

The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation*

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INTRODUCTION¹

“*¡No es posible! ¡No es posible!*” shouted Santiago Ventura Morales as the jury announced its guilty verdict in his murder trial.² Ventura Morales, an eighteen-year-old migrant from a remote village located in the mountains of Southern Mexico, could not believe the verdict.³ The Oregon trial court had dutifully appointed a Spanish-speaking interpreter for the proceedings, but Ventura Morales only understood very basic Span-

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² Peter Carlin, *What Becomes of the Resurrected?*, L.A. TIMES MAG., Mar. 8, 1992, at 20.

³ *Id.*; see also Paul J. DeMuniz, *Introduction to IMMIGRANTS IN COURTS* 3, 3–5 (Joanne I. Moore & Margaret E. Fisher eds., 1999). Ventura Morales’s case was heard in Clackamas County, Oregon. *State of Oregon v. Ventura Morales*, Nos. 86-630, CA A42459, 1988 Ore. App. LEXIS 1627 (Or. Ct. App. Aug. 30, 1988). Since the case was affirmed without opinion, it was difficult for the authors to follow the procedural history of the case. *See id.*

ish.⁴ His native language was Mixtec, an indigenous language.⁵ Witnesses, who likewise only spoke Mixtec, were confused and bewildered by questions posed to them in Spanish.⁶ The court interpreter could neither faithfully interpret the proceedings into Mixtec nor interpret the testimony of Mixtec-speaking witnesses into English.⁷ Repeated interpreter complaints on the record regarding linguistic limitations were unheeded or unnoticed by the court.⁸

The *Ventura Morales* case received significant media exposure nationwide and raised this country's consciousness regarding fundamental fairness issues and equal access to justice for linguistic minorities.⁹ The Oregon Court of Appeals affirmed *Ventura Morales* without written opinion.¹⁰ It was not until two years later that the case was dismissed by the trial judge.¹¹

Non-English-speaking persons are appearing in civil and criminal courts across the country with increasing frequency.¹² Although *Ventura Morales* stands out as an abysmally low point for the treatment of language minorities, it is fair to say that less egregious—but still very troubling—problems have occurred and continue to occur in our courts. The Fifth Amendment guarantee that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law” establishes the important concept of individual fairness in the American judicial system.¹³ New trends in language use and immigration flows challenge status quo conceptions of individual fairness guarantees. These guarantees include the rights of confrontation and due process set forth in the Fifth and Fourteenth Amendments.¹⁴ To protect individual rights, courts are increasingly compelled to use language interpreters for defendants who do not speak or understand English. Providing court interpreters, thus, be-

⁴ Carlin, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See id.* Since *Ventura Morales* appeared to have been treated unfairly by the judicial system, the reinvestigation of his case eventually became the subject of intense media attention. Articles about the case appeared frequently in *The Oregonian*, Oregon's major newspaper. Local television news programs mentioned the case repeatedly. One local station did an hour-long feature on the case, even sending reporters to *Ventura Morales*'s home village in the remote mountains of southern Mexico. NBC sent a news crew to interview the defendant in prison and devoted five minutes to the story on the national evening news. Not to be outdone, Oprah Winfrey devoted most of a show to interviewing three of the trial jurors while *Ventura Morales* appeared via satellite from prison. *Id.*

¹⁰ *State of Oregon v. Ventura Morales*, Nos. 86-630, 1988 Ore. App. LEXIS 1627 (Or. Ct. App. Aug. 30, 1988).

¹¹ The trial judge signed an order dismissing the case on April 11, 1991. Telephone Interview with the Clerk of Clackamas County Circuit Court (Summer 2000).

¹² *See* discussion *infra* Part II.

¹³ U.S. CONST. amend. V.

¹⁴ U.S. CONST. amend. V, XIV.

comes an integral part of securing “justice for all” in federal and state courts.¹⁵

Language interpreters overcome the barriers and cultural misunderstandings that can render criminal defendants virtually absent from their own proceedings. Interpreters also eliminate the misinterpretation of witnesses’ statements made to police or to triers of fact during court proceedings. This Article focuses primarily on the criminal justice system, but appellate criminal case law analysis arguably may apply to civil, probate, and administrative proceedings as well. Interpreters are extremely beneficial, perhaps even necessary, in civil matters that involve complex issues such as the termination of parental rights, adoptions, and the terms and conditions of divorce settlements.

Some state constitutions guarantee the right to an interpreter despite the absence of an explicit provision providing for this in the U.S. Constitution.¹⁶ The Court Interpreters Act requires federal courts to appoint an interpreter in both criminal and civil actions commenced by the federal government in U.S. district courts.¹⁷ Federal district courts recorded 174,405 interpreted events in 2002, ninety-four percent of which were in Spanish.¹⁸ Moreover, courts have recognized that when defendants cannot effectively communicate with their counsel or understand the charges against them, they are entitled to an interpreter to take full advantage of their constitutional rights and to ensure due process.¹⁹

I. THE SCOPE OF THE CHALLENGES ASSOCIATED WITH COURTROOM INTERPRETATION

Information derived from the 2000 U.S. Census illustrates how the demand for courtroom interpretation services continues to increase. The Census Bureau compiled information related to courtroom interpretations by means of three questions: (1) “Does this person speak a language other than English at home?” (2) “What is this language?” and (3) “How well does this person speak English?”²⁰ The Census Bureau sent a survey

¹⁵ See James Thomas & Frank Gavin, *The Top Ten Issues Facing Courts in 1996 and What You Can Do About Them*, FUTURE VIEW (Va. Sup. Ct./Office of the Executive Sec’y), Spring 1997, at 1 (“Providing court interpreter programs has become, and will remain for the foreseeable future, a difficult but obligatory task for court managers.”).

¹⁶ See, e.g., CAL. CONST. art. I, § 14 (“A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.”).

¹⁷ 28 U.S.C.A. § 1827(d) (West 2003). Amendments made to the Act in 1988 extended this right to all judicial proceedings instituted by the United States, including the pre-trial and grand jury stages of cases. 28 U.S.C.A. § 1827(j).

¹⁸ ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2002 ANNUAL REPORT OF THE DIRECTOR 23 (2002).

¹⁹ *United States ex rel. Negron v. New York*, 434 F.2d 386, 389 (2d Cir. 1970) (holding that every criminal defendant should have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960))).

²⁰ U.S. CENSUS BUREAU, LANGUAGE USE AND ENGLISH-SPEAKING ABILITY: 2000 1

containing the aforementioned questions to approximately one out of every six households in the United States and used that representative sample to extrapolate the information presented below.²¹

The data collected by the Census Bureau demonstrates that a significant portion of the United States population does not consider English to be its native tongue. Almost 47 million individuals, or eighteen percent of the total U.S. population over the age of five, speak a language other than English at home.²² Furthermore, of those 47 million people who do not speak English at home, 24.1 million indicated that they have difficulty speaking and understanding the English language.²³ Under this analysis, at least 24 million individuals living in the United States would require interpretation services if haled into court.

