

No. 10-1472

In the Supreme Court of the United States

KOICHI TANIGUCHI,

Petitioner,

v.

KAN PACIFIC SAIPAN, LTD.,
doing business as Marianas Resort and Spa,

Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether “compensation of interpreters,” a taxable cost under 28 U.S.C. § 1920(6), includes compensation of those who translate written as well as spoken words.

CORPORATE DISCLOSURE STATEMENT

Respondent Kan Pacific Saipan, Ltd., d/b/a Mariana Resort and Spa, has no parent corporation and no publicly held company owns 10% or more of respondent's stock.

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BRIEF FOR RESPONDENT

Section 1920(6) of Title 28 of the United States Code authorizes a federal judge or clerk to tax as costs against a losing party the “compensation of interpreters.” The question presented is whether “interpreters” in that provision include those who translate written as well as spoken words.

There can be little question that the word “interpreters” is broad enough to include those who translate written words, both according to the definition in authoritative dictionaries and as a matter of common usage. But “interpreters” can also be used in a narrower sense, to refer to members of a profession specializing in oral translation, as distinct from the “translator” profession, whose members specialize in written translation. The issue in this case is whether “interpreters” in 28 U.S.C. § 1920(6) has the broader meaning, as the court below and most other courts to consider the question have concluded, or the narrower one, as petitioner maintains. This Court should hold that it has the broader meaning.

There are good reasons to conclude that Congress intended the broader meaning in Section 1920(6). Translation serves the essential litigation function of ensuring that relevant foreign-language evidence is intelligible to the parties and the court. The provision at issue reflects a legislative determination that the cost of translation can be shifted to the losing party. It would be anomalous, in such a provision, to include the translation of testimony but not the translation of documents. For one thing, the two types of evidence are equally important. For another, there are a number of hybrid translating tasks in litigation that are neither strictly “oral” nor strictly

“written”—for example, the oral translation of documents and the written translation of recordings—and that can be performed by a member of either the “interpreter” or the “translator” profession.

Petitioner claims that there are good reasons why Congress would have intended the narrower meaning of “interpreter” in Section 1920(6), but the reasons he proffers are not in fact good. Far from being oppressively large, as petitioner suggests, cost awards for document translation are typically quite modest. And it cannot seriously be thought that such awards somehow interfere with the sovereign authority of foreign nations, as he also contends.

In addition to offering these justifications for a narrower reading of Section 1920(6), petitioner relies on other statutes and rules that use the term “interpreter.” But it is hardly clear that the term has the narrower meaning in those provisions. And even if it does in some of them, that is only because of the context, which is very different from that of Section 1920(6).

The judgment of the court of appeals should be affirmed.

STATEMENT

1. “Section 1920 [of Title 28 of the United States Code] enumerates expenses that a federal court may tax as a cost under the discretionary authority found in Rule 54(d) [of the Federal Rules of Civil Procedure].” *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441-442 (1987). Rule 54(d) provides, in relevant part, that, “[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the

prevailing party.” Fed. R. Civ. P. 54(d)(1). Section 1920 provides, in full, as follows:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

Section 1920 “is phrased permissively because Rule 54(d) generally grants a federal court discretion to refuse to tax costs in favor of the prevailing party.” *Crawford Fitting*, 482 U.S. at 442. In light of the “discretionary character” of the rule, federal courts “are free to pursue a case-by-case approach and to make their decisions on the basis of the circumstances and equities of each case.” 10 Charles A.

Wright et al., *Federal Practice and Procedure* § 2668, at 231 (3d ed. 1998). Costs may be “denied or limited,” for example, if they “were unreasonably incurred or unnecessary to the case.” 10 James W. Moore, *Moore’s Federal Practice* § 54.101[1][b], at 54-158 (3d ed. 2011).

2. Petitioner Kouichi Taniguchi was for a time a professional baseball player in Japan. On November 6, 2006, he took a tour of the premises of respondent Kan Pacific Saipan, Ltd. (Kan Pacific), the Mariana Resort and Spa in Saipan. During the tour, a piece of wooden deck broke beneath him and his leg fell through a hole. Pet. App. 2a, 13a.

On February 11, 2008, Taniguchi filed a negligence action against Kan Pacific in the United States District Court for the District of the Northern Mariana Islands. He alleged that he sustained injuries from the fall and that, as a result of the injuries, he incurred medical expenses and could not honor certain contractual obligations. JA 32-35; Pet. App. 2a, 13a.

The district court granted summary judgment to Kan Pacific, on the ground that Taniguchi could not prove that Kan Pacific failed to exercise reasonable care. Pet. App. 12a-17a. The court subsequently awarded Kan Pacific a total of \$7,732.20 in costs: \$2,215 for transcripts of two depositions of Taniguchi; and \$5,517.20 for interpreter services, which included the costs of translating contracts, medical records, and other documents from Japanese to English. *Id.* at 19a-22a; see JA 58-61, 79-86, 103. In overruling Taniguchi’s objections to the award, the district court concluded that the costs of translating documents are allowable under 28 U.S.C. § 1920(6), which authorizes a district court to tax, among other

costs, “compensation of interpreters,” and found that the costs should be awarded in this case because “the defense required documents translated” “[i]n order to depose Plaintiff.” Pet. App. 24a-25a.¹

3. The Ninth Circuit affirmed both the district court’s grant of summary judgment, Pet. App. 9a-11a, and its award of costs, *id.* at 1a-8a. As relevant here, the court of appeals rejected Taniguchi’s contention that “the district court erred in awarding costs for translation services used by Kan Pacific during the litigation.” *Id.* at 4a.

As the Ninth Circuit observed, the Sixth Circuit has held that “awarding costs for translation of documents necessary for litigation is appropriate.” Pet. App. 6a. It relied in so holding “on a dictionary definition of interpret, which included ‘to translate into intelligible or familiar language.’” *Ibid.* (quoting *BDT Prods., Inc. v. Lexmark Int’l, Inc.*, 405 F.3d 415,

¹ Through translation of the documents and the deposition of Taniguchi, Kan Pacific had discovered that the contracts were signed after the accident and backdated to dates before the accident; that Taniguchi’s injuries did not prevent him from fulfilling his contractual obligations; and that Taniguchi did not expect to be paid under the contracts, which had a total value of \$1.2 million. Resp. C.A. Br. 5-7; see Resp. C.A. Supp. E.R. 10, 13, 32-38, 40-71, 74-76. After obtaining this information, Kan Pacific filed a motion seeking (1) dismissal of the action on the ground that Taniguchi had fabricated evidence; (2) summary judgment as to that portion of Taniguchi’s claim for lost wages that was based on the contracts; or, in the alternative, (3) an order precluding Taniguchi from offering the contracts or evidence of them at trial. See JA 20-21. In support of the motion, Kan Pacific submitted translations of the contracts. See *ibid.* (Exhs. C-E). Having granted summary judgment to Kan Pacific in its entirety, the district court found it unnecessary to rule on this motion. Pet. App. 17a n.2.

419 (6th Cir. 2005)). The Ninth Circuit agreed with that decision. “In § 1920(6),” the court explained, “the word ‘interpreter’ can reasonably encompass a ‘translator,’ both according to the dictionary definition and common usage of these terms, which does not always draw precise distinctions between foreign language interpretations involving live speech versus written documents.” *Id.* at 7a. The court thus held that, “within the meaning of § 1920(6), the prevailing party should be awarded costs for services required to interpret either live speech or written documents into a familiar language, so long as interpretation of the items is necessary to the litigation.” *Ibid.*

The court of appeals then determined that that standard was satisfied here. “As Taniguchi alleged that his injuries caused him to lose compensation from his negotiated contract deals,” the court explained, “it was necessary for Kan Pacific to have Taniguchi’s documents and medical records translated to adequately prepare its defense.” Pet. App. 7a-8a. And because the court of appeals “conclude[d] that § 1920(6) contemplates the award of costs for translation services,” it “h[e]ld that the district court acted within its discretion when it determined that translation services were necessary to render pertinent documents intelligible to the litigants.” *Id.* at 8a.

SUMMARY OF ARGUMENT

The term “interpreters” in 28 U.S.C. § 1920(6) encompasses those who translate written as well as spoken words.

A. The ordinary meaning of “interpreters” includes those who translate written words. *Webster’s*

Third New International Dictionary and *Black's Law Dictionary* both define "interpreter" as a person who translates from one language to another. These dictionaries indicate that an "interpreter" is "especially" a person who translates *orally*, but that only serves to confirm that the definition is not *limited* to oral translators. Taniguchi cites a number of dictionaries that have a narrower definition, but almost all of them are abridged versions of *Webster's*, are long out of date, are obscure, or contain a definition of "interpreter" that is narrower even than the one that Taniguchi advocates.

The term "interpreters" also includes those who translate written words as a matter of common usage. For example, district judges from around the country, who have more experience than most with the translation of spoken and written language in litigation, routinely refer to those who translate written language as "interpreters." And while Taniguchi insists that there is a clear distinction between "interpreters" (who work with speech) and "translators" (who work with writing), this Court itself has used "translator" and "interpreter" interchangeably, sometimes referring to those who translate spoken language as "translators."

B. There are good reasons to conclude that Congress used "interpreters" in its broader sense in Section 1920(6). Documentary evidence is no less important than testimonial evidence, and translating either serves the identical purpose of making relevant foreign-language material comprehensible to the parties and the court. If, as all agree, Congress intended that the cost of translating testimonial evidence could be borne by the losing party, it would be

anomalous for Congress to have had the opposite intention for documentary evidence.

That is particularly true because a number of basic translating tasks in litigation are neither entirely “oral” nor entirely “written,” and can be performed by a member of either the “interpreter” or the “translator” profession. Tasks that defy Taniguchi’s strict dichotomy include (1) sight translation (the oral translation of a written document); (2) transcription and translation of recorded conversations (the written translation of oral speech); (3) document comparison; and (4) document translation. Understanding an “interpreter” in Section 1920(6) to be someone who translates either spoken *or* written words obviates the need for courts to draw arbitrary distinctions between “interpretation” and “translation,” and provides a simple, easily administrable rule.

