2]

II

Duran-Gonzalez's challenge, based on absence of an interpreter, constitutes a collateral attack on his two prior convictions. We hold that the absence of an interpreter does not amount to denial of counsel and that it is therefore not a valid basis on which to collaterally attack a prior sentence in the context of the career-criminal enhancement.

The Supreme Court held in *Custis v. United States* that a defendant could "collaterally attack the validity of previous state convictions that are used to enhance his sentence" only if the conviction was the result of "failure to appoint counsel at all." 511 U.S. 485, 487, 496 (1994).[3] Even assuming that the absence of an interpreter may in some circumstances amount to ineffective assistance of counsel, *see, e.g.*, *Gonzalez v. Phillips*, 195 F. Supp. 2d 893, 897–903 (E.D. Mich. 2001), it is not a complete denial of counsel. At oral argument, counsel was unable to provide, nor have we discovered, any case authority equating a lack of an interpreter with a complete absence of counsel. Therefore, Duran-Gonzalez's argument fails to meet *Custis*'s limited exception allowing for collateral attacks under only very narrow circumstances.

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[2] The parties dispute the proper standard of review. The Government has asserted that Duran-Gonzalez either invited, waived, or forfeited the challenge to his sentence. On the other hand, Duran-Gonzalez has argued for *de novo* review. We need not determine the proper standard of review, however, as Duran-Gonzalez's challenge fails on the merits as a collateral attack against prior convictions, even when reviewed *de novo*.

[3] Although *Custis* spoke only of previous *state* court convictions, we have since applied its holding to previous *federal* convictions. *See, e.g.*, *United States v. Bams*, 858 F.3d 937, 948 (5th Cir. 2017).

Other circuit courts likewise have applied the *Custis* rule to bar collateral challenges based on absence of an interpreter, holding it to be substantively different from complete absence of counsel. *See United States v. Wallace*, 52 F. App'x 581, 582 (3d Cir. 2002); *United States v. Jimenes*, 852 F.3d 631, 633–35 (7th Cir. 2017); *United States v. Zarasua-Galvan*, 83 F. App'x 147 (8th Cir. 2003); *United States v. Javier-Lopez*, 43 F. App'x 116, 116–17 (9th Cir. 2002); *United States v. Tum-Perez*, 156 F.3d 1245 (10th Cir. 1998) (unpublished table decision). We are unaware of any holding to the contrary.

To the extent that Duran-Gonzalez independently challenges the district court's denial of his motion for downward variance, there is no reversible error because the sentence imposed by the district court is within the Guidelines range and Duran-Gonzalez has not met his burden to show that his sentence was unreasonable. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 360 (5th Cir. 2009) (noting that "a sentence within the Guidelines range is presumed reasonable on appeal" (citing *United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir. 2008)).

III

The district court did not err in denying Duran-Gonzalez's collateral attacks on his previous convictions because such attacks are barred by *Custis*, nor did the district court reversibly err in denying the downward variance. Accordingly, we AFFIRM the district court's judgment and sentence.

Appendix "B"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 4:17-CR-00356-3 DC
USM Number: 97612-380

HERACLIO DURAN-GONZALEZ

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, HERACLIO DURAN-GONZALEZ, was represented by Mimi Smith, Esq.

The defendant pled guilty to Count(s) One of the Indictment on January 10, 2018. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1) 18 U.S.C. § 2	Aiding and Abetting Possession With Intent to Distribute 50 Kilograms or More, but Less Than 100 Kilograms of Marijuana	11/28/2017	One

As pronounced on June 18, 2018, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

Signed this 27th day of June, 2018.

David Counts
United States District Judge

DEFENDANT: HERACLIO DURAN-GONZALEZ
CASE NUMBER: 4:17-CR-00356-DC(3)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **One Hundred Fifty One (151) months as to Count One (1). Term to run consecutive to the sentence imposed in P-18-CR-035** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

____
____
____

Defendant delivered on ________________ to ______________________________

at ______________________, with a certified copy of this judgment.