The number of individuals currently eligible for interpretation services, however, is probably far greater than 24 million. Recent history indicates that the number of people in America who do not speak English in the home has risen dramatically over the past twenty years. For instance, in 1980 only 23.1 million individuals spoke a language other than English at home.²⁴ In contrast, the number of similarly situated individuals swelled to 31.8 million in 1990 and 47 million in 2000.²⁵ Currently, the ranks of individuals speaking a language other than English at home are probably in excess of 50 million, and the number of individuals who struggle to speak or understand English likely exceeds 25 million.²⁶

While the sheer number of individuals potentially in need of interpretation services appears daunting, equally significant interpretation problems arise as a consequence of the wide variety of languages spoken within the United States. In the latest Census, approximately 2000 unique languages were identified within the borders of the United States.²⁷ The pragmatic difficulties associated with securing a qualified interpreter for any of these 2000 languages poses almost insurmountable challenges for courts forced to work with finite resources. Furthermore, although many of the languages listed are quite similar to one another, such similarity does not eliminate interpretation inconsistencies during court proceedings. Indeed, some of the most egregious violations involve situations in

(2003), available at <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>.

²¹ *Id.* at 10.

²² *Id.* at 1.

²³ *Id.* at 2–4.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *See id.* 2–4.

²⁷ U.S. Census Bureau, *Language Spoken at Home and Ability to Speak English*, available at http://factfinder.census.gov/servlet/MetadataBrowserServlet?type=subject&id=LANGUAGESF3&dsspName=DEC_2000_SF3&back=update&-lang=en (last visited Dec. 30, 2003).

which the interpretation is conducted in a language similar to the language spoken by the individual needing interpretation services.²⁸

Some courts grapple with the challenge of providing accurate interpretation services more frequently than other courts. The 2000 Census revealed that people who spoke languages other than English at home were not equally distributed across the country.²⁹ Rather, the actual distribution of such individuals varied widely from state to state and region to region. According to the Census Bureau, the proportion of individuals who spoke a non-English language at home was 29% in the West, 20% in the Northeast, 15% in the South, and only 9% in the Midwest.³⁰ In particular counties, the proportion of people speaking a language other than English in the home was surprisingly high. In fact, the results of the 2000 Census revealed that “in about 1 percent of the 3,141 counties in the United States, more than 60 percent of the population spoke a language other than English at home.”³¹ The City of Hialeah, located in southern Florida, had the highest proportion of non-English-speaking individuals, in that an astounding ninety-three percent of the population spoke a language other than English at home.³² Conversely, many counties—particularly non-metropolitan counties in the Midwest and the South—had relatively few individuals who spoke a language other than English in the home.³³ Generally, the highest concentrations of non-English-speakers were found in states that bordered Mexico, the Pacific Ocean, and the Atlantic Ocean because such “border states” served as entry points for immigrants.³⁴

II. SURVEY RESULTS IN A NUTSHELL

In conducting our study, we examined court interpreter decisions from state and federal courts over a five-year period (1998–2003). We reviewed approximately thirty decisions, most of which are published criminal cases. The case law presented represents a cross section of recent key state and federal decisions and is, hopefully, a fair representation of those decisions. As we have closely examined the cases, we have identified several jurisprudential trends or conclusions:³⁵

- Court interpreter cases are appearing with increased frequency in appellate courts.³⁶

²⁸ See discussion *supra* Introduction.

²⁹ See U.S. CENSUS BUREAU, *supra* note 20, at 3–9.

³⁰ *Id.* at 4.

³¹ *Id.* at 7.

³² *Id.* at 9.

³³ *Id.*

³⁴ *Id.* at 7.

³⁵ For a detailed discussion of cases used in this survey, see *infra* Part IV.

³⁶ We have based this observation solely upon searching the LexisNexis court database

- Justices at the appellate level and trial court judges across the country make no distinction between court interpreters and translators. Of course, appellate court judges usually cannot disturb the findings of the lower court and the improper nomenclature. These decisions frequently confuse “court interpreters” and “court translators.” Unless court rules, statutes, or constitutional provisions support the generic use of the term “court translators,” it appears that the case law simply perpetuates the confusion. However, this may be a question of semantics.
- “Translation” can be defined in several ways. The term is generally defined as “the replacement of *textual* material in one language by the equivalent *textual* material in another language,” but it can also be used to refer to the general process of converting a message from one language to another.³⁷ The term “interpretation” denotes the *oral* form of the translation process.³⁸ In comparing the two, “*Translators* have time to reflect and craft their output, whereas *interpreters* must instantaneously arrive at a target language equivalent”³⁹
- The vast majority of court interpreter cases are affirmed on appeal, relying upon a plain error standard of review.
- The cases surveyed make clear that attorneys are not sufficiently educated in this area of jurisprudence to object in a timely manner and preserve a record for appeal. Failure to make a timely objection results in a waiver of the right to confront an adverse witness.
- No case was overturned on appeal where the trial court judge engaged in any preliminary colloquy with the accused in order to determine language proficiency and the need for an interpreter. This remained true regardless of procedural deficiencies.
- Most appellate court cases that we examined involved Spanish-speaking litigants.⁴⁰
- Some judges, now dealing with a deluge of court interpreter cases, are beginning to appreciate the difficulties and complexities involved in courtroom interpretation. William E. Hewitt elaborated upon the difficulties attendant in interpretation:

for the term “court interpreter” over five-year periods.

DATES	NUMBER OF HITS
01/01/1988–12/31/1992	144 hits
01/01/1993–12/31/1997	169 hits
01/01/1998–12/31/2002	205 hits
01/01/2003–12/31/2003	56 hits (extrapolation of 280)

³⁷ ROSEANN D. GONZÁLEZ ET AL., *FUNDAMENTALS OF COURT INTERPRETATION: THEORY, POLICY, AND PRACTICE* 295 (1991) (emphasis added).

³⁸ *Id.*

³⁹ *Id.* (emphasis added).

⁴⁰ See ADMIN. OFFICE OF THE U.S. COURTS, *supra* note 18, at 23 (showing that federal courts recorded 174,405 interpreted events in 2002, ninety-four percent of which were in Spanish).

Court interpretation for foreign language speaking and deaf or hearing impaired individuals is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Arguably, it is the most difficult form of interpreting. Being bilingual, even fluently so, is insufficient qualification for court interpreting. Court interpreters must be able to preserve “legal equivalence” while interpreting. Moreover, they must be able to do this in each of three modalities: simultaneous interpreting, consecutive interpreting, or sight translating documents.⁴¹

III. STANDARDS OF REVIEW

There are two standards of review used in cases challenging the adequacy of court interpretation. The major factor in determining the appropriate standard of review is whether or not an objection to the interpretation was made at trial. Provided that the defense makes “a timely and specific objection during the proceedings which is noted on the record,” then courts employ an abuse of discretion standard.⁴² Proof must be presented that an interpreter-related problem has occurred which is prejudicial to the defendant’s case, such as a procedural error related to the presence of the interpreter or to the interpreter’s actual performance.⁴³ Alternately, if an error is not objected to at trial, then an appeal may be sought under the plain error standard. This requires a showing that “the error was egregious, that it affected substantial rights, represented a miscarriage of justice, or resulted in an unfair trial.”⁴⁴ In general, reversals based on plain error are rarely granted.⁴⁵

IV. STATE AND FEDERAL CASE LAW

A. *Failure To Appoint an Interpreter*

Recent case law supports the proposition that all people, including non-English-speaking individuals, are entitled to the guarantees of fairness and due process set forth in the United States Constitution. The cases examined below set forth the metes and bounds governing an individual’s right to have an interpreter present during court proceedings.

⁴¹ WILLIAM E. HEWITT ET AL., COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS 16 (1995).

