

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) August 26, 2014
Joseph M. Arpaio, et al.,) 10:04 a.m.
8)
Defendants.)
9 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE G. MURRAY SNOW

17 (Oral Argument)

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P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is civil case number 07-2513,
Melendres v. Arpaio, on for oral argument.

10:04:33

Counsel, please announce your appearance.

MR. YOUNG: Good morning, Your Honor. Stanley Young
for plaintiffs.

MS. WANG: Good morning, Your Honor. Cecillia Wang,
also for the plaintiffs.

10:04:44

MR. POCHODA: Good morning. Dan Pochoda for
plaintiffs.

THE COURT: Good morning.

MR. CASEY: Good morning, Your Honor. Tim Casey and
James Williams in private practice for the defendants, and also
from the Maricopa County Attorney's Office, Tom Liddy.

10:04:51

THE COURT: All right. I believe as you're all aware,
today I've set oral argument on a long pending motion, which is
the motion for the award of attorneys' fees that's been filed
by plaintiffs in this matter.

10:05:10

Are you all going to speak individually, or how are
you going to handle this? Mr. Young?

MR. YOUNG: For plaintiffs I'll speak primarily, Your
Honor. To the extent there are specific questions relating to
the ACLU and the ACLU fees bills, I'll defer to my co-counsel.

10:05:26

1 THE COURT: All right.

2 MR. CASEY: For the defense, Your Honor, James
3 Williams will take the lead on this particular issue. If
4 there's anything else the Court wants to discuss, then I may --
5 may chime in, to the extent you allow it or it's appropriate. 10:05:38

6 THE COURT: All right. Mr. Young.

7 MR. YOUNG: Thank you, Your Honor. I'll speak very
8 briefly to remind the Court of the policy behind 1988, which is
9 to provide for attorneys' fees in the event of a prevailing
10 party's efforts. If plaintiffs had not prevailed in this case, 10:05:59
11 all of the expenditures and the time that you see before you
12 would not have been compensated.

13 And that's fine, but the statute provides, and the
14 policy provides, for purposes of fulfilling the civil rights
15 law's purpose, that in an event like this where there has been 10:06:17
16 a prevailing party for the plaintiff that the plaintiff should
17 get its fees.

18 I'd like to address just briefly the issue of the
19 rates, and I would point the Court to the cases such as Camacho
20 and the Guam Society, which provide that where -- 10:06:34

21 THE COURT: Is that the Seventh Circuit case?

22 MR. YOUNG: The Guam is actually a Ninth Circuit case.
23 There's a Seventh Circuit case which actually also speaks very
24 eloquently to the policy, which is the Chrapliwy versus
25 Uniroyal case. 10:06:49

1 THE COURT: Well, I'll look at the Seventh Circuit
2 case -- I already have; I remembered it was Seventh Circuit --
3 but can you give me the Ninth Circuit case again?

4 MR. YOUNG: Yes, Camacho versus Bridgeport
5 Financial --

10:07:00

6 THE COURT: -- judicial district, we do find the Ninth
7 Circuit a little bit more persuasive.

8 MR. YOUNG: Yes. Well, the Seventh Circuit case was
9 cited in our reply brief, so it may be a little fresher in your
10 memory. The Ninth Circuit cases are Camacho, 523 973, which
11 also held that where local counsel are unavailable, either
12 because they are unwilling or unable to perform because they
13 lack the degree of experience, expertise, or specialization
14 required to handle properly the case, then the counsel's home
15 practice area rates become the measure for --

10:07:08

10:07:29

16 THE COURT: The Camacho case?

17 MR. YOUNG: Yes, that is the Camacho case.

18 THE COURT: Do you have anything in which you've
19 indicated to me by way of affidavit -- and I have read the
20 affidavits, but it's been a while -- that no counsel within the
21 state was willing to take the case when Steptoe & Johnson left?

10:07:41

22 MR. YOUNG: That is correct, Your Honor. And that's
23 in Mr. Pochoda's declaration. He describes how he went to five
24 different law firms and was unable to find someone here in
25 Arizona who was willing to take the case. And for whatever

10:08:00

1 reason, plaintiffs were just unable to find someone to do that.

2 And I can somewhat attest to a little bit of that just
3 in my own discussions with respect to this motion that the
4 plaintiffs did need to go outside the state in order to find
5 counsel with the staffing and all of the logistical
6 capabilities that were necessary to bring this case to a
7 successful conclusion.

10:08:25

8 Your Honor, we said a lot in our reply brief, I would
9 be happy to answer questions that you may have, but would
10 request leave to either answer your questions or save the
11 balance of my time for rebuttal.

10:08:45

12 THE COURT: Well, I do think, and I've only brought in
13 a small number of the papers that I thought might be helpful
14 today, both parties have given me lots of paper and I've tried
15 to review most of it, but I do -- among the matters that have
16 been raised by the defendants, I do want to ask you
17 particularly about one.

10:09:01

18 They have said -- and I do think that I have to weigh
19 the extent -- they've cited the Gonzalez case for the
20 proposition, of course, that the rate we're looking at is the
21 rate within the venue, and that's a Ninth Circuit case as well
22 so --

10:09:26

23 MR. YOUNG: And that says "generally," Your Honor, I
24 would point out --

25 THE COURT: Yeah.

10:09:34

1 MR. YOUNG: -- it says generally.

2 THE COURT: I'll take a look at Gonzalez; I'll take a
3 look at Camacho. To the extent it's appropriate to consider
4 your rates, I will consider those.

