

1 Daniel J. Pochoda
2 ACLU Foundation of Arizona
3 3707 North 7th Street, Ste. 235
4 Phoenix, AZ 85014
5 Telephone: (602) 650-1854
6 Facsimile: (602) 650-1376
7 dpochoda@acluaz.org
8

9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE DISTRICT OF ARIZONA**

11 Manuel de Jesus Ortega Melendres,) No. CV 07-02513-PHX-GMS
12 et al.,)
13 Plaintiffs,)
14 Joseph M. Arpaio, et al.,)
15 Defendants)
16)
17)

18 **LODGED PROPOSED:**

19 **RESPONSE TO DEFENDANTS' OBJECTIONS TO PLAINTIFFS'**
20 **MONITOR NOMINEES AND RESPONSE TO DEFENDANTS'**
21 **NOMINATIONS OF MONITOR CANDIDATES**
22
23
24
25
26
27
28

CV-07-2513-PHX-GMS

Additional Attorneys for Plaintiffs:

Stanley Young (*Pro Hac Vice*)
syoun@cov.com
Covington & Burling LLP
333 Twin Dolphin Drive
Suite 700
Redwood Shores, CA 94065-1418
Telephone: (650) 632-4700
Facsimile: (650) 632-4800

Tammy Albarran (*Pro Hac Vice*)
talbarran@cov.com
David Hults (*Pro Hac Vice*)
dhults@cov.com
Covington & Burling LLP
1 Front Street
San Francisco, CA 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

Lesli Gallagher (*Pro Hac Vice*)
lgallagher@cov.com
Covington & Burling LLP
9191 Towne Centre Drive, 6th Floor
San Diego CA 92122
Telephone: (858) 678-1800
Facsimile: (858) 678-1600

Anne Lai (*Pro Hac Vice*)
alai@law.uci.edu
401 E. Peltason, Suite 3500
Irvine, CA 92697-8000
Telephone: (949) 824-9894
Facsimile: (949) 824-0066

Cecillia Wang (*Pro Hac Vice*)
cwang@aclu.org
ACLU Foundation
Immigrants' Rights Project
39 Drumm Street
San Francisco, California 94111
Telephone: (415) 343-0775
Facsimile: (415) 395-0950

1 Andre Segura (*Pro Hac Vice*)
2 asegura@aclu.org
3 ACLU Foundation
4 Immigrants' Rights Project
5 125 Broad Street, 17th Floor
6 New York, NY 10004
7 Telephone: (212) 549-2676
8 Facsimile: (212) 549-2654
9

10 Nancy Ramirez (*Pro Hac Vice*)
11 nramirez@maldef.org
12 Mexican American Legal Defense and
13 Educational Fund
14 634 South Spring Street, 11th Floor
15 Los Angeles, California 90014
16 Telephone: (213) 629-2512
17 Facsimile: (213) 629-0266
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiffs submit the following response to Defendants' objections to Plaintiffs'
2 proposed Monitor candidates filed on December 11, 2013.

3 **Plaintiffs' Approach and Nominees**

4 Based on Plaintiffs' familiarity with other cases involving unconstitutional
5 practices by law enforcement agencies and court-supervised remediation, Plaintiffs are
6 aware that selection of the Monitor is one of the most important determinants for
7 successful reform of agency practices and culture, and for reversing the harms to the
8 community. The Monitor will be the eyes and ears of the Court for the coming years.
9 After considering many potential candidates among experienced monitors and prominent
10 experts and spending many hours interviewing, gathering inputs and conducting due
11 diligence, Plaintiffs selected several qualified candidates to present to the Court.
12 Plaintiffs' process enabled them to provide the Court with important information beyond
13 a resume in order to assist the Court in its decision.

14 Robert Warshaw was nominated by Plaintiffs based on his substantial record of
15 success as a Monitor in several cases and upon the recommendation of others familiar
16 with his work. His qualifications, approach and references are set out in Doc. 625-1,
17 Exhibit A.

18 Joseph Brann also has a proven track record as a Monitor in similar cases and high
19 marks from those he has worked with. His information is set out in Doc. 625-2, Ex. B and
20 Doc. 627-1, Ex. A. Defendants have not challenged any aspect of Mr. Brann's work or
21 reputation, but seek to disqualify one of his proposed advisors, Paul Charlton. Mr.
22 Charlton is a former United States Attorney for Arizona, appointed by President George
23 W. Bush, and a well-respected member of the legal community. His affiliation with the
24 firm of Steptoe and Johnson began only in the last two months. Moreover, Mr. Charlton
25 was listed as a local Arizona contact for legal consultation, and not as an indispensable
26 member of Mr. Brann's proposal. As stated in his proposal, Mr. Brann is also open to
27

1 “reconsidering the composition of the current team” if that would be of assistance. Doc.
2 627-1, Ex. at 9.

