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| District Court, Arapahoe County, Colorado Arapahoe County Courthouse7325 S. Potomac St., Englewood, CO 80112 D | ATE FILED: October 3, 2017 3:46 PM ILING ID: 29C91C6351460ASE NUMBER: 2017CR988* COURT USE ONLY 
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| **THE PEOPLE OF THE STATE OF COLORADO**, FPlaintiff Cv.**ANGELA INGA**,Defendant. |
| Katie Telfer, #41720Deputy State Public DefenderDouglas K. Wilson, Colorado State Public Defender Arapahoe County Public Defenders12350 E. Arapahoe Road, Suite A, Centennial, CO 80112 Phone (303) 799-9001 Fax (303) 792-0822E-mail: katie.telfer@coloradodefenders.us | Case No.: **2017CR988**Division: **309** |
| **DEFENSE MOTION #6: MOTION TO SUPPRESS STATEMENTS** |

Angela Inga, through counsel, respectfully moves this Court to suppress all statements, observations, and evidence acquired by law enforcement in the course of her custodial interrogation.

AS GROUNDS, Ms. Inga asserts:

# FACTUAL BACKGROUND

1. On April 4, 2017, Ms. Inga was contacted by officers with the Aurora Police Department (“APD”) at her apartment at 918 S. Ivory Circle Unit E in Aurora, Colorado where Ms. Inga was living.
2. Officers were dispatched to this address on the report of an alleged assault after the complaining witness, Ms. Mirian Yurivilca-Arellana, went to the police station and made a report.
3. When APD officers arrived, Ms. Inga’s roommate, Ms. Bessy Betanco-Cruz opened the door and allowed police to come inside the residence. Police subsequently made contact with Ms. Inga inside of the residence and began questioning her about what happened.
4. Ms. Inga does not speak English and the interrogation was done in Spanish by multiple armed officers in uniform. Officer Stephenson enlisted the aid of Officer Dexter Sanchez to interpret between he and Ms. Inga. Nowhere in discovery provided does it indicate whether or not Officer Sanchez is a certified Spanish interpreter nor does it indicate whether he is

fluent in Spanish or what his qualifications are in relation to his ability to speak and understand Spanish.1

1. As a result of questions and commands, Ms. Inga made statements to APD officers.
2. At all points Ms. Inga was interrogated by police officers she was in custody.
3. Prior to and during Ms. Inga being questioned, at no point was she read her *Miranda* rights.
4. Subsequently, officers handcuffed Ms. Inga and transported her to the Aurora jail and the police reports provided to defense counsel indicate Ms. Inga made no further statements to police officers after the initial interrogation.

# LEGAL GROUNDS

**I. When a Suspect is In Custody and Interrogated, She Must Be Given a Miranda Advisement**

1. Once a suspect is in custody, police must not interrogate her until they have provided her with an advisement pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and obtained a knowing, intelligent, and voluntary waiver of those rights by the suspect. People v. Hopkins, 774 P.2d 849 (Colo. 1989). If the Miranda requirements are not complied with, the suspect’s statements must be suppressed at trial. Oregon v. Elstad, 470 U.S. 298 (1985); People v. Viduya, 703 P.2d 1281 (Colo. 1985); U.S. Const. amends. V, VI, XIV; Colo. Const., art. II, §§ 16, 25.

# Interrogation:

1. Interrogation occurs when the words or actions of police “are reasonably likely to elicit an incriminating response from the suspect.” Rhode Island v. Ellis, 446 U.S. 291, 301 (1980); People v. Trujillo, 784 P.2d 788, 790 (Colo. 1990). “Interrogation includes both express questioning and ‘any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.’" In the Interest of D.F.L., 931 P.2d 448, 454 (Colo. 1997) (q*uoting* Rhode Island v. Innis, 446 U.S. 291, 301 (1980)) (interrogation occurred when, in conducting a search of a house for drugs, police questioned individuals as to the ownership of a purse that was later found to have drugs in it).

# Custody:

1. Custody exists if, based on the totality of the circumstances, “a reasonable person in the suspect’s position would have considered himself deprived of his freedom of action in a significant way.” People v. Hamilton, 831 P.2d 1326 (Colo. 1992). Relevant criteria include the

1 Interviews conducted subsequently by Detective McDonald with Ms. Yurivilca-Arellana and Ms. Betanco-Cruz were done with the assistance of the APD’s Spanish interpreter, Ms. Irma Creamer.

time, place, and purpose of the encounter with the suspect, ability to leave, as well as the words, tone of voice, and general demeanor of the officer, the accusatory nature of the interview, and the suspect’s response to directions provided by the police. People v. LaFrankie, 858 P.2d 702 (Colo. 1993); People v. Milhollin, 751 P.2d 43, 49 (Colo. 1988); Trujillo.

