No. 10-1472

In the Supreme Court of the United States

KOUICHI TANIGUCHI,

Petitioner,

v.

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

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

THOMAS L. ROBERTS
Dooley Roberts & Fowler LLP
Suite 201, Orlean Pacific Plaza
865 S. Marine Corps Dr.
Tamuning, Guam 96913
(671) 646-1222

DAN HIMMELFARB
Counsel of Record
PAUL W. HUGHES
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
dhimmefarb@mayerbrown.com

Counsel for Respondent

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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RESPONDENT'S BRIEF IN OPPOSITION

Petitioner asks this Court to grant certiorari to decide whether, in the statute authorizing a prevailing party to recover costs, "compensation of interpreters" includes compensation of those who translate written as well as spoken words. He contends that (1) the decision below incorrectly answered that question yes; (2) there is a seven-to-one circuit conflict on the question; and (3) the question is one of exceptional importance. Petitioner is mistaken on each point.

First, the ordinary meaning of "interpreters" encompasses those who translate documents, and there is no indication that Congress intended anything other than the ordinary meaning in 28 U.S.C. § 1920(6). That is not surprising, since documentary evidence is no less important—and sometimes more important—than testimonial evidence. The decision below is therefore correct.

Second, even with the court of appeals' decision in this case, there are only three circuits—not eight, as petitioner maintains—that have squarely addressed the issue, and only one of them has endorsed petitioner's position. The two-to-one circuit conflict could be resolved without this Court's intervention, and even if it were not, the Court's ultimate resolution of the issue would benefit from further percolation.

Third, there is particular reason to await further development in the lower courts, because, contrary to petitioner's claim, the issue is not especially important, and certainly is not *exceptionally* important, inasmuch as awards for the cost of translating documents are typically quite modest.

The petition should be denied.

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). Section 1920 provides 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 keeping with the discretionary character of the rule, the 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 & Arthur R. Miller, *Federal Practice and Procedure* § 2668, at 231 (3d ed. 1998).

2. Petitioner Kouichi Taniguchi was for a time a professional baseball player in Japan. On November 6, 2006, he took a tour of respondent Kan Pacific Saipan, Ltd.'s premises, 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, petitioner filed a negligence action against respondent 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. Pet. App. 2a, 13a.

3. The district court granted summary judgment to respondent, on the ground that petitioner could not prove that respondent failed to exercise reasonable care. Pet. App. 12a-17a. The court subsequently awarded respondent a total of $7,732.20 in costs—$2,215 for transcripts of two depositions of petitioner and $5,517.20 for interpreter services, which included the translation of contracts, medical records, and other documents from Japanese to English. *Id.* at 19a-22a; Aff. of Tim Roberts, Esq. in Support of Bill of Costs, Exs. 2, 6, *Taniguchi* v. *Kan Pacific Sai-*

pan, Ltd., No. 1:08-cv-00008 (D. N. Mar. I. Dec. 31, 2008). In overruling petitioner's objections to these costs, the 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.

4. The court of appeals 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 petitioner'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 court of appeals 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, 419 (6th Cir. 2005)). The court of appeals 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.

REASONS FOR DENYING THE PETITION

Petitioner seeks review of the court of appeals' holding that "compensation of interpreters" in 28 U.S.C. § 1920(6) includes compensation of those who translate written as well as spoken words. The decision below is correct; there is no circuit conflict that warrants this Court's intervention at this time; and the question presented is not one of exceptional importance. Further review is therefore unwarranted.

A. The Decision Below Is Correct

The court of appeals correctly held that the term "interpreters" in Section 1920(6) encompasses those who translate written words.

1. The "inquiry in this case begins and ends with the text" of the statute. *Hui* v. *Castaneda*, 130 S. Ct. 1845, 1850 (2010). Section 1920(6) provides that a

judge or clerk of a federal court may tax as costs "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). The ordinary meaning of "interpreter" is "one that translates," *Webster's Third New International Dictionary* 1182 (1976) (*Webster's Third*), and "translate" means "to turn into one's own or another language," *id.* at 2429.

