

No. 10-1472

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

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KOUICHI TANIGUCHI, PETITIONER,

v.

KAN PACIFIC SAIPAN, LTD.  
—◆—

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
—◆—

**BRIEF FOR CHICAGO AREA TRANSLATORS  
AND INTERPRETERS ASSOCIATION,  
COLORADO TRANSLATORS ASSOCIATION,  
AND EL PASO INTERPRETERS AND  
TRANSLATORS ASSOCIATION AS AMICI  
CURIAE IN SUPPORT OF RESPONDENT**  
—◆—

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**BRIEF FOR CHICAGO AREA TRANSLATORS  
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CURIAE IN SUPPORT OF RESPONDENT**

The Chicago Area Translators and Interpreters Association, Colorado Translators Association, and El Paso Interpreters and Translators Association respectfully submit this brief as amici curiae in support of respondent.<sup>1</sup>

**INTEREST OF AMICI CURIAE**

The Chicago Area Translators and Interpreters Association (CHICATA) is an independent professional association of individual translators and interpreters. Established in 1987, CHICATA has grown to over 170 independent, freelance, and in-house translators and interpreters working in 50 languages and over 120 language combinations. CHICATA promotes the recognition of translation and interpretation as professions, improves standards, professional ethics, practices, and

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<sup>1</sup> Letters providing blanket consent to the filing of amicus briefs have been filed with the Clerk of the Court, pursuant to Rule 37.3(a). No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

competence among its members, and provides a regular forum for translators and interpreters to exchange ideas and experiences.

The Colorado Translators Association (CTA) is a not-for-profit professional organization for Colorado-based translators and interpreters that offers assistance to its members and to corporations and individuals seeking translation and interpretation services. CTA provides a forum for the exchange of information, training, and assistance in all areas related to the profession of translation and interpretation. CTA establishes important contacts between business, government, and industry, as well as public relations to inform and educate the public. CTA members represent over 25 different language pairs. Specialty areas vary widely and include, for example, computer hardware and software, telecommunications, law, health, medicine and medical instrumentation, finance, automotive, mining and petroleum, geography, natural science, poetry, and cross-cultural consulting.

The El Paso Interpreters and Translators Association (EPITA) is a professional association of interpreters and translators that was founded on February 9, 1984. EPITA's members frequently work with institutions of higher learning, government agencies, business in general, and the legal and medical professions. The goals of EPITA are to advocate for the advancement, protection, and benefit of its members. EPITA seeks to unite interpreters and translators in El Paso and surrounding areas in an

effort to upgrade the profession, to meet the increasing demand for more qualified interpreters and translators, and to promote programs designed to educate, train, and certify interpreters and translators. EPITA provides a forum for its member interpreters and translators to promote fellowship and good will within the profession.

## **SUMMARY OF ARGUMENT**

Congress did not exclude the costs of translating written documents when it provided for the taxing of the compensation of “interpreters” in 28 U.S.C. § 1920(6). Regardless of whether they are translating oral or written communication, interpreters and translators perform essentially the same role in litigation. And substantially the same skill set is used to translate oral and written communication. Moreover, dictionary definitions of “interpreter” do not exclude translation of written documents. There is no good reason to believe that Congress intended to provide for the taxing of costs associated with translation of oral communication but intended to exclude the costs of translating written documents.

## **ARGUMENT**

### **COSTS FOR “COMPENSATION OF INTERPRETERS” IN 28 U.S.C. § 1920 INCLUDES COSTS FOR TRANSLATION OF WRITTEN DOCUMENTS**

Congress provided in 28 U.S.C. § 1920(6) that “[a] judge or clerk of any court of the United States may tax as costs \* \* \* compensation of interpreters.” In light of the commonly understood meaning of “interpreter,” the structure and purpose of the statute, and the overlapping role of translators and interpreters, the term “interpreters” in Section 1920(6) should be read to include taxing of the cost of translating written documents.