⁴² Virginia Benmaman, *Interpreter Issues on Appeal*, PROTEUS: NEWSLETTER OF THE NAT’L ASS’N OF JUDICIARY INTERPRETERS AND TRANSLATORS, Fall 2000, available at http://www.najit.org/proteus/v9n4/benmaman_v9n4.htm.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

State v. Santiago Calderon indicates that non-English-speakers possess a fundamental right to have court proceedings interpreted.⁴⁶ The defendant in this case, Domingo Santiago Calderon, appealed his murder conviction and claimed that the trial court erred in ordering that the closing argument not be translated.⁴⁷ On appeal, the Supreme Court of Kansas held that “[t]he right to be present at one’s criminal trial is a fundamental right.”⁴⁸ The court elaborated, “A defendant’s right to be present includes a right to have trial proceedings translated into a language that he or she understands so that he or she can participate effectively in his or her own defense.”⁴⁹ Since the defendant’s attorney did not object to the trial court’s failure to provide an interpreter during closing arguments, Santiago Calderon had to satisfy the stringent plain error standard.⁵⁰ Nevertheless, the Supreme Court of Kansas held that the trial court’s failure to provide a translator constituted plain error because this violated the appellant’s fundamental right to be “present” at trial.⁵¹ Santiago Calderon’s conviction was reversed, and the case was remanded for a new trial.⁵²

However, not all individuals possess a fundamental right to a court-appointed interpreter. In *United States v. Si*, defendant Tony Si claimed that the district court deprived him of a fair trial under the Court Interpreters Act and the U.S. Constitution by not providing a court-appointed interpreter throughout his trial.⁵³ The Ninth Circuit Court of Appeals noted that “[t]he determination whether a party needs an interpreter ‘is likely to hinge upon various factors, including the complexity of the issues and testimony presented during trial and the language ability of the defendant’s counsel.’”⁵⁴ In assessing Si’s need for an interpreter, the court declared that it could not determine whether Si was entitled to this service because the district court failed to make findings on the record assessing Si’s ability to communicate in English.⁵⁵ After holding that a factually specific inquiry is needed to determine whether a party requires interpretation services, the Ninth Circuit indicated that “[t]his determination is one that should be made on the record by the district court whenever the court is put on notice that there is a potential language difficulty.”⁵⁶

On remand, the district court issued factual findings that Si’s language abilities did not impair his comprehension of the proceedings or his

⁴⁶ *State v. Santiago Calderon*, 13 P.3d 871, 876 (Kan. 2000).

⁴⁷ *Id.* at 875.

⁴⁸ *Id.* at 879.

⁴⁹ *Id.*

⁵⁰ *Id.* at 875–79.

⁵¹ *Id.* at 879.

⁵² *Id.*

⁵³ *United States v. Si*, 333 F.3d 1041 (9th Cir. 2003).

⁵⁴ *Id.* at 1044 (quoting *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1973)).

⁵⁵ *Id.* at 1043–44.

⁵⁶ *Id.* at 1044.

ability to communicate with counsel and the court.⁵⁷ Since Si never objected to the district court's findings, the Ninth Circuit presumed the district court's judgment to be correct and held that Si's English language abilities allowed Si to adequately participate in the court proceedings without the aid of an interpreter.⁵⁸ Consequently, the appeals court concluded that the district court's failure to provide Si with an interpreter was not an abuse of discretion and did not violate Si's statutory and constitutional rights.⁵⁹

In *United States v. Febus*, the Seventh Circuit Court of Appeals also acknowledged that deciding whether to appoint an interpreter hinges on factors that include the defendant's knowledge of English and the relative complexity of the legal proceedings.⁶⁰ A defendant in *Febus*, Angel Morales, claimed that English was not his primary language and argued that the trial judge had violated the Court Interpreters Act by denying him access to interpretation services.⁶¹ On appeal, the Seventh Circuit recognized that deciding whether an individual requires an interpreter is a fact-driven inquiry. Consequently, the court declared that "the trial judge, who is in direct contact with the defendant, must be given wide discretion" to determine whether an interpreter is needed.⁶² Since the transcript of Morales's plea hearing demonstrated that he understood the proceedings and gave clear and responsive answers throughout the trial court's plea colloquy, the Seventh Circuit held that the trial court had not abused its discretion in finding that Morales did not need the services of a court-appointed interpreter.⁶³

Similar to *Febus*, the court in *United States v. Nevelo Nostratis* held that the defendant's coherent responses to the trial court precluded his later assertions that he did not understand English well enough to comprehend his plea agreement.⁶⁴ Furthermore, the court specified that the significant lapse of time between the entry of Nevelo Nostratis's guilty plea and his plea withdrawal motion could be considered when ruling on the motion to withdraw.⁶⁵ Specifically, the court set forth that if "the defendant has long delayed his withdrawal motion . . . the reasons given to support withdrawal must have considerably more force."⁶⁶ Applying this

⁵⁷ *United States v. Si*, 343 F.3d 1116, 1116 (9th Cir. 2003).

⁵⁸ *Id.* at 1121–22.

⁵⁹ *Id.*

⁶⁰ *United States v. Febus*, 218 F.3d 784 (7th Cir. 2000).

⁶¹ *Id.* at 791.

⁶² *Id.* at 791–92 (quoting *Valladares v. United States*, 871 F.2d 1564, 1566 (11th Cir. 1989)).

⁶³ *Id.* at 792–93.

⁶⁴ *United States v. Nevelo Nostratis*, 321 F.3d 1206, 1209–12 (9th Cir. 2003).

⁶⁵ *Id.* at 1211.

⁶⁶ *Id.* (quoting *United States v. Barker*, 514 F.2d 208, 222 (D.C. Cir. 1975)).

heightened standard of review, the Ninth Circuit held that there was no abuse of discretion by the district court.⁶⁷

Similar guidelines govern decisions in cases involving allegations of ineffective assistance of counsel. In *United States v. Madrigal-Trujillo*, the defendant claimed that he received ineffective assistance of counsel because his attorney failed to object to the lack of an interpreter at a sentencing hearing.⁶⁸ Specifically, Madrigal-Trujillo alleged that he could not fully understand a police witness's testimony during the sentencing hearing.⁶⁹ The United States District Court for the Northern District of Texas held that Trujillo had not received ineffective assistance of counsel.⁷⁰ In defending its decision, the court reasoned that Madrigal-Trujillo had no difficulty communicating with counsel and understood the questions posed by the court.⁷¹ Since the court found the defendant's interpretation complaint to be meritless, the court concluded that counsel was not ineffective in failing to raise the complaint during sentencing.⁷²

The Connecticut Appellate Court established an even stricter standard for obtaining a court-appointed interpreter in *Rodriguez v. Commissioner of Correction*.⁷³ Defendant Joaquin Rodriguez claimed that he did not receive effective assistance of counsel during his trial because his lawyer neglected to request an interpreter.⁷⁴ Although the court recognized that "continuous translations are required at trial 'when a non-English speaking defendant cannot understand . . . the proceedings,'" the court also determined that the only individuals who qualify for an interpreter under this standard must have "so limited an understanding or ability to speak English that [their] ability to comprehend the proceedings and to communicate with [their] counsel is significantly impaired."⁷⁵ Employing this strict standard, the court explained that a trial court's failure to provide word-for-word interpretation will only result in a new trial if the failure to provide an interpreter renders the trial fundamentally unfair.⁷⁶ Analyzing Rodriguez's claims under a plain error standard of review, the court held that the defendant did not require an interpreter, despite not being able to adequately comprehend some of the more complicated testimony and proceedings.⁷⁷ This inadequacy did not require reversal of the lower court's

⁶⁷ *Id.* at 1212.