The ordinary meaning of "interpreter" thus contains no "limitation to spoken communication," as petitioner maintains. Pet. 17. On the contrary, the relevant definition of the word in 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. orally, from one language to another." *Black's Law Dictionary* 895 (9th ed. 2009). Petitioner's submission that an "interpreter" is *only* a person who translates orally is inconsistent with these definitions. "Especially" does not mean "only," and Congress should thus be presumed to have included translators of both spoken and written words when it used the term "interpreter" in Section 1920(6) without qualification.

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 Exportacao 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 fundamentally flawed, 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 definition of "interpreter": "one that interprets, explains, or expounds." *Ibid.* Under the definition relevant here, an "interpreter" is a person who *translates* either orally or in writing.

For his part, petitioner simply ignores the definition of "interpreter" in *Webster's Third New International Dictionary*, and cites instead the definition in *Webster's Collegiate Dictionary*. Pet. 17. That dictionary does not support his position either. The definition of "interpreter" from which petitioner quotes is not, as he claims, "one who translates orally for parties conversing in different languages." *Ibid.* It is "one that interprets: as * * * : one who translates orally for parties conversing in different languages." *Merriam-Webster's Collegiate Dictionary* 654 (11th ed. 2004). The "as" in this definition, like the "esp" in the other, shows that an oral translator is merely one type of interpreter.

2. "The construction of statutory language often turns on context," *FCC* v. *AT&T Inc.*, 131 S. Ct. 1177, 1182 (2011), but there is nothing in the context of Section 1920(6) to indicate that, contrary to the ordinary meaning of "interpreter," Congress meant to cover only those who translate spoken words. In arguing otherwise, petitioner relies on the Court Interpreters Act, Pub L. No. 95-539, 92 Stat. 2040 (1978), which added subsection (6) to 28 U.S.C.

§ 1920, and makes two related points. He contends that Section 1920(6) addresses "the same subject" as the substantive provisions of the Court Interpreters Act (which he claims are limited to oral translation) and that the services of "interpreters" in Section 1920(6) must have "the same meaning" as "special interpretation services" in Section 1920(6) (the latter of which are described in a substantive provision of the Court Interpreters Act). Pet. 17-18. These contentions lack merit.

To begin with, Section 1920(6) does *not* address the "same subject" as the substantive provisions of the Court Interpreters Act (Sections 1827 and 1828 of Title 28). That subject is quite narrow: the provision of "interpreters" and "special interpretation services" in "judicial proceedings instituted by the United States." 28 U.S.C. §§ 1827(a), 1828(a). The first category of taxable costs in Section 1920(6)—"[c]ompensation of court appointed experts"—has nothing to do with "interpreters" or "special interpretation services" in *any* type of proceedings. See H.R. Rep. No. 95-1687, at 13 (1978) ("Section 7 * * * makes express reference to the taxation of the compensation of a court appointed expert, as permitted by rule 706 of the Federal Rules of Evidence."). The second category of taxable costs in Section 1920(6)—"compensation of interpreters"—is likewise not limited to the "subject" of the substantive provisions of the Court Interpreters Act, because the overwhelming majority of interpreters in federal civil cases provide their services in judicial proceedings that were *not* instituted by the United States and thus only a tiny fraction of interpreters in federal civil cases serve pursuant to the Court Interpreters Act. (In 2009, for example, only 8,702—or approximately three percent—of the 278,884 federal civil cases were

filed by the United States. See www.uscourts.gov/uscourts/Statistics/StatisticalTablesForTheFederalJudiciary/2009/dec09/C02Dec09.pdf.) For the same reason, the services of "interpreters" in Section 1920(6) cannot have the "same meaning" as "special interpretation services," which are covered by the third category of taxable costs in that provision.

Thus, with the exception of the third category, which specifically refers to "special interpretation services *under section 1828 of this title*" (emphasis added), Section 1920(6) is not tethered to Sections 1827 and 1828. Indeed, had Congress intended to tie the second category of taxable costs—"compensation of interpreters"—to the substantive provisions of the Court Interpreters Act, it could have used language like "compensation of interpreters under section 1827 of this title." But it did not. Once it is recognized that Section 1920(6) has a broader scope than Sections 1827 and 1828, and that it is not merely a "costs analogue" of those provisions, Pet. 18, there is no principled basis for according the term "interpreters" in Section 1920(6) anything other than its ordinary meaning.

