Vermont Superior Court
Filed 11/10/26
Windsor Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-04898

GERARDO ZELAYA GRANADOS v. State of Vermont et al

ENTRY REGARDING MOTION

Title: Motion FOR INTERPRETATION AND WRITTEN TRANSLATION (Motion: 2)
Filer: Jill P. Martin, Esq.
Filed Date: October 13, 2026

Petitioner moves for written translation of all court documents, orders, and findings into Spanish as well as oral interpretation of all court proceedings. Several federal district courts and circuits have determined the extent of the federal due process clause's applicability to interpretation and translation more so in the criminal context than in civil. The Vermont Supreme Court discussed the right to competent interpretation once in *State v. Gurung*. The Vermont Judiciary's Language Access Operations Manual and Vermont Rules of Civil Procedure dictate that the court provides translation and interpretation for "vital" documents affecting substantive rights, such as due process, that the court generated. Therefore, the court should interpret all vital documents it generates, including notices for court hearings, but it should not translate documents generated by the parties.

Legal Analysis

Petitioner Gerardo Zelaya-Granados moves for the written translation of all court documents, orders, and findings into Spanish as well as oral interpretation of all court proceedings. Petitioner specifically seeks written translation of the following: notices of hearings, any exhibits to be used at hearings, and any entry orders or decisions.

As a threshold matter, the court recognizes the distinction between interpretation and translation. Interpretation means "the act of listening to a communication in one language and orally converting it to another language without changing the meaning." Vermont Judiciary Language Access Operations Manual Version 1.1, at 5 (May 2021). The Judiciary recognizes three modes of interpretation: consecutive, simultaneous, and sight translation of documents. *Id.* Whereas translation means "[c]onverting a written text from one language into written text in another language." *Id.* at 6. "The source of the message being converted is always a written language" and "requires different skills than those used by an interpreter." *Id.*

I. Due Process Requirements

The United States Supreme Court held that the Due Process Clause "requires the States to afford certain civil litigants a 'meaningful opportunity to be heard' by removing obstacles to their full participation in judicial proceedings." *Tennessee v. Lane*, 541 U.S. 509, 523 (2004) (holding that Title II of the ADA, as applied to cases implicating the fundamental right of access to the courts, constitutes a valid exercise of congressional enforcement power under the Fourteenth Amendment) (citations omitted). Accordingly, federal courts have recognized due process rights for civil litigants. See, e.g., *Danny B. ex rel. Elliott v. Raimondo*, 784 F.3d 825, 831 (1st Cir. 2015) ("Civil litigants have a constitutional right, rooted in the Due Process Clause, to retain the services of counsel."); *Uccello Immobilien GMBH, Inc. v. Steel Bridge Cap.*, *LLC*, No. 07-21018-CIV, 2007 WL 9702755, at *3 (S.D. Fla. July 2, 2007) ("The right of a litigant to be heard is one of the fundamental rights of due process of law.") (citation omitted); *Aguirre-Jarquin v. Hemmert*, No. 6:20-CV-25-ORL-37DCI, 2020 WL 13664132, at *9 (M.D. Fla. Aug. 28, 2020) ("Individuals have a right to a fair trial mandated by the Due Process Clause of the Fourteenth Amendment.").

A. Interpretation

"Procedural due process requires that an individual whose rights are at stake understand the nature of the proceedings he or she faces." *In re Doe*, 57 P.3d 447, 458–59 (Ha. 2002) (holding that parents have the right to an interpreter in family court proceedings) (citations and footnote omitted). "Fundamental due process rights may require . . . an interpreter to translate courtroom proceedings. This is so because *inherent in [the] nature of justice is the notion that those involved in litigation should understand and be understood*." *Id.* (emphasis in original); see also *Lizotte v. Johnson*, 777 N.Y.S. 580, 586 (N.Y. Sup. Ct. 2004) ("The failure to provide adequate translation services here deprived petitioner of fundamental due process."). As noted in *Taniguchi v. Kan Pac. Saipan, Ltd.*, "[d]ocumentary evidence in a foreign language, no less than oral statements, must be translated to equip the parties to present their case clearly and the court to decide the merits intelligently." 566 U.S. 560, 579 (2012) (Ginsburg, J., dissenting) (considering whether costs of written translations may be awarded to prevailing parties in civil litigation under 28 U.S.C. § 1920).