5 But even if I do that, and I am certainly not saying
6 you're not a very valuable attorney, nor would I suggest that
7 about Ms. Wang or Mr. Pochoda, there were nine attorneys at
8 counsel table during trial. I don't mean to be unfair to any
9 of them, and it seems to me that in a case like this, I realize
10 that there are a couple of other things that are at issue:

10:09:45

10:10:16

11 One, many people, many different organizations, may want to be
12 involved and may have given resources; two, in an organization
13 like yours, Mr. Young, you also, understandably, want to train
14 younger attorneys how to conduct trial and do things like that.

15 But if you were billing this to a paying client, would
16 you really have had nine attorneys conducting examinations
17 during the trial?

10:10:40

18 MR. YOUNG: I think in a case where we would have a
19 paying client we would have done something very similar. I
20 don't know whether everyone would have been in there, perhaps a
21 paying client would not have had as many different
22 organizations representing it, but we had a number of
23 organizations who had been involved who lent their expertise to
24 the trial, and their experience with the case, their deep
25 knowledge of the case.

10:11:01

10:11:19

1 Covington & Burling came in the case in the spring of
2 2010. There had been a lot of work that had gone on prior to
3 that by MALDEF and the ACLU Human Rights Project and the ACLU
4 of Arizona. I think that the trial effort would have suffered
5 if all of those organizations had not been present in the
6 trial, who would have -- who were able to provide their
7 knowledge as to the individual class members and named
8 plaintiffs who were coming in to testify.

10:11:37

9 The people who were in the trial I know from our firm
10 had done a great deal of work leading up to the trial, and I
11 think Your Honor is correct that some of the junior attorneys
12 were able to examine witnesses. I know our most junior
13 attorney I think examined a witness, and it's quite possible
14 that in a different circumstance, that would have gone to a
15 more senior attorney. But they were there, they would have
16 been there --

10:12:01

17 THE COURT: The senior attorney would have been you.

18 MR. YOUNG: Well, perhaps, depending on the client.
19 Different --

10:12:24

20 THE COURT: And I'm not saying, and please don't
21 misunderstand me, I'm not saying it's inappropriate; in fact, I
22 think it's commendable for a firm to develop younger lawyers.
23 But I do think that it's fair to say that it's rare that you
24 would expect your clients to pay extra for that development.

10:12:34

25 Is that a fair statement, do you think?

10:12:50

1 MR. YOUNG: I think that there would be write-offs,
2 and we did do write-offs in this case. I mean, the bills that
3 you have seen do reflect some editing, and -- based on desire
4 to avoid duplication.

5 I don't think there was duplication in the trial 10:13:05
6 effort. I think the efforts of the younger attorneys in seeing
7 the trial, doing the witness examinations, but more importantly
8 for the purposes of the post-hearing briefing, seeing how the
9 evidence came in; in some cases, arguing for admission of
10 evidence. 10:13:23

11 For example, I know with respect to some of the
12 documents whose admissibility was in question Ms. Gallagher had
13 more time reviewing the documents and figuring out why they
14 should be admitted and -- than I had. Now, perhaps she could
15 have given that to me, but that time still would have been 10:13:42
16 spent on behalf of a paying client in any case. I wouldn't
17 have been reviewing all --

18 THE COURT: The non-trial time would have been spent,
19 certainly.

20 MR. YOUNG: Right. 10:13:52

21 THE COURT: And some pretrial preparation time. But
22 present throughout the trial?

23 MR. YOUNG: Again, we have, I think, in some cases,
24 written off time for more junior attorneys --

25 THE COURT: That were present in our trial? 10:14:04

1 MR. YOUNG: For presence in a trial, you're right,
2 Your Honor. And we have done that for some clients, and I
3 think that if Your Honor thought it appropriate here we could
4 take another look at that. But I do think that the time was
5 useful, and we say this to clients even who -- for whom we
6 write it off, the time is useful and inured to the benefit of
7 the client.

10:14:23

8 But I will grant you that sometimes just for client
9 relations purposes if the client is there and they see the
10 person there, they know the person's spending the time, we'll
11 tell them, Okay, we acknowledge that that person is more
12 junior, and although they were very supportive of the trial
13 effort, for you we'll write the time off. So you're correct,
14 that does sometimes happen.

10:14:39

15 THE COURT: Let me also ask a question, and I don't
16 really know the extent to which Covington & Burling has been
17 involved in the ongoing efforts at
18 monitoring-compliance-implementation of my order.

10:14:56

19 I do know that Ms. Wang has been somewhat involved, as
20 well as Mr. Pochoda, and without trying to prejudice any sort
21 of result or supposing that I know any of the facts that lead
22 to that result, there have certainly been disclosures made by
23 MCSO after trial which would suggest that there were materials
24 that were not provided prior to trial that were requested,
25 which may, of course -- I mean, I don't know what the

10:15:18

10:15:51

1 appropriate remedy, if any, may or may not be for that, and I
2 think that MCSO is trying to get their arms around that, as we
3 are.