## **A. Interpreters And Translators Perform Closely Related Work, Particularly In Litigation**

Interpreters and translators perform the same function in litigation: making material in a foreign language able to be comprehended by the parties and the court. They both are necessary to litigate cases involving multiple languages; indeed, translators are vital in cases involving significant documentary evidence such as contract disputes. There is no good reason to believe that Congress provided for an award of the costs of translating oral communications but not the costs of translating written documents.

### ***1. Translation of written and spoken language requires related skills***

Petitioner attempts to draw a bright line between language professionals who translate oral communications and those who translate written documents. But such a clear distinction does not exist in practice. Regardless of whether the communication being translated is oral or written, the skills employed are closely related. To start, translators and interpreters must be fluent in both the source language and the target language. They must carefully decipher the correct meaning of the words in context in the source language. And they must determine the best way to communicate them in the language of the audience.

In both oral and written translation, context plays an important role. Interpreters and translators must pay careful attention to the context in which the source communication is made, because context

informs their understanding of the message and their ability to transmit that message effectively to a target audience. Rose Kennedy, *Much Ado About Noting: Problems in the Legal Translation Industry*, 14 *Temp. Int'l & Comp. L.J.* 423, 426 (2000) (“[W]ords denote not only their primary meaning, but also layers of nuance, slowly built up as a result of the historical context in which a culture has used that word.”); Peter W. Schroth, *Legal Translation*, 34 *Am. J. Comp. L. Supp.* 47, 53-4 (1986) (observing that word-for-word translations that disregard context result in “awkward document[s]”); Eleanor Wong, *In the Space Between Words and Meaning: Reflections From Translating Lao Laws to English*, 2006 *Sing. J. Legal Stud.* 439, 444 (2006) (“[H]ow a reader understands the meaning of the legal, social and other factors underlying \* \* \* words is extremely dependent on knowledge, experience and culture.”).

For translators of written work, context is not limited to the surrounding text, but also includes relevant legal, literary, historical, or social factors. *See* Wong, *supra*, at 444. The same is true in translating oral communications. There, context also includes the source speaker’s intonation, inflection, and physical mannerisms. There is significant overlap in how translators and interpreters incorporate these contextual cues—both must decipher the source’s meaning and choose their target words accordingly. *See* Schroth, *supra*, at 54, 56 (“[E]very translation is a series of choices \* \* \* [and] every choice can be discussed and second-guessed.”).

Moreover, interpreters who primarily deal with oral communications often are called on to translate written documents. See Byron W. Daynes, *The Court Interpreter—An AJS Study*, 51 *Judicature* 135 (1967) (“[Court interpreter’s] services may include both interpretation of oral testimony as well as the translation of documents written in a foreign tongue.”). This is known as “sight translation” when it takes place in a legal context. See Hon. Lynn W. Davis & William E. Hewitt, *Lessons in Administering Justice: What Judges Need to Know About the Requirements, Role, and Professional Responsibilities of the Court Interpreter*, 1 *Harv. Latino L. Rev.* 121, 129-131 (1994). As its name suggests, sight translation sometimes occurs on the spot, in real time. At other times, however, judges may provide written documents to court interpreters “prior to the trial or hearing to increase the accuracy of sight translation.” *Id.* at 131. Doing so provides the interpreter with more time and allows the interpreter access to additional resources, resulting in a translation that “better protects the rights of [litigants].” *Ibid.* In such cases, an interpreter’s role is no different from a translator’s.

