

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 8-9, 2016

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local and territorial law-enforcement authorities to provide a culturally, substantively and accurate translation of the *Miranda* warning in Spanish.

REPORT

I. INTRODUCTION.

Fifty years after *Miranda*, law enforcement has made no effective effort to develop a culturally and substantively accurate translation of the *Miranda* warning. This is an issue. Best estimates imply that law enforcement Spanish language *Miranda* warnings are necessary in nearly 900,000 instances per year. Experience suggests, and case law confirms, that many of the translations used by authorities are inaccurate. These inaccurate warnings violate individual rights and undermine law-enforcement efforts, particularly as courts subsequently exclude statements due to their inaccuracy. An accurate translation that can be used by local, state and federal law enforcement is long overdue. The ABA Special Committee on Hispanic Legal Rights and Responsibilities (“Hispanic Special Committee”) is a natural entity, given its mission and jurisdiction statement, to lead this effort taking into account input from internal and external stakeholders on the topic of *Miranda*. The success of a culturally and substantively accurate Spanish translation of the *Miranda* warning could be expanded to other languages.

II. THE NEED FOR ACCURATE, READILY AVAILABLE SPANISH *MIRANDA* WARNINGS.

The Census Bureau estimates that about 14% of adults in this country speak a language other than English. Spanish or a Spanish Creole make up a majority of those persons. There are 38 million Spanish speakers in the U.S., 26.7 million of which are adults between ages 18 and 64. Of those adults, just over half, 52.5%, say they speak English “very well.” The remaining 47.5% do not, which amounts to 12.7 million people. The numbers climb higher adding in the 1.8 million children (ages 5-17) and 1.8 million seniors (age 65 and over) who also do not speak English very well.¹

Inevitably, some fraction of those people who do not speak English “very well,” have contacts with law enforcement and are questioned by police officers. In 2011, the U.S. Department of Justice estimated that about 0.6% percent of the total population had been subjected to street stops (not traffic stops) and that Black/African Americans were stopped at about the same rate as Whites (both 0.6%) and that Hispanic/Latinos were stopped at a slightly higher rate (0.7%).² Given a total U.S. population of around 323 million³ that would mean about 2.3 million Hispanic/Latinos are stopped annually.⁴ The overlap between Spanish speakers and Hispanic/Latinos is far from perfect, but research suggests that about 38% of Hispanic adults are Spanish-language dominant, another 38% are bilingual, and 24% are English-language dominant.⁵ Putting those numbers together,

¹ factfinder.census.gov. Language Spoken at Home, 2010-2014 American Community Survey 5-Year Estimates.

² Given the much larger White population, these numbers indicate a serious racial/ethnic disparity, but that is not the issue in this Report.

³ <http://www.census.gov/popclock/>

⁴ <http://www.bjs.gov/content/pub/pdf/pbtss11.pdf>

⁵ <http://www.pewhispanic.org/2012/04/04/iv-language-use-among-latinos/>

that means that every year there are 874,000 people stopped by police who would need their *Miranda* rights read in Spanish, and another equal number who are bilingual but might prefer Spanish. In 2006, the Bureau of Justice Statistics reported 119,200 detainees of Hispanic origin, or approximately 15.6% of the jail population. (Behav, 2009).⁶

III. PROBLEMS WITH *AD HOC* TRANSLATIONS.

The reported case law suggests that many attempts to provide an accurate translation of the *Miranda* rights are woeful. One case from the U.S. Ninth Circuit gained a fair amount of publicity when an officer mistranslated the word “free” (as in “a free lawyer”) as *libre*, rather than *gratis*—meaning that the lawyer was at liberty and not incarcerated rather than the lawyer would be provided at no cost. *United States v. Botello-Rosales*, 728 F. 3d 865, 867 & n.1 (9th Cir. 2013). Regrettably, that is far from the only case, or the only mistranslation. In some cases, the appellate court granted relief due to the mistranslation problems, in others the appellate courts found them inconsequential. The result is not as important as the fact of the mistranslation, however.

