



505 Fifth Avenue, Ste. 901  
Des Moines, IA 50309  
(515) 243-3576

## **Federal appeals court chastises Iowa courts for failing to follow law requiring use of certified interpreters**

by R. Ben Stone, ACLU-IA Executive Director  
8/12/2003

~~~~~

### **8th Circuit judges cite ACLU-IA's "friend-of-the-court" brief in finding widespread use of unqualified interpreters "troubling"**

A unanimous three judge panel of the Eighth Circuit Court of Appeals has condemned the failure of federal district court judges in Iowa to provide trained and certified interpreters to federal defendants who don't understand the English language.

The American Civil Liberties Union of Iowa, which filed an amicus "friend-of-the-court" brief on behalf of the defendant, praised the ruling, calling it a "red alert" for the court system in Iowa to start taking the rights of the accused more seriously in cases involving people who don't speak English.

"This ruling is about basic, old-fashioned fairness. Kangaroo courts and star chambers have no place in a just society--and that is what you have if the accused can't understand what is going on," said Ben Stone, executive director of the ACLU-IA. "The appeals court in this case has put the lower courts on notice that if they don't start using trained and certified interpreters whenever possible, future convictions will be overturned," he added.

The case involves Heriberto Gonzales, who was not provided the use of a certified interpreter throughout the federal criminal proceedings stemming from his Iowa arrest on methamphetamine charges in 2001. Gonzales, who is from Mexico and does not speak English, pled guilty to conspiracy to import the drug.

Despite what the appeals court describes as a "clear" and "unambiguous" federal law that requires federal judges to "utilize the services of the most available certified interpreter," the district court in the Gonzales case inexplicably used court staff or other persons who were not certified as interpreters.

The ACLU-IA's amicus brief presented the appeals court with evidence of how widespread the use of unqualified interpreters is in the Iowa federal court system. The judges wrote:

Through an amicus brief, the American Civil Liberties Union of Iowa (ACLU-IA) advised that the Southern District of Iowa used uncertified interpreters in almost 90% of all proceedings in 2001. By contrast, the neighboring District of Nebraska employed uncertified interpreters only 12.8% of the time. ... [T]he national average [is] 12%.

The court went on to describe how there is a service available to help federal district courts find certified interpreters, including the possibility of using remote interpreters by telephone. Citing these possibilities, the court found it "hard to reconcile the district court's reliance upon court staff members to provide Spanish-English translations."

In its conclusion, the Eighth Circuit panel issued an uncharacteristically strong warning: "The [Court Interpreters] Act obligates district courts to make every effort to use certified interpreters, and we caution district courts that this obligation should not be ignored."

It should be noted that despite the wording of its ruling, the court nonetheless refused to overturn Gonzales' conviction, citing the fact that he had failed to present evidence indicating that the use of uncertified interpreters in his particular case had prejudiced him. [This manner of determining the outcome of criminal appeals has become commonly known as the "harmless error doctrine." The ACLU-IA and ACLU have condemned this doctrine for decades because they believe it creates a loophole for violations of the Constitution.]

To read the actual ruling in U.S. v. Gonzales, go to the link below, or check out the Legal Program/Briefs section of the ACLU-IA's website in a few days ([www.iowaclu.org](http://www.iowaclu.org))

<http://caselaw.lp.findlaw.com/data2/circs/8th/021897p.pdf>