C. While there are good reasons for Congress to have included those who translate written words in Section 1920(6), there are no good reasons for it to have excluded them. Taniguchi contends that allowing taxation of document-translation costs will routinely lead to very large cost awards, but he provides no evidence of that. On the contrary, in the overwhelming majority of representative cases that he cites, the awards for document-translation costs were less than \$13,000. Appropriate restrictions on such awards are found, not in a categorical ban, but in the discretion given district courts to deny or limit awards of costs that are unnecessary, unreasonable, or otherwise unwarranted. District courts have been exercising that discretion for decades, without any evident difficulty, in cases involving all manner of costs—including the costs of both written and oral translation.

Taniguchi also claims that allowing taxation of document-translation costs will interfere with the sovereign authority of foreign nations, by subjecting their citizens not only to document discovery but also to the costs of translating the documents they produce. But the possibility of typically modest cost awards in cases in which (1) the prevailing party had a need to translate documents, (2) the losing party is a foreign national, and (3) the district court exercises its discretion to tax some or all of the translating costs cannot reasonably be thought to rise to the level of interference with foreign nations' sovereign authority. In any event, the reading of Section 1920(6) that we advocate frequently operates to the *benefit* of foreign parties, as when they have their own documents translated into English for submission to the court and prevail in the action.

D. Contrary to Taniguchi's assertion, the Court Interpreters Act does not reflect a congressional intent to exclude the translation of written words from Section 1920(6). Taniguchi relies on Section 2 of the Act, which requires the use of certified "interpreters in courts of the United States" in actions initiated by the United States, at government expense, when necessary to enable a party or witness to comprehend the proceedings. He maintains that Section 2 is limited to oral, in-court interpretation and that Section 7 of the Act, which added the cost provision at issue here, must be similarly limited. That is wrong in two respects.

First, even assuming that Section 2 is limited in the way that Taniguchi claims, there is no reason to believe that Section 7 carries the same meaning. Unlike Section 7, Section 2 uses narrow language; was placed in a chapter of Title 28 that addresses the

subject of “Witnesses”; and mandates interpretation services that are funded by taxpayers. *Second*, it is hardly clear that the duties of interpreters under Section 2 are in fact limited to oral, in-court interpretation. Three years after passage of the Court Interpreters Act, and for thirteen years after that, the Director of the Administrative Office of the United States Courts, who is charged with administering Section 2, regularly published notices in the *Federal Register* that described the duties of interpreters under the Act. Each notice stated that those duties included, not only oral translation, but also translation of documents.

E. There is no other persuasive evidence that Congress intended to exclude the translation of written words from Section 1920(6). Taniguchi claims that the term “interpreter” is limited to oral translation whenever it is used in federal rules and other provisions of the United States Code. But it is far from obvious that the term has the narrower meaning everywhere else; and even where it does, that reading is appropriate only because of the context of the particular rule or statutory provision. Taniguchi also relies on the canon favoring narrow construction of statutes in derogation of the common law. But the common-law prohibition on recovery of costs was unambiguously repealed by statute more than 150 years ago, and the scope of a particular provision of the cost statute is not subject to this interpretive canon.

ARGUMENT

THE TERM “INTERPRETERS” IN 28 U.S.C. § 1920(6) ENCOMPASSES THOSE WHO TRANSLATE WRITTEN AS WELL AS SPOKEN WORDS

All but one of the courts of appeals to consider the question have concluded that the costs of translating documents are taxable under 28 U.S.C. § 1920(6).² Those decisions are correct. The ordinary meaning of “interpreters” includes those who translate written words. There are good reasons to include them in Section 1920(6). And there are no good reasons to exclude them. Contrary to Taniguchi’s assertion, the Court Interpreters Act does not suggest that document translation is excluded from

² See Pet. App. 7a (Ninth Circuit’s decision below) (“within the meaning of § 1920(6), the prevailing party should be awarded costs for services required to interpret either live speech or written documents into a familiar language”); *BDT Prods., Inc. v. Lexmark Int’l, Inc.*, 405 F.3d 415, 419 (6th Cir. 2005) (“translation costs are taxable under § 1920”); see also *Slagenweit v. Slagenweit*, 63 F.3d 719, 721 (8th Cir. 1995) (per curiam) (affirming award of “costs for * * * translated documents” under “28 U.S.C. § 1920(6)”); *Chore-Time Equip., Inc. v. Cumberland Corp.*, 713 F.2d 774, 782 (Fed. Cir. 1983) (“The award of costs for translation * * * was appropriate under 28 U.S.C. § 1920(6).”); *Studiengesellschaft Kohle mbH v. Eastman Kodak Co.*, 713 F.2d 128, 133 (5th Cir. 1983) (“translation expenses [are] a taxable cost * * * under * * * section 1920”); *In re Puerto Rico Elec. Power Auth.*, 687 F.2d 501, 510 (1st Cir. 1982) (“Whichever party ultimately prevails will * * * be free to apply to district court for reimbursement of its translation expenses as ‘costs’ under * * * 28 U.S.C. § 1920.”); *Quy v. Air Am., Inc.*, 667 F.2d 1059, 1065 (D.C. Cir. 1981) (“Under [Section 1920(6)], the District Court was authorized to award costs for * * * translations * * *.”). But see *Extra Equipamentos E Exportação Ltda. v. Case Corp.*, 541 F.3d 719, 727-728 (7th Cir. 2008).

Section 1920(6). Nor is there any other persuasive evidence that it is.

A. The Ordinary Meaning Of “Interpreters” Includes Those Who Translate Written Words

Section 1920(6) provides that a judge or clerk of a federal court may tax as costs the “compensation of interpreters.” The term “interpreters” is not defined in the statute. “When terms used in a statute are undefined, [this Court] give[s] them their ordinary meaning.” *Hamilton v. Lanning*, 130 S. Ct. 2464, 2471 (2010) (internal quotation marks omitted). As the court of appeals correctly concluded, the ordinary meaning of “interpreters” includes those who translate written words, both according to “the dictionary definition” and as a matter of “common usage.” Pet. App. 7a.

1. *Webster’s Third New International Dictionary* defines “interpreter” as “one that translates,” and “translate” as “to turn into one’s own or another language.” *Webster’s Third New International Dictionary of the English Language Unabridged* 1182, 2429 (1976) (*Webster’s Third*). The ordinary meaning of “interpreters” thus does not exclude “document translators,” as Taniguchi maintains. Pet. Br. 12.

On the contrary, the relevant definition in that dictionary, which is one of “the most authoritative dictionaries” of American English, *Johnson v. United States*, 529 U.S. 694, 706 n.9 (2000), reads, in full, as follows: “one that translates; *esp* : a person who translates orally for parties conversing in different tongues.” *Webster’s Third* 1182. The definition of “interpreter” in the leading law dictionary is essentially the same: “[a] person who translates, *esp.* oral-

ly, from one language to another.” *Black’s Law Dictionary* 895 (9th ed. 2009). Taniguchi’s submission that an “interpreter” is *only* a person who translates orally is inconsistent with these definitions. “Especially” does not mean “only,” and the ordinary meaning of “interpreter” thus includes both spoken and written words.

The only appellate court to have concluded otherwise—the Seventh Circuit—acknowledged that the word “especially” in the definition “leaves open the possibility that an interpretation can sometimes be of a document.” *Extra Equipamentos E Exportação Ltda. v. Case Corp.*, 541 F.3d 719, 728 (7th Cir. 2008). But it thought that possibility was accounted for by the circumstance in which “a judge interprets statutes.” *Ibid.* This reasoning is misguided, because a judge who interprets a statute is not “one that translates” at all. *Webster’s Third* 1182. The act of statutory interpretation is covered by a separate (indeed, the first) definition of “interpreter”: “one that interprets, explains, or expounds.” *Ibid.* Under the definition relevant here, an “interpreter” is a person who *translates* spoken or written words.

For his part, Taniguchi takes the position that all that matters in the definition is what comes after “*esp.*” He relies on the dictionary’s statement that “[t]he sense divider *esp* (for especially) is used to introduce the most common meaning subsumed in the more general preceding definition.” Pet. Br. 15 n.5 (quoting *12,000 Words: A Supplement to Webster’s Third New International Dictionary* 15a (1986)). But Taniguchi offers no reason why a “general definition” in authoritative dictionaries should be ignored. It obviously should not. See, e.g., *Permanent Mission of India to United Nations v. City of New York*, 551 U.S.

193, 198 (2007) (relying upon “general definitions” in *Black’s Law Dictionary* in interpreting statutory language). And the general definition in this case is that an “interpreter” is someone who translates.

In *Smith v. United States*, 508 U.S. 223 (1993), this Court held that the statutory term “uses a firearm” is not limited to using a firearm as a weapon, and includes the exchange of a gun for narcotics. In explaining why, the Court said:

It is one thing to say that the ordinary meaning of “uses a firearm” *includes* using a firearm as a weapon, since that is * * * the example of “use” that most immediately comes to mind. But it is quite another to conclude that, as a result, the phrase also *excludes* any other use. * * * As the dictionary definitions * * * make clear, one can use a firearm in a number of ways.

Id. at 230. The same, *mutatis mutandis*, is true here.

Taniguchi cites *Mallard v. United States District Court*, 490 U.S. 296 (1989), for the proposition that “the ‘most common meaning’ of a statutory term ordinarily controls.” Pet. Br. 15 n.5 (quoting 490 U.S. at 301). But there was no indication in *Mallard* that the “most common meaning” of the term in question (there, the word “request”) was any narrower than the “general definition.” Taniguchi also cites *Muscarello v. United States*, 524 U.S. 125 (1998), for the proposition that a statutory term should be construed “in keeping with its ‘primary meaning.’” Pet. Br. 15 n.5 (quoting 524 U.S. at 128). But that case does not help him either. For one thing, the “primary meaning” of “interpreter”—“one that interprets, explains, or expounds,” *Webster’s Third* 1182—has no

applicability here. For another, *Muscarello*, like *Smith*, rejected the “narrow interpretation” of the statutory term at issue (there, the phrase “carries a firearm”). *Muscarello*, 524 U.S. at 138.