3 Timothy Nelson is a prominent member of the Arizona Bar and served as Chief
4 Deputy Attorney General supervising the work of the seven legal divisions in the Arizona
5 Attorney General’s office. Defendants object because Mr. Nelson is a Democrat and
6 worked with a Democratic Governor allegedly involved in unnamed positions adverse to
7 Defendants. In fact, while Tim Nelson was Counsel, Governor Napolitano intervened to
8 obtain Defendant Arpaio’s 287(g) authority from the federal government and Arpaio
9 endorsed her candidacy.

10 The aforementioned Monitor candidates are available to discuss their qualifications
11 with the Court directly. Plaintiffs will follow direction from the Court as to any future
12 steps that will facilitate selection of the best Monitor.

13 **Defendants’ Nominees**

14 Defendants submitted three candidates for Monitor to the Court for consideration.
15 See Doc. 626 and 626-1, Exs. 1-3.

16 Defendants provided only the resumes for Mr. Wolfinger and Mr. Sanchez and
17 Plaintiffs do not have any additional information about anticipated members of their
18 proposed monitoring team or methodological approach. The resumes themselves
19 demonstrate that neither candidate has experience as a monitor in a similar context.

20 The application Defendants submitted on behalf of Mr. Safir and his VRI firm
21 contains some limited information about the monitoring team. Plaintiffs were also
22 approached by Mr. Safir and sent the same materials; Defendants did not add to the self-
23 selected information presented by this company. Had Defendants conducted any
24 additional due diligence about Mr. Safir, it would have become apparent that he would not
25 be a suitable Monitor in a case. The focus of this case is on widespread racial profiling by
26 a local law enforcement agency. As demonstrated in his prior statements, Mr. Safir

1 harbors a hostility to Court-ordered change in police agencies as a result of findings of
 2 misconduct. For example, in a recent editorial about the decision by the U.S. District
 3 Court in the *Floyd v. City of New York* matter concerning the practice of stop-and-frisk in
 4 New York City, Mr. Safir insisted that the allegations by the Plaintiffs that the New York
 5 Police Department was “using stop-and-frisk as a way of profiling” were false. In the
 6 same editorial, Mr. Safir criticized the court’s order as a “Draconian order that would have
 7 the police monitored by a group of lawyers who know nothing about law enforcement.”
 8 [http://www.nydailynews.com/new-york/safir-stop-and-frisk-ruling-new-yorkers-safe-](http://www.nydailynews.com/new-york/safir-stop-and-frisk-ruling-new-yorkers-safe-article-1.1503484)
 9 [article-1.1503484](http://www.nydailynews.com/new-york/safir-stop-and-frisk-ruling-new-yorkers-safe-article-1.1503484). In July 2013, Safir wrote in the *New York Daily News* that “Alleged
 10 racial profiling has been the clarion call of pandering politicians....”
 11 [http://www.nydailynews.com/opinion/nypd-police-commissioner-howard-safir-bills-](http://www.nydailynews.com/opinion/nypd-police-commissioner-howard-safir-bills-invite-crime-article-1.1408242)
 12 [invite-crime-article-1.1408242](http://www.nydailynews.com/opinion/nypd-police-commissioner-howard-safir-bills-invite-crime-article-1.1408242).

13 Defendants in the instant case have made similar statements to the media during
 14 the six-year reign of racial profiling in Maricopa County. They have also characterized
 15 this Court’s orders in a similarly dismissive way.¹ This further demonstrates that it would
 16 not be appropriate for Mr. Safir to serve as the Monitor in this case.

17 Finally, Mr. Safir’s record as the chief executive of the New York Police
 18 Department from 1996 to 2000 also gives rise to serious concerns about his bias and
 19

20
 21 ¹ Following a Significant Operation conducted by the MCSO in October 2013,
 22 Sheriff Arpaio stated to the media that he was "not concerned about being in violation" of
 23 the Court's order, that he "wanted to send a message that the Sheriff is still in the business
 24 of crime suppression operations" and that "no one is going to take away [his] authority
 25 under the constitution." See [http://www.phoenixnewtimes.com/2013-10-24/news/arpaio-](http://www.phoenixnewtimes.com/2013-10-24/news/arpaio-s-sweep-of-the-west-valley-could-turn-judge-snow-s-order-into-a-paper-tiger/2/)
 26 [s-sweep-of-the-west-valley-could-turn-judge-snow-s-order-into-a-paper-tiger/2/;](http://www.phoenixnewtimes.com/2013-10-24/news/arpaio-s-sweep-of-the-west-valley-could-turn-judge-snow-s-order-into-a-paper-tiger/2/)
[http://www.myfoxphoenix.com/story/23736580/mcso-conducting-another-crime-](http://www.myfoxphoenix.com/story/23736580/mcso-conducting-another-crime-suppression-sweep)
[suppression-sweep; http://www.kpho.com/story/23737670/sheriff-arpaio-defends-latest-](http://www.kpho.com/story/23737670/sheriff-arpaio-defends-latest-crime-sweep)
[crime-sweep](http://www.kpho.com/story/23737670/sheriff-arpaio-defends-latest-crime-sweep). Arpaio further declared, regarding the operation, "Some courts want
 community outreach. I just started it." [http://www.kpho.com/story/23737670/sheriff-](http://www.kpho.com/story/23737670/sheriff-arpaio-defends-latest-crime-sweep)
[arpaio-defends-latest-crime-sweep](http://www.kpho.com/story/23737670/sheriff-arpaio-defends-latest-crime-sweep).