⁶⁸ *United States v. Madrigal-Trujillo*, No. 3:97-CR-409-P(11), 2003 U.S. Dist. LEXIS 11522, at *2-*3 (N.D. Tex. July 7, 2003).

⁶⁹ *Id.* at *5.

⁷⁰ *Id.* at *5-*6.

⁷¹ *Id.* at *5.

⁷² *Id.* at *5-*6.

⁷³ *Rodriguez v. Comm'r of Corr.*, 749 A.2d 657 (Conn. App. Ct. 2000).

⁷⁴ *Id.* at 659.

⁷⁵ *Id.* at 660 (quoting *State v. Munoz*, 659 A.2d 683 (Conn. 1995)).

⁷⁶ *Id.*

⁷⁷ *Id.*

decision because the defendant's diminished level of understanding did not render the trial fundamentally unfair.⁷⁸

Even individuals who can demonstrate a genuine need for interpretation services can waive their right to an interpreter. In *United States v. Rendon Osuna*, the Tenth Circuit Court of Appeals stipulated that only the defendant can waive his or her right to an interpreter.⁷⁹ Defendant Felix Rendon Osuna claimed that his conviction for possession of an unregistered firearm should be reversed because the lower court erred in failing to appoint a Spanish interpreter.⁸⁰ The prosecution suggested that an interpreter be appointed, but defense counsel declined to follow this recommendation.⁸¹ The court reviewed the case using a plain error standard because Rendon Osuna had not raised the interpreter issue at the trial court level.⁸² Although the defendant's counsel refrained from using a court interpreter at trial, the court observed: "[W]aiver of an interpreter is not a decision for [defendant's] counsel or the Court to make. It is the defendant's decision, after the Court explains to him the nature and effect of a waiver."⁸³ Since Rendon Osuna had never personally waived his right to an interpreter, the Tenth Circuit remanded the case to the trial court for a determination as to whether the lack of an interpreter "inhibited Osuna's comprehension of the proceedings" and hampered his ability to present the case to the jury.⁸⁴

The Texas Court of Appeal's decision in *Guerrero v. State* identifies other waiver requirements affecting an individual's right to an interpreter.⁸⁵ In *Guerrero*, the non-English-speaking defendant claimed that the trial court erred by failing to *sua sponte* appoint an interpreter to assist him with the punishment phase of the trial.⁸⁶ The sentencing hearing record indicated that Guerrero's attorney, rather than a certified interpreter, was translating the proceeding for Guerrero.⁸⁷ In determining whether the defendant had waived his right to have a court-appointed interpreter, the court first acknowledged that "an accused does not waive the right to an interpreter, even if he fails to request one, if the record 'otherwise demonstrates the defendant's lack of understanding of the proceedings.'"⁸⁸ Having established that Guerrero was entitled to an interpreter,⁸⁹ the court

⁷⁸ *Id.*

⁷⁹ *United States v. Rendon Osuna*, 189 F.3d 1289, 1292 (10th Cir. 1999).

⁸⁰ *Id.* at 1291.

⁸¹ *Id.*

⁸² *Id.* at 1292.

⁸³ *Id.* (quoting *United States v. Tapia*, 631 F.2d 1207, 1209 (5th Cir. 1980)) (second alteration in original).

⁸⁴ *Id.* at 1293.

⁸⁵ *Guerrero v. State*, No. 10-00-217-CR, 2003 Tex. App. LEXIS 6443 (Tex. Ct. App. July 23, 2003).

⁸⁶ *Id.* at *1, *9.

⁸⁷ *Id.* at *2.

⁸⁸ *Id.* at *7 (quoting *Leon v. State*, 25 S.W.3d 841, 843 (Tex. Ct. App. 2000)).

⁸⁹ *Id.* at *4.

indicated that Guerrero could only waive this right through an intentional relinquishment or abandonment of a known right or privilege in writing and on the record.⁹⁰ The appeals court then found that the trial court erred in failing to appoint an interpreter for Guerrero's punishment hearing.⁹¹ However, the court refused to require a new punishment hearing because the trial court's error in failing to appoint an interpreter did not affect Guerrero's substantial rights.⁹²

Melese v. Kebede, decided by the Washington Court of Appeals, is factually similar to *Guerrero*. Melese, an Ethiopian Amharic speaker, could not express herself during an in-court custody battle.⁹³ Although Melese had clear difficulty speaking and understanding English, her attorney stated that no interpreter was necessary.⁹⁴ In reliance on that representation, the trial court did not appoint an interpreter for Melese.⁹⁵ Employing an abuse of discretion standard, the appellate court held that the trial court erred in failing to appoint an interpreter when Melese had trouble communicating her position in English.⁹⁶

Although courts have consistently found that non-English-speaking participants have a right to court-appointed interpreters, recent case law sets forth certain limitations. In *State v. Alsanea*, the Idaho Court of Appeals indicated that trial courts' responsibilities did not include monitoring interactions between parties and court interpreters.⁹⁷ Although the trial court provided the defendant with a court-appointed interpreter, Alsanea claimed that the court erred in permitting him to testify without using the interpreter.⁹⁸ Analyzing Alsanea's arguments under the plain error standard, the Idaho Court of Appeals upheld the actions of the trial court.⁹⁹ While recognizing that courts often have a responsibility to provide a party with a court-appointed interpreter, the court specified that a judge has no obligation to monitor a party's use of an interpreter once this service is made available.¹⁰⁰

Similarly, in *State v. Cardenas*, the Supreme Court of Colorado limited courts' responsibilities by concluding that a state is not required to pay for the expenses of a private interpreter to translate out-of-court discussions between a defendant and a pro bono attorney.¹⁰¹ Janet Zimmerman, defense counsel for Cardenas, requested that a court-appointed in-

⁹⁰ *Id.* at *7–*8.

⁹¹ *Id.* at *10.

⁹² *Id.* at *12.

⁹³ *Melese v. Kebede*, No. 41384-8-I, 1999 Wash. App. LEXIS 969, at *7–*8 (Wash. Ct. App. June 1, 1999).

⁹⁴ *Id.* at *8.

⁹⁵ *Id.*

⁹⁶ *Id.* at *13.

⁹⁷ *State v. Alsanea*, 69 P.3d 153, 163 (Idaho Ct. App. 2003).

⁹⁸ *Id.* at 157, 161.

⁹⁹ *Id.* at 163.

