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To: Pumphrey Law Criminal Defense

Subj: Causes of Wrongful Convictions

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The [National Institute of Justice](#) states that people who are wrongfully convicted fall into two broad categories -- persons who are factually innocent of their charges or those who fall victim to procedural errors violating their constitutional, civil or statutory rights. Many convictions are overturned due to post-conviction DNA testing of crime scene materials, which prove their factual innocence. However, some convicted individuals are unable to overturn their convictions because the type of crime they were convicted of cannot be disproved by DNA evidence, like certain kinds of child abuse, or because there is no recognized statutory or constitutional right to a licensed language interpreter for Latinx and non-native English speakers during police interrogations. It is well documented that an [alleged suspect's race](#) factors into whether they will face more procedural errors in the conviction process, or ultimately receive the death penalty in a capital murder trial, particularly if the defendant is Black and the victim is white. Yet, there is less attention to the wrongful convictions of women or Latinx people who have limited English proficiency.

Women are less likely to achieve exoneration because they are often convicted of crimes where DNA cannot disprove their guilt, particularly if events leading to the conviction were caused by the [victim's suicide, fabricated crimes or accident](#). One type of crime that mothers or female caregivers are often convicted of is [Abusive Head Trauma](#) or "shaken baby syndrome." Abusive Head Trauma supposedly occurs when someone violently shakes a young child or infant, and the resulting trauma causes brain swelling and other injuries. However, scientists have said the main symptoms of abusive head trauma - diffuse brain swelling, subdural hemorrhage, and retinal hemorrhages - can have other causes including diseases, or falling at home. Yet, when mothers take a baby with these kinds of symptoms to the hospital, untrained clinical staff may misdiagnose the child as being abused. The charges of abuse, in turn, make it more likely for a mother to be wrongfully convicted of a crime they did not commit, particularly Black and Latinx mothers, who society has historically labelled as unfit parents.

Separately, Spanish-speaking Latinx people who have been wrongfully convicted usually face different challenges than women generally, especially when they lack access to a qualified interpreter during police interrogation. In *Miranda v. Arizona* (1966), the Supreme Court held that all criminal suspects who have been taken into police custody, must have their Miranda warnings read to them and affirmatively waive their Sixth and Fifth Amendment rights to counsel and silence, through a knowing and intelligent waiver, before any of their voluntary statements could be used at trial. The Court did not establish either in *Miranda* or future cases that suspects have a constitutional right to a legally qualified interpreter when, due to language barriers, they cannot understand their *Miranda* warnings or the criminal proceedings against them. Therefore, any "voluntary" statements taken from a non-English speaking suspect can be admitted at trial, even if they have minimally understood their rights.

Take for instance, [Rosa Jimenez](#) who was a non-English speaking nanny for Bryan Gutierrez, a 21-month-old toddler. In 2003, while living in Austin, Texas, and caring for Bryan, Rosa noticed the boy gasping for breath. Unable to alleviate his choking, she ran to a neighbor's home for help. Paramedics later arrived and removed the obstruction - a wad of paper towels -

from the boy's throat. After doctors declared Bryan was brain dead, Rosa was arrested and questioned by an officer who was supposedly bilingual. Because of insufficient language translation during her interrogation, Rosa unwittingly waived her *Miranda* rights and submitted statements that were misconstrued as evidence of her guilt. At trial, the prosecution alleged Rosa forced the child to consume the paper towels, and the prosecution's medical witnesses, who were not pediatric airway experts, testified that the child's death could not have been accidental. If not for the lack of an adequate interpreter who could fully appraise Rosa of her constitutional rights, as well as the un rebutted testimony of non-expert medical witnesses, Rosa might have been freed. Only in 2021 did a trial court judge recommend Rosa's conviction be vacated when top pediatric airway specialists testified that all evidence suggested Bryan accidentally choked.

Rosa's wrongful conviction is not an outlier. Too often, non-English speaking Latinx people are denied a qualified interpreter during police interrogations. Or, for women generally, they are often accused of abusing their children when an accident was really to blame. As of 1989, [241 women](#) have been exonerated and most of these exonerees were convicted of crimes that never occurred. To prevent these miscarriages of justice, I am proposing two changes.

The first is a federal law requiring the presence of a certified translator for any custodial suspect who states they do not understand the criminal proceedings against them due to a language barrier or someone a law enforcement officer suspects has limited English proficiency. The issue of whether someone has been denied an interpreter is a question of fact that requires the State to prove the defendant had adequate interpretation services or sufficient English proficiency to understand the interrogation process. The test would be met where a defendant has obtained a high school degree or higher in English or has communicated verbally or in writing in a fluent manner. Finally, indigent defendants and their public defenders should have equitable access to medical experts like the prosecution, and this access should be funded through each state's budget for public defender services.

Often, the resources of state-appointed attorneys are limited and they cannot put on a robust defense when presented with a mountain of medical evidence in certain cases, except in very rare cases where expert medical professionals provide services at no cost. While these measures are not foolproof, they would provide greater statutory protections for women and Latinx defendants who have the greatest challenge of proving their innocence. Overall, the interrogation and trial processes need to be improved to prevent more innocent people from being unnecessarily imprisoned and separated from their families.

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