The U.S. Supreme Court "has never decided what level of interpreting assistance is required under the United States Constitution for defendants who do not speak English." *Ta v. Pliler*, No. CV 03-00076-RSWL (MAN), 2009 WL 322251, at *13 (C.D. Cal. Feb. 6, 2009) (citations omitted). Several federal circuit courts have concluded that due process is violated when a non-English speaking defendant is tried without an interpreter. See, e.g., *United States v. Johnson*, 248 F.3d 655, 663 (7th Cir. 2001); *United States v. Lim*, 794 F.2d 469, 470 (9th Cir. 1986). The Eleventh Circuit held that a lower court did not violate due process when "an interpreter was present at the proceedings and translated all the questions, and Petitioner's former attorney did not complain that [the petitioner] was unaware of what was transpiring during the proceedings or make any objections to the translation." *Azizova v. U.S. Atty. Gen.*, 442 F. App'x

531, 537 (11th Cir. 2011) (denying petition for review of decision of Board of Immigration Appeals).

"The right to competent interpretation, whether grounded in the Sixth or Fifth Amendment, serves the purpose of securing a non-English-speaking defendant's rights to meaningfully understand and participate in the proceedings against the defendant." *State v. Gurung*, 2025 VT 52, ¶ 97 (citing *United States v. Tapia*, 631 F.2d 1207, 1210 (5th Cir. 1980)). The Vermont Supreme Court recognizes that "at its core, defendant's right to competent interpretation is to empower him to participate meaningfully in his trial." *Id.*

In *Gurung*, the Court held that the trial court acted within its discretion in denying a motion for a formal court record of interpretation. *Id.* ¶¶ 95, 110. The Court further determined that the trial court's failure to create a formal record of the interpretation provided to a native Nepali speaker-defendant, per the Vermont Judiciary Language Access Manual, did not demonstrate an abuse of discretion. *Id*. ¶ 109. The Court recognized, however, that the "better practice" would have been for the court to record interpretation to avoid any later disputes about the "veracity or completeness of a recording taken by defendant." *Id*. ¶ 108.

B. Translation

Petitioner points this court to *United States v. Mosquera*, where a federal district court determined what documents the court must translate for a limited English proficiency criminal defendant. 816 F. Supp. 168, 177 (E.D.N.Y. 1993). The court concluded that

> [o]ral interpretations and written translations serve different purposes. While an oral interpretation can provide momentary understanding of representations contained in a document, [a party] may need and want to review the document alone and with others to achieve a full understanding.

Id. at 175.

The notion that criminal defendants must have "the means to understand the charges lodged against them as soon and as fully as practicable" influenced the court. *Id.* at 175. In determining so, the court ordered that

> [e]very non-English speaking criminal defendant shall be provided in this case with a translation of the indictment and relevant portions of the statutes referred to in the indictment.
>
> Where a plea of guilty is entered in this case, such a defendant shall be provided with a translation of 1) the statutes referred to if they are different from those in the indictment, and 2) the written plea agreement.

> Any pre-sentence report in this case shall be provided to defendant in translation whether there is a plea or finding of guilt at trial.
>
> Other documents shall be translated in accordance with this order or as otherwise ordered by the court. With each translation, the government may include a statement indicating that the translation is solely for the benefit of the defendant and that there may be errors in the translation which may not form the basis for appeal since the original document in English governs.
>
> We need not address at this time the more complex issue of whether the government is required to translate additional documents that may be needed for trial. In the instant case, that problem has been addressed by the appointment of an Administrative Coordinating Counsel, who is funded by CJA. She can decide, subject to court supervision, for all defendants, which documents require translation. Costs will be paid by CJA unless the court orders otherwise.
>
> The court recommends that the able civil rights organizations who have appeared as amici on this matter join with the organized bar to utilize their resources and skills to prepare a pamphlet, which can be translated into different languages, to serve as a guide to the court system for non-English speaking defendants.

Id. at 178.

Failure to translate all documents, however, does not imply a due process violation. See *United States v. Celis*, 608 F.3d 818, 841 (D.C. Cir. 2010) (finding no support for the claim that "the Constitution *compels* that in every case in which defendant is not fluent in English, all discovery documents must be translated, in written form, into the defendant's native tongue"); *United States v. Gonzales*, 339 F.3d 725, 729 (8th Cir. 2003) (determining that court's failure to provide written translations of documents involved in legal proceedings was not plain error); *Mendoza v. United States*, 755 F.3d 821, 831–32 (7th Cir. 2014) ("Due Process does not require that discovery documents be translated into a defendant's native language."). For example, in a 42 U.S.C. § 1983 civil action brought by a *pro se* prisoner, a federal district court held that "while Fed.R.Civ.P. 43(f) grants the trial judge discretion to appoint an interpreter for trial, there is no federal rule that gives an indigent non-English speaking civil plaintiff the right to a court-ordered translation of pre-trial motions." *Pedraza v. Phoenix*, No. 93 CIV. 2631 (MGC), 1994 WL 177285.21, at *1 (S.D.N.Y. May 9, 1994).