4 Should any award I make be without prejudice to an
5 additional request for attorneys' fees that might result from 10:16:11
6 noncompliance if I make such a finding, or efforts made on
7 appeal to the extent that the court of appeals doesn't make its
8 own reward or other matters? And is Covington & Burling
9 involved in that effort? Or is it essentially the ACLU and the
10 Immigrants' Rights Project? And MALDEF. I don't know whether 10:16:35
11 MALDEF's involved or not.

12 MR. YOUNG: I think on the monitor issues and some of
13 the discovery or new information that has come out I'll defer
14 to my colleague, Ms. Wang.

15 I will say that with respect to additional fee 10:16:49
16 motions, there's the appeal in which Covington is very heavily
17 involved. And as we've stated in our papers, there will be a
18 motion for fees relating, actually, to this fee motion in which
19 our firm was also involved. But for the other questions, which
20 actually involve more significant amounts of time, and maybe 10:17:09
21 more significant issues, I'll defer to Ms. Wang.

22 THE COURT: Well, I'm not quite through with you --

23 MR. YOUNG: All right.

24 THE COURT: -- Mr. Young, so I'll ask you all my
25 questions before I ask Ms. Wang. 10:17:23

1 MR. YOUNG: Yes, Your Honor.

2 THE COURT: The defendants have provided me with the
3 Economics of Law Practice, the most reinstate iteration by the
4 Arizona -- I think it was the Arizona bar that did that, wasn't
5 it, Mr. Williams?

10:17:35

6 MR. WILLIAMS: Yes, Your Honor.

7 THE COURT: And it suggests that for lawyers above 25
8 years of practice, only the top 5 percent in Arizona bill \$515
9 an hour. How long have you been in practice, Mr. Wang?

10 MR. YOUNG: We feel I've been -- Mr. Young -- I've
11 been --

10:17:57

12 THE COURT: I -- I apologize.

13 MR. YOUNG: No problem, Your Honor. It's been a long,
14 complicated case.

15 THE COURT: It's been long enough that I should know
16 that you're --

10:18:03

17 (Laughter.)

18 MR. YOUNG: I've been in practice since 1986, so that
19 would be 28 years, Your Honor. And I --

20 THE COURT: And would it offend you to be awarded \$515
21 an hour for your time?

10:18:17

22 MR. YOUNG: I recognize that the Arizona statistics --
23 and actually, if you'll let me step back and retrieve my binder
24 here, as we stated in our papers, I think that we're entitled
25 to rates measured from our --

10:18:39

1 THE COURT: And by my questions, you shouldn't infer
2 that I won't give you some credit for coming from San
3 Francisco.

4 MR. YOUNG: Thank you, Your Honor.

5 THE COURT: But let me ask you, doesn't it -- doesn't
6 it cut a little bit both ways, too? Keep my \$515 question;
7 I'll allow you to answer that. But it seems to me that on the
8 nontaxable costs -- you've asked for meals and hotels and
9 travel -- and it seems to me that all that is quite reasonable
10 since you're coming from out of town.

10:18:48

10:19:05

11 But if you were in town, those are not the sort of
12 things that you would necessarily bill for, would they be? I
13 mean, we might expect you to pay for your own lunch if you
14 lived here.

15 MR. YOUNG: I think that's right. If it's not a
16 traveling expense then it wouldn't be appropriate, and -- but
17 these are traveling expenses for us.

10:19:17

18 THE COURT: And so if we -- if you were billing, for
19 example, a --

20 And you're not exactly in San Francisco, are you?
21 What's --

10:19:29

22 MR. YOUNG: I'm somewhat south of San Francisco in
23 what we call our Silicon Valley office.

24 THE COURT: If you were billing a Silicon Valley
25 client, you wouldn't, of course, have the -- and you were

10:19:40

1 billing your rate that you get in Silicon Valley, you wouldn't
2 be also billing for --

3 MR. YOUNG: Travel and meals.

4 THE COURT: Right.

5 MR. YOUNG: Yes, for a client in Silicon Valley.

10:19:49

6 THE COURT: Okay.

7 MR. YOUNG: Going back to the Arizona Economics of Law
8 Practice, I'm looking at Exhibit C, which is the 2013 rates,
9 and I would point a couple of things out. If Your Honor wants
10 to look at this, I would note that on page 2 of that exhibit,
11 the 95th percentile number for law firms of 51 and more, which
12 is Covington & Burling, is \$545 an hour.

10:20:06

13 THE COURT: That is on what page?

14 MR. YOUNG: That's on the second page of Exhibit C to
15 the opposition.

10:20:34

16 THE COURT: Okay.

17 MR. YOUNG: It's document 652-2, page 20 of 35. And
18 on the next page, page 21 of 35, I would note, actually, since
19 there is an appeal in this case, that there is an entry for the
20 95th percentile for appellate practice, which is \$600 an hour.

10:20:47

21 THE COURT: Right, and I'm not -- and to be truthful,
22 I don't really know whether you're going to -- assuming you
23 prevail on appeal, I don't know whether you make that request
24 to the Ninth Circuit or whether you're going to make it to me,
25 but I'll take that into account.

