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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO**

9 THE PEOPLE OF THE STATE OF  
10 CALIFORNIA,

11 Plaintiff,

12 v.

13 Jesus Pineda,

14 Defendant.  
15  
16  
17  
18

) Case No.: CD229951  
) D.A. No.: ACV200

) **DEFENDANT'S REQUEST FOR  
TWO INTERPRETERS TO MAINTAIN  
INTERPRETER COMPETENCE**

19 **TWO INTERPRETERS MUST BE USED IN COURT BECAUSE OTHERWISE FATIGUE  
20 HINDERS THE ABILITY OF THE INTERPRETERS TO MAINTAIN LINGUISTIC  
COMPETENCE.**

21 **ARGUMENT**

22 **I.**

23 **DUE PROCESS REQUIRES THAT DEFENDANT HAVE A  
COMPETENT INTERPRETER THROUGHOUT THE TRIAL PROCEEDINGS**

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25 The California Constitution guarantees that "[a] person unable to understand English  
26 who is charged with a crime has a right to an interpreter throughout the proceedings." (Cal.  
27 Const., Art. I §14.) An individual's right to a n interpreter arises directly from both the  
28

1 State and Federal rights of confrontation guaranteed by the 6<sup>th</sup> amendment and  
2 applicable to the states by the 15<sup>th</sup> amendment Due Process clause.

3 In *People v. Aquilar*, (1984) 35 Cal. 3d 785, 790.) Defendant was charged with murder,  
4 at his jury trial the trial court appointed an interpreter for him. During the trial the interpreter  
5 was 'borrowed' by the trial court to function as a witness interpreter for the benefit of the court  
6 and jury when two prosecution witnesses were called to testify against defendant. Defense  
7 counsel, without consulting defendant, acquiesced in the 'borrowing' of the interpreter.  
8 Defendant was convicted. The Supreme Court reversed, holding that Cal. Const., art. I, § 14,  
9 requires that when an interpreter is appointed for a non-English-speaking defendant, he has  
10 the constitutional right to the assistance of the interpreter throughout the entire proceeding,  
11 and that the 'borrowing' of the interpreter, defendant's only means of communicating with  
12 defense counsel and understanding the proceedings was a denial of a constitutional right. A  
13 personal waiver is required to waive this right, mere acquiescence by counsel is insufficient.

14 Due process not only requires an interpreter, but a *competent* interpreter. *U. S. ex rel.*  
15 *Negron v. State of N. Y.* (2d Cir. 1970) 434 F.2d 386, 390-91 "The least we can require is that  
16 a court, put on notice of a defendant's severe language difficulty, make unmistakably clear to  
17 him that he has a right to have a competent translator assist him, at state expense if need be,  
18 throughout his trial." (*Ibid* 390-91)

19 Court interpretation is a highly specialized, and particularly demanding, form of  
20 interpreting. Court proceedings not only involve interactions at a significantly higher level of  
21 difficulty than conversational language, but also require a familiarity with legal terminology and  
22 procedures and with the cultural context impacting the parties in the court proceedings. The  
23 court interpreter's successful performance is dependent on his or her ability to convey the  
24 speaker's words and presentation style in the courtroom setting, without changing colloquial  
25 expressions or tone. See Steven M. Kahaner, *The Administration of Justice in A Multilingual*  
26  
27  
28

1 *Society-Open to Interpretation or Lost in Translation?* (2009) 92 *Judicature* 224, 227<sup>1</sup> (hereafter  
2 *Kahaner*)

3 Courts should be aware of and make provisions for dealing with interpreter fatigue.  
4 Although court interpreting may seem effortless, it is highly demanding and mentally taxing,  
5 and mental fatigue sets in after approximately 30 minutes of sustained simultaneous  
6 interpretation, resulting in a marked loss in accuracy, no matter how experienced or talented  
7 the interpreter may be. If interpreters work without relief in proceedings lasting more than 30-  
8 45 minutes, the accuracy of interpretation may be compromised.