1. Custodial interrogation not only occurs while the person making the statement has been formally arrested but whenever his freedom of action is curtailed to a degree associated with formal arrest. People v. Polander, 41 P.3d 698 (Colo. 2001); People v. Mangum, 48 P.3d 568, 571 (Colo. 2002). “[T]he specific test for determining if a seizure has occurred as whether, under the totality of the circumstances, an encounter between a police officer and a citizen is so intimidating as to demonstrate that a reasonable, innocent person would not feel free to decline the officers' requests or otherwise terminate the encounter. People v. Taylor, 41 P.3d 681, 686 (Colo. 2002). Additionally, a police contact originally not deemed to be custodial can become custodial as a result of the officer’s actions during an interrogation. *See* Trujillo.
2. Even if a suspect is told that she is free to leave, the circumstances of police contact may render the encounter custodial in nature. People v. Moore, 900 P.2d 66 (Colo. 1995); People v. Horn, 790 P.2d 816 (Colo. 1990). *See* People v. Minjarez, 81 P.3d 348, at 355-56 (Colo. 2003). (Even though defendant was told he was free to leave during an interrogation conducted in a private conference room at a hospital, the Court concluded defendant was in-custody. In making its determination, the Court relied on the facts that the interrogation occurred in isolation in a small room with the door closed, the officers blocked the defendant’s access to the only exit in the room, the defendant was repeatedly confronted with the weight of the evidence against him, the questions posed by the officer “provided all of the details of the incident and were designed essentially to force agreement from the defendant”, and the interview was conducted in a “highly confrontational and accusatory atmosphere that was clearly aimed at obtaining a confession.”)

# Waiver:

1. To be effective, a waiver of Miranda rights must be made voluntarily, knowingly, and intelligently. People v. Humphrey, 132 P.3d 352, 356 (Colo. 2006). The first prong of the waiver validity inquiry concerns whether the waiver "was the product of a free and deliberate choice rather than intimidation, coercion, or deception". Humphrey, 132 P.3d at 356; see People v. May, 859 P.2d 879, 882 (Colo. 1993). To be knowing and intelligently executed, "the waiver must have been made with a full awareness, both of the nature of the right being abandoned and the consequences of the decision to abandon it." Humphrey, 132 P.3d at 859; May, 859 P.2d at 882.
2. When a defendant moves to suppress the admission of her statements to police, the prosecution bears the burden of proving, by a preponderance of the evidence, that the accused made a knowing, intelligent, and voluntary waiver of his rights. Colorado v. Connelly, 479 U.S. 157 (1986); People v. DeBaca, 736 P.2d 25 (Colo. 1987). Every reasonable presumption against waiver should be indulged by the courts. Brewer v. Williams, 430 U.S. 387 (1977); People v. Pierson, 670 P.2d 770, 775 (Colo. 1983).
3. In suppressing a defendant’s statements the Colorado Supreme Court noted not only the inaccuracies and deficiencies of an inexperienced interpreter in communicating the Miranda advisement to a defendant, but also noted other inaccuracies evident in the substance of the interrogation itself. People v. Aguilar-Ramos, 86 P.3d 397, 399 (Colo. 2004). People v. Hinojos- Mendoza reaffirmed that “…admission of translated testimony is appropriate when the circumstances assure its reliability.” 149 P.3d 30, 38 (Colo. App., 2005).