Failures to Use Actual Spanish

- Giving *Miranda* Warnings in Spanglish
Avincola v. Stinson, 60 F. Supp. 2d 133, 139 (S.D.N.Y. 1999) (official court interpreter’s take on police officer’s translation was: “With my command of two languages I understood. It is not a perfect Spanish, it would be hard to understand for a non-educated person.”); *United States v. Barrena*, 2007 WL 5312565 (E.D. Tenn. 2007) (required knowing both English and Spanish to fully understand police officer’s translation); *State v. Santiago*, 556 NW.2d 687, 691 (Wis. 1996) (translated into Spanish “street language”).
- Right to Silento
“Silento” is not a word in Spanish. *Albarran v. Alabama* 96 So. 3d 131, 151 (Ala. Crim. App. 2011).
- Poira
Another non-word in Spanish. The correct word was *podra*, meaning “can” or “be able to,” as used in the phrase “can and will be used against you.” *State v. Carrasco-Calderon*, 2008 WL 5377923 (Ariz. Ct. App. 2008).
- Corte de Ley
Yet another phrase with no meaning in Spanish, instead of *tribunal de justicia*. *State v. Ortez*, 631 S.E.2d 188, 192 (N.C. Ct. App. 2006)
- Empleca

⁶https://www.researchgate.net/profile/Lisa_Hazelwood/publication/5534144_Spanish_Translations_of_Miranda_Warnings_and_the_Totality_of_the_Circumstances/links/5491d6970cf2484a3f3e05e9.pdf?inViewer=0&pdfJsDownload=0&origin=publication_detail

Another non-word in Spanish, probably intended to be *implica*. *Torres v. State*, 10 N.E.3d 611 (Ind. Ct. App. 2014) (table).

- Ud.
An abbreviation for the word *usted*, meaning “you,” but was literally pronounced by the officer. Similar to pronouncing Mrs. as “mers.” *People v. Hernandez*, 2002 WL 31109643 (N.Y. Westchester Cnty. Ct. 2002).

Mistranslations of Specific Words

- Right-hand Side
Interpreter used the word for right-hand side rather than a legal right. *State v. Ramirez*, 732 N.E.2d 1065, 1067 (Ohio Ct. App. 1999).
- Right to “Carry” Silence
People v. Aguilar-Ramos, 86 P.3d 397, 399 (Colo. 2004).
- “Before” a Court of Law
Police used the word *antes* rather than *ante*. *Antes* is temporal (prior to); *ante* is presence (in front of). This means that anything the defendant said would be used prior to, rather than in front of, a court of law. *State v. Carrasco-Calderon*, 2008 WL 5377923 (Ariz. Ct. App. 2008).
- Right to Point At Counsel
Using the verb *puntadar* rather than *para nombrar*. *United States v. Barrena*, 2007 WL 5312565 (E.D. Tenn. 2007); *Mojica v. State*, 2009 WL 1980942 (Tex. Ct. App. 2009) (parenthetical?); *State v. Santiago*, 556 NW.2d 687, 691 (Wis. 1996) (“apuntar un abogado,” literally “to point to a lawyer.”).
- Right to Have Counsel Selected for Defendant
Albarran v. State, 96 So. 3d 131, 151 (Ala. Ct. Crim. App. 2011).
- Occupy an Attorney
Using the word *ocupar*, which can mean “to occupy” or “to employ.” *State v. Torres*, 87 Wash. App. 1089 (Wash. Ct. App. 1997) (unpublished opinion).
- Right to Design Counsel
The verb *designer* can mean to appoint or to design. *People v. Aguilar-Ramos*, 86 P.3d 397, 399 (Colo. 2004).
- Counsel Might be Appointed
Using *puede*, which means “could, may or can,” but not “will,” as in “a lawyer will be appointed.” *Fernando-Grandos v. Houston*, 2007 WL 673172 (D. Neb. 2007); *United States v. Botello-Rosales*, 728 F. 3d 865, 867 (9th Cir. 2013) (“could be given to you”).
- If You Cannot Get a Lawyer

Used *conseguir*, which means “to get” instead of “to afford” a lawyer, resulting in the warning failing to convey that if the defendant could not afford a lawyer, one would be appointed free of charge. *People v. Diaz*, 140 Cal. App. 3d 813, 819 (Cal. Ct. App. 1983); *see also State v. Ortez*, 631 S.E.2d 188, 192 (N.C. Ct. App. 2006) (“[I]f you want a lawyer and cannot get one, for you one will be named for you so that for you he can represent you during the interrogatory.”)

- Right to Counsel Assisting You, and Everybody Else
Police used *hacerles* (the plural) rather than *hacerle* (singular), meaning that counsel would *advise* the defendant and others, or maybe just others. *State v. Carrasco-Calderon*, 2008 WL 5377923 (Ariz. Ct. App. 2008).
- Giving Warning in Very Formal Spanish
Instead of translating “give” as *dar*, the more common word, the officer used the word *proporcionar*, which is rarely used. *State v. Teran*, 862 P.2d 137, 138 (Wash. Ct. App. 1993).