II. Vermont-Specific Requirements

The Vermont Judiciary provides both interpretation and translation services to litigants with limited English proficiency. See *Language Access: Interpreters and Translators*, Vt.

Judiciary, (accessed Nov. 4, 2026), https://www.vtcourts.gov/programs-and-services/language-access-interpreters-and-translators. Regarding interpretation, Vermont Rule of Civil Procedure 43(f) states:

> The court must provide competent interpreter services when such services are necessary to ensure meaningful access to all court proceedings and court-managed functions in or related to civil actions for a party, witness, or other person whose presence or participation is necessary or appropriate and who is a person with limited English proficiency, hearing impairment, or other disability which results in the need for interpreter services. The court must determine the reasonable compensation for the interpreter services for court proceedings and court-managed functions. The compensation must be paid by the State of Vermont.

V.R.C.P. 43(f).

The Reporter's Note to the rule states that in 2017, Rule 43(f) was amended "to make clear that the requirements in actions in all divisions of the Superior Court for court provision of interpreter services for persons with limited English proficiency (LEP), hearing impairments, or other disability resulting in the need for interpreter services comply with federal law." Reporter's Notes—2017 Amendment, V.R.C.P. 43. "The amended civil and criminal rules will apply in other proceedings by virtue of their incorporation of the rules governing those proceedings." *Id*. Rule 43(f) carries forward a practice recognized in Vermont in the absence of express provision for it. Reporter's Notes, V.R.C.P. 43 (referencing 12 V.S.A. § 5811, which sets forth a form of oath to be administered to an interpreter).

The Reporter's Notes to the rule note that the "amendments govern provision of interpreter services in judicial proceedings, essentially in the courtroom and in those matters and circumstances directly related thereto." *Id.* The amendments supplement both the Vermont Judiciary Language Access Plan, and "such administrative directives and procedures as are adopted by the State Court Administrator that independently make provision for access to court documents and services associated with the filing, maintenance, and participation in judicial proceedings and related matters." *Id.*

The Vermont Judiciary Language Access Plan further guides this court regarding translation services.

> When a party or their attorney requests that case-specific documents be translated, the judicial officer assigned to the case has primary responsibility for determining whether a document needs to be translated, in whole or in part, and by what means (written or audio), in order to provide meaningful access to the information. Vital documents should be translated.

Vermont Judiciary Language Access Operations Manual Version 1.1, at 31–32 (May 2021).

"The Judiciary is responsible for translation of vital documents that are generated by the Judiciary." *Id.* at 32. The Judiciary, however, is "not responsible for the translation of documents generated by other agencies/entities such as the public defender, prosecutor, Department of Corrections and the Department of Children and Families, even if the documents are part of the court's file." *Id*. "Each of these entities has its own responsibility under Title VI for translation of vital documents." *Id*.

"Vital documents" are defined as those "involv[ing] decisions regarding liberty, safety, property, due process, or relationships that have significant consequences." *Id*. Such documents include "both substantive and procedural components"; "[t]herefore, it is important to look at both the content of the document and how it is to be used to determine whether it is a vital document that requires translation." *Id*.

The Vermont Judiciary website outlines several examples of proceedings that the court does not provide interpretation or translation services for:

- Discussions between lawyers and their clients
- Interrogations conducted as part of a police investigation
- Programs ordered as a condition of probation or parole
- Settlement discussions

Overview, Language Access: Interpreters and Translators, Vt. Judiciary (accessed Nov. 4, 2026), https://www.vtcourts.gov/programs-and-services/language-access-interpreters-and-translators. As such, "[o]ther individuals or entities/agencies are likely required to provide interpreting or translation services for these proceedings." *Id*.

Conclusion

The Court must translate any of the "vital" documents that it generates, including notices of hearing. The notices of hearing fall within the definition of vital documents because they implicate the notice aspect of fundamental due process. The Court, however, is not required to translate documents it did not create, such as exhibits for hearings, because these are generated by other entities like the Defender General's Office and the State's Attorney's Office.

1) The Court will translate into Spanish all vital documents which does include the hearing notices in this case and includes this decision;

2) The State shall translate all exhibits it seeks to present at future court proceedings and bear the costs of translation;

3) The Defender General's Office shall translate all exhibits it seeks to present at future court proceedings and bear the costs of translation.

The motion #2 is Granted in part and Denied in part.

Dated November 7, 2026.

Electronically signed pursuant to V.R.E.F. 9(d).

Kerry A. McDonald-Cady

Kerry A. McDonald-Cady, Superior Court Judge