¹⁰⁰ *Id.*

¹⁰¹ *State v. Cardenas*, 62 P.3d 621, 622–23 (Colo. 2002).

terpreter be assigned to assist Zimmerman's out-of-court investigation as to whether Cardenas's plea was voluntary.¹⁰² The court determined that "the only situation in which the appointment of a state-paid interpreter is mandatory is for translation of in-court proceedings."¹⁰³ Using an abuse of discretion standard, the court held that the trial court did not abuse its discretion by failing to pay a court interpreter to interpret out-of-court conversations between Zimmerman and Cardenas.¹⁰⁴

A 2001 decision in federal court placed additional limits on a non-English-speaker's right to a court-appointed attorney. In *United States v. Johnson*, three defendants shared a court-appointed Spanish-language interpreter who simultaneously translated the proceedings through a microphone that fed into headsets worn by the defendants.¹⁰⁵ During the trial, defense counsel indicated that his client was having difficulty communicating with counsel because the interpreter was occupied with the task of interpreting the proceedings.¹⁰⁶ Upon receiving this information, the trial court permitted the defendants frequent "breaks" during which they could converse with counsel through the interpreter.¹⁰⁷ On appeal, the defendants argued that sharing one interpreter kept them from effectively communicating with counsel.¹⁰⁸ The Seventh Circuit Court of Appeals declared, "There is nothing in the language of the [Court Interpreters Act] . . . which requires every defendant in a multi-defendant criminal action be provided with his own individual interpreter. To the contrary, the [Court Interpreters Act] itself authorizes the use of a single interpreter in multi-defendant cases."¹⁰⁹ In recognizing the validity of using a single interpreter in multi-defendant cases, the Seventh Circuit cautioned that in such instances "[t]he district court must provide each defendant the time and ability to confer effectively with counsel throughout the proceedings."¹¹⁰ In *Johnson*, the Seventh Circuit found that the trial court did not abuse its discretion by appointing one interpreter for multiple defendants because the judge received late notice of the issue and the method of interpretation used provided defendants with recesses whenever they were requested.

The Washington Supreme Court's decision in *State v. Gonzales-Morales* reaffirms the proposition that parties in the same court proceeding are not necessarily entitled to their own interpreter.¹¹¹ In *Gonzales-Morales*, the defendant argued that his constitutional rights were violated

¹⁰² *Id.* at 622.

¹⁰³ *Id.* at 623.

¹⁰⁴ *Id.* at 622–23.

¹⁰⁵ *United States v. Johnson*, 248 F.3d 655, 659 (7th Cir. 2001).

¹⁰⁶ *Id.* at 660.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 662.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *State v. Gonzales-Morales*, 979 P.2d 826 (Wash. 1999).

when the judge allowed his court-appointed interpreter to render similar services for a prosecution witness.¹¹² Specifically, Gonzales-Morales claimed that the prosecution witness's use of the "borrowed interpreter" had prevented him from communicating with his counsel during that period.¹¹³ In rejecting the defendant's argument, the court explained that "[a]s long as the defendant's ability to understand the proceedings and communicate with counsel is unimpaired, the appropriate use of interpreters in the courtroom is a matter within the discretion of the district court."¹¹⁴ Since the trial court offered Gonzales-Morales the option of interrupting the testimony whenever he needed to communicate with his counsel, the court concluded that the defendant's ability to understand the proceedings was unimpaired.¹¹⁵

Finally, in *State v. Camarena*, the New York Supreme Court Appellate Division intimated that a defendant may not need to be physically present in order to participate meaningfully in an interpreted judicial proceeding.¹¹⁶ Defendant Julio Camarena agreed, prior to the proceeding, that his right to be present at sidebars could be satisfied by allowing him to listen to a translation using a headset that was a short distance from the sidebar proceedings.¹¹⁷ In response to the defendant's later appeal of the sidebar arrangement, the court held that Camarena "participate[d] in the sidebar conferences in a meaningful manner through his use of the headphones, his proximity to the sidebar permitting him to see the panelists' faces, and his frequent conferences with his attorney."¹¹⁸ However, the court refused to determine whether a similar sidebar arrangement would satisfy fairness requirements if imposed on a defendant in lieu of a defendant's physical presence at a sidebar.¹¹⁹

B. Unqualified Interpreters

Court interpretation is an extremely specialized skill requiring high levels of language fluency and substantial familiarity with the American legal system. Many courts have recognized the unique challenges associated with court interpretation and have created certification standards in an effort to provide qualified interpreters who are able to protect the rights of non-English-speakers.

Despite the best efforts of government, the demand for court interpreters remains much greater than the current supply of officially certified

¹¹² *Id.* at 827.

¹¹³ *Id.* at 830.

¹¹⁴ *Id.* (quoting *United States v. Lim*, 794 F.2d 469, 471 (9th Cir. 1986)) (alteration in original).

¹¹⁵ *Id.* at 832.

¹¹⁶ *State v. Camarena*, 295 A.D.2d 109 (N.Y. App. Div. 2002).

¹¹⁷ *Id.* at 110.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

interpreters. Consequently, many courts are forced to use skilled non-certified interpreters on a regular basis. In *State v. Almaraz*, the defendant filed a motion to strike three prior misdemeanor convictions because the interpreter that assisted him was not certified.¹²⁰ Almaraz claimed that although the interpreter was competent, the trial court had violated his right to due process by employing a non-certified interpreter without showing good cause as to why a certified interpreter could not be used.¹²¹ In assessing Almaraz's argument, the court stated that "[t]here is no right . . . to a certified interpreter. There is only a right to a competent interpreter."¹²² The court noted that Almaraz had not challenged his interpreter's competency and held that the defendant had received his rights because he had access to competent interpretation services.¹²³ Further, the trial court's improper application of the procedures created to appoint an interpreter did not rise to the level of a constitutional violation because Almaraz did not demonstrate that the procedural improprieties resulted in an unfair trial.¹²⁴

The Arkansas Supreme Court in *In re Certification for Foreign Language Interpreters in Arkansas Courts* issued a per curiam order intended to provide for the certification, appointment, and use of interpreters for non-English-speaking parties or witnesses.¹²⁵ In its order, the court instructed judges to use certified interpreters whenever possible.¹²⁶ The court only permitted judges to appoint a non-certified interpreter after making a good faith effort to obtain a certified interpreter.¹²⁷ *In re Certification for Foreign Language Interpreters* also set forth the factors that constituted good cause for removing an interpreter. Such factors included:

- (1) being unable to interpret adequately, including where the interpreter self-reports such inability;
- (2) knowingly and willfully making false interpretation while serving in an official capacity;
- (3) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (4) failing to adhere to the requirements prescribed by the [Administrative Office of the Courts], including the Arkansas Code

¹²⁰ *State v. Almaraz*, 89 Cal. App. 4th 1353, 1356 (2001).

¹²¹ *Id.* at 1360.

¹²² *Id.* at 1359 (quoting *People v. Estrada*, 176 Cal. App. 3d 410, 415 (1986)) (alteration in original).

¹²³ *Id.* at 1360–61.

¹²⁴ *Id.* at 1360.

¹²⁵ *In re Certification for Foreign Language Interpreters in Arkansas Courts*, 1999 Ark. LEXIS 482 (Ark. Sept. 30, 1999).

¹²⁶ *Id.* at *2.

¹²⁷ *Id.*

of Professional Responsibility for foreign language interpreters;
[and (5)] failing to follow other standards prescribed by law.¹²⁸

Although the Arkansas Supreme Court cited the aforementioned factors as grounds for removal, case law from other jurisdictions indicates that, under a plain error standard, courts will not generally remove an interpreter without proof that the interpreter's conduct significantly prejudiced a party to the dispute.