Taniguchi also cites a number of dictionaries that include only the narrower definition of “interpreter.” Pet. Br. 16. But almost all of those dictionaries (a) are abridged versions of *Webster’s* (with concomitantly abridged definitions);³ (b) are long out of date (and were long out of date when Section 1920(6) was enacted);⁴ (c) are obscure (and therefore not authoritative);⁵ or (d) contain a definition of “interpreter” that is narrower even than the one that Taniguchi advocates (and so cannot control here).⁶ Tanigu-

³ See *Webster’s II: New Riverside University Dictionary* 638 (1984); *Merriam-Webster’s Collegiate Dictionary* 654 (11th ed. 2003).

⁴ See 1 Benjamin Vaughan Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 639 (1879); William C. Anderson, *A Dictionary of Law* 565 (1889); James A. Ballentine, *A Law Dictionary* 247 (1916); *The Concise Oxford Dictionary of Current English* 429 (1917); *Funk & Wagnalls Comprehensive Standard Dictionary of the English Language* 323 (1921).

⁵ See *The Scribner-Bantam English Dictionary* 476 (1977); Hadumod Bussmann, *Routledge Dictionary of Language and Linguistics* 237 (1996); P.H. Collin, *Dictionary of Law* 127 (2d ed. 1999); *The Chambers Dictionary* 779 (10th ed. 2006); Jack P. Friedman, *Dictionary of Business Terms* 343 (4th ed. 2007).

⁶ The fourth edition of *Black’s Law Dictionary*, see Pet. Br. 15, defines “interpreter” as “a person sworn *at a trial* to interpret the evidence of a foreigner or a deaf and dumb person to the court.” *Black’s Law Dictionary* 954 (4th ed. 1957) (emphasis added). But no one—including Taniguchi—would say that Section 1920(6) precludes recovery of the cost of oral interpretation at a pre- or post-trial hearing; at a deposition; or, for that matter, at a witness interview or witness-preparation session. See,

chi's reliance on out-of-date dictionaries is especially problematic, because a later edition of one of them defines "interpreter" to *include* the translation of written words. See *Ballentine's Law Dictionary* 654-655 (3d ed. 1969) ("interpreter" means "[o]ne who interprets, particularly one who interprets words *written or spoken* in a foreign language," and "interpret" means "to translate from a foreign language" (emphasis added)).

2. The term "interpreters" also includes those who translate written words as a matter of common usage. Taniguchi insists that "common usage * * * recognize[s] that 'interpreters' work in the context of spoken language," while "translators" work in the context of written language. Pet. Br. 42. But as one of the very authorities on which he relies, *id.* at 19, points out, "case law, courts, and the general public tend to use the terms 'translator' and 'interpreter' interchangeably." Nina L. Ivanichvili, *Considerations in Selecting Interpreters and Translators*, 39 COLO. LAW. 39, 40 (Sept. 2010).

Newspaper articles, for example, commonly refer to those who translate documents as "interpreters."⁷

e.g., Pet. Br. 38 (interpreters covered by Section 1920(6) translate for "witnesses (including deponents)" (quoting *Extra Equipamentos*, 541 F.3d at 728)); see also *id.* at 7; NAJIT Br. 18.

⁷ See, *e.g.*, John Eligon, *In Court, Lost in Translation*, N.Y. TIMES, July 29, 2011 ("Disputes over how interpreters translate testimony or documents come up regularly in court cases."); Jane Arraf, *How the Pentagon aims to prevent more Wikileaks releases*, CHRISTIAN SCI. MONITOR, Oct. 27, 2010 ("Mr. Zaer, editor of Sabah al-Jadeed, says he has hired a team of six interpreters working on translating the documents into Arabic."); Trenton Daniel, *Immigration agencies moving from iconic Miami headquarters*, MIAMI HERALD, Oct. 20, 2008 ("Interpreters translate Spanish, Haitian Creole and Portugese documents in-

So do opinions of district judges from around the country, who have more experience than most with the translation of spoken and written language in the course of litigation.⁸ Indeed, this Court itself has used “translator” and “interpreter” interchangeably, sometimes referring to those who translate oral

to English.”); Brigid Schulte, *Communities Struggle to Break Down Language Barriers*, WASH. POST, Jan. 27, 2005 (“Alexandria has just come up with a list of certified local interpreters who are qualified to translate documents.”).

⁸ See, e.g., *United States v. Prado-Cervantez*, 2011 WL 4691934, at *3 (D. Kan. Oct. 6, 2011) (“Standby counsel should also be prepared to arrange for interpreters to interpret or translate documents when necessary for defendant.”); *Sunrider Corp. v. Bountiful Biotech. Corp.*, 2010 WL 4590766, at *13 (C.D. Cal. Oct. 8, 2010) (“Wilks also states that he did not fully understand the import * * * of the Chinese language documents * * * and retained a certified interpreter to prepare formal translations * * *.”); *United States v. Chipres-Madriz*, 2010 WL 334372, at *1 n.2 (N.D. Cal. Jan. 28, 2010) (immigration judge informed alien that he had a right to “have [certain] documents translated by an interpreter”); *Mendoza v. Ring*, 2008 WL 2959848, at *2 (C.D. Ill. July 30, 2008) (“The clerk of court shall forward the documents needed for translation to the interpreter.”); *Echevarri v. MacFarland*, 2005 WL 3440430, at *3 (D.N.J. Dec. 14, 2005) (counsel allegedly ineffective because of “fail[ure] to ensure that Petitioner had the services of a Spanish interpreter to translate discovery documents”); *Palomo v. Trustees of Columbia Univ.*, 2005 WL 1683586, at *3 (S.D.N.Y. July 20, 2005) (“she was asked to find an interpreter to translate a document”), *aff’d*, 170 F. App’x 194 (2d Cir. 2006); *Pace Shipping Servs. Network SA v. M/V Ocean D*, 2003 WL 1733544, at *3 (E.D. La. Mar. 28, 2003) (“Defendants also attach a sworn affidavit of Rania Fustok, a local interpreter, who has translated the documents * * *.”); *Borja v. Dole Food Co.*, 2002 WL 31757780, at *6 (N.D. Tex. Nov. 29, 2002) (considering, in ruling on motion to dismiss on forum non conveniens grounds, “the cost of interpreters to translate witness testimony and documentary evidence”), *vacated*, 2003 WL 21529297 (N.D. Tex. June 30, 2003).

speech as “translators.”⁹ And there are state statutes that use “interpreter” to mean a translator of spoken *or* written words.¹⁰

Taniguchi quotes the Seventh Circuit’s statement that “Robert Fagles made famous translations into English of the *Iliad*, the *Odyssey*, and the *Aeneid*, but no one would refer to him as an English-language ‘interpreter’ of these works.” Pet. Br. 16 (quoting *Extra Equipamentos*, 541 F.3d at 727). That may well be, but it could just as well be said that no one would refer to someone who *orally* trans-

⁹ See, e.g., *Munaf v. Geren*, 553 U.S. 674, 683 (2008) (“Munaf * * * traveled to Iraq with several Romanian journalists. He was to serve as the journalists’ translator and guide.”); *United States v. Dominguez Benitez*, 542 U.S. 74, 77 n.1 (2004) (“A certified translator was present for the hearings in court * * *.”); *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 3 (1992) (defendant, who “was provided with a defense attorney and interpreter,” alleged that “his translator had not translated accurately and completely for him”); *Hernandez v. New York*, 500 U.S. 352, 361 (1991) (plurality op.) (referring to “the translator’s rendition of Spanish-language testimony”).

¹⁰ See, e.g., Cal. Gov’t Code § 26806(a) (“the clerk of the court may employ as many foreign language interpreters as may be necessary to interpret in criminal cases * * * and to translate documents intended for filing in any civil or criminal action”); Fla. Stat. Ann. § 90.606 (“An interpreter shall take an oath that he or she will make a true interpretation of the questions asked and the answers given and that the interpreter will make a true translation into English of any writing which he or she is required * * * to * * * translate.”); Mich. Comp. Laws Ann. § 775.19 (“if a person attends a court as an interpreter for the purpose of interpreting the testimony of a witness given in behalf of the prosecution, or for the purpose of translating or interpreting a writing or document introduced or used in a court in behalf of the prosecution, * * * the person shall receive compensation as ordered by the court”).

lates into English the speeches of foreign leaders as they are being made as “an English-language ‘interpreter’ of the speeches.” There is no question, however, that that person is in fact an “interpreter.” The usage problem in the Seventh Circuit’s example is not that the person is not an “interpreter”; it is that the word “interpreter,” in the context of “interpreter of works,” is generally understood to mean an “expounder” rather than a “translator” of the works.

The same can be said of the Seventh Circuit’s statement, which Taniguchi also quotes, that, “[i]f a judge translated the French Code of Criminal Procedure into English, we would not say that he had ‘interpreted’ the French code into English.” Pet. Br. 9 (quoting *Extra Equipamentos*, 541 F.3d at 728). While that is true, it is equally true that we would not say that an *oral* interpreter of a foreign-language speech had “interpreted” the speech into English. We would say that she had “translated” it into English. And yet that person would indisputably be an “interpreter” as the term is used in Section 1920(6).

B. There Are Good Reasons For Including Those Who Translate Written Words In Section 1920(6)

If, as we have shown, the ordinary meaning of “interpreters” includes those who translate written words, then that is how Section 1920(6) should be read, unless there is some basis to conclude that Congress intended a narrower meaning. There is none. On the contrary, insofar as taxation of costs is concerned, there are good reasons to treat the translation of writing the same as the translation of speech.