____
UNITED STATES MARSHAL

____
By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: HERACLIO DURAN-GONZALEZ
CASE NUMBER: 4:17-CR-00356-DC(3)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Three (3) years.**

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

The defendant shall not illegally reenter the United States. If the defendant lawfully reenters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

The Court waives the mandatory drug testing should the defendant be excluded, removed or deported. If not excluded, removed or deported, the defendant shall report to the U.S. Probation Office within 72 hours of release, refrain from any unlawful use of a controlled substance; submit to one drug test within 15 days of release from imprisonment; submit to at least two periodic drug tests thereafter, as directed by the Probation Officer.

DEFENDANT: HERACLIO DURAN-GONZALEZ
CASE NUMBER: 4:17-CR-00356-DC(3)

CONDITIONS OF PROBATION AND SUPERVISED RELEASE
(As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

Mandatory Conditions:

[1] The defendant shall not commit another federal, state, or local crime during the term of supervision.

[2] The defendant shall not unlawfully possess a controlled substance.

[3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

[4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

[5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

[6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

[7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

[8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.

[9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

[1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

[2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

[3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

[4] The defendant shall answer truthfully the questions asked by the probation officer.

[5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change

DEFENDANT: HERACLIO DURAN-GONZALEZ
CASE NUMBER: 4:17-CR-00356-DC(3)

[6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

[7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

[8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

[9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

[10] The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

[11] The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

[12] If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

[13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

[14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

[15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

[16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

[17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: HERACLIO DURAN-GONZALEZ
CASE NUMBER: 4:17-CR-00356-DC(3)

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 410 S. Cedar St., Pecos, TX 79772. The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	Assessment	Fine	Restitution
TOTALS	$100.00	$.00	$.00

SPECIAL ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of $100.00. Payment of this sum shall begin immediately.

FINE

The fine is waived because of the defendant's inability to pay.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Appendix "C"

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 21 U.S.C.S. § 841

(a)UNLAWFUL ACTS

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

2. 28 U.S.C.S. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

3. 28 U.S.C. §1827

Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)

(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.

(c)

(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.

(d)

(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment) so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

(e)

(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)

(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)

(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States

Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

(6) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term "presiding judicial officer" as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate judge, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term "judicial proceedings instituted by the United States" as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term "United States district court" as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice.
The presiding judicial officer, on such officer's motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(l) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer's own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment.

The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.

4. **U.S.S.G. § 4B1.1** provides the following

CAREER OFFENDER

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.
(b) Except as provided in subsection (c), if the offense level for a career offender from the table in this subsection is greater than the offense level otherwise applicable, the offense level from the table in this subsection shall apply. A career offender's criminal history category in every case under this subsection shall be Category VI.

Offense Statutory Maximum	Offense Level*
(1) Life	37
(2) 25 years or more	34
(3) 20 years or more, but less than 25 years	32
(4) 15 years or more, but less than 20 years	29
(5) 10 years or more, but less than 15 years	24
(6) 5 years or more, but less than 10 years	17
(7) More than 1 year, but less than 5 years	12.

*If an adjustment from §3E1.1 (Acceptance of Responsibility) applies, decrease the offense level by the number of levels corresponding to that adjustment.

(c) If the defendant is convicted of 18 U.S.C. § 924(c) or § 929(a), and the defendant is determined to be a career offender under subsection (a), the applicable guideline range shall be determined as follows:

(1) If the only count of conviction is 18 U.S.C. § 924(c) or § 929(a), the applicable guideline range shall be determined using the table in subsection (c)(3).

(2) In the case of multiple counts of conviction in which at least one of the counts is a conviction other than a conviction for 18 U.S.C. § 924(c) or § 929(a), the guideline range shall be the greater of—

(A) the guideline range that results by adding the mandatory minimum consecutive penalty required by the 18 U.S.C. § 924(c) or § 929(a) count(s) to the minimum and the maximum of the otherwise applicable guideline range determined for the count(s) of conviction other than the 18 U.S.C. § 924(c) or § 929(a) count(s); and

(B) the guideline range determined using the table in subsection (c)(3).