For example, in *State v. Cardona*, the defendant argued that the district court committed plain error by failing to properly administer the requisite oath to the interpreter.¹²⁹ Cardona's interpreter did take an oath at the plea hearing, but it did not contain the precise language mandated by Nebraska law.¹³⁰ In affirming the defendant's conviction, the court explained:

Plain error will be noted only where an error is evident from the record, prejudicially affects a substantial right of a litigant, and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process.¹³¹

Accordingly, the failure to administer the precise statutory oath to an interpreter at a plea hearing did not rise to the level of plain error.¹³²

Even relatively egregious interpreter errors may not fulfill the requirements of the plain error standard. In *United States v. Ramirez Mata*, the court interpreter assigned to the defendant admitted to defense counsel that she was having difficulty interpreting some of the legal terms.¹³³ It was also evident during the proceedings that Ramirez Mata was not receiving a continuous simultaneous interpretation.¹³⁴ Despite the interpreter's readily apparent shortcomings and alleged lack of qualifications, the Fourth Circuit affirmed the district court's decision because the evidence of the defendant's guilt was overwhelming, such that the deficient interpretation had not prejudiced Ramirez Mata in any way.¹³⁵ The court applied a plain error standard of review because defense counsel did not make a timely objection as to the ability of the interpreter.¹³⁶

¹²⁸ *Id.* at *4-*5.

¹²⁹ *State v. Cardona*, 639 N.W.2d 653 (Neb. Ct. App. 2002).

¹³⁰ *Id.* at 658.

¹³¹ *Id.* at 659.

¹³² *Id.*

¹³³ *United States v. Ramirez Mata*, No. 98-4843, 1999 U.S. App. LEXIS 22169, at *6 (4th Cir. June 25, 1999).

¹³⁴ *Id.*

¹³⁵ *Id.* at *8.

¹³⁶ *Id.* at *7-*8.

The decision in *United States v. Gonzales* highlights the stringent standards governing enforcement of the plain error standard.¹³⁷ *Gonzales* focused on the defendant's claim that the "district court violated the Court Interpreters Act . . . when it failed to appoint certified interpreters to assist him during court proceedings."¹³⁸ Although court interpreters assisted Gonzales in numerous court proceedings, none of the interpreters were certified in the Spanish language.¹³⁹ The Eighth Circuit characterized the trial court's use of non-certified interpreters as "troubling" and indicated that the failure to appoint a certified interpreter might constitute plain error.¹⁴⁰ Despite its stated concerns, the court refused to reverse the trial court's decision under the plain error standard because Gonzales never showed that he was harmed by the use of non-certified interpreters.¹⁴¹ Similar to the Fourth Circuit's review of *Ramirez Mata*, the Eighth Circuit reviewed Gonzales's claims under the plain error standard because the defendant failed to raise the issue of interpreter certification during the initial proceedings.¹⁴²

The timing of counsel's objection is one of the most crucial procedural components of an interpreter qualification challenge. If an attorney contests an interpreter's qualifications during the trial, then the appellate courts generally use an abuse of discretion standard of review. In contrast, when an interpreter's credentials are not challenged at the time of trial, the appellate courts usually employ a more stringent plain error standard.

State v. Yia N. Thao illustrates how the timing of an objection can have a substantial impact in interpreter qualification challenges.¹⁴³ In *Thao*, the defendant claimed that the trial court erred in failing to order a hearing into the competency of his court interpreter.¹⁴⁴ Thao alleged that the court interpreter's poor interpretation of the proceedings denied him the right to effective interpretive services and that the trial court did not follow proper state procedures in appointing a non-certified court interpreter.¹⁴⁵ Thao's attorney first raised the issue of the interpreter's competency while the jury was deliberating after closing arguments and final instructions.¹⁴⁶ The trial court indicated that it would have entertained Thao's motion for a hearing into the court interpreter's competency if such a motion had

¹³⁷ *United States v. Gonzales*, 339 F.3d 725 (8th Cir. 2003).

¹³⁸ *Id.* at 727.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 728.

¹⁴¹ *Id.* at 729.

¹⁴² *Id.* at 728.

¹⁴³ *State v. Yia N. Thao*, No. C040092, 2003 Cal. App. Unpub. LEXIS 10515 (Cal. Ct. App. Nov. 7, 2003).

¹⁴⁴ *Id.* at *3.

¹⁴⁵ *Id.* at *3, *7.

¹⁴⁶ *Id.* at *3–*4.

been made earlier.¹⁴⁷ When the objection was renewed on the day of sentencing, the court denied the request and observed that the interpreter, while not certified, had passed the test and was registered.¹⁴⁸ The state appeals court rejected both of Thao's arguments.¹⁴⁹ The court reasoned that Thao's objection was filed at a late stage in the proceedings and denied his request for a competency hearing because the defendant never objected to the court interpreter's competency during the trial itself.¹⁵⁰ Additionally, the court determined that the trial court's potential noncompliance with a state rule governing the appointment of non-certified interpreters was a procedural defect that Thao waived by failing to object during trial.¹⁵¹

As evidenced by *Hernandez v. State*, even cases involving an abuse of discretion standard of review may present difficulties for parties attempting to contest interpreters' credentials.¹⁵² In *Hernandez*, the defendant argued that his plea was involuntary because the trial court failed to ensure that the plea and sentencing hearings were translated by a licensed Spanish interpreter.¹⁵³ Hernandez claimed that his counsel's request to interpret the proceedings for him resulted in error because the judge did not appoint a certified interpreter, inquire into counsel's qualifications as an interpreter, or swear in counsel.¹⁵⁴ The appellate court concluded that there was no abuse of discretion because Hernandez failed to show that his counsel was not competent to translate the proceedings.¹⁵⁵ Additionally, the court held that the defendant's failure to object to the quality of interpretation at the time of trial foreclosed appellate review of any interpretation error.¹⁵⁶

C. Interpreter Errors and Inadequacies

In the cases we surveyed, allegations of interpreter error comprised the majority of arguments raised by criminal defendants on appeal. As demonstrated by the cases discussed below, interpreter errors occur in a wide variety of settings and can prejudice English-speaking and non-English-speaking parties.

Recent case law is replete with instances in which non-prevailing parties claim that they received ineffective assistance of counsel because

¹⁴⁷ *Id.* at *4.

¹⁴⁸ *Id.* at *4–*5.

¹⁴⁹ *Id.* at *6–*8.

¹⁵⁰ *Id.* at *9.

¹⁵¹ *Id.*

¹⁵² *Hernandez v. State*, No. 05-03-00107-CR, 2003 Tex. App. LEXIS 7322 (Tex. App. Aug. 27, 2003).

¹⁵³ *Id.* at *14.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at *16.

¹⁵⁶ *Id.* at *17.

their attorney failed to object to interpreter errors that occurred during trial. In *United States v. Thammavong*, the defendant alleged that he received ineffective assistance of counsel because his lawyer failed to determine that the interpreter was speaking in Thai during the plea hearing and sentencing, even though Thammavong only understood Laotian.¹⁵⁷ In determining that Thammavong's counsel had rendered effective assistance,¹⁵⁸ the district court noted that defense counsel arranged for an adjournment of the plea hearing until a certified interpreter could be found for his client.¹⁵⁹ The court also observed that Thammavong had the benefit of two interpreters, including one provided by the defendant, and that Thammavong indicated that he understood the proceedings during the plea hearing and sentencing.¹⁶⁰

Similarly, in *State v. Alvarez*, the Ohio Court of Appeals rejected the defendant's claim that he received ineffective assistance of counsel.¹⁶¹ After being convicted of unlawful sexual conduct with a minor, Alvarez alleged that "his trial counsel's performance was deficient because counsel failed to request a record memorializing the conversations in Spanish between Alvarez and the interpreter."¹⁶² The court denied the defendant's motion, noting that it is not unreasonable for counsel—absent some specific problem—to rely on the court interpreter because that employee works under the direction of the court.¹⁶³ Furthermore, so long as an interpreter faithfully repeats the defendant's own words, then there exists no additional requirement to memorialize intervening conversations in a foreign language between the interpreter and the defendant.¹⁶⁴

Cornelio v. Blanks established the proposition that a client has received ineffective assistance of counsel whenever interpreter errors hindered effective communication between counsel and client.¹⁶⁵ The habeas corpus petitioner in *Cornelio* contended that his lawyers were ineffective because they did not use an interpreter during out-of-court meetings with him.¹⁶⁶ The United States District Court for the Northern District of California acknowledged, "When a defendant and his counsel can communicate only through an intermediary, unprofessional conduct on the part of the intermediary can render counsel's assistance ineffective . . ."¹⁶⁷ Nevertheless, the court rejected Cornelio's claim and held that the defense

¹⁵⁷ *United States v. Thammavong*, No. CR 00-4032-MWB, 2003 U.S. Dist. LEXIS 15719, at *5 (N.D. Iowa Sept. 4, 2003).