Inaccuracies in Describing Rights Due to Mistranslations

- Right to Stop Questioning in Any Weather
Using the words *cualquier tiempo*. *United States v. Barrena*, 2007 WL 5312565 (E.D. Tenn. 2007).
- Right to Answer Questions
Torres v. State, 10 N.E.3d 611 (Ind. Ct. App. 2014) (table); *Avincola v. Stinson*, 60 F. Supp. 2d 133, 139 (S.D.N.Y. 1999)
- Right Not to Say Nothing
State v. Dominguez-Ramirez, 563 N.W.2d 245, 250 (Minn. 1997).
- Right to Maintain Yourself in Silence
United States v. Higareda-Santa Cruz, 826 F. Supp. 355, 357 (D. Or. 1993).
- Right “the something can be used against you in a court of law”
State v. Ramirez, 732 N.E.2d 1065, 1069 (Ohio Ct. App. 1999).
- Right to Interrupt the Conversation at any Moment
United States v. Higareda-Santa Cruz, 826 F. Supp. 355, 357 (D. Or. 1993).
- Statements “can be used against the court”
Torres v. State, 10 N.E.3d 611 (Ind. Ct. App. 2014) (table).
- Right “to have your attorney present to notify you before and during questions of a policeman or of lawyers representing the state.”
Mojica v. State, 2009 WL 1980942 (Tex. App. 2009).
- Right for Police to “write you down a lawyer, before I ask you rights.”

State v. Moreno, 265 S.W.3d 751, 753 (Ark. 2007).

- Right to an Attorney “before asking questions.”
State v. Ortiz, 766 N.W.2d 244, 248 (Iowa 2009)
- Right to Petition for an Attorney
No indication that the court would always provide one. *United States v. Higareda-Santa Cruz*, 826 F. Supp. 355, 357 (D. Or. 1993) (Warning meant: “In case you do not have money, you have the right to petition an attorney from the court”); *see also United States v. Perez-Lopez*, 348 F.3d 839, 842 (9th Cir. 2003) (“*En caso de que no tenga dinero, Ud. tiene el derecho de solicitar de la corte un abogado.*” Which means: “In case you don't have enough money or funds, you have the right to solicit the Court for an attorney.”).
- Right to “remain before you consult with an attorney, before answering any question”
Commonwealth v. Ochoa, 32 Mass. L. Rptr. 153 (Mass. Super. Ct. 2014)
- Right to Have a Lawyer Present During Questioning
But not before. *United States v. Castro-Higuero*, 473 F.3d 880, 883 (8th Cir. 2007) (The interpreter also told the defendant that he could “request that a lawyer be with you for any type of information or for any conversation you want to establish”).
- Right to Have a Free Lawyer Before Questioning
But not during. *State v. Ramirez*, 732 N.E.2d 1065, 1069 (Ohio Ct. App. 1999) (“And, also, if you can't pay for a lawyer, it is possible to have a lawyer without paying before the questioning.”).

General Failures to Translate the *Miranda* Warnings

- Failure to Give *Miranda* Warnings in Spanish
United States v. Alarcon, 95 F. App'x 954, 955 (10th Cir. 2004).
- Incomplete Warnings
The Spanish *Miranda* card omitted statement that was on the English *Miranda* card that a person could stop the questioning at any time by invoking their rights. *Rivera-Reyes v. Commonwealth*, 2006 WL 2986495 (Ky. 2006).
- Failure to Warn that Statements Could be Used Against Defendant in Court
The Spanish translation by police officer just omitted it. *Melchor-Gloria v. State*, 660 P.2d 109, 111 (Nev. 1983).

IV. SOURCES OF MISTRANSLATIONS

These same cases indicate that the sources of the translation errors are varied. That variety itself points to the need for an accurate translation that is readily available to the law-enforcement community.