3. Petitioner nevertheless contends that "[t]he restriction of 'interpreters' to those who translate spoken language" is "part of a broader congressional convention applied throughout the United States Code." Pet. 19. That is not correct.

While a couple of provisions of the United States Code refer to "interpreters" who make "aurally delivered materials available to individuals with hearing impairments," Pet. 19, those provisions demonstrate only that that is the specific type of "interpreter" with which the provisions are concerned. They do not show that that is the *only* type of interpreter. 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). Petitioner obviously does not take that position.

While a few provisions of the United States Code employ the phrase "interpreters or translators," Pet. 20, moreover, this "kind of excess language" is "hardly unusual," *Microsoft Corp.* v. *i4i Ltd. P'ship*, 131 S. Ct. 2238, 2249 (2011), and does not establish that Congress intended "interpreter" to have a more limited meaning than its ordinary one when the term appears by itself. Congress has used "translator" in other statutes to include one who translates orally, thereby confirming the soundness of the court of appeals' conclusion that "'translation' services" and "'interpretation' services" are generally used "interchangeabl[y]." Pet. App. 6a.[1]

4. Quoting a statement from the legislative history of the 1853 cost statute, petitioner contends that "an overriding purpose of the costs statute is to eliminate the danger of 'oppressive' and 'disproportionate' costs awards." Pet. 15 (quoting Cong. Globe App.,

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[1] See, *e.g.*, 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); 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").

32d Cong., 2d Sess. 207 (1853) (remarks of Sen. Bradbury)); see also Pet. 3 (same). Insofar as petitioner is suggesting that, as between a broader interpretation of the current cost statute and a narrower one, the narrower one is more consistent with the congressional purpose, that suggestion should be rejected, for the simple reason that the legislator's statement quoted in the petition addressed *attorneys' fees*, not costs.[2] This Court's summary of that statement in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975), which the petition truncates, Pet. 2, is to the same effect. See 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 attorney*." (emphasis added)).

Petitioner contends that the legislative history of the Court Interpreters Act likewise "reinforces" the conclusion that "interpreters" in Section 1920(6) are limited to those who translate spoken words. Pet. 20. It does no such thing. The discussions in the House and Senate Reports on which petitioner relies, Pet. 20-21, address the services covered in Sections 1827 and 1828, not those covered in Section 1920(6). As we have explained, Section 1920(6) encompasses a broader array of services than do Sections 1827

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[2] 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)).

and 1828, and so the latter do not determine the meaning of the former.

5. Petitioner also relies on three interpretive canons. Pet. 22-24. But they do not support his claim that the court of appeals erred in construing "interpreters" in Section 1920(6) to include those who translate written words.

First, the court of appeals' interpretation does not violate the canon that waivers of sovereign immunity should be strictly construed. Pet. 22. The waiver of sovereign immunity identified by petitioner is found in 28 U.S.C. § 2412(a)(1), which unambiguously permits taxation of costs enumerated in 28 U.S.C. § 1920 against the government. "[W]here one statutory provision unequivocally provides for a waiver of sovereign immunity to enforce a separate statutory provision, that latter provision 'need not . . . be construed in the manner appropriate to waivers of sovereign immunity.'" *Gomez-Perez* v. *Potter*, 553 U.S. 474, 491 (2008) (quoting *United States* v. *White Mountain Apache Tribe*, 537 U.S. 465, 472-473 (2003)).

Second, the court of appeals' interpretation does not violate the canon that statutes in derogation of the common law should be strictly construed. Pet. 23. "The 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"—Section 1920 and its predecessors unquestionably changed the law that disallowed recovery of costs—"the extent of the application of the change demands * * * no more rigorous construction than would be applied to [other] laws." *Ibid.*

Third, the court of appeals' interpretation does not violate the canon that unreasonable interference with the sovereign authority of other nations should be avoided. Pet. 23-24. "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 petitioner—that initiated the case in an American court or a defendant over which jurisdiction in an American court was proper.

