

# ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
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June 3, 2010

## **Miranda on the Ropes. Again.**

Miranda rights suffer another setback in the United States Supreme Court case of *Berghuis v. Thompkins*. The court held that is not enough to remain silent to stop police questioning, a suspect in a criminal case must explicitly invoke his or her Miranda rights.

The ruling will allow police to interrogate suspects for hours on end so long as the suspect does not state to the police the wish to invoke Miranda. It is rightfully feared that the police will abuse the greater latitude particularly in cases of poorly educated, mentally ill, impaired, or generally unsophisticated suspects. The court's ruling may have even greater consequences for those whose first language is not English particularly in the 10th Circuit where non-English speaking suspects may waive important constitutional rights without the benefit of an interpreter.

*Berghuis v. Thompkins* represents just one more setback to Miranda. In fact, the exceptions to Miranda are so numerous as to render it virtually meaningless even before this opinion. Perhaps more troubling than the opinion itself is the Court's willingness to cast aside long established constitutional rights. This same mind-set is present throughout the Circuit Courts as well. So what does it all mean?

It means a suspect should keep his or her mouth shut except to the degree necessary to assert Miranda Rights. After all the right to remain silent under the 5th Amendment is the essence of Miranda. The fact is that there are so many exceptions to Miranda that anything said to the police is likely to end up in court. Likewise, any physical evidence discovered as a result of questioning will be admitted. It is extremely rare that the evidence would be completely suppressed. It is rarer still that a case would be dismissed for a violation of Miranda. On the other hand, there are countless ways that a suspect's statements may damage his or her defense.

Many labor under the misconception that the legal system is fair and balanced. Just as many believe that accused persons are presumed innocent. It is not and they are not. This is made most clear in the cases involving Miranda disputes. Once a "confession" is extracted or even alleged to have been extracted, the burden shifts to the defendant. Clearly, judges are going to believe police over an accused. If there is any question as to the legitimacy of the Miranda warnings, and the suspects waiver of Miranda rights, the courts will err on the side of the police. This made clear each and every day in criminal courts across the country. Ties go to the prosecution as in the recent 10th Circuit

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case of *US v. Silva-Arzeta* where the police alleged that the suspect consented to the search of his residence despite the fact that he did not speak English, no interpreter was provided and the suspect was first taken into custody a distance from his residence.

In light of *Berghuis v. Thompkins*, *Silva-Arzeta*, and the growing list of exceptions, is there any question how the courts will rule in case of a dispute over Miranda? Keep this in mind as Arizona's "Papers Please" law moves forward. It is a fairly safe bet that these trends will quickly come into play there.

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