¹⁵⁸ *Id.* at *41.

¹⁵⁹ *Id.* at *3.

¹⁶⁰ *Id.* at *40–*41.

¹⁶¹ *State v. Alvarez*, 797 N.E.2d 1043, 1046 (Ohio Ct. App. 2003).

¹⁶² *Id.* at 1045.

¹⁶³ *Id.*

¹⁶⁴ *Id.* 1045–46.

¹⁶⁵ *Cornelio v. Blanks*, No. C02-4263 SI, 2003 WL 22682453 (N.D. Cal. Nov. 6, 2003).

¹⁶⁶ *Id.* at *2.

¹⁶⁷ *Id.* at *5.

attorneys provided effective assistance, as evidenced by the defendant's frequent conversations with counsel and the nature of Cornelio's informed representations before the trial court.¹⁶⁸

Allegations of interpreter error also occur frequently in connection with plea hearings. *In re Calderon* involved a defendant who claimed that his guilty plea was not willing and voluntary because he did not understand the possible deportation consequences of his plea.¹⁶⁹ Calderon complained that the interpretation provided by both a certified interpreter and Calderon's wife was faulty in that it did not fully educate him about the fact that he could be deported.¹⁷⁰ The Supreme Court of Vermont, noting that "[t]he findings in a post-conviction relief decision will not be disturbed absent clear error,"¹⁷¹ denied Calderon's petition because he had not complained about the quality of interpretation during the trial and because there was credible testimonial evidence supporting the trial court's conclusion that the interpreters were "adequate and accurate."¹⁷²

Not all legally significant interpreter errors occur in the courtroom. *Martinez v. State* involved an interpreter error that occurred when police interviewed the defendant while he was being treated at a hospital.¹⁷³ Corporal George Camacho served as an interpreter during the interview.¹⁷⁴ Martinez's statement at the hospital, as translated by Camacho, indicated that he admitted to a local shooting.¹⁷⁵ After being convicted, Martinez argued that the trial court erred in admitting Camacho's interpretation of Martinez's hospital statement.¹⁷⁶ The defendant alleged that Camacho had misinterpreted statements made during the interview which prejudiced Martinez at trial.¹⁷⁷ The Supreme Court of Delaware concluded that the trial court properly admitted Camacho's interpretation of the defendant's statement.¹⁷⁸ The court indicated that the contradictory evidence presented by Martinez and Camacho created a credibility issue that could be resolved only by the jury.¹⁷⁹ Under this analysis, the court held that Camacho's interpretation of Martinez's statement was properly submitted to the jury as admissible evidence.¹⁸⁰

Not all legally significant interpreter errors prejudice non-English-speaking individuals. In *Holliday v. State*, an English-speaking defendant whose alleged victims spoke only Spanish raised a number of objections

¹⁶⁸ *Id.* at *6.

¹⁶⁹ *In re Calderon*, 838 A.2d 109, 110 (Vt. 2003).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 111.

¹⁷² *Id.* at 112.

¹⁷³ *Martinez v. State*, No. 534,2000, 2002 WL 272358, at *1 (Del. Feb. 22, 2002).

¹⁷⁴ *Id.* at *2.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at *2-*3.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at *3.

¹⁸⁰ *Id.*

on appeal related to the use of a court interpreter.¹⁸¹ Specifically, Holliday argued that his counsel would have objected to two statements that the interpreter did not interpret into English, the interpreter was not qualified to render services, and the trial court should have dismissed the interpreter when her interpretation became suspect after she asked witnesses to repeat their answers.¹⁸² The Georgia Court of Appeals acknowledged that due process concerns might arise when the defendant speaks English and the victim speaks another language.¹⁸³ Nevertheless, the court rejected Holliday's claims because "[t]he translator was qualified, the jury did not hear potentially prejudicial information [because such information was never interpreted into English], and no matter how often the translator sought repetition or clarification, the evidence of Holliday's guilt was overwhelming."¹⁸⁴

Although allegations of interpreter error arise in a multitude of settings and circumstances, useful contemporary legal principles can be extrapolated from the recent body of case law dealing with interpretation. For instance, court decisions in federal and state cases show that parties alleging interpreter error must satisfy a relatively high burden of proof. Both the Ninth Circuit Court of Appeals and New Jersey's Superior Court have held that minor deviations from the accepted word-for-word translation standard will not necessarily abrogate a party's constitutional rights.

In *United States v. Way Quoe Long*, the defendant claimed that his due process rights were violated when the court interpreter committed numerous errors in translating the testimony of a government witness.¹⁸⁵ Long alleged that the translator, "who claimed to be skilled in both Hmong and Lao, apparently used both languages during translation."¹⁸⁶ The record created in the trial court verified that interpretation errors had occurred and that the defendant was not provided with a word-for-word interpretation of the testimony.¹⁸⁷ Nevertheless, the Ninth Circuit Court of Appeals held that the district court did not abuse its discretion in denying a mistrial.¹⁸⁸ In its holding, the court explained, "While the general standard for interpreters requires continuous word-for-word translation, occasional lapses in the standard will not necessarily contravene a defendant's constitutional rights."¹⁸⁹ The court continued that although the record did not provide a way to determine the adequacy of the interpretation, the

¹⁸¹ *Holliday v. State*, 588 S.E.2d 833, 835 (Ga. Ct. App. 2003).

¹⁸² *Id.* at 836–37.

¹⁸³ *Id.* at 837.

¹⁸⁴ *Id.* at 838.

¹⁸⁵ *United States v. Way Quoe Long*, 301 F.3d 1095, 1105 (9th Cir. 2002).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 1101.

¹⁸⁹ *Id.* at 1105.

record indicated that the trial court attempted to ensure that Long received an “adequate translation.”¹⁹⁰

The Superior Court of New Jersey reached a similar conclusion in *State v. Guzman*, where the defendant argued that his constitutional right to be “present” at trial was violated because his interpreter did not provide him with a word-for-word interpretation.¹⁹¹ At Guzman’s trial, his request for a court-appointed interpreter was denied, although he was allowed to bring a friend to interpret for him.¹⁹² Pursuant to the trial court’s instruction, Guzman’s girlfriend interpreted the proceedings but did not provide him with a verbatim interpretation.¹⁹³ In reviewing this issue, the Superior Court of New Jersey acknowledged that the “general standard for the adequate translation of trial proceedings requires continuous word for word translation of everything relating to the trial a defendant conversant in English would be privy to hear.”¹⁹⁴ Nevertheless, the court determined that “minor deviations from this [word-for-word] standard will not necessarily contravene a defendant’s constitutional rights.”¹⁹⁵ The court concluded that the trial judge had not abused his discretion because the interpretation informed Guzman about “the most important parts of the case” and because the defendant never suggested that his defense would have been different if he had been privy to a more thorough interpretation of the proceedings.¹⁹⁶

A review of relevant court decisions indicates that timely objections to interpretation errors can have a significant impact on subsequent appellate proceedings. Timely objections to interpreter errors often preserve issues for appeal and allow the appellate courts to forego a stringent plain error standard, in favor of an abuse of discretion standard. Some courts may employ an abuse of discretion standard even without a timely objection at the trial court level. However, these courts invariably reference the appellee’s failure to make a timely objection as one of the factors affecting the outcome of the case.