6. Including compensation of those who translate written as well as spoken words in the cost statute only makes sense, which is yet another reason to conclude that that is what Congress meant to do. In civil litigation documentary evidence is no less important than testimonial evidence. In many cases—contract actions, for example—it can be more important. As the court of appeals correctly concluded, therefore, there is no less need to "render pertinent documents intelligible to the litigants" than there is to render pertinent testimony intelligible to them. Pet. App. 8a.

B. There Is No Circuit Conflict That Warrants This Court's Intervention At This Time

Petitioner contends that there is a seven-to-one circuit conflict on the question presented in the petition and at least as substantial a conflict among district courts. Pet. 8, 10, 11-12. That is wildly inaccurate. There is in fact a two-to-one circuit conflict on the question, combined with disagreement among

judges in a single district, and it would be premature for this Court to resolve that shallow split of authority now.

1. In 2005, the Sixth Circuit became the first court of appeals to address the question squarely, holding in *BDT Products, Inc.* v. *Lexmark International, Inc.*, 405 F.3d 415, 419 (6th Cir. 2005), that the cost of translating documents is taxable under Section 1920(6). In 2008, the Seventh Circuit reached the contrary conclusion in *Extra Equipamentos*. Then, in 2011, the Ninth Circuit sided with the Sixth Circuit in the decision of which petitioner seeks review, holding that the word "interpreter" in Section 1920(6) encompasses one who translates written words, "both according to the dictionary definition and [to] common usage." Pet. App. 7a.

Petitioner claims that five *other* circuits—in addition to the Sixth and Ninth—have "held," in cases predating the Sixth Circuit's decision in *BDT*, that "a federal court may tax [document] translation costs under section 1920(6)." Pet. 10. That is incorrect. As explained in the very decision on which petitioner relies—the Seventh Circuit's in *Extra Equipamentos*—"[o]ther decisions have allowed such awards, but *BDT* is the only reported appellate decision * * * in which the meaning of the statute was placed in question." 541 F.3d at 728. Contrary to petitioner's assertion, therefore, the decisions of "the First, Fifth, Eighth, D.C., and Federal Circuits" that are cited in the petition, Pet. 10, do not conflict with the decision of the Seventh Circuit.

In *Quy* v. *Air America, Inc.*, 667 F.2d 1059 (D.C. Cir. 1981), for example, the losing party "d[id] not dispute the point that translation costs are allowable." *Id.* at 1065. The same was true in *Chore-Time*

Equipment, Inc. v. *Cumberland Corp.*, 713 F.2d 774 (Fed. Cir. 1983), and *Slagenweit* v. *Slagenweit*, 63 F.3d 719 (8th Cir. 1995) (per curiam). The courts in those cases addressed—and rejected—different arguments: that "the work done * * * was * * * not a translating service," *Quy*, 667 F.2d at 1065 (internal quotation marks omitted); that the translation was "not necessarily obtained for use in the case," *Chore-Time Equip.*, 713 F.2d at 781 (internal quotation marks omitted); and that "the costs for the translated documents were unnecessarily incurred," *Slagenweit*, 63 F.3d at 721.

As for *Studiengesellschaft Kohle mbH* v. *Eastman Kodak Co.*, 713 F.2d 128 (5th Cir. 1983), that decision did not address "the question whether the term 'interpreters' in 28 U.S.C. § 1920(6) encompasses document translators." Pet. 8; see 713 F.2d at 133. And *In re Puerto Rico Electric Power Authority*, 687 F.2d 501 (1st Cir. 1982), did not even review an order awarding costs. Instead, the decision set aside a district court's pre-trial order under Rule 34 of the Federal Rules of Civil Procedure that "requir[ed] [the defendant] to translate (or pay [the plaintiff] the costs of translating) all Spanish language documents produced by [the defendant] in the course of pretrial discovery." *Id.* at 503.