First, documentary evidence is no less important than testimonial evidence. In many cases—contract actions, for example—it can be more important. Translating either type of evidence serves the fundamental litigation purpose of making relevant foreign-language material comprehensible to the parties and the court. As the court of appeals correctly concluded, there is no less need, and sometimes more need, to “render pertinent documents intelligible to the litigants” and the court than to render pertinent testimony intelligible to them. Pet. App. 8a. If Congress intended that the losing party could be required to pay the costs of ensuring that *spoken* words are understood by the parties and the court, as it indisputably did, it would be anomalous for Congress to have intended that the losing party could not also be required to pay the costs of ensuring that *written* words are understood by them.

Second, translators of writing and translators of speech should be treated identically in the cost statute because there is considerable overlap between the two. Taniguchi contends that “[t]he professional literature addressing the subject of judicial interpreting draws a distinction between the vocal and written modes, applying the term ‘interpreter’ to the former” and the term “translator” to the latter. Pet. Br. 17. An “interpreter,” according to Taniguchi, “listen[s] to something in one language * * * and orally translat[es] it into another language,” whereas a “translator” “replace[s] * * * a written text from one language * * * into an equivalent written text in another language.” *Id.* at 23-24 (internal quotation marks omitted). But while a “technical” meaning of “interpreter,” *id.* at 17, may be a member of a “profession” that is “distinct” from the “translator” profession, Interpreting & Translation Professors Br. 1,

there are several basic translation tasks in litigation that are neither strictly “vocal” nor strictly “written,” and/or that generally can be performed by a member of either the “interpreter” or the “translator” profession.

The very “professional literature” on which Taniguchi relies, Pet. Br. 17, recognizes as much. Thus:

- One such task is “sight translation,” the “oral translation of a written document,” Roseann Dueñas González et al., *Fundamentals of Court Interpretation: Theory, Policy and Practice* 401 (1991), which is “a hybrid of translation and interpretation,” *ibid.*, that “combines both interpreting and translation tasks,” Marianne Mason, *Courtroom Interpreting* 6 (2008), and is also known as “sight interpreting,” *ibid.*
- Another task in which either “[t]ranslators or interpreters” can “specialize,” *Fundamentals of Court Interpretation, supra*, at 440, is “the transcription and translation of recorded conversations,” Holly Mikkelson, *Introduction to Court Interpreting* 78 (2000), a form of written translation of oral speech, which entails listening to a recording of oral communication in a foreign language, transcribing it in that language, and then preparing a written English translation of the transcription.
- A third such task is “document comparison,” which requires “[a]n interpreter or a translator * * * to compare documents in the source and target languages in order to verify that the two versions are fully identical.” Morry

Sofer, *The Translator's Handbook* 128 (7th ed. 2009).

- Last but certainly not least, a “task that court interpreters are frequently asked to perform is the translation of written documents”—that is, the preparation of written translations that “may be used as evidence.” *Fundamentals of Court Interpretation, supra*, at 445. While “translation is considered an ancillary task * * * of the court interpreter,” *ibid.*, and while “it is important for interpreters to candidly assess their translation ability and to turn down translation assignments if they feel they cannot perform the task adequately,” *Introduction to Court Interpreting, supra*, at 77, “translation * * * of legal documents” is still “one of the many tasks of the court interpreter,” *Fundamentals of Court Interpretation, supra*, at 34.

The prevalence of these basic translating tasks undermines Taniguchi’s position. It would be difficult if not impossible to characterize at least the first three of them—which entail the spoken translation of written words or the written translation of spoken words—as either “interpretation” or “translation” under Taniguchi’s strict dichotomy. Each task has elements of both, and can be performed by either an “interpreter” or a “translator.” It would be absurd, moreover, to think that the recoverability of costs for any of these activities could depend, not on how they are characterized, but on the happenstance of whether the person who did the translating was considered a member of the “interpreter” or the “translator” profession. If that were the criterion, parties would simply hire a self-identified “interpreter” to

perform such tasks—including the translation of documents—to ensure that the costs would be recoverable in the event that they won. That might benefit members of the “interpreter” profession, but it would not benefit the parties or the court.

Taniguchi appears to take the position that “sight translation” is a form of “interpretation” that is covered by the statute, whether or not it is performed by an “interpreter” or a “translator.” See Pet. Br. 19-20; see also Interpreting & Translation Professors Br. 14. But he cannot explain how the oral translation of *written* language satisfies his own (and his *amicus*’s) definition of “interpretation”: “the process by which *oral* communication is rendered from one language to another.” *Id.* at 20 (quoting NAJIT website). More fundamentally, Taniguchi cannot explain why, under his reading of Section 1920(6), the costs of translation in this case would have been recoverable if, to prepare for Taniguchi’s deposition, Kan Pacific had had the contracts and medical records translated *orally* rather than in writing. Congress could not have intended to draw such an arbitrary and irrational distinction.

Understanding an “interpreter” in Section 1920(6) to be someone who translates either spoken *or* written words avoids these complications; obviates the need for courts to draw metaphysical distinctions between “interpretation” and “translation” in particular cases; and provides a simple, easily administrable rule. As long as the statutory language permits it—and the language of Section 1920(6) certainly does—Congress should be presumed to have intended that result. Cf. *United States v. Tinkleberg*, 131 S. Ct. 2007, 2014 (2011) (rejecting “interpretation [that] would make the [statute] significantly

more difficult to administer”); *FMC Corp. v. Holliday*, 498 U.S. 52, 64-65 (1990) (rejecting “restricted reading” of statute that would be “fraught with administrative difficulties”).

C. There Are No Good Reasons For Excluding Those Who Translate Written Words From Section 1920(6)

Taniguchi concedes that “the translation of documents,” like the translation of speech, “can play an important role in litigation.” Pet. Br. 37. And he acknowledges the existence of tasks that are neither strictly “interpretation” nor strictly “translation.” See *id.* at 19-20. He nevertheless contends that “there are significant differences” between the two that “warrant differential treatment with respect to the taxation of costs.” *Id.* at 37. In particular, Taniguchi claims that allowing the costs of document translation to be taxed would “create the risk of large costs awards,” *ibid.*, and “interfere[] with the sovereign authority of other nations,” *id.* at 41 (internal quotation marks omitted). Far from being “significant,” these supposed “differences” between oral and written translation are illusory.

1. a. Quoting a statement from the legislative history of the 1853 cost statute, Taniguchi contends that one of the “concerns” that led to the statute’s enactment was Congress’ determination that cost awards had “swelled to an amount exceedingly oppressive to suitors, and altogether disproportionate to the magnitude and importance of the causes in which they [we]re taxed.” Pet. Br. 3 (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 251 n.24 (1975), in turn quoting Cong. Globe App., 32d Cong., 2d Sess. 207 (1853) (remarks of Sen. Bradbury); brackets added by petitioner). But the

statement of the legislator that Taniguchi quotes addressed *attorneys' fees*, not costs.¹¹ This Court's summary of that statement is to the same effect. See *Alyeska Pipeline*, 421 U.S. at 251 ("In support of the proposed legislation, it was asserted * * * that losing litigants were being unfairly saddled with exorbitant *fees for the victor's attorneys.*" (emphasis added)).

Unlike awards of attorneys' fees, awards for the cost of translating documents have rarely been "oppressive" or "disproportionate." Pet. Br. 3 (internal quotation marks omitted). Taniguchi's assertion that allowing recovery of document-translation costs creates "[t]he potential for large and chilling costs liability" and imposes "chilling costs burdens," *id.* at 39, is thus baseless. Indeed, the very cases that are cited in Taniguchi's petition-stage briefs demonstrate the opposite.

In his merits brief, Taniguchi cites a Federal Circuit decision, *Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories Inc.*, 569 F.3d 1353 (Fed. Cir. 2009), that affirmed an award of more than \$1 million for the cost of translating documents. Pet. Br. 39. But that decision is an extreme outlier. Of the cases cited in Taniguchi's petition-stage briefs, including the "representative sample" of "district court cases since 2000," Pet. 12 n.4, there are by our count

¹¹ See Cong. Globe App., 32d Cong., 2d Sess. 207 ("The abuses that have grown up in the taxation of *attorneys' fees* which the losing party has been compelled to pay in civil suits, have been a matter of serious complaint. The papers before the committee show that in some cases *those costs* have been swelled to an amount exceedingly oppressive to suitors, and altogether disproportionate to the magnitude and importance of the causes in which they are taxed, or the labor bestowed." (emphasis added)).

27 in which the court granted an award for the cost of translating documents and the amount of the award is identified in the decision. Only one award in those cases exceeded \$76,000, and nearly all of them were far less. Twenty-three of the awards were less than \$13,000; sixteen were less than \$3,000; and eight were less than \$1,000.¹²