10:21:04

1 MR. YOUNG: Okay, Your Honor. So there are -- I think
2 I would at least look to the larger law firm figure that I
3 mentioned earlier, but my primary argument and request would be
4 that the Court look at the situation that the plaintiff class
5 was in: being unable to find counsel to carry this case through 10:21:23
6 trial here in Arizona and needing to find counsel elsewhere.

7 THE COURT: It seems to me that I -- I understand, and
8 I want to make sure I don't misunderstand from your briefing,
9 that when I got this case, at least, Steptoe was the primary
10 assistance to the ACLU; and, in fact, we all had a number of 10:21:42
11 proceedings with Steptoe before they withdrew and Covington &
12 Burling came into the case.

13 MR. YOUNG: Correct.

14 THE COURT: Is it your representation that neither
15 Steptoe nor, I think, Ballard and Spahr, which was also 10:21:55
16 involved prior to Steptoe's involvement, but that was also
17 prior to my involvement, is it your representation that neither
18 of those firms is going to be seeking any remuneration for
19 their costs or expenses as a result of being -- or representing
20 prevailing plaintiffs in this matter? 10:22:12

21 MR. YOUNG: That is correct. We had those
22 conversations in connection with filing this motion. They will
23 not be submitting a time or fee requests to this court.

24 THE COURT: All right. Thank you, Mr. Young.

25 MR. YOUNG: Thank you, Your Honor. 10:22:25

1 THE COURT: Ms. Wang?

2 MS. WANG: Thank you, Your Honor.

3 To answer Your Honor's question, it would be
4 plaintiffs' request that the Court make whatever ruling it will
5 make on this current motion without prejudice to a future fee
6 motion by the plaintiffs on any time spent since October 2nd,
7 the cutoff for this motion.

10:22:47

8 There are two primary areas which have already been
9 discussed. First is the pending appeal, which the ACLU has
10 invested significant time in along with the Covington
11 co-counsel; and the second, Your Honor, as you noted, is that
12 we have had to spend significant time on monitoring matters
13 related to your supplemental injunction. Primarily, the ACLU
14 has taken charge of that, and it represents a significant
15 expense, which, frankly, I had hoped we would not have to
16 invest at this stage of the case. So yes, that would be our
17 request, that we leave that aside for future request of the
18 Court.

10:23:07

10:23:28

19 I do want to add a word to Mr. Young's presentation
20 about the issue of our hourly rates. I think that the Ninth
21 Circuit cases, particularly Camacho, make it clear that there
22 are actually two different reasons why an out-of-town market
23 rate should apply here, and in the case of nonprofit
24 organizations like the ACLU, there's a particular reason that I
25 think the law has developed that way.

10:23:44

10:24:07

1 The first, as Mr. Young noted, is that both
2 Mr. Pochoda and I made significant efforts, both in the state
3 of Arizona, and then, frankly, outside the state of Arizona, it
4 was not easy to find a pro bono law firm that was willing to
5 come in after discovery had closed and pick up this case at
6 that point in time. We were very fortunate that Covington &
7 Burling stepped up to do this on a pro bono basis when no firm
8 in Arizona would touch the case.

10:24:24

9 THE COURT: Right. Can I stop you there?

10 MS. WANG: Sure.

10:24:42

11 THE COURT: I forgot to ask you, Mr. Young, do you
12 have varying rates that you charge varying clients in your
13 Redwood Shores office?

14 MR. YOUNG: We have a set of uniform rates which we
15 give to clients. I will say that not everyone pays exactly
16 those rates. Depending on volume, we have some, for example,
17 very large clients who engage us on very large multiyear
18 engagements, and to them we do offer some discounts.

10:24:55

19 THE COURT: Thank you.

20 And now sort of the related question for you,
21 Ms. Wang --

10:25:18

22 MS. WANG: Yes, sir.

23 THE COURT: -- the Immigrants' Rights Project, how do
24 you decide what cases you will intercede in and what you won't?

25 And again, by these questions, and I think's important

10:25:29

1 that I ask them, I don't mean to in any way diminish the value
2 of your services to this case, but I do want to know -- I do
3 think that defendants have offered some relevant inquiries
4 about the number of parties that were involved here, and the
5 concern that -- the extent to which that coordination may have
6 been overlapping, duplicative --

10:25:53

7 MS. WANG: Um-hum.

8 THE COURT: -- and I think that deserves some
9 exploration. And so I guess I would like to have you tell me
10 to what extent do you --

10:26:07

11 Are you the director of the Immigrants' Rights
12 Project? Are you the director?

13 MS. WANG: I am.

14 THE COURT: Do you get to choose in what matter -- I
15 assume that you get requests from all over the country about
16 what matters you'll intercede in, is that correct?

10:26:16

17 MS. WANG: Yes, Your Honor. This brings me to the
18 second reason in the Ninth Circuit case law for why our hourly
19 rate should apply.

20 THE COURT: May I finish my question, though, and I
21 will --

10:26:26

22 MS. WANG: Sure.

23 THE COURT: -- let you speak.

24 MS. WANG: Yeah, of course.

25 THE COURT: How do you decide which cases you're going

10:26:29

1 to intervene in and which you don't?