While acknowledging that yet another circuit—the Tenth—"declined to decide the issue" in *Tilton* v. *Capital Cities/ABC, Inc.*, 115 F.3d 1471 (10th Cir. 1997), petitioner claims that that decision nevertheless "indicated skepticism that section 1920(6) permits document translation costs" by citing a decision of a district judge in the Central District of California that held that it does not. Pet. 10-11. That is a highly implausible reading of the Tenth Circuit's de-

cision. The paragraph in question simply noted the losing party's "claim[] that * * * translation costs are not recoverable"; then cited the Central District of California decision; then said that the Tenth Circuit would not address the argument because the party had "failed to raise this issue before the district court." 115 F.3d at 1479. It is quite clear that the district court decision was cited in support of the *party's claim* that the Tenth Circuit declined to reach, not to suggest that the court endorsed that position.

2. Petitioner contends that "[t]he disuniformity in the federal courts is substantially more pronounced than might be indicated by a circuit split of [7]-1," because "the district courts are sharply at odds in the circuits which have yet to resolve the issue"—according to petitioner, "the Second, Third, Fourth, Tenth and Eleventh." Pet. 11. This contention is mistaken in two respects. First, as we explain above, it is inaccurate to say that there is a seven-to-one circuit split. Second, as we explain below, it is inaccurate to say that there is a division of authority among district courts in five other circuits.

Quoting a magistrate judge in the Southern District of Florida, the petition claims that, "[i]n these latter circuits, 'some courts . . . have followed the Seventh Circuit and disallowed translation costs, [and] others have allowed such costs.'" Pet. 11 (quoting *Del. Valley Floral Group, Inc.* v. *Shaw Rose Nets, L.L.C.*, 2009 WL 5127941, at *5 (S.D. Fla. Nov. 6, 2009)). The ellipsis in the quoted language is supplied by petitioner, in place of the words "in this District." *Del. Valley Floral Group*, 2009 WL 5127941, at *5. What the magistrate judge actually said, therefore, is that district courts *in the Southern Dis-*

trict of Florida are divided on this question, not—as the petition implies—that district courts in the Second, Third, Fourth, Tenth, and Eleventh Circuits are.

Nor do the "district court decisions" from the supposedly "undecided circuits" that are cited in the petition, Pet. 11 n.3, demonstrate any division of authority among district courts outside the Southern District of Florida. The cited decisions confirm that some judges within that district have followed the Sixth Circuit, while others have followed the Seventh, on whether the cost of translating documents may be taxed under Section 1920(6). But the only cited decision from outside the Southern District of Florida that disallowed such an award did so, not because the court believed the award was not authorized by the statute, but because the losing party "had already paid for the translation." *Ricoh Corp.* v. *Pitney Bowes Inc.*, 2007 WL 1852553, at *3 (D.N.J. June 26, 2007). And in the three cited decisions from outside the Southern District of Florida that *allowed* such an award, Pet. 12 n.3, as in the pre-*BDT* court of appeals decisions that did so, "the meaning of the statute was [not] placed in question." *Extra Equipamentos*, 541 F.3d at 728.

So there is in fact no "deep and persistent division in the district courts" on the question presented in the petition. Pet. 8. There is a division in the district courts only in the Southern District of Florida, where the issue apparently arises more frequently because of the large number of non-English speakers in South Florida. (Seven of the 11 cases cited in petitioner's division-of-district-court-authority footnote are from the Southern District of Florida. Pet. 11

n.3.) That conflict can be resolved by the Eleventh Circuit. See Sup. Ct. R. 10.

3. On the question whether the cost of translating written as well as spoken words may be taxed under 28 U.S.C. § 1920(6), there is thus a two-to-one circuit conflict and disagreement among district judges in a single district. Far from providing a reason to grant certiorari now, that shows that the Court should allow further percolation.

Only three circuits have squarely addressed the question presented in the petition; only one of them has adopted the position that petitioner advocates; and all three have issued their decisions within the last half dozen years. If other circuits adopt the position of the Sixth and Ninth Circuits, the Seventh Circuit may decide to reconsider the issue en banc and thereby resolve the conflict without any need for this Court's intervention. (It is true that the Seventh Circuit declined to hear *Extra Equipamentos* en banc on its own motion before the decision was issued, 541 F.3d at 728, but at that time there was only a single circuit on either side of the conflict.) If, on the other hand, the Seventh Circuit decides *not* to reconsider the issue, or if other circuits adopt the position of the Seventh Circuit, it may at that point be appropriate for this Court to grant review. But however this issue may develop in the lower courts, "further consideration * * * of the problem by other courts will enable [this Court] to deal with the issue more wisely at a later date." *McCray* v. *New York*, 461 U.S. 961, 962 (1983) (Stevens, J., respecting the denial of certiorari).