¹² See *Tilton v. Capital Cities/ABC, Inc.*, 115 F.3d 1471, 1479 (10th Cir. 1997) (\$1,675); *Slagenweit*, 63 F.3d at 720 (portion of \$1,496.56); *Chore-Time Equip.*, 713 F.2d at 776 (portion of \$2,932.32); *Quy*, 667 F.2d at 1065 (\$412.50); *Castillo v. Tele-dyne Cont'l Motors, Inc.*, 2011 WL 1343051, at *5 (S.D. Fla. Mar. 16, 2011) (\$10,884.93); *Chacon v. El Milagro Care Ctr., Inc.*, 2010 WL 3023833, at *8 (S.D. Fla. July 29, 2010) (\$1,158.13); *Maker's Mark Distillery, Inc. v. Diageo N. Am., Inc.*, 2010 WL 2651186, at *3 (W.D. Ky. June 30, 2010) (\$190); *Flores-Torres v. Holder*, 2010 WL 1910011, at *2 (N.D. Cal. May 11, 2010) (portion of \$12,083.14); *Merck Sharp & Dohme Pharm., SRL v. Teva Pharm. USA, Inc.*, 2010 WL 1381413, at *6 (D.N.J. Mar. 31, 2010) (\$250); *Hynix Semiconductor Inc. v. Rambus Inc.*, 697 F. Supp. 2d 1139, 1150 (N.D. Cal. 2010) (\$1,977.43); *Del. Valley Floral Group, Inc. v. Shaw Rose Nets, L.L.C.*, 2009 WL 5127941, at *4 (S.D. Fla. Nov. 6, 2009) (\$275); *Porcelanas Florencia, S.A. v. Caribbean Resort Suppliers, Inc.*, 2009 WL 1456338, at *8 (S.D. Fla. May 22, 2009) (\$922.50); Pet. App. 22a (portion of \$5,517.20); *Gidding v. Anderson*, 2008 WL 5068524, at *1 (N.D. Cal. Nov. 24, 2008) (\$7,363.19); *Zayas v. Puerto Rico*, 451 F. Supp. 2d 310, 318 (D.P.R. 2006) (\$1,426.15); *Competitive Techs. v. Fujitsu Ltd.*, 2006 WL 6338914, at *11 (N.D. Cal. Aug. 23, 2006) (portion of \$12,594.57); *Aerotech Res., Inc. v. Dodson Aviation, Inc.*, 237 F.R.D. 659, 665-666 (D. Kan. 2005) (portion of \$2,661.32); *Dattner v. Conagra Foods, Inc.*, 2005 WL 1963937, at *1 (S.D.N.Y. Aug. 16, 2005) (\$9,022.48), vacated per curiam, 458 F.3d 98 (2d Cir. 2006); *Tharo Sys., Inc. v. Cab Produkttechnik*, 2005 WL 1123595, at *2 (N.D. Ohio May 10, 2005) (\$2,507); *V-Formation, Inc. v. Benetton Grp. SPA*, 2003 WL 21403326, at *3 (S.D.N.Y. June 17, 2003) (\$781); *Shared Med. Sys. v. Ashford Presbyterian Cmty. Hosp.*, 212 F.R.D. 50, 55 (D.P.R. 2002) (\$275.30); *Neles-Jamesbury, Inc. v.*

In the cases cited by Taniguchi where the court awarded both the cost of translating speech and the cost of translating documents, moreover, the latter was not invariably larger than the former. In fact, the cost of translating documents was nearly as often *less*.¹³

b. Taniguchi's own evidence thus demonstrates that document-translation-cost awards are generally quite modest. He nevertheless insists that there is an inherent risk of high awards because "the broad latitude to conduct discovery can permit [a party] wide discretion to decide how many documents to discover and translate." Pet. Br. 38. This ignores the critical fact that Section 1920 "is phrased permissively"—it provides that a judge or clerk "may tax" the listed items as costs—and that, in tandem with Rule 54(d), Section 1920 thus "grants a federal court discretion to refuse to tax costs in favor of the prevailing party" in an appropriate case. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 442 (1987).

Accordingly, in those circuits in which the costs of translating documents are taxable, a "district court [does] not grant translation costs * * * carte blanche." *Studiengesellschaft Kohle mbH v. East-*

Fisher Controls Int'l, Inc., 140 F. Supp. 2d 104, 106-107 (D. Mass. 2001) (\$10,989); *Pan Am. Grain Mfg. Co. v. Puerto Rico Ports Auth.*, 193 F.R.D. 26, 38 (D.P.R. 2000) (\$155 and \$317.13), *aff'd*, 295 F.3d 108 (1st Cir. 2002).

¹³ See *Hynix Semiconductor*, 697 F. Supp. 2d at 1149-1150 (\$17,252.42 for translating speech and \$1,977.43 for translating documents); *Tharo Sys.*, 2005 WL 1123595, at *1-2 (\$8,893.12 for translating speech and \$2,507 for translating documents); *Pan Am. Grain Mfg.*, 193 F.R.D. at 38, 42 (\$712.50 for translating speech and \$472.13 for translating documents).

man Kodak Co., 713 F.2d 128, 133 (5th Cir. 1983). Instead, the “proper standard for the award of translation costs [is] whether they were necessarily [and reasonably] incurred.” *Ibid.* In making that determination, a district court must “examine the possibility that only parts of the translation costs should be assessed,” because the losing party “should not have to bear the cost of translating every [foreign] document irrespective of its value to the litigation.” *Ibid.* A district court “may, for example, choose to assess the cost of translating only titles and subtitles of all discovered documents plus the cost of translations of those documents which, based upon their titles, appear to be relevant to the litigation.” *Ibid.* Consistent with these principles, district courts throughout the country routinely have exercised their discretion to limit—or deny entirely—awards for the cost of translating documents.¹⁴

To place meaningful limits on cost awards for document translation, therefore, Congress did not

¹⁴ See *Conn v. Zakharov*, 2010 WL 2293133, at *3 (N.D. Ohio June 4, 2010) (denying award because prevailing party “failed to address why such excessive translation costs were necessary”); *Maker’s Mark Distillery*, 2010 WL 2651186, at *3 (limiting award because court “cannot determine whether [the] translations * * * were * * * necessary”); *Competitive Techs.*, 2006 WL 6338914, at *11 (limiting award because there was not “sufficient information to allow the Court to determine whether [certain translations] were necessary”); *Arboireau v. Adidas Salomon AG*, 2002 WL 31466564, at *6 (D. Or. June 14, 2002) (denying award because prevailing party made “no showing that [a] * * * translator was necessary”); *Oetiker v. Jurid Werke, GmbH*, 104 F.R.D. 389, 393 (D.D.C. 1982) (denying award because “defendant has failed to provide the court with sufficient factual information to support th[e] conclusion * * * that the translations * * * were necessary”).

have to impose a categorical ban, as Taniguchi suggests. Those awards instead are subject to the same limitation that governs all cost awards: a district court's authority—indeed, responsibility—to deny or limit an award if the costs were unnecessary, unreasonable, or otherwise unwarranted.

It is telling, in this connection, that the only cases that Taniguchi's *amicus* cites—apart from *Ortho-McNeil*—to support its claim that “translation expenses have totaled over \$100,000,” NAJIT Br. 17, are not cases in which the court actually *awarded* that amount. See *id.* at 17-18. In one, the court had no occasion to decide whether the costs were necessary and reasonable, because the recovery of such costs was categorically precluded under the Seventh Circuit's decision in *Extra Equipamentos* (although the total cost award was still nearly \$400,000). See *Trading Techs. Int'l, Inc. v. eSpeed, Inc.*, 750 F. Supp. 2d 962, 983 n.10, 986 (N.D. Ill. 2010). In the other case, the court granted a pre-trial motion for a bond, the size of which was based, in part, on the court's “estimate” of the amount the moving party “expect[ed] to incur” in translating documents. *Gabriel Techs. Corp. v. Qualcomm Inc.*, 2010 WL 3718848, at *12 (S.D. Cal. Sept. 20, 2010). Similarly, while Taniguchi's *amicus* cites a case in which “accumulated translation expenses (\$47,571.86) were more than ten times that of interpreter fees (\$3,900),” NAJIT Br. 18, the court in that case found that it was not “possible to validate [the] claim[]” for document-translation costs and directed the party to re-submit its bill of costs with additional information. *E. & J. Gallo Winery v. Andina Licores S.A.*, 2007 WL 1589546, at *2 (E.D. Cal. June 1, 2007).

c. In adopting the position that Taniguchi advocates, the Seventh Circuit expressed concern about requiring district courts to “wade into” the question whether “translation of written documents [was] necessary” in a particular case. *Extra Equipamentos*, 541 F.3d at 728. Taniguchi’s *amicus* echoes this sentiment. NAJIT Br. 20-23. But a majority of courts have been allowing an award of costs for translating documents since the enactment of Section 1920(6) in 1978—and, indeed, for at least 40 years before that (although the precise source of the authority for doing so was not entirely clear). Courts have thus been making the determination of whether such costs were necessary for more than 70 years without any evident difficulty.¹⁵

In any event, *all* courts, including those in the Seventh Circuit, must determine the necessity and reasonableness of a particular expenditure for the categories of costs that are *indisputably* taxable under Section 1920(6)—including the costs of interpret-

¹⁵ See, e.g., *Raffold Process Corp. v. Castanea Paper Co.*, 25 F. Supp. 593, 594 (W.D. Pa. 1938) (awarding translation costs because they were “necessarily obtained for use in defense of this action”); *Bennett Chem. Co. v. Atl. Commodities, Ltd.*, 24 F.R.D. 200, 204 (S.D.N.Y. 1959) (awarding translation costs in total amount of \$9.50 because “the translations were necessary for use in the action”); *Kaiser Indus. Corp. v. McLouth Steel Corp.*, 50 F.R.D. 5, 11-12 (E.D. Mich. 1970) (awarding translation costs representing some portion of \$3,033.27 because “the items being translated were reasonably necessary for a proper determination of the issues”); *Lockett v. Hellenic Sea Transps., Ltd.*, 60 F.R.D. 469, 473 (E.D. Pa. 1973) (awarding translation costs in total amount of \$200 because “[the] translation was necessary”).

ing speech.¹⁶ There is no reason to think that that determination is any more difficult for translation of written words than for translation of spoken words. The supposed “administrative burden[s]” identified by Taniguchi’s *amicus*, for example, NAJIT Br. 20; see *id.* at 20-23, apply equally to written and oral translation.