2 MS. WANG: Well, Your Honor, we have a number of
3 different factors that play in. In terms of this particular
4 case, the national ACLU Immigrants' Rights Project came in
5 because of the specialized expertise that was needed to 10:26:43
6 litigate this case. There were a number of issues in the case,
7 as Your Honor knows, from the trial and from before the trial,
8 that had to do with the intersection of local law enforcement
9 authority and federal authority over immigration enforcement
10 matters. That is an area of particular expertise for the 10:27:02
11 Immigrants' Rights Project of the national ACLU, and it's a
12 major focus of my own personal practice as a lawyer. So we
13 came in as the national ACLU to do the case with the ACLU of
14 Arizona, and at that time Steptoe & Johnson because of the need
15 for that special legal expertise. 10:27:23

16 THE COURT: And when you do fee applications -- and I
17 assume that you don't really have billable rates, do you?

18 MS. WANG: What we do, Your Honor, is survey previous
19 fee awards for ACLU and other nonprofit attorneys who've
20 litigated civil rights cases that are of similar complexity; 10:27:41
21 we've provided some of that information in the supporting
22 documentation attached to my declaration. And we look at the
23 market rates because we come in from San Francisco and New York
24 to do these cases.

25 And, frankly, a moment ago you asked Mr. Young whether 10:27:57

1 he would be offended if he were awarded a lower rate than
2 Covington's market rates. Well, it's a matter of great
3 importance for nonprofit organizations because an award at a
4 rate that is lower than market rate for us will have a tendency
5 to depress our rate in future fee applications in other cases.

10:28:18

6 THE COURT: So bottom line, is the market rate you've
7 given me a national market rate, or is it a San Francisco
8 market rate, or is it -- what kind of a market are we talking
9 about?

10 MS. WANG: It's a Northern California market rate,
11 Your Honor. And I would -- I would urge the Court, in looking
12 at the overall fee request, to follow the case law about
13 setting the hourly rate and separate that from other --

10:28:34

14 THE COURT: I promise you, Ms. Wang, I will do my best
15 to follow the case law, but it does seem to me that the case
16 law does allow some discretion on the part of the Court,
17 doesn't it?

10:28:51

18 MS. WANG: It does, Your Honor. I guess what I'm
19 trying to get across is that you've discussed with Mr. Young
20 various ways that defendants have questioned the total amount.
21 There are ways the Court can look at the overall fee request in
22 terms of duplication of effort, in terms of various discounts
23 that we have already applied and are reflected in our request,
24 and additional discounts that could be made.

10:29:09

25 I guess what I'm saying is that to us as nonprofit

10:29:26

1 organizations, the matter of the hourly rate is an important
2 one in itself, and I would hope that that be kept as a separate
3 issue from some of the other questions about discounting the
4 total request.

5 THE COURT: Well, and certainly it's something to be
6 considered, but let me ask you, I have Covington's application
7 in a specific dollar amount, I have your application in a
8 specific dollar amount, I have MALDEF's application in a
9 specific dollar amount, and I have the ACLU of Arizona's
10 application in a specific dollar amount.

10:29:44

10:30:04

11 If I were to determine in my -- and again, I only have
12 my own perspective, which is only my perspective but,
13 unfortunately, in this case it's kind of dispositive, if I were
14 to determine that -- to the extent it isn't reversed on appeal.
15 If I were to determine that your services were very valuable
16 and Mr. Young's services were very valuable, should I deal with
17 you differently than I would, say, deal with MALDEF if I
18 determined that at least from my perspective, MALDEF's
19 participation, while valuable, was less valuable to the
20 plaintiffs and, hence, should I cut MALDEF's application more
21 than I cut yours, or more than I cut Mr. Young's, or should I
22 just do an across-the-board reduction in which you all
23 participate if I determine that such a reduction is merited?

10:30:30

10:30:45

24 MS. WANG: Well, Your Honor, we would urge you to
25 consider our request; it's made on behalf of all the

10:31:01

1 plaintiffs. And I think that each organization submitted a
2 separate declaration, but our application for fees is joint and
3 made on behalf of all the plaintiffs and all plaintiffs'
4 counsel.

5 So I would say in answer to your question, no, we 10:31:16
6 would prefer the Court not to pick and choose among the
7 different requests. Those are simply reflected in separate
8 declarations, but the request is a joint one. And we would ask
9 the Court to consider the fact that we have exercised billing
10 judgment, each of us who submitted a declaration, that already 10:31:34
11 represents a significant discount off of our actual
12 out-of-pocket investment in the case, and we think it's a fair
13 request.

14 Beyond that, if the Court is inclined to award less
15 than the amount that's requested, I think we've discussed 10:31:50
16 various ways of doing that. And Mr. Young and I both have
17 talked about openness -- obviously, the Court is going to
18 decide as it decides, but we understand that there are
19 considerations and arguments the defendants have made.

20 THE COURT: All right. Thank you. 10:32:07

21 MR. YOUNG: Your Honor, might I add something to that?

22 Just to take one of the issues that you raised
23 earlier, I certainly wouldn't expect that if the Court were to
24 reduce the total fees requested because a more junior Covington
25 lawyer's presence at the trial shouldn't be paid for by the 10:32:23

1 defendants, that that would only be subtracted from Covington's
2 share and that wouldn't be spread across everyone.