Indeed, language professionals themselves recognize the close relationship between translating written and oral communications. Professional associations usually include both translators and interpreters. Amici are only two examples of such organizations. The nation’s largest language professional association, the American Translators Association, includes interpreters and translators alike. *About the American*

*Translators Association*, Am. Translators Ass'n, <http://www.atanet.org/aboutus/history.php> (last visited Jan. 4, 2012). State and local organizations across the country also count translators and interpreters in their membership, including the Atlanta Association of Interpreters & Translators ([aait.org](http://aait.org)), the Austin Area Translators and Interpreters Association ([aatia.org](http://aatia.org)), the Association of Translators and Interpreters of Florida ([atifonline.org](http://atifonline.org)), the Hawaii Interpreters and Translators Association ([hawaiiinterpreters.com](http://hawaiiinterpreters.com)), the Houston Interpreters and Translators Association ([hitagroup.org](http://hitagroup.org)), the Iowa Interpreters and Translators Association ([iitanet.org](http://iitanet.org)), the Nebraska Association for Translators and Interpreters ([natihq.org](http://natihq.org)), the Nevada Interpreters and Translators Association ([nitaonline.org](http://nitaonline.org)), and the New York Circle of Translators, Inc. ([nyctranslators.org](http://nyctranslators.org)).

This should not be surprising. As petitioner concedes, even the lay community generally does not distinguish interpreters from translators. Pet. Br. 20 (“laypersons are often unaware of th[e] distinction between interpreting and translating” (quoting Holly Mikkelson, Introduction to Court Interpreting 77 (2000))). Rather, “the terms ‘translate’ and ‘interpret’ are used interchangeably in everyday parlance.” Davis & Hewitt, *supra*, at 129 n.33.

## ***2. Legal translation is an act of interpretation***

The close relationship between translation and interpretation is particularly true in the litigation context. The work of language professionals often is vital to litigating parties who need language professionals to present their case. To be of benefit, legal translators and interpreters must make interpretive choices regarding how to communicate across a language barrier while maintaining the same legal effect. See North Carolina Administrative Office of the Courts, *Interpreting in the Courts: The AOC's Guidelines*, 7 N.C. St. B.J. 24, 28 n.3 (2002) (“The principles that apply to interpreting also apply to translating.”); Lawrence Lessig, *Fidelity in Translation*, 71 Tex. L. Rev. 1165, 1192 (1993) (“[t]ranslation and legal interpretation share \* \* \* a common core of interpretive problems”).

Legal translation requires interpreters and translators to have much more than a base fluency in the target and source languages. They also must be proficient with legal vocabulary and terms of art, because legal terms vary not only by language but by legal system. See Wong, *supra*, at 444 (“Even if the same language is used by two legal systems, perfect equivalence is impossible by virtue of the fact that the two systems are different.”). In a sense, legal terms represent a third language for the language professional. Kennedy, *supra*, at 426 (characterizing legal terminology as “a different language altogether”). Thus, if the languages of two different nations are

involved in the litigation, the language professional needs legal training and familiarity with the legal vocabularies of each nation to ensure that the legal concepts correspond. *Id.* at 425. That is true regardless of whether the communication being rendered is in oral or written form.

This is particularly true of translating Japanese legal communications given the “hidden multilingualism” of Japanese law. *See* Ichiro Kitamura, *Problems of the Translation of Law in Japan*, 23 Victoria U. Wellington L. Rev. 143, Monograph 7, at 5 (1993). Early Japanese law was modeled on Chinese legislation, and, following the Restoration of 1868, the Japanese Government began incorporating elements of Western law into its legal system. *See id.* at 1-2. As a result, Japanese law is an amalgamation of principles and terms derived from laws written in other languages. *See id.* at 3 (“Japanese positive law itself constitutes a whole translated world or is at least a town paved with an underlying multilingual mosaic.”). “The choice of word” when translating Japanese legal documents, such as the contracts involved in this case, “therefore necessarily implies an interpretative decision.” *Id.* at 11.

## **B. The Text Of Section 1920 Is Not So Narrow As To Exclude The Translation Of Written Documents**

Section 1920 is consistent with the common-sense understanding that interpreters and translators perform closely related, and sometimes identical, work in litigation.

1. Section 1920 allows district courts to “tax as costs \* \* \* compensation of interpreters.” 28 U.S.C. § 1920(6). But the statute leaves “interpreters” undefined. “When terms used in a statute are undefined, [the Court] give[s] them their ordinary meaning.” *Hamilton v. Lanning*, 130 S. Ct. 2464, 2471 (2010) (quoting *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995)). The ordinary meaning of “interpreters,” as recognized by the court of appeals below, as well as both language professionals and the lay community, includes those who translate oral communications and those who translate written ones. “Translators” should not be limited to a narrow meaning that is, at most, understood only in a technical sense among a small segment of the population.