Perhaps no recent case demonstrates the crucial role of a timely objection better than *United States v. Camejo*.¹⁹⁷ The defendant in *Camejo* contended that the court interpreter’s difficulty in translating victim Abel Perez’s testimony from Spanish to English deprived Camejo of a fair trial.¹⁹⁸ Specifically, Camejo alleged that the interpreter “failed to translate verbatim, translated in the third person, . . . and improperly summarized

¹⁹⁰ *Id.*

¹⁹¹ *State v. Guzman*, 712 A.2d 1233 (N.J. Super. Ct. App. Div. 1998).

¹⁹² *Id.* at 1240.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 1242 (quoting *United States v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990)).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *United States v. Camejo*, 333 F.3d 669 (6th Cir. 2003).

¹⁹⁸ *Id.* at 672.

Perez's testimony."¹⁹⁹ The record created in the district court supported Camejo's allegations of interpreter error.²⁰⁰ Unfortunately, the Sixth Circuit Court of Appeals reviewed the issue under a plain error standard because the defendant did not make a timely objection to the alleged interpretation errors at trial.²⁰¹ The court held that the judge did not commit plain error by failing to replace the interpreter because the interpretation "was not sufficiently poor" and the district judge handled interpretation problems as they arose.²⁰² Further, the interpretation errors involved the testimony of the victim rather than the defendant, and the defendant and his attorney both spoke Spanish and, thus, did not need to rely on the interpreter to understand the victim's testimony.²⁰³ In rejecting Camejo's claim, the court noted that "while the interpreter's performance was . . . 'not a model of clarity and efficiency,' . . . [e]rror, if any, was certainly not 'plain.'"²⁰⁴

In *State v. Uvalle*, the North Carolina Court of Appeals intimated that only express objections to interpreter error would avoid review under the demanding plain error standard.²⁰⁵ The defendant in *Uvalle* claimed that the interpreter failed to provide a word-for-word interpretation of the "question asked by the State and the answer as given by the witness."²⁰⁶ On appeal, the court adopted a plain error standard because Uvalle never lodged a formal objection.²⁰⁷ Although the appeals court acknowledged that the defendant had expressed concern whenever the interpreter conversed with a witness without translating the contents of the conversation, the court also indicated that only an explicit objection would trigger review under the plain error standard.²⁰⁸ Further, the court set forth a stringent plain error standard in stating, "When we review for plain error, we only grant relief when the 'error is a *fundamental* error, something so basic, so prejudicial . . . that justice cannot have been done.'"²⁰⁹ Ultimately, it was concluded that the trial court's handling of the readily apparent interpreter problems did not impede Uvalle's ability to confront witnesses and did not constitute plain error.²¹⁰

State v. Sutton demonstrated that objections to interpreter error must be credible in order to preserve an issue for appeal.²¹¹ Defendant Ahn Vu

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 673.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *State v. Uvalle*, 565 S.E.2d 727 (N.C. Ct. App. 2002).

²⁰⁶ *Id.* at 731.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.* (quoting *State v. Odom*, 300 S.E.2d 375, 378 (N.C. Ct. App. 1983)) (alteration in original).

²¹⁰ *Id.* at 733.

²¹¹ *State v. Sutton*, Nos. 49989-1-I, 49994-7-I, 50052-0-I, 2003 WL 22683041 (Wash.

Nguyen contended that the court interpreter assigned to his criminal trial did not accurately interpret the testimony of two witnesses.²¹² However, the defendant did not provide any evidence of inaccurate interpretation “beyond his own assertion.”²¹³ The trial court refused to hold a hearing on the inaccuracy unless Nguyen could provide an “offer of proof from Vietnamese-speaking individuals who could testify regarding any [interpretation error].”²¹⁴ In rejecting Nguyen’s assertion of error, the court reasoned that the defendant’s failure to make an offer of proof in the trial court did not preserve the issue of interpretation error for purposes of appellate review.²¹⁵

Camejo, Uvalle, and Sutton provide striking examples of how failing to make credible and timely objections results in receiving a stricter standard of review. In the same vein, *Perez-Lastor v. INS* demonstrates how a lower standard of review greatly enhances the likelihood that an interpreter error challenge will be successful.²¹⁶ In this case, the Ninth Circuit Court of Appeals reviewed Martin Perez-Lastor’s claim that interpretation errors significantly impacted his quest for political asylum.²¹⁷ The defendant, a Guatemalan Indian whose primary language was Quiche, asserted that the deportation hearing violated his due process rights because an incompetent interpretation prevented him from presenting relevant evidence.²¹⁸ The Ninth Circuit determined that the record supported his allegations of interpreter error, in that it contained numerous instances in which Perez-Lastor was not responsive to a question or indicated that he could not understand the interpreter.²¹⁹ Rather than review Perez-Lastor’s claim under a plain error or abuse of discretion standard, the Ninth Circuit employed the considerably less demanding *de novo* standard of review traditionally used in deportation hearings.²²⁰ While noting the difficulties associated with “pinpoint[ing] . . . translation errors without a bilingual transcript of the hearing,”²²¹ the court found that a correct interpretation would have made a difference in the outcome of the hearing and remanded the case to the Bureau of Immigration Appeals for a new hearing.²²²

Ct. App. Nov. 10, 2003).

²¹² *Id.* at *4.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Perez-Lastor v. INS*, 208 F.3d 773 (9th Cir. 2000).

²¹⁷ *Id.* at 775.

²¹⁸ *Id.*

²¹⁹ *Id.* at 779.

²²⁰ *Id.* at 777.

²²¹ *Id.* at 778.

²²² *Id.* at 777, 780.

CONCLUSION

The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities.²²³

—Lord John E. E. Dalberg Acton
English historian, statesman (1834–1902)

If this statement was true in the nineteenth century, then these words ring especially true for linguistic minorities in the twenty-first century, where fundamental fairness and equal access to the courts must be preserved at all costs. Attorneys who represent non-English-speaking clients must become aware of the jurisprudential devastation wreaked by untimely objections. Objections regarding interpreter adequacy, the language proficiency of a client, and any communication problems must be preserved on the record in a timely fashion. This Article is a call to action for attorneys to educate themselves in this emerging and growing field of jurisprudence. Absent education and protective measures, the plain error standard will ensure that the vast majority of interpretation cases will be affirmed without ever reaching the merits. The concept of equal access to the courts for linguistic minorities is meaningless without the pivotal component of an educated bar regarding court interpretation jurisprudence.

²²³ Quoteworld, *Liberty, Liberate, Free Quotations, Famous Quotes*, at <http://www.quoteworld.org/browse.php?thetext=liberty,liberate,free> (last visited Mar. 3, 2004).