9 . For any proceeding lasting longer than 30 minutes of continuous simultaneous  
10 interpretation, two interpreters should be assigned so they can relieve each other at periodic  
11 intervals. A similar standard should be observed for continuous witness interpreting. *Kahaner*,  
12 p. 230 (See also Mirta Vidal, *New Study on Fatigue Confirms Working in Teams*, 6 No.1  
13 *Proteus* (Winter 1997).)

14 The right to a competent interpreter is not satisfied unless interpreters rotate when they  
15 are used for extended periods of time. Due process *requires a competent* interpreter. (*Negron*  
16 *supra.*) When a single interpreter works for longer than a half hour at a time the accuracy of  
17 interpretation declines. (*Vidal, supra.*) After a half-hour accuracy decreases by about 10%  
18 every five minutes. (*Id.*) After forty-five minutes accuracy will be at 75% what it is in the first  
19 half-hour. After one hour accuracy will have fallen to nearly 50%. At this point the competency  
20 of interpretation is clearly in question. If the right to a competent interpreter is to be satisfied  
21 as *Negron* requires, then interpreters must rotate every half an hour. Having a competent and  
22 effective interpreter is essential if accuracy and credibility are to be maintained in the record.

23 An accused's 6<sup>th</sup> amend right to be present at his trial to see and hear all witnesses and  
24 evidence presented against them is dependent on the accuracy of interpretation.  
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28 <sup>1</sup> Attached as Exhibit 1

1 It is axiomatic that the Sixth Amendment's guarantee of a right to be  
2 confronted with adverse witnesses, now also applicable to the  
3 states through the Fourteenth Amendment, (*cite omitted*) includes  
4 the right to cross-examine those witnesses as an 'an essential and  
5 fundamental requirement for the kind of fair trial which is this  
6 country's constitutional goal.' (*cite omitted*) But the right that was  
7 denied Negron seems to us even more consequential than the right  
8 of confrontation. Considerations of fairness, the integrity of the fact-  
9 finding process, and the potency of our adversary system of justice  
10 forbid that the state should prosecute a defendant who is not  
11 present at his own trial, (*cite omitted*) And it is equally imperative  
12 that every criminal defendant- if the right to be present is to have  
13 meaning- possess 'sufficient present ability to consult with his  
14 lawyer with a reasonable degree of rational understanding.'

15 *U. S. ex rel. Negron v. State of N. Y.* (2d Cir. 1970) 434 F.2d 386, 389 (*internal citations*  
16 *omitted*)

17 It is the practice of the courts to keep no transcript of the oral proceedings in the  
18 translated language. This prevents review of the translated testimony. When a  
19 misinterpretation occurs regarding the court proceedings the record will not help to settle the  
20 matter. The integrity of court proceedings is in jeopardy when errors are allowed to go  
21 unchecked and unproven by the record. If the right to be present at one's trial is to mean  
22 anything, it is imperative that a scrupulously accurate translation of the proceedings be  
23 communicated.

24 The language of the Court Interpreter Act also suggests that using multiple interpreters  
25 is desirable. "If any interpreter is unable to communicate effectively . . . the presiding judicial  
26 officer shall dismiss such interpreter and obtain the services of another interpreter." (28 USCS  
27 § 1827(e)(1).) With evidence suggesting that after a half-hour effective interpretation begins to  
28 subside, we should mandate the use of team interpreters. This would bypass the step of  
having to evaluate the performance of an interpreter while they perform a job that is difficult to  
determine when it is being done ineffectively.

1 Team interpretation used in tandem is the current standard of interpreter competence.  
2 AS noted in the United Nations, the U.S. State Department, the International Court of Justice,  
3 and federal courts, “[n]o individual simultaneous interpreter is allowed to work for more than 30  
4 minutes at a time.” (*Vidal, supra*). Due Process requires this court to order the use of a two  
5 interpreter team during the trial proceedings in this case.

6  
7 **CONCLUSION**  
8

9 For the reasons stated above defendant respectfully requests that he be provided the  
10 use of two interpreters to use in tandem during the upcoming proceeding in which the  
11 defendant is an exclusive Spanish speaker.  
12

13 Dated: \_\_\_\_\_  
14

Respectfully submitted,  
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16 By:

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# EXHIBIT 1