



Supreme Court

STATE OF ARIZONA

FROM THE CHAMBERS OF
RUTH V. MCGREGOR
CHIEF JUSTICE

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RMcGregor@courts.az.gov

October 2, 2008

Lizzette Alameda Zubey
2008 Los Abogados President
Los Abogados Hispanic Bar Association
P.O. Box 813
Phoenix, Arizona 85001

Salvador Ongaro
President Elect

Dear Lizzette and Salvador:

Thank you for your letter of September 12, 2008, asking that our judges and employees refrain from using certain derogatory terms in court documents and proceedings. I have taken several steps to notify our judges of your concerns.

Because you provided a copy of your letter to Judge Timmer, Division One of the Court of Appeals is aware of your concerns. With a copy of this letter, I am sending your request to Judge John Pelander, Chief Judge of Division Two of the Court of Appeals. I will provide copies to all superior court presiding judges at our scheduled meeting on October 21, 2008. If Judge Song Ong has not already done so, I request that the Commission on Minorities in the Judiciary consider whether any further distribution of your request would be helpful.

Thank you for bringing your concerns to our attention.

Sincerely,

A handwritten signature in cursive script, reading "Ruth V. McGregor", is written over the typed name.

Ruth V. McGregor
Chief Justice
Arizona Supreme Court

Copy w/attachment to: Judge Pelander, Chief Judge, Court of Appeals Division 2
Copy of letter to: Judge Timmer, Chief Judge, Court of Appeals Division 1
Judge Irvine, Vice Chief Judge, Court of Appeals Division 1
Judge Song Ong, Commission on Minorities in the Judiciary

LOS ABOGADOS HISPANIC BAR ASSOCIATION

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September 12, 2008

The Honorable Ruth V. McGregor
Chief Justice of the Supreme Court of Arizona
1501W. Washington Street
Phoenix, Arizona 85007-3231

Dear Chief Justice McGregor:

Los Abogados, the Hispanic bar association of Arizona, requests your assistance in disseminating some important information to Arizona's judges and their staff. Specifically, we ask that you strongly encourage Arizona's judges and court employees to avoid using certain inflammatory immigrant-related terms in court documents, correspondence, and proceedings. Rather than describing the act that may have been committed by that person, these terms attach an illegal status to the person, thereby establishing a brand of contemptibility. We believe elimination of these unnecessary terms from public documents and proceedings will increase the professionalism of the courts, reduce perceptions of judicial bias, and lead to greater confidence in Arizona's courts.

Recently, Los Abogados gave a presentation to the Arizona Judicial Council's Commission on Minorities in the Judiciary on eliminating the use of these provocative terms in court opinions and court proceedings. Specifically, we highly discouraged use of the words "illegals" and "aliens" to describe persons without lawful immigration status. These terms, even when innocuously used, create division in our state and add nothing to today's immigration debate. Perhaps worse, the use of these words gives the appearance of anti-immigrant prejudice and tarnishes the image of our courts as a place where disputes may be fairly resolved. With this letter we attach a list of objectionable terms and our proposed substitutes.

There is no place in today's immigration debate for the use of the term "illegal" to describe a person. Those supporting federal immigration reform and human rights for the undocumented uniformly declare that "no human being is illegal," but that only captures part of the issue. Nobody uses the term "illegals" to describe other people who are carrying on in their daily lives with impunity after violating the law. Persons who fail to

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register for Selective Service, who do not pay their taxes, who do not have a current driver's license while driving, or who violate their probation are not labeled an "illegal." Putting this in greater perspective, even a convicted murderer is never referred to as an "illegal" because of that conviction.

The words "illegals," "aliens," and others have been roundly criticized by the National Association of Hispanic Journalists ("NAHJ") for dehumanizing a segment of the population. A copy of that organization's position on the issue is attached.

Those that use the terms as an instrument of hate know that it insults and incenses those that oppose their views. At the same time, they know it perpetuates an "us vs. them" mentality and works their supporters into a frenzy. The word "illegals" as well as several others in the attached list are used with great calculation and a wink and nod by their proponents. The more the language becomes part of our everyday vocabulary, the easier it is for proponents of hate to push forward their divisive agenda.

Our concerns that lead us to write you stem from the use of the terms "illegals" and "illegal individual" to refer to undocumented immigrants in the Court of Appeals' published opinion in *Hernandez v. Lynch*.¹ A copy of that opinion highlighting those offensive terms is attached. The terms were concededly direct quotations from State Representative Russell Pearce, sponsor and proponent of the law at issue. Nonetheless, we believe that Arizona's courts should not give perceived legitimacy to that type of speech and should steer clear from employing it. For example, in that particular case, the same point could have been made without quoting the intentionally divisive language of the law's proponent. A paraphrased reference could have sufficed in those circumstances. The opinion likewise includes other objectionable terms from the list we have attached.