- **Police Officers Themselves**

Many of these cases also involve police officers calling on their own education or abilities in Spanish, which are sometimes quite limited. *Commonwealth v. Ochoa*, 32 Mass. L. Rptr. 153 (Mass. Super. 2014) (police officer schooled exclusively in English, but spoke Spanish at home); *People v. Aguilar-Ramos*, 86 P.3d 397, 399 (Colo. 2004) (1-2 years of Spanish in high school); *State v. Carrasco-Calderon*, 2008 WL 5377923 (Ariz. Ct. App. 2008) (going off script and asking only if the defendant understood “that” (implying the last right) rather than all of the rights); *State v. Moreno*, 265 S.W.3d 751, 752 (Ark. 2007) (Officer grew up speaking Spanish because he lived with Spanish-only grandparents, but had no formal training); *United States v. Perez-Lopez*, 348 F.3d 839, 842 (9th Cir. 2003); *State v. Jaco*, 949 P.2d 1077, 1080 (Idaho Ct. App. 1997) (Spanish-speaking officer paraphrasing); *State v. Santiago*, 556 NW.2d 687, 691 (Wis. 1996) (Spanish-speaking officer who is not literate in Spanish); *Melchor-Gloria v. State*, 660 P.2d 109, 111 (Nev. 1983) (Spanish-speaking officer omitting one warning). Some are better than others. *Avincola v. Stinson*, 60 F. Supp. 2d 133, 139 (S.D.N.Y. 1999) (not too bad, except for inventing a right to answer questions); *State v. Dominguez-Ramirez*, 563 N.W.2d 245, 250 (Minn. 1997) (not too bad, except for right not to say nothing); *Lopez v. Grams*, 2009 WL 5092866 (W.D. Wis. 2009). Some tried to compensate by over explaining, so that it was less a translation and “more akin to a running commentary.” *United States v. Barrena*, 2007 WL 5312565 (E.D. Tenn. 2007).

- **Unofficial Interpreters**

Sometimes the police use impromptu, unofficial interpreters, with predictable results. *United States v. Angeles-Guzman*, 683 F. Supp. 2d 397, 398-99 (E.D.N.C. 2010) (police used defendant’s girlfriend, who had one semester of formal Spanish education plus six visits to Mexico and could not adequately translate “incriminate.”); *State v. Ramirez*, 732 N.E.2d 1065, 1069 (Ohio Ct. App. 1999) (police used administrative assistant from local Chamber of Commerce with seven quarters of Spanish in college who lived in Mexico for six months); *People v. Gonzalez*, 622 N.Y.S.2d 685, 686 (Sup. Ct. App. Div. 1995) (police used one defendant to translate for other Spanish-speaking defendants); *In re Rafael M.*, 395 N.Y.S.2d 170 (Sup. Ct. App. Div. 1977) (police used son to translate warnings to his mother).

- **Official Interpreters**

Sometimes the police use official, seemingly well-trained, interpreters who apparently misinterpret on the fly. *Albarran v. Alabama*, 96 So. 3d 131, 150 (2011) (misinterpretation with non-word “Silento” by college Spanish professor). *United States v. Castro-Higuero*, 473 F.3d 880, 883 (8th Cir. 2007) (not saying that a defendant had the right to consult with an attorney before and during questioning).

- **Official *Miranda* Cards in Spanish**

Even more regrettably, some of these cases involve police officers using official Spanish *Miranda* cards. *Mojica v. State*, 2009 WL 1980942 (Tex. Ct. App. 2009); *State v. Carrasco-Calderon*, 2008 WL 5377923 (Ariz. Ct. App. 2008); *People v. Aguilar-Ramos*, 86 P.3d 397, 399 (Colo. 2004); *United States v. Higareda-Santa Cruz*, 826 F. Supp. 355, 357 (D. Or. 1993) (translation probably done by someone who knew Spanish as a second language); *People v. Diaz*, 140 Cal. App. 3d 813, 819 (Cal. Ct. App. 1983).

V. THE ADVANTAGES OF A CULTURALLY AND SUBSTANTIVELY ACCURATE TRANSLATION.

A reliable, readily available translation is not a panacea and will not solve the problems with interpreters later contradicting well-written Spanish *Miranda* warnings. See *People v. Mejia-Mendoza*, 965 P.2d 777, 778-79 (Colo. 1998) (*en banc*). But it will at least assist law enforcement personnel in administering accurate *Miranda* warnings in Spanish so the Spanish-speaking suspects can know their rights.

The Hispanic Special Committee, through the ABA, has the nationwide standing and resources to make available to federal, state, and local law enforcement agencies a well-researched and well-thought translation. This effort, also, will help further introduce the ABA as a resource to Hispanic communities. The translation should be made available on the internet in a way that it would be one of the first options that appears after searching for “*Miranda*” and “Spanish.”

Respectfully Submitted,

R. Alexander Acosta, Chair
Special Committee on Hispanic Legal Rights and Responsibilities
August 2016

GENERAL INFORMATION FORM

Submitting Entity: Special Committee on Hispanic Legal Rights and Responsibilities
 (“Hispanic Special Committee”)

Submitted By: R. Alexander Acosta, Chair, Special Committee on Hispanic Legal Rights
 and Responsibilities