Taniguchi himself does not contend that the “necessity” determination is in fact more difficult for translation of writing than for translation of speech. Instead, he claims that Section 1920(6) “is not cabined by any * * * necessity limitation” at all. Pet. Br. 40. But that view is fundamentally inconsistent with the discretionary character of Section 1920 and Rule 54(d), and with the many decisions in which district courts have exercised their discretion. Unsurprisingly, therefore, Taniguchi cites no authority to support the proposition that *unnecessary* interpreter costs are recoverable.

d. There is also no merit to Taniguchi’s suggestion that allowing taxation of the costs of translating documents will inevitably disadvantage “immigrants

¹⁶ See, e.g., *LG Elecs. U.S.A., Inc. v. Whirlpool Corp.*, 2011 WL 5008425, at *9 (N.D. Ill. Oct. 20, 2011) (costs for “oral interpretation services” were “reasonable”); *Osorio v. Dole Food Co.*, 2010 WL 3212065, at *8 (S.D. Fla. July 7, 2010) (determining “reasonable and necessary expenses connected with interpreters”); *Hynix Semiconductor*, 697 F. Supp. 2d at 1150 (interpreter was “reasonably required” for deposition); *Ortho-McNeil Pharm., Inc. v. Mylan Labs. Inc.*, 2008 WL 7384877, at *10 (N.D. W. Va. Aug. 18, 2008) (some of the interpreter costs “were in no way necessary for litigation”), *aff’d in part, vacated in part*, 569 F.3d 1353 (Fed. Cir. 2009); *Pan Am. Grain Mfg.*, 193 F.R.D. at 42 (costs “for interpretation of testimony” were “necessary and reasonable”).

and non-English speakers, who may be particularly likely to have non-English documents.” Pet. Br. 39. Taniguchi focuses on cases in which “the other side” obtains the documents in discovery and has them translated for their own use. *Id.* at 38. He ignores the cases in which immigrants or non-English speakers have non-English documents translated *themselves* for submission to the court. In the latter cases, the rule we advocate will *benefit* the litigants about whom Taniguchi expresses concern, because they will be able to recover their translation costs if they prevail. See, e.g., *Flores-Torres v. Holder*, 2010 WL 1910011, at *3 (N.D. Cal. May 11, 2010) (taxing costs against government in immigration case where prevailing party had obtained “translations of numerous foreign law documents which were of material aid to the Court in resolving th[e] case”). Under the rule Taniguchi advocates, by contrast, these parties will be *unable* to recover their translation costs whether they lose or win.

2. Taniguchi also argues that allowing courts to tax the cost of speech translation but not of document translation is “a reasonable accommodation of foreign nations that have expressed concerns about the impact of United States discovery obligations upon foreign nationals.” Pet. Br. 40. If Congress had chosen “to include document translation expenses within the scope of section 1920,” according to Taniguchi, foreign nationals who litigate in United States courts “would not only be subject to the expansive document discovery objected to by some other nations,” but “could additionally be required to pay the potentially large cost of translating those same documents into English.” *Id.* at 41. This argument is flawed in multiple ways.

First, Taniguchi identifies no evidence in the legislative record, and we are aware of none, suggesting that Congress was in fact motivated by any such concern.

Second, there is no basis even for speculating that Congress *may* have been motivated by it, because, as we have explained, cost awards for translating documents are typically modest.

Third, the French “blocking statute” cited by Taniguchi, Pet. Br. 40-41, does not support the distinction he claims that Congress drew between speech and documents in Section 1920(6). The blocking statute prohibits both disclosures “in writing” and those made “orally,” *Société Nationale Industrielle Aérospatiale v. United States Dist. Ct.*, 482 U.S. 522, 526 n.6 (1987) (quoting French Penal Code Law No. 80-438 art. 1A), and all agree that Section 1920(6) authorizes a court to order the losing party to pay the costs of translating oral disclosures.

Fourth, Taniguchi is mistaken in his suggestion that Section 1920(6) must be construed in light of the presumption that Congress intends to avoid unreasonable interference with the sovereign authority of other nations. Pet. Br. 41. “This rule of construction reflects principles of customary international law * * * limiting the unreasonable exercise of prescriptive jurisdiction with respect to a person or activity having connections with another State.” *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004). The rule does not apply here, because Section 1920(6) authorizes taxation of costs only against a plaintiff—like Taniguchi—that initiated the case in an American court or a defendant with respect to which jurisdiction was by definition proper.

In any event, the possibility of typically modest cost awards in cases in which the prevailing party had a need to translate documents, the losing party is a foreign national, and the district court exercises its discretion to tax some or all of the translating costs hardly rises to the level of unreasonable interference with the sovereign authority of other nations. It is therefore unsurprising that no foreign government or international organization has filed an *amicus* brief in this case suggesting that the rule that has long been applied by a majority of courts has any materially adverse effect on foreign parties.

Finally, it bears emphasis that our interpretation of Section 1920(6) does not invariably operate to the detriment of foreign parties, and frequently operates to their benefit. Like “immigrants and non-English speakers” in the United States, Pet. Br. 39, foreign parties often have their own documents translated into English for submission to an American court. Under the interpretation that Taniguchi advocates, foreign parties will be unable to recover those translation costs whether they win or lose. Under the interpretation that we advocate, they will be able to recover the costs if they win. Indeed, that was precisely the situation in the *Ortho-McNeil* case that Taniguchi criticizes. See *Ortho-McNeil Pharm., Inc. v. Mylan Labs. Inc.*, 2008 WL 7384877, at *10 (N.D. W. Va. Aug. 18, 2008) (“the costs [Daiichi] incurred to translate foreign-language documents into English” encompassed “translation costs for those documents included on the trial exhibit list and translated for the Court’s *in camera* review of its privilege log”), *aff’d in part, vacated in part*, 569 F.3d 1353 (Fed. Cir. 2009).

D. The Court Interpreters Act Does Not Suggest That Those Who Translate Written Words Are Excluded From Section 1920(6)

In arguing that Section 1920(6) covers speech but not writing, Taniguchi places heavy emphasis on both the “structure” and the “legislative history,” Pet. Br. 25, 33, of the Court Interpreters Act, Pub. L. No. 95-539, 92 Stat. 2040 (1978). Neither supports his position.

1. Section 2 of the Court Interpreters Act added two sections to Chapter 119 of Title 28 of the United States Code: 28 U.S.C. § 1827, titled “Interpreters in courts of the United States”; and 28 U.S.C. § 1828, titled “Special interpretation services.” As originally enacted, 28 U.S.C. § 1827 (1976 & Supp. II 1978) required:

- the Director of the Administrative Office of the United States Courts to establish a program to facilitate the use of “interpreters in courts of the United States” (Section 1827(a));
- the Director to certify those who can serve as “interpreters in courts of the United States” (Section 1827(b));
- the presiding judicial officer to use a certified interpreter in “any criminal or civil action initiated by the United States in a United States district court” when necessary to enable a party or witness to comprehend the proceedings (Section 1827(d)); and
- the Director to pay “the salaries, fees, expenses, and costs” incident to providing the serv-

ices of interpreters in cases initiated by the United States “from sums appropriated to the Federal judiciary,” except that such “salaries, fees, expenses, and costs” incurred with respect to government witnesses were to be paid by the Attorney General “from sums appropriated to the Department of Justice,” unless, in either event, the presiding judicial officer directed otherwise (Section 1827(g)).

For its part, 28 U.S.C. § 1828 (1976 & Supp. II 1978) required the Director to establish a program for the provision of “special interpretation services” in “multidefendant criminal actions and multidefendant civil actions” that are “initiated by the United States” (Section 1828(a)) and provided that the expenses incident to these “special interpretation services” were to be paid “from sums appropriated to the Federal judiciary,” unless a presiding judicial officer directed otherwise (Section 1828(c)).

Section 7 of the Court Interpreters Act added a new subsection to Section 1920, titled “Taxation of costs,” in Chapter 123 of Title 28 of the United States Code. The new subsection is the one at issue in this case, 28 U.S.C. § 1920(6), which authorizes a federal judge or clerk to tax as costs “[c]ompensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.”

As originally enacted, subsection (k) of 28 U.S.C. § 1827 (1976 & Supp. II 1978) provided that interpretation would be “in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation” in certain circumstances. Taniguchi points out that “the

simultaneous, consecutive, and summary modes are all methods of interpretation that apply to live proceedings” and are “inapplicable to the translation of written documents outside the courtroom.” Pet. Br. 26. He contends that “the primary, substantive provisions set out in section 2 of the Court Interpreters Act” thus “use the word ‘interpreter’ in a manner limited to oral, in-court interpretation” and that “the same word in section 7 of that statute, which created subsection 1920(6), naturally carries the same meaning.” *Id.* at 27. This contention should be rejected.

First, even assuming that Section 2 is “limited to oral, in-court interpretation,” as Taniguchi maintains, Pet. Br. 27, there is no reason to believe that Section 7 “carries the same meaning,” *ibid.* To begin with, the two sections employ different language. Section 2 covers “interpreters in courts of the United States” and “special interpretation services,” the respective titles of the sections of the United States Code—1827 and 1828—that Section 2 added. By contrast, Section 7 covers—in addition to “court appointed experts”—“interpreters” and “special interpretation services under section 1828 of this title.”

“[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (internal quotation marks omitted). The unqualified use of “interpreters” in Section 7 suggests a broader meaning than that of “interpreters in courts of the United States” in Section 2, such that, if the duties of “interpreters in courts of the United States” are in fact “limited to oral, in-court interpretation,” Pet. Br. 27, then the duties of “inter-

preters” are not so limited. There is particular justification for that conclusion because 28 U.S.C. § 1920(6) specifically authorizes taxation of costs for “salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title” but does not include comparable language from Section 1827 as originally enacted.

This reading finds additional support in the location of Sections 1827 and 1920 in Title 28 of the United States Code. The Court Interpreters Act placed Section 1827 in Chapter 119 of Title 28, which is titled “Evidence; Witnesses” and covers in-court testimony. Other chapters of Title 28 cover out-of-court testimony (Chapter 117, titled “Evidence; Depositions”) and documentary evidence (Chapter 115, titled “Evidence; Documentary”). Unlike Section 1827, Section 1920(6) was placed in Chapter 123, titled “Fees and Costs,” which is not limited to any particular type of evidence, or even to the subject of evidence generally.

In this connection, it bears mention that Taniguchi’s assertion that “interpreters” in Section 1920(6) is “limited to oral, in-court interpretation,” Pet. Br. 27, is inconsistent with his recognition elsewhere in his brief that the term extends (at least) to interpretation at depositions, see *id.* at 7, 38. That acknowledgement, by itself, undermines his claim that the scope of Section 7 of the Court Interpreters Act should be understood as coextensive with that of Section 2.