(3) Career Offender Table for 18 U.S.C. § 924(c) or § 929(a) Offenders

§3E1.1 Reduction	Guideline Range for the 18 U.S.C. § 924(c) or § 929(a) Count(s)
No reduction	360–life
2-level	reduction 292–365
3-level reduction	262–327.

Commentary
Application Notes:
1. Definitions.—"Crime of violence," "controlled substance offense," and "two prior felony convictions" are defined in §4B1.2.
2. "Offense Statutory Maximum".—"Offense Statutory Maximum," for the purposes of this guideline, refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, including any increase in that maximum term under a sentencing enhancement provision that applies because of the defendant's prior criminal record (such sentencing enhancement provisions are contained, for example, in 21 U.S.C. § 841(b)(1)(A), (B), (C), and (D)). For example, in a case in which the statutory maximum term of imprisonment under 21 U.S.C. § 841(b)(1)(C) is increased from twenty years to thirty years because the defendant has one or more qualifying prior drug convictions, the "Offense Statutory Maximum" for that defendant for the purposes of this guideline is thirty years and not twenty years. If more than one count of conviction is of a crime of violence or controlled substance offense, use the maximum authorized term of imprisonment for the count that has the greatest offense statutory maximum.

3. Application of Subsection (c).—
(A) In General.—Subsection (c) applies in any case in which the defendant (i) was convicted of violating 18 U.S.C. § 924(c) or § 929(a); and (ii) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under §4B1.1(a).
(B) Subsection (c)(2).—To determine the greater guideline range under subsection (c)(2), the court shall use the guideline range with the highest minimum term of imprisonment.
(C) "Otherwise Applicable Guideline Range".—For purposes of subsection (c)(2)(A), "otherwise applicable guideline range" for the count(s) of conviction other than the 18 U.S.C. § 924(c) or 18 U.S.C. § 929(a) count(s) is determined as follows:
(i) If the count(s) of conviction other than the 18 U.S.C. § 924(c) or 18 U.S.C. § 929(a) count(s) does not qualify the defendant as a career offender, the otherwise applicable guideline range for that count(s) is the guideline range determined using: (I) the Chapter Two and Three offense level for that count(s); and (II) the appropriate criminal history category determined under §4A1.1 (Criminal History Category) and §4A1.2 (Definitions and Instructions for Computing Criminal History).
(ii) If the count(s) of conviction other than the 18 U.S.C. § 924(c) or 18 U.S.C. § 929(a) count(s) qualifies the defendant as a career offender, the otherwise applicable guideline range for that count(s) is the guideline range determined for that count(s) under §4B1.1(a) and (b).
(D) Imposition of Consecutive Term of Imprisonment.—In a case involving multiple counts, the sentence shall be imposed according to the rules in subsection (e) of §5G1.2 (Sentencing on Multiple Counts of Conviction).
(E) Example.—The following example illustrates the application of subsection (c)(2) in a multiple count situation:
The defendant is convicted of one count of violating 18 U.S.C. § 924(c) for possessing a firearm in furtherance of a drug trafficking offense (5 year mandatory minimum), and one count of violating 21 U.S.C. § 841(b)(1)(B) (5 year mandatory minimum, 40 year statutory maximum). Applying subsection (c)(2)(A), the court determines that the drug count (without regard to the 18 U.S.C. § 924(c) count) qualifies the defendant as a career offender under §4B1.1(a). Under §4B1.1(a), the otherwise applicable guideline range for the drug count is 188–235 months (using offense level 34 (because the statutory maximum for the drug count is 40 years), minus 3 levels for acceptance of responsibility, and criminal history category VI). The court adds 60 months (the minimum required by 18 U.S.C. § 924(c)) to the minimum and the maximum of that range, resulting in a guideline range of 248–295 months. Applying subsection (c)(2)(B), the court then determines the career

offender guideline range from the table in subsection (c)(3) is 262–327 months. The range with the greatest minimum, 262–327 months, is used to impose the sentence in accordance with §5G1.2(e).