1 predilections in cases involving racial profiling. He was an unusually controversial Police
2 Commissioner and his tenure was marked by tension between minority communities and
3 the Department. The Street Crimes Unit touted by Mr. Safir was disbanded shortly after
4 his departure due to serious allegations of abuse and racial discrimination. These high-
5 profile incidents included two cases of police brutality that received national attention:
6 the extremely brutal sexual abuse of Haitian immigrant Abner Louima while in NYPD
7 custody in 1997, and the shooting of Amadou Diallo, an unarmed African immigrant, with
8 41 shots fired, in 1999. Based on a study that followed, then New York State Attorney
9 General Eliot Spitzer remarked: "I think the perception has been that there is
10 disproportionate stopping of minorities and now we have an analytical basis to say that
11 perception is real." <http://articles.latimes.com/1999/dec/02/news/mn-39850> The U.S.
12 Commission on Civil Rights also concluded after an investigation that the police tactic of
13 racial profiling to stop and question people was a factor "in the racial tensions that can
14 lead to 'tragic and unnecessary' incidents like the shooting of Amadou
15 Diallo." [http://articles.chicagotribune.com/2000-06-16/news/0006170030_1_mary-
16 frances-berry-shooting-of-amadou-diallo-commission-on-civil-rights](http://articles.chicagotribune.com/2000-06-16/news/0006170030_1_mary-frances-berry-shooting-of-amadou-diallo-commission-on-civil-rights)

17
18 RESPECTFULLY SUBMITTED this 13th day of December, 2013.
19
20
21
22
23
24
25
26
27
28

By /s/ Daniel J. Pochoda

Daniel J. Pochoda
dpochoda@acluaz.org
James Lyall
jlyall@acluaz.org
ACLU Foundation of Arizona
3707 North 7th St., Ste. 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376

Stanley Young (*Pro Hac Vice*)
syoun@cov.com
COVINGTON & BURLING LLP
333 Twin Dolphin Drive
Suite 700
Redwood Shores, CA 94065-1418

Tammy Albarran (*Pro Hac Vice*)
talbarran@cov.com
David Hults (*Pro Hac Vice*)
dhults@cov.com
Covington & Burling LLP
1 Front Street
San Francisco, CA 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

Lesli Gallagher (*Pro Hac Vice*)
lgallagher@cov.com
Covington & Burling LLP
9191 Towne Centre Drive, 6th Floor
San Diego CA 92122
Telephone: (858) 678-1800
Facsimile: (858) 678-1600

Anne Lai (*Pro Hac Vice*)
alai@law.uci.edu
401 E. Peltason, Suite 3500
Irvine, CA 92697-8000
Telephone: (949) 824-9894
Facsimile: (949) 824-0066

Cecillia Wang (*Pro Hac Vice*)
cwang@aclu.org
ACLU Foundation
Immigrants' Rights Project
39 Drumm Street
San Francisco, California 94111
Telephone: (415) 343-0775
Facsimile: (415) 395-0950

1 Andre Segura (*Pro Hac Vice*)
2 asegura@aclu.org
3 ACLU Foundation
4 Immigrants' Rights Project
5 125 Broad Street, 17th Floor
6 New York, NY 10004
7 Telephone: (212) 549-2676

8 Nancy Ramirez (*Pro Hac Vice*)
9 nramirez@maldef.org
10 Mexican American Legal Defense and
11 Educational Fund
12 634 South Spring Street, 11th Floor
13 Los Angeles, California 90014
14 Telephone: (213) 629-2512
15 Facsimile: (213) 629-0266

16 *Attorneys for Plaintiffs*
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December 2013, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and caused the attached document to be e-mailed to:

Thomas P. Liddy
liddyt@mcao.maricopa.gov

Ann Uglietta
uglietta@mcao.maricopa.gov

Timothy J. Casey
timcasey@azbarristers.com

*Attorneys for Defendant Sheriff Joseph Arpaio and the
Maricopa County Sherriff's Office*

/s/ Gloria A. Torres
Paralegal