Section 1827 as originally enacted differs from Section 1920(6), not only in the sense that it uses narrower language and was placed under the heading of “Witnesses,” but also in the sense that it applies only in cases “initiated by the United States”

and provides that the costs of interpreters in those cases will ordinarily be paid from “sums appropriated to the Federal judiciary.” Almost all of the cases in which Section 1920(6) applies are civil cases between private parties, in which the government will not have to pay for interpreters. Insofar as a narrow construction of Section 2 of the Court Interpreters Act might be warranted because it mandates a service that is funded by taxpayers, therefore, that concern does not justify a narrow construction of Section 7.

Second, it is hardly clear that the duties of interpreters under Section 2 of the Court Interpreters Act are in fact “limited to oral, in court interpretation.” Pet. Br. 27. In support of that claim, Taniguchi places heavy reliance on the 2011 version of a document called “Guide to Judiciary Policy” that was prepared by the Director of the Administrative Office of the United States Courts. *Id.* at 23, 27. But he ignores a series of documents issued by the Director that undermine his claim.

Three years after passage of the Court Interpreters Act, and for twelve years after that, the Director published notices in the *Federal Register* announcing that the Administrative Office would be conducting a certification examination for “interpreters in courts of the United States in accordance with the Court Interpreters Act.” *Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination*, 46 Fed. Reg. 60,636, 60,636 (Dec. 11, 1981). In a section titled “Duties,” those notices stated:

Court interpreters perform all or some of the following duties: (1) Interpret verbatim in simultaneous, consecutive, or summary mode

a foreign language into English, and vice versa, at arraignments, preliminary hearings, pretrial hearings, trials, and other court proceedings; (2) *transcribe from electronic sound recordings*; and (3) *translate technical, medical and legal documents and correspondence for introduction as evidence*.

Ibid. (emphasis added).¹⁷ A year later, the Director published a similar notice in the *Federal Register*, which stated that the duties of “[c]ourt interpreters” include—in addition to “[i]nterpret[ing] verbatim in simultaneous and consecutive modes”—“transcrib[ing] and translat[ing] electronic sound recordings” and “sight translat[ing] or translat[ing] in written form technical, medical, and legal documents and correspondence for introduction as evidence.” *Interpreters in Courts of the United States; Announcement of Written Segment of Certification Examination for Spanish, Cantonese, Mandarin, and Korean; and Written Segment of “Otherwise Qualified” Examina-*

¹⁷ Accord *Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination*, 48 Fed. Reg. 28,508, 28,509 (June 22, 1983) (same); *Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination*, 50 Fed. Reg. 11,524, 11,525 (Mar. 22, 1985) (same); *Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination*, 51 Fed. Reg. 44,496, 44,497 (Dec. 10, 1986) (same); *Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination*, 53 Fed. Reg. 43,744, 43,745 (Oct. 28, 1988) (same); *Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination*, 56 Fed. Reg. 5,794, 5,795 (Feb. 13, 1991) (same); *Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination*, 58 Fed. Reg. 13,736, 13,737 (Mar. 15, 1993) (same).

tion for Arabic, Hebrew, Italian, Mien, Polish, and Russian, 59 Fed. Reg. 30,333, 30,334 (June 13, 1994).

These *Federal Register* notices, which reflect the Administrative Office's consistently held understanding of the job description of a "court interpreter" for at least 16 years after the enactment of the Court Interpreters Act, are flatly inconsistent with Taniguchi's assertion that the duties of interpreters under Section 2 of the Act are limited to oral interpretation in "the simultaneous, consecutive, and summary modes." Pet. Br. 26. They are instead entirely consistent with the "professional literature," *id.* at 17, which recognizes that the duties of court interpreters include forms of translation that are neither strictly "oral" nor strictly "written," as well as forms of translation that are unambiguously "written." The notices are also consistent with the Local Rules of the United States District Court for the District of Puerto Rico, which provide that "documents not in the English language * * * must be accompanied by a certified translation into English prepared by *an interpreter certified by the Administrative Office of the United States Courts.*" D.P.R. R. 5(g) (emphasis added). Indeed, if it is true, as Taniguchi's *amicus* urges, that "[t]he Administrative Office's definition of 'interpreter' for purposes of the [Court Interpreters] Act * * * should be given deference" in this case, NAJIT Br. 10, then the Court should defer to the Director's view that an "interpreter" interprets, transcribes, and translates.

2. The legislative history of the Court Interpreters Act does not support Taniguchi's reading of 28 U.S.C. § 1920(6) either.

First, Taniguchi points to statements in the legislative history indicating that one of the motivations

for the legislation that became the Court Interpreters Act was that criminal defendants may have a constitutional right to a court interpreter, so that they can understand the proceedings. Pet. Br. 33. But that does not show that the law that was ultimately enacted was meant to exclude written translation—much less that the part of the law that amended the cost statute was meant to do so, particularly since the cost statute ordinarily applies only in civil cases.

Second, Taniguchi relies on materials placed before a House subcommittee considering the legislation that identified certain differences between “interpreters” and “translators.” Pet. Br. 34. But that hardly means that Congress intended to use “interpreter” in the narrow sense that Taniguchi advocates in the provision of the Court Interpreters Act that amended the cost statute, especially because “interpreters” and “translators” perform many of the same functions during litigation.

Third, a draft of the legislation that ultimately became the Court Interpreters Act provided that the record on appeal in Spanish-language cases litigated in the District of Puerto Rico must be translated into English and that the cost of the translation must be paid by the district court or the parties, as the court may direct. H.R. 10228, 95th Cong. § 3 (1977). In testimony conveying the views of the Judicial Council of the First Circuit, Judge Coffin expressed concern that “the preparation of a translated record for appeal would take from four to ten times as long as at present” and lead to “increased costs.” *Court Interpreters Act: Hearing on H.R. 10228, H.R. 10129, and S. 1315 Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the*

Judiciary, 95th Cong. 93 (1978). The provision was not included in the law that was enacted. Taniguchi argues that, “[h]aving considered and rejected a far more cabined proposal specifically permitting the assignment of certain translation costs to parties in only a single district,” Congress “cannot reasonably be imagined to have adopted a far more expansive provision permitting taxation of translation costs to parties in subsection 1920(6).” Pet. Br. 35.

This is a *non sequitur*. Even if one assumes that the provision in question was deleted because of the concerns expressed by Judge Coffin, it does not follow that Congress must have intended to exclude written translation from the scope of Section 1920(6). The deleted provision *required* translation that would not otherwise have been undertaken, and so necessitated the expenditure of time and costs that would not otherwise have been borne by *anyone*. This case, by contrast, involves the situation in which the prevailing party has *chosen* to have documents translated; the only question is whether the losing party may be required to pay the costs of translation, as opposed to having the prevailing party bear the costs itself. This case, in other words, is not about saving costs but about allocating costs that have already been expended. The deleted provision cited by Taniguchi has nothing to do with that.

Finally, Taniguchi contends that “no statement in the legislative history indicates that subsection 1920(6) was to apply to the translation of written materials.” Pet. Br. 36. But no statement in the legislative history indicates that Section 1920(6) was *not* to apply to the translation of written materials. The legislative history simply does not address the question.

If anything, the legislative history supports *our* position, because, consistent with common usage, the legislators and staff who drafted the Court Interpreters Act used “interpretation” and “translation” interchangeably in the very items of legislative history on which Taniguchi relies.¹⁸ Indeed, the legislative history routinely employs the word “translation” even in connection with “the simultaneous, consecutive, and summary modes,” Pet. Br. 26, which, as Taniguchi emphasizes, are unambiguously forms of “oral * * * interpretation,” *id.* at 27.¹⁹

E. There Is No Other Persuasive Evidence That Those Who Translate Written Words Are Excluded From Section 1920(6)

Taniguchi claims to find further support for his narrow reading of “interpreter” in Section 1920(6) in “the use of the word ‘interpreter’ in procedural rules dealing with interpreters,” Pet. Br. 29; in a supposed

¹⁸ See, e.g., H.R. Rep. No. 95-1687, at 4 (1978) (“According to testimony by proponents of this legislation, the appointment of certified interpreters is designed to insure not only an accurate translation but also an impartial one.”); 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.”).

¹⁹ See, e.g., H.R. Rep. No. 95-1687, at 7 (referring to “simultaneous translation,” “the consecutive mode” of “translat[ing],” and “[s]ummary translations”); S. Rep. No. 95-569, at 8 (referring to “[s]imultaneous translation,” “[c]onsecutive translation,” and “summary translation”); 119 Cong. Rec. 14,449 (1977) (statement of Sen. Tunney) (proposed legislation “provid[es] for the simultaneous translation of all courtroom proceedings—in a manner very similar to the method used by the United Nations—in both criminal and civil matters”).

“congressional convention extending throughout the United States Code,” *id.* at 30; and in the canon favoring narrow construction of “a statute in derogation of the common law,” *id.* at 36. Each theory is groundless.

1. Rule 43(d) of the Federal Rules of Civil Procedure authorizes a court to “appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.” Fed. R. Civ. P. 43(d). Rule 604 of the Federal Rules of Evidence “implements” what is now Rule 43(d) of the Federal Rules of Civil Procedure, Fed. R. Evid. 604 advisory committee’s note (1972), by subjecting an “interpreter” to provisions of the Rules of Evidence “relating to qualification as an expert and the administration of an oath or affirmation to make a true translation,” Fed. R. Evid. 604. Quoting a treatise, Taniguchi contends that, “[f]or purposes of Rules 43(d) and 604, ‘an ‘interpreter’ is a person who renders intelligible a statement made in a courtroom by a person whose statement would not otherwise be intelligible to others in the courtroom.” Pet. Br. 29 (quoting 27 Charles A. Wright & Victor J. Gold, *Federal Practice and Procedure* § 6053, at 352 (2d ed. 2007)). He goes on to argue that “the word ‘interpreter’ in Rules 43 and 604” thus “excludes translators of written documents” and that “the word should similarly be so read in subsection 1920(6).” *Id.* at 30.