¹ 216 Ariz. 469, 167 P.3d 1264 (App. 2007) (review denied April 22, 2008).

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The *Hernandez* case is only a recent example. The Arizona Supreme Court has used the term "illegals" in at least two other opinions,² and the term "illegal alien(s)" to describe undocumented immigrants has been used on several occasions in at least forty published Arizona opinions.³ Notwithstanding the rooted history of the term "aliens" to describe foreign immigrants, the NAHJ posits, and we concur, that the term is pejorative and alternatives should always be sought. An exception would be if the term "aliens" must be quoted to maintain context, such as if statutory language must be specifically included. Even so, the evolving meaning and impact of certain historical words require a periodic reevaluation. For example, an analogy can be drawn to current statutes referring to those persons unable to speak as being "dumb"⁴ or to children with a disability as being "mentally retarded."⁵ Similarly, designations like "idiot" and "lunatic" to describe the mentally ill are remnants of a different era.⁶ The mere existence of words in our legal history does not render them socially acceptable today.

In light of the above, Los Abogados asks that use of the words from the attached list of terms by Arizona's judiciary be strongly discouraged as being counterproductive to the purpose of the courts. By this request, we are not asking Arizona's courts to favor one side of the immigration debate over the other. Instead, we believe it essential to ongoing public dialogue to eliminate hate speech in all forms and to strip away all vestiges of perceived bias. Most are familiar with many terms that are inappropriate for public speech and usage. By writing to you we intend to educate on additional words that should be considered outside the realms of civil language and society. We hope to count on your support in communicating these points to all judges and court employees

² See *St. Joseph's Hosp. & Med. Ctr. v. Maricopa Cty.*, 142 Ariz. 94, 100, 688 P.2d 986, 992 (1984) (attached); see also *State v. Boggs*, 218 Ariz. 89, 180 P.3d 392, 410 ¶ 83 (2008).

³ See, e.g., *State v. Flores*, ___ P.3d ___, 2008 WL 2930103, at *5 ¶¶ 13-15 (Ariz. Ct. App. July 31, 2008); *State v. Barragan-Sierra*, ___ P.3d ___, 2008 WL 2764611, at *4 ¶ 15, *10-*11 ¶¶ 32-34 (Ariz. Ct. App. July 17, 2008); *Segura v. Cunanan*, ___ P.3d ___, 2008 WL 1822308, at *4 ¶¶ 15-16 (Ariz. Ct. App. April 24, 2008).

⁴ See A.R.S. § 15-304(A).

⁵ See A.R.S. § 36-203(A).

⁶ See A.R.S. § 1-215(21).

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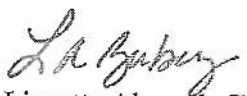
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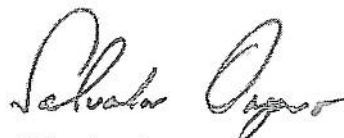
Juan Pablo G. Zaragoza

in Arizona so that none of these hurtful terms are used in Arizona court documents or proceedings again.

Sincerely,



Lizzette Alameda Zubey
2008 Los Abogados President



Salvador Ongaro
President-Elect

Enclosures

cc: Vice Chief Justice Rebecca White Berch
Chief Judge Ann A. Scott Timmer, Arizona Court of Appeals
Vice Chief Judge Patrick Irvine, Arizona Court of Appeals
Hon. Roxanne K. Song Ong, Chair of Commission on Minorities
in the Judiciary

Immigration Terms

Immigrants

YES:

Undocumented immigrants

Foreign nationals

Persons without legal immigration status

Unauthorized workers

Alleged or suspected undocumented immigrants

NO:

Illegals

Illegal aliens

Aliens

Resident or non-resident aliens

Illegal immigrants

Scratchbacks or wetbacks

Armies of immigrants

Invaders

"Reconquistadores"

Anchor babies

Immigration

YES:

Immigration debate
Immigration issue
Immigration problem
Immigration

NO:

Illegal immigration
Immigration epidemic
Immigration crisis
Immigrant invasion

Activists

YES:

Human rights advocates
Pro-immigrant supporters
Immigration reform proponents
Community activists

NO:

Pro-illegal immigration activists
Open borders advocates
Illegal immigrants
Proponents for amnesty