3 THE COURT: I guess I appreciate that generosity,
4 Mr. Young. Let me ask you a question, though, since you've
5 raised it. It seems to me that it wasn't just young Covington
6 lawyers that were able to participate at trial. There were
7 also younger lawyers from MALDEF, maybe the ACLU, and other
8 lawyers that also participated.

10:32:39

9 Is that a mischaracterization, do you think?

10 MR. YOUNG: No, Your Honor.

10:32:58

11 THE COURT: Okay. Thank you.

12 MR. POCHODA: Your Honor, if I may just briefly add a
13 little bit that I think might be of some assistance --

14 THE COURT: Do you want to approach the podium --

15 MR. POCHODA: Yes.

10:33:08

16 THE COURT: -- Mr. Pochoda? Thank you.

17 MR. POCHODA: In light of your last line of
18 questioning and the number of entities, if you will, that were
19 involved as counsel for plaintiffs, and leaving aside the issue
20 that you raised earlier about the number at trial per se, but
21 historically, I was asked by Steptoe back in 2007, when they
22 agreed to take over the case from Ballard, they felt that there
23 was a chunk of areas of expertise that they were not that --
24 had not had the same experience that the ACLU had, including
25 class actions, civil rights matters, and so forth, and other

10:33:22

10:33:47

1 areas and as to -- I felt should be involved as well in the
2 litigation itself.

3 Without going into a litany of our other cases, I said
4 I would consider that and give them my recommendation based on
5 what I thought would be the minimal amount needed for this case 10:34:05
6 and the expertise involved, including the immigration related
7 and federal law related that IRP had, and MALDEF's relationship
8 with the community, much of which I believe would require a
9 great number of hours to go into in terms of the actual
10 contributions, but it was really pretty streamlined compared to 10:34:26
11 many of our other cases -- for example, the challenge to 1070
12 and some of the others had many more -- and we discussed that
13 at length, to keep it as few as possible.

14 Within the ACLU of Arizona I was the primary person.
15 A few others had some involvement, but not very much. And I 10:34:46
16 believe that we could show, I don't think you need to take the
17 time and effort, that the contributions of all of the
18 organizations, including, obviously, the law firm, which was a
19 prerequisite, would not have been responsible to even consider
20 this litigation if we did not come up with a firm that had the 10:35:02
21 wherewithal, the resources, and the competent attorneys,
22 excellent attorneys to do this. But I think we did in fact
23 keep it as limited a group as possible, and it did, throughout
24 the almost, well, six years of litigation, in fact was a very
25 efficient model of operation. 10:35:25

1 THE COURT: All right. Let me ask you, Mr. Pochoda,
2 you heard Ms. Wang indicate to me that her fee request, and I
3 believe you had another colleague that came from New York that
4 also submitted --

5 MS. WANG: Yes, Your Honor. Mr. Segura.

10:35:38

6 THE COURT: Yes. That her fee request was generated
7 based on actual fee awards out of the San Francisco Bay Area.

8 Is your fee request generated out of actual fee awards
9 out of the Arizona?

10 MR. POCHODA: Well, in a roundabout way, Your Honor.

10:35:53

11 My only fee award in the history of -- in Arizona was
12 in 1989 when the District Court Judge Muecke, may he rest,
13 awarded me \$240 an hour. If you go to the labor statistics,
14 that would translate into \$487 today. If you add -- well, if
15 you had figured that out back in 1989 based on the added years
16 of experience and it went up to \$300 an hour, it would go up to
17 587 today.

10:36:14

18 So that was my only direct fee award. I did a lot of
19 field research -- not just for this case, Your Honor, but in
20 past cases with many attorneys here in Arizona -- to see what
21 would be the range for someone of my experience and background
22 and reputation. And as you know, we put in one of the
23 affidavits from the former managing partner of Perkins Coie
24 here, Joel Nomkin, to attest to that.

10:36:31

25 THE COURT: Well, and I don't mean to either -- I also

10:36:51

1 don't mean to undervalue, and I won't under --

2 MR. POCHODA: Thank you.

3 THE COURT: -- I will do my best not to undervalue
4 your participation, but do you -- are you aware of any Arizona
5 court that has given a fee award to a local attorney of \$500 an
6 hour?

10:37:02

7 MR. POCHODA: I don't offhand. I was told that there
8 were, yes, but I don't offhand, Your Honor. I was told that,
9 in fact, it is a commercial rate that is regularly charged by
10 senior partners with over 40 years of experience in large firms
11 in Arizona.

10:37:16

12 THE COURT: All right.

13 MR. POCHODA: And that is the standard.

14 THE COURT: Thank you, Mr. Pochoda.

15 Mr. Williams.

10:37:23

16 MR. WILLIAMS: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. WILLIAMS: I'm going to reiterate, if I can, what
19 you had expressed, that none of our concerns or my statements
20 here today are in any way, shape or form disparaging on these
21 lawyers. I have the utmost respect for them, and I think
22 they've become friends working through this process, so please
23 don't take any of the criticisms --

10:37:41

24 THE COURT: I won't; you're doing your job.

25 MR. WILLIAMS: I'm doing my job for my clients, that's

10:37:57

1 right, Your Honor. I think --

2 THE COURT: Let me ask, Mr. Williams --

3 MR. WILLIAMS: Sure.

4 THE COURT: -- to get some things out of the way

5 first, it didn't seem to me like there's any contest from

10:38:04

6 Maricopa County that a fee award isn't merited in this case

7 pursuant to the requirements of 1988.