# Voluntariness:

1. For the defendant's statement to be admissible, it must be voluntary. [Jackson v. Denno, 378 U.S. 368 (1964).](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1964124873&amp;pubNum=708&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Search%29) The People must establish the voluntariness of a confession by a preponderance of the evidence. [People v. Martinez, 185 Colo. 187, 523 P.2d 120 (1974).](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1974124523&amp;pubNum=661&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Search%29) [People v. Shearer, 181 Colo. 237, 508 P.2d 1249 (1973).](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1973123076&amp;pubNum=661&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Search%29)
2. A suspect’s statements must be suppressed if they are involuntarily given. In order to be admissible, a suspect’s statements must also be voluntarily given without the influence of coercive governmental conduct. Colorado v. Connelly, 479 U.S. 157, 167 (1986); People v. Mendoza-Rodriguez, 790 P.2d 810, 816 (1990). U.S. Const. amends. V, VI, XIV; Colo. Const., art. II, §§ 16, 25. To be voluntary, a statement “must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however, slight, nor by the exertion of any improper influence.” Brady v. United States, 397 U.S. 742, 753 (1970); Mendoza-Rodriguez, 790 P.2d at 816.
3. The court must evaluate the totality of the circumstances including the details of the interrogation and the conduct and characteristics of the defendant. People v. DeBaca, 736 P.2d 25 (Colo. 1987, citing). [People v. Cummings, 706 P.2d 766, 769 (Colo.1985);](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1985147081&amp;pubNum=661&amp;fi=co_pp_sp_661_769&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Keycite%29&amp;co_pp_sp_661_769) [People v. Corley, 698 P.2d 1336, 1339 (Colo.1985);](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1985122505&amp;pubNum=661&amp;fi=co_pp_sp_661_1339&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Keycite%29&amp;co_pp_sp_661_1339) [People v. Fish, 660 P.2d 505, 508–10 (Colo.1983)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1983112953&amp;pubNum=661&amp;fi=co_pp_sp_661_508&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Keycite%29&amp;co_pp_sp_661_508). When considering the totality of the circumstances, “the mental condition of the person making the statement at the time the statement is made is one of the factors relevant to the question of voluntariness[.]” [People v. Rhodes, 729 P.2d 982, 984–85 (Colo.1985)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1986163000&amp;pubNum=661&amp;fi=co_pp_sp_661_984&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Keycite%29&amp;co_pp_sp_661_984) (citing [People v. Raffaelli, 647 P.2d 230, 235 (Colo.1982);](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1982129332&amp;pubNum=661&amp;fi=co_pp_sp_661_235&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Keycite%29&amp;co_pp_sp_661_235) [People v. Parks, 195 Colo. 344, 579 P.2d 76 (1978)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1978109645&amp;pubNum=661&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Keycite%29)). *See also* People v. Fordyce, 612 P.2d 1131 (1980) (Court affirmed trial court’s suppression of statement as involuntary where extensive evidence was presented that defendant was suffering from effects of morphine intoxication at the time the statement was given to a police officer).
4. Subtle forms of psychological coercion by police may be sufficient to render a statement involuntary. People v. Gennings, 808 P.2d 839, 843-44 (Colo. 1991); see People v. Medina, 25 P.3d 1216 (Colo. 2001) (defendant’s non-custodial statement was involuntary where police threatened to take custody of Defendant’s child if he did not confess). A suspect’s mental condition is a factor to be considered in determining whether he may be susceptible to coercion. People v. Parks, 579 P.2d 76 (Colo. 1978). See People v. McIntyre, 798 P.2d 1108 (Colo. 1990) (affirming suppression ruling where there was sufficient evidence to support trial court's finding that officer was aware of defendant's fragile mental and emotional condition and exploited weakness to obtain confession); People Raffaelli, 647 P.2d 230 (Colo. 1982) (upholding trial court's finding of involuntariness where defendant was under substantial emotional stress, underwent repetitive questioning, and nature of interrogation was accusatory, although conducted in conversational tone).
5. Factors a court must consider include, but are not limited to: whether the defendant was in custody or was free to leave and was aware of his situation; whether *Miranda* warnings were given prior to any interrogation and whether the defendant understood and waived his *Miranda* rights; whether the defendant had the opportunity to confer with counsel or any one else prior to the interrogation; whether the challenged statement was made during the course of an interrogation or was instead volunteered; whether any overt or implied threat or promise was directed to the defendant; the method and style employed by the interrogator in questioning the defendant and the length and place of the interrogation; and the defendant's mental and physical condition immediately prior to and during the interrogation as well as his educational background, employment status, and prior experience with law enforcement and the criminal justice system. [Gennings*,* 808 P.2d at 844.](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&amp;serNum=1991079553&amp;pubNum=661&amp;fi=co_pp_sp_661_844&amp;originationContext=document&amp;transitionType=DocumentItem&amp;contextData=%28sc.Search%29&amp;co_pp_sp_661_844)
6. Should a court find that a suspect’s statements are involuntary, such statements may not be used either in the prosecution’s case-in-chief nor for impeachment of the suspect should she choose to testify at trial. Effland*,* at 877.

# ARGUMENT

1. At all points during interrogation, Ms. Inga was in-custody; her freedom of action was curtailed to a point associated with formal arrest, and she was asked questions meant to elicit incriminating responses.
2. Ms. Inga was not properly advised of her rights under *Miranda* prior to making these statements and was interrogated with the assistance of another officer whose qualifications in the Spanish language are unknown.
3. Finally, any statements made by Ms. Inga were not voluntarily made.

WHEREFORE, Ms. Inga respectfully requests this Court issue an order suppressing as incriminatory evidence the above-described statements, and all observations and evidence obtained as a result thereof, pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution; Rule 5 of the Colorado Rules of Criminal Procedure; Chapter 16, Article 3, Colorado Revised Statutes; and Article II, Sections 7, 16, and 25 of the Colorado Constitution.

DOUGLAS K. WILSON

COLORADO STATE PUBLIC DEFENDER

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|  /s/ Katie Telfer Katie Telfer, #41720Deputy State Public Defenders Dated: October 3, 2017 | **Certificate of Service**I hereby certify that on October 3, 2017, I served the foregoing document through ICCES to opposing counsel of record./s/ Katie Telfer |