This argument disregards the basic principle that “[t]he construction of statutory language often turns on context.” *FCC v. AT&T Inc.*, 131 S. Ct. 1177, 1182 (2011). The context of Rule 43 is that it “governs the taking of testimony.” 8 James W. Moore, *Moore’s Federal Practice* ch. 43 intro., at 43-1

(3d ed. 2011). That “limited scope” is “reflect[ed]” in the Rule’s “title,” 9A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2401, at 192 (3d ed. 2008), which, not coincidentally, is “Taking Testimony.” It might therefore be sensible to construe “interpreter” in Rules 43 and 604 as limited to “oral interpretation.” Pet. Br. 29. But Section 1920(6), which governs taxation of costs, is not limited to the subject of a court’s taking testimony, and so Rule 43 provides no basis for a narrow reading of “interpreter” in Section 1920(6). “[M]ost words have different shades of meaning and consequently may be variously construed,” especially “when they occur in different statutes.” *Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007) (quoting *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932)). “Context counts.” *Id.* at 576.

Taniguchi’s assertion that “interpreter” in Section 1920(6) has the same meaning as in Rule 43 also suffers from an independent flaw: his recognition that an “interpreter” under the cost statute is *not* merely, as he says it is under Rule 43, “a person who renders intelligible a statement made *in a courtroom* by a person whose statement would not otherwise be intelligible to others *in the courtroom*.” Pet. Br. 29 (internal quotation marks omitted; emphasis added). As Taniguchi elsewhere acknowledges, *id.* at 7, 38, an “interpreter” under Section 1920(6) also includes (at the very least) a person who translates orally at depositions, which of course occur *outside* the courtroom. So even Taniguchi must concede that “interpreter” has a broader meaning in Section 1920(6) than in Rule 43.

2. Taniguchi next contends that “the limitation of the word ‘interpreter’ to one engaging in live, oral

interpretation is part of a broader congressional convention extending throughout the United States Code,” which, he says, “adheres to [a] distinction between ‘interpreters’ and ‘translators.’” Pet. Br. 30. That contention is mistaken.

Taniguchi and his *amicus* collectively cite seven other provisions of the United States Code that use the statutory term at issue here (“interpreters”). Pet. Br. 30-32; NAJIT Br. 13-14. Two of them mention “interpreters” who make “aurally delivered materials available to individuals with hearing impairments.” 26 U.S.C. § 44(c)(2)(B); 42 U.S.C. § 12103(1)(A). These provisions demonstrate only that that is the particular type of “interpreter” with which the statutes are concerned; they do not show that it is the *only* type. If it were, the term would exclude even those who translate orally for non-hearing-impaired “persons who speak only or primarily a language other than the English language.” 28 U.S.C. § 1827(b)(1). Taniguchi obviously does not take that position.

Two other provisions require the use of “interpreters” in courts-martial or military commissions. 10 U.S.C. § 828; 10 U.S.C. § 948l(b). It is not at all clear, as Taniguchi’s *amicus* contends, that these provisions “plainly refer[] to oral interpretation.” NAJIT Br. 13. But even if they do, the reason is their context; both provisions address “the proceedings of and testimony taken” before the court or commission. 10 U.S.C. § 828; 10 U.S.C. § 948l(a). There is no comparable language in 28 U.S.C. § 1920(6).

The three other provisions use the phrase “interpreters and translators,” 8 U.S.C. § 1555; 28 U.S.C. § 530C(b)(1)(D), or “interpreters or translators,” 42 U.S.C. § 2991b-3(b)(2). The use of the two terms to-

gether in those provisions does not mean that “interpreters” and “translators” always have different meanings. Unlike 28 U.S.C. § 1920(6), which addresses the costs of services provided in a particular litigation, those three provisions concern “interpreters” and “translators” as *job titles*.²⁰ Since the professions of “interpreter” and “translator” are typically regarded as distinct (although their duties overlap), it makes sense for these statutes to employ both terms, to ensure that both jobs are covered. But even if that is wrong, “excess language” in statutes is “hardly unusual.” *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S. Ct. 2238, 2249 (2011). Congress sometimes inserts language that is “technically unnecessary” out of “an abundance of caution,” *Fort Stewart Sch. v. FLRA*, 495 U.S. 641, 646 (1990), in order to “remove any doubt” about the reach of the statute, *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226 (2008).

So much for the use of “interpreters” in other statutes. As for “translator,” Taniguchi’s *amicus* asserts that that term is “used consistently in the [United States] Code to refer to out-of-court, written translation.” NAJIT Br. 13. That is not correct. Congress has used “translator” in other statutes to include one

²⁰ See 8 U.S.C. § 1555 (“Appropriations * * * provided for the Immigration and Naturalization Service shall be available for * * * pay of interpreters and translators who are not citizens of the United States”); 28 U.S.C. § 530C(b)(1)(I) (“Funds available to the Attorney General * * * may be used * * * for * * * [p]ayment of interpreters and translators who are not citizens of the United States”); 42 U.S.C. § 2991b-3(b)(2) (“The purposes for which each grant * * * may be used include * * * the establishment of a project to train Native Americans * * * to enable them to serve as interpreters or translators of [Native American] language”).

who translates orally, thereby confirming the soundness of the court of appeals' conclusion that "translation' services" and "interpretation' services" are commonly used "interchangeabl[y]." Pet. App. 6a.²¹

3. Taniguchi also argues that "[t]he common law . . . ought not to be deemed to be repealed, unless the language of [the] statute be clear and explicit"; that, "[a]t common law, costs were not allowed"; and that Section 1920(6) therefore "should be construed narrowly[,] as a statute in derogation of the common law," to preclude recovery of the costs of translating documents. Pet. Br. 36 (quoting *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603, 623 (1813), and *Alyeska Pipeline*, 421 U.S. at 247; ellipsis added by petitioner). The major and minor premises may be correct, but the conclusion does not follow.

The common-law prohibition on recovery of costs has been clearly and explicitly repealed by statute at least since 1853, when Congress enacted "a far-reaching Act specifying in detail the nature and amount of the taxable items of cost in the federal

²¹ See 20 U.S.C. § 6319(g)(2) (paraprofessional working in education program supported with federal funds may be assigned to tutor, assist in classroom, assist in computer lab, conduct parental-involvement activities, provide support in library or media center, "act as a translator," or provide instruction to students); Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, § 6(a)(10), 96 Stat. 1248, 1257 (1982) (guidelines should ensure provision of assistance to victims and witnesses, including "translator services for victims in court"); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, tit. II, § 201(14), 110 Stat. 2960, 2994 (2006) (congressional finding that "[t]he National Domestic Violence Hotline service is available, toll-free, 24 hours a day and 7 days a week, with bilingual staff, access to translators in 150 languages, and a TTY line for the hearing-impaired").

courts.” *Alyeska Pipeline*, 421 U.S. at 251-252. The scope of a particular provision of that statute’s successor is not subject to the interpretive canon on which Taniguchi relies. As this Court has put it, “[t]he dogma as to the strict construction of statutes in derogation of the common law only amounts to the recognition of a presumption against an intention to change existing law.” *Johnson v. S. Pac. Co.*, 196 U.S. 1, 17 (1904). “[A]s there is no doubt of that intention here, the extent of the application of the change demands * * * no more rigorous construction than would be applied to [other] laws.” *Ibid.*

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

COURT INTERPRETERS ACT

Public Law 95-539

95th Congress

Oct. 28, 1978

[S. 1315]

An Act

To provide more effectively for the use of interpreters in courts of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Court Interpreters Act".

SEC. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

“§ 1827. Interpreters in courts of the United States

“(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

“(b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director

and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

“(c) Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

“(d) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator), if the presiding judicial officer determines on such officer’s own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such action—

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

“(2) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

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

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

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

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

“(g)(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

“(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

“(3) The presiding judicial officer may in such officer’s discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

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

“(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall

not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

“(i) The term ‘presiding judicial officer’ as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.

“(j) The term ‘United States district court’ as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.

“(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer’s motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

“§ 1828. Special interpretation services

“(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by

relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

“(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a), but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

“(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer’s discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

“(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer’s discretion, may order that all or part of the

expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.”.

(b) The table of sections for chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following:

“1827. Interpreters in courts of the United States.

“1828. Special interpretation services.”.

SEC. 3. Section 604(a) of title 28, United States Code, is amended—

(a) by striking out paragraph (10) and inserting in lieu thereof:

“(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (b) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services for pretrial services agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S. C. 5);”;

(b) by redesignating paragraph (13) as paragraph (17); and

(c) by inserting after paragraph (12) the following new paragraphs:

“(13) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

“(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

“(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters’ salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

“(16) In the Director’s discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102 of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;”.

SEC. 4. Section 604 of title 28, United States Code, is amended further by inserting after subsection (e) the following new subsections:

“(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Director’s functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

“(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

“(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.”.

SEC. 5. Section 602 of title 28, United States Code, is amended to read as follows:

“§ 602. Employees

“(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

“(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with

section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

“(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

“(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director’s functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.”.

SEC. 6. Section 603 of title 28, United States Code, is amended by striking out the second paragraph thereof.

SEC. 7. Section 1920 of title 28, United States Code, is amended by striking out the period at the

end of paragraph (5) and inserting a semicolon in lieu thereof and by inserting after paragraph (5) the following new paragraph:

“(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.”.

SEC. 8. Section 5(b) of the Act of September 23, 1959 (Public Law 86-370, 73 Stat. 652), is repealed.

SEC. 9. There are authorized to be appropriated to the judicial branch of Government such sums as may be necessary to carry out the amendments made by this Act.

SEC. 10. (a) Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) Section 2 of this Act shall take effect ninety days after the date of the enactment of this Act.

SEC. 11. Any contracts entered into under this Act or any of the amendments made by this Act shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

Approved October 28, 1978.