8 You're conceding that the plaintiffs qualify for a fee
9 award, aren't you?

10 MR. WILLIAMS: Yes, Your Honor.

10:38:17

11 THE COURT: All right. If in fact you're not going to
12 get dinged, or nobody's going to ask you from Steptoe & Johnson
13 and from Ballard Spahr for any fees, and I think you were there
14 at least when I came onto the case, too, so there was a fair
15 amount that we did in this court, let alone what happened in
16 Judge Murguia's court, with Steptoe & Johnson. I mean, there
17 would be a fair amount of time that would have been required by
18 Covington to get up to speed on the case, wouldn't there?

10:38:36

19 MR. WILLIAMS: Yes, Your Honor.

20 THE COURT: And --

10:38:54

21 MR. WILLIAMS: I think the issue, of course, is:
22 What's a fair amount of time? And how was the time spent? And
23 as we detailed --

24 THE COURT: Do you remember those proceedings where we
25 found all those documents that Mr. Casey had to sort through

10:39:03

1 from Maricopa County that were presumably destroyed, and there
2 were literally thousands and thousands and thousands of
3 documents on disks that he had to go through and that, to some
4 extent, were disclosed to the other side?

5 MR. WILLIAMS: And I was personally not that actively 10:39:22
6 involved in the case at that point. I became actively involved
7 more at the summary judgment phase, but --

8 THE COURT: Well, I'm reminding you, and Mr. Casey,
9 and I think -- well, to a lesser extent, others were involved
10 at the time, but there was a lot of paperwork, a lot of 10:39:38
11 requests, a lot of things to go through, were there not?

12 MR. WILLIAMS: Yes, Your Honor.

13 THE COURT: And you wouldn't contest, for example,
14 that big cases require pretty heavy staffing.

15 MR. WILLIAMS: I would not contest that, Your Honor. 10:39:53
16 In fact, I think one of the cases that they cited gave an
17 example of that of a trial that was honestly more complicated
18 than ours, and the total fee award was about \$2.2 million.
19 That would be Agster, 2.339, with a seven-week trial.

20 THE COURT: Which case is that that's more complex? 10:40:10

21 MR. WILLIAMS: Agster.

22 THE COURT: What?

23 MR. WILLIAMS: Agster, A-g-s-t-e-r. That's at
24 486 F.Supp.2d 1005.

25 THE COURT: Is that the prison conditions case, or 10:40:17

1 what is it?

2 MR. WILLIAMS: I don't remember, Your Honor. I had
3 the facts about 167 potential witnesses, 771 exhibits,
4 seven-week trial; interlocutory appeal, as we had in this case;
5 818 docket entries, which is a little higher, but not by much,
6 than we had; and, again, the total fees were about 2.3.

10:40:29

7 So I don't think anybody in this room believes that
8 this was a simple case to try. I think the problem is 2.3 is
9 one thing; 6.6 is another matter.

10 And I think you can see that the challenge, Your
11 Honor, I think, as you were pointing out in the structure of
12 how you choose to accomplish the representation, when you
13 involve three civil rights organizations and a national level
14 law firm, you end up with 634 time entries referring to team
15 meetings, et cetera, 992 conferences --

10:40:47

10:41:06

16 THE COURT: Well, you wouldn't -- let's drill down now
17 on that now a little bit.

18 MR. WILLIAMS: Sure.

19 THE COURT: Covington & Burling was necessary. Do you
20 concede?

10:41:14

21 MR. WILLIAMS: I don't -- I don't know that, Your
22 Honor. I don't dispute it, but I don't know that.

23 THE COURT: Well, do you concede that if not
24 Covington & Burling, a firm with substantial resources was
25 necessary to try this case?

10:41:24

1 MR. WILLIAMS: I think that's probably the case, yes.

2 THE COURT: Would you concede that ACLU as the
3 original plaintiff is an appropriate party to this case?

4 MR. WILLIAMS: Yes, Your Honor.

5 THE COURT: Would you concede that there are
6 immigrants -- immigrants' rights issues that were involved in
7 this case from which the national Immigrants' Rights Project's
8 participation was necessary and/or useful?

10:41:33

9 MR. WILLIAMS: I think so. I think the uniqueness of
10 those interests is perhaps an issue, as compared to the ACLU
11 and the plaintiff class.

10:41:50

12 THE COURT: Well, was there any case prior to this
13 one -- well, I mean, it was the case, was it not, I don't mean
14 to be misstating the facts, that even after the 287(g)
15 certification was lost by the MCSO, the MCSO had a national
16 prominent lawyer training his folks -- training the sheriff's
17 deputies that they had the inherent right to engage in
18 immigration enforcement, isn't that so?

10:42:12

19 MR. WILLIAMS: I believe that's -- I believe that's
20 accurate.

10:42:31

21 THE COURT: And so wouldn't -- wouldn't this case be
22 considered as resolving a fairly novel issue, at least from
23 your perspective?