1. Summary of Resolution(s). This resolution calls upon the American Bar Association (“ABA”) to urge federal, state, territorial and local law enforcement authorities to provide a culturally substantive and accurate translation of the *Miranda* warning in Spanish, one that is culturally and substantively accurately translated. Spanish is the most spoken language other than English in the United States. Every year there are 874,000 people stopped by police who would need *Miranda* rights read in Spanish, and another equal number of people who are bilingual but might prefer Spanish. There are many instances reported in case law that reflect mistranslations ranging from inaccuracies, ad hoc translations, and failure to use actual Spanish language. A culturally and substantively accurate translation of the *Miranda* warning is long overdue. The resolution will assist law enforcement personnel in administering accurate *Miranda* warnings in Spanish so the Spanish-speaking suspects can know their rights.
2. Approval by Submitting Entity. The Special Committee on Hispanic Legal Rights and Responsibilities approved of this resolution on February 5, 2016.
3. Has this or a similar resolution been submitted to the House or Board previously? No
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? Resolution 102B, passed by the House of Delegates at the 2010 Midyear Meeting “urges federal, state, territorial and local legislative bodies and governmental agencies to support the development of simplified *Miranda* warning language for use with juvenile arrestees.” The proposed resolution would assist with the implementation of Resolution 102B.

Resolution 104, passed by the House of Delegates at the 2010 Midyear Meeting “urges law enforcement authorities to implement *Miranda*-like warnings advising foreign nationals of their rights and fundamental protections under Article 36 to the Vienna Convention on Consular Relations (“Article 36”), consular notification requirement, as soon as they are detained and identified. The proposed resolution would assist with the implementation of resolution 104.

Resolution 125, passed by the House of Delegates at the 1998 Annual Meeting “urges federal, state, territorial and local law enforcement authorities to adopt a warning of rights similar to the “*Miranda*” standard, advising foreign nationals of their right to consular assistance pursuant to Article 36 of the Vienna Convention on Consular Relations. The proposed resolution would assist with the implementation

of resolution 125.

Resolution 113D, passed by the House of Delegates at the 1999 Annual Meeting “urges to reaffirm the principle set forth in *Miranda* that individuals should be advised of their rights prior to custodial interrogation.” The proposed resolution would assist advance the implementation of resolution 113D.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
6. Status of Legislation. (If applicable) N/A
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. Implementation will involve three steps. First, the Hispanic Special Committee will develop a Spanish translation of the *Miranda* warning with input from internal and external stakeholders on the topic. Second, the ABA will maintain the translation on the internet in a way that it would appear after searching for “*Miranda*” and “Spanish.” Third, the sponsors by way of ABA Communications Media Resources and/or other internal divisions will make available the translation so that it is provided and/or made available to all federal, state, and local law enforcement agencies.
8. Cost to the Association. (Both direct and indirect costs) No direct costs will result from this policy. Indirect costs will be from volunteer and staff resources that already exist within the ABA. No additional costs will be incurred.
9. Disclosure of Interest. (If applicable) None.
10. Referrals. The resolution has been circulated to the following entities, seeking their insights:
 - Standing Committee on Legal Aid and Indigent Defendants
 - Standing Committee on Pro-Bono and Public Service
 - Standing Committee on the Delivery of Legal Services
 - Section of Civil Rights and Social Justice
 - Section of Criminal Justice
 - Judicial Division
 - Latin America and Caribbean law Initiative Council
 - Commission on Immigration
 - Commission on Youth at Risk
 - Commission on Human Rights
 - Commission on Racial and Ethnic Diversity in the Profession
 - Center for Racial and Ethnic Diversity
 - Center for Professional Responsibility - Ethics
 - Coalition on Racial and Ethnic Justice
 - Forum on Construction Law
 - Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution.

This resolution calls upon the American Bar Association (“ABA”) to urge federal, state, territorial and local law enforcement authorities to provide a uniform translation of the *Miranda* warning in Spanish, one that is culturally and substantively accurately translated.

2. Summary of the Issue that the Resolution Addresses

Spanish is the most spoken language other than English in the United States. Every year there are 874,000 people stopped by police who would need *Miranda* rights read in Spanish, and another equal number of people who are bilingual but might prefer Spanish. In 2006, the Bureau of Justice Statistics reported 119,200 detainees of Hispanic origin, or approximately 15.6% of the jail population. There are many instances reported in case law that reflect mistranslations ranging from inaccuracies, ad hoc translations, and failure to use actual Spanish language. A culturally and substantively accurate translation of *Miranda* is long overdue.

3. Please Explain How the Proposed Policy Position will address the issue

The resolution will assist law enforcement personnel in administering accurate *Miranda* warnings in Spanish so the Spanish-speaking suspects can know their rights. The Spanish translation will be developed by the Hispanic Special Committee given its mission and jurisdiction statement.

4. Summary of Minority Views

None to date.