Definitions found in dictionaries confirm that the meaning of “interpreters” is broader than petitioner contends. Dictionaries provide a useful guide to establish the common, ordinary meaning of a word in a statute. See *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 724 (2011). Dictionaries generally do not limit “interpreter” only to oral translation. An interpreter is commonly defined as “one that translates.”

Webster's Third New Int'l Dictionary 1182 (1993); *see also* Funk & Wagnalls New Int'l Dictionary 665 (Comprehensive ed. 1996) (defining "interpreter" as "one who interprets or translates"). Indeed, dictionaries routinely define the word "interpret" as "translate," or they list the two words as synonyms. *See, e.g.,* The American Encyclopedic Dictionary 871 (1987) (defining "interpret" as "translate"); Heinemann English Dictionary 570 (1979) (defining "interpret" as "to translate"); The New Merriam-Webster Dictionary 392 (1989) (listing "translate" as a synonym for "interpret"); Webster's New American Dictionary 274-275 (1995) (same); Cambridge Dictionary of American English 458 (2000) (same).

These common definitions recognize that oral translation falls within the meaning of the term, and the definitions do not exclude translation of written communication. *See, e.g.,* Cambridge Dictionary of American English 458 (2000) (defining "interpret" as "to change (the words, *esp.* spoken words) into the words of another language" (emphasis added)).

Moreover, as respondent's brief demonstrates (Resp. Br. 16-18), "interpreter" regularly is used in common parlance to refer to a person translating documents. And petitioner concedes that "laypersons are often unaware of the distinction between interpreting and translating." Pet. Br. 20 (brackets omitted). There is no reason to believe that Congress departed from that ordinary use to adopt a narrow construction used, at most, by a small segment of those in the field. Had that been Congress's intent, it

could have expressly narrowed Section 1920(6) to oral interpretation.

2. The word “interpreter” in Section 1920(6) must be read in context and with a view to its place in the overall statutory scheme. *McNeill v. United States*, 131 S. Ct. 2218, 2222-2223 (2011). When Congress enacted the Court Interpreters Act in 1978, it chose to codify the text of paragraph (6) within a statutory provision, Section 1920, that primarily concerns written documents. At the time, paragraphs (1) to (5) of Section 1920 already were in existence. Paragraph (2) permitted the taxing of fees “for all or any part of the stenographic transcript.” 28 U.S.C. § 1920(2) (1978). Paragraph (3) concerned “[f]ees and disbursements for printing.” *Id.* § 1920(3) (1978). And paragraph (4) permitted the taxing of “[f]ees for exemplification and copies of papers necessarily obtained for use in the case.” *Id.* § 1920(4) (1978). Congress’s choice to place paragraph (6) within Section 1920 indicates it likewise covers written documents, and nothing indicates that it should be read as standing alone among those paragraphs as pertaining only to oral communications.

3. The relevant legislative history indicates that the drafters of the Court Interpreters Act were not drawing the distinction that petitioners urge here. For example, the House and Senate Reports used “interpretation” and “translation” interchangeably. *See, e.g.*, H.R. Rep. No. 95-1687, at 4 (1978) (“appointment of certified interpreters is designed to insure not only an accurate translation but also an impartial

one”); *id.* at 7 (“simultaneous translation,” “the consecutive mode” of “translat[ing],” and “[s]ummary translations”); S. Rep. No. 95-569, at 1 (1977) (“The bill as originally introduced provided for translation services only for non-English-speaking people in the Federal courts.”); *id.* at 8 (“[s]imultaneous translation,” “[c]onsecutive translation,” and “summary translation”).

### CONCLUSION

For the reasons set forth above and in respondent’s brief, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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