C. The Question Presented Is Not One Of Exceptional Importance

In the absence of a mature circuit conflict, a grant of certiorari might be justified if the question presented in the petition were one of exceptional importance. It is not. Far from it.

In arguing otherwise, petitioner suggests that the rule adopted by the court of appeals will create a substantial "danger of oppressive * * * costs awards," and thereby "impose an immense burden on the parties in litigation," by making parties liable for the "potentially exorbitant costs" of translating documents. Pet. 15, 14, 17 (internal quotation marks omitted). That suggestion is totally divorced from reality. As the very cases that are cited in the petition demonstrate, the cost of translating documents in civil cases is rarely "exorbitant," "immense," or "oppressive." Quite the contrary.

The petition focuses on a $1 million award and claims that it was not an "isolated anomaly." Pet. 14. In truth, however, it was. Of the cases cited in the petition, including the "representative sample" of "district court cases since 2000," Pet. 12 n.4, there are by our count 34 in which the court granted or denied an award for the cost of translating documents and the amount of the award is identified in the decision. No other award in those cases exceeded $100,000, and nearly all of them were far less. Twenty-eight of the awards were less than $13,000; 22 of them—including the award in this case—were

less than $6,000; 19 were less than $3,000; and nine were less than $1,000.[3]

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[3] See *Tilton*, 115 F.3d at 1479 ($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. *Teledyine 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*, 2009 WL 5127941, at *4 ($275); *Horizon Hobby, Inc.* v. *Ripmax Ltd.*, 2009 WL 3381163, at *7 (C.D. Ill. Oct. 15, 2009) ($3,462.90), aff'd per curiam, 397 F. App'x 627 (Fed. Cir. 2010); *Tesler* v. *Costa Crociere S.p.A.*, 2009 WL 1851091, at *2 (S.D. Fla. June 29, 2009) ($300); *Porcelanas Florencia, S.A.* v. *Caribbean Resort Suppliers, Inc.*, 2009 WL 1456338, at *8 (S.D. Fla. May 22, 2009) ($922.50); *Galvez* v. *Cuevas*, 2009 WL 1024632, at *6 (S.D. Fla. Apr. 15, 2009) ($345); Pet. App. 22a ($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 Food, 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); *Arboireau* v. *Adidas Salomon AG*, 2002 WL 31466564, at *6 (D. Or. June 14, 2002) ($3,399.08); *Neles-Jamesbury, Inc.* v. *Fisher Controls Int'l, Inc.*, 140 F. Supp. 2d 104, 106-107 (D. Mass.

Petitioner also makes the rather extravagant claim that the question presented is one of exceptional importance because taxing the cost of translating foreign-language documents "implicates important issues of international relations and foreign comity." Pet. 15. Unsurprisingly, however, he offers no evidence—not a shred—that any nation has complained, or is even concerned, about these typically modest 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 the translating costs. Nor has any foreign government or international organization filed an *amicus curiae* brief suggesting that the question presented has consequences for international relations or foreign comity.

Particularly in a case, like this, in which the decision below is correct and further percolation is warranted, there is no pressing need for the Court to grant certiorari to decide whether the court of appeals erred in adopting a rule that permits an award of costs in a relatively small category of cases that ordinarily amount to no more than a few hundred or a few thousand dollars.

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).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THOMAS L. ROBERTS
Dooley Roberts & Fowler LLP
Suite 201, Orlean Pacific Plaza
865 S. Marine Corps Dr.
Tamuning, Guam 96913
(671) 646-1222

DAN HIMMELFARB
Counsel of Record
PAUL W. HUGHES
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
dhimmelfarb@mayerbrown.com

Counsel for Respondent

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