24 MR. WILLIAMS: I believe that's accurate, yes, Your
25 Honor.

10:42:39

1 THE COURT: And wouldn't that issue also be directly
2 related to immigrants' rights?

3 MR. WILLIAMS: And that's my point, Your Honor. I
4 think it's probably directly related to all of the plaintiffs.
5 The issue is the uniqueness of any particular interest such 10:42:49
6 that there couldn't have been a much more streamlined approach
7 than having nine lawyers spread across here and 19 lawyers
8 total, leaving out the Steptoe & Johnson period, and 20
9 paralegals.

10 THE COURT: Your firm is how big? 10:43:05

11 MR. WILLIAMS: Eight lawyers.

12 THE COURT: Okay. Have any of your lawyers left
13 during the course of that six years?

14 MR. WILLIAMS: Have any of our lawyers left? Yes.

15 THE COURT: It does happen. 10:43:16

16 MR. WILLIAMS: It does happen, Your Honor, yes.

17 THE COURT: And is it unreasonable for -- for me to
18 reimburse Covington for lawyers that have left?

19 MR. WILLIAMS: No, Your Honor, and I don't mean --

20 THE COURT: That does inflate the total number of 10:43:29
21 lawyers whose billings you see on the bill, right?

22 MR. WILLIAMS: That's fair. I think as Your -- as
23 Your Honor pointed out, I think that to take a snapshot is
24 probably a more accurate picture, so to take a snapshot at
25 trial, or to take a snapshot as we did with the motion for 10:43:41

1 summary judgment where you have four hundred and some-odd
2 thousand dollars and a thousand man-hours spent on one motion.
3 Not the motion and the reply; not the response to our motion;
4 just the initial motion. I think --

5 THE COURT: You've done me the favor of highlighting 10:43:55
6 certain things and numbering them and coding them, and I've
7 looked at them. Do you expect me to go through and with
8 respect to every time entry --

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: -- evaluate whether or not I believe that 10:44:07
11 the time has been appropriately spent?

12 MR. WILLIAMS: No, Your Honor. I think this is a
13 case, as is mentioned in one of the cases that we cited where
14 when you have voluminous, and this is certainly a voluminous
15 fee entry case, I think you have to look at them across the 10:44:19
16 board.

17 THE COURT: All right. So what would you suggest by
18 way of an across-the-board cut in terms of efficiencies? And
19 back that up with why.

20 MR. WILLIAMS: Well, can I address, on a related 10:44:30
21 topic, block billing? Because I think that's one where you had
22 a measure for an across-the-board reduction.

23 The number that I consistently saw for an
24 across-the-board reduction for block billing was about a
25 30 percent reduction for those entries block billed, not for 10:44:42

1 all the entries, but for those entries that were block billed,
2 to account for the fact that now, me sitting in my shoes and
3 you sitting in yours, you can't figure out what was what.

4 So I think that's a component. I think a similar
5 reduction, depending on what Your Honor does with the hourly 10:44:57
6 rate, too, I think that the challenge in this case with
7 Lodestar is it is a two-step process, and so you do have to
8 determine first what hours were reasonably spent. And I would
9 agree with plaintiffs that probably does look at an overall
10 picture of how many people were involved, what would a 10:45:14
11 reasonable attorney have done with regard to the structure and
12 with regard to those hours and how much everybody was
13 conferencing in on all of the issues, which is what it appears
14 happened in the case so that everybody was involved all the
15 time, which again, the nine hundred and some-odd entries for 10:45:28
16 conferencing.

17 So I think something akin to a percentage reduction
18 there. And it sort of depends on how far you do the block
19 billing. I mean, nobody -- nobody in this room intends to
20 deprive them of a fair fee award. The issue is: What is a 10:45:45
21 fair fee award in the case?

22 THE COURT: Well, let me ask, then, about the other
23 component of the Lodestar, which is Mr. Young came from
24 Thousand Shores, or Redwood Shores, or some very elegant
25 sounding location in the Bay Area -- 10:45:58

1 MR. WILLIAMS: To Phoenix in the summer, nonetheless.

2 THE COURT: He did, and all -- many other times
3 otherwise. And Mr. Pochoda and Ms. Wang have both represented
4 to this Court today, if not in their affidavits, and I will
5 look in their affidavits, that they did look in the Phoenix
6 area, even among national firms with Phoenix offices after
7 Steptoe was departing, and found nobody that would take the
8 case.

10:46:17

9 So to the extent that is true, and to the extent that
10 Camacho dictates that I can take into account that Mr. Young
11 came from that very elegant bay sounding location, what
12 difference do the Economics of Law Practice make?

10:46:34

13 MR. WILLIAMS: I think the problem with Camacho, Your
14 Honor, is that Gonzalez, which is the Ninth Circuit case that
15 they cited, specifically acknowledges Camacho, which we pointed
16 out in our response, and yet still that was a remand down to
17 the district court to consider the rates in the forum district.

10:46:51

18 THE COURT: But now we don't have to do the remand,
19 because I'm here doing it the first time around.

20 MR. WILLIAMS: That's our hope, Your Honor, yes.

10:47:08

21 THE COURT: It doesn't say that I shouldn't consider
22 the fact that Mr. Young had to come in from San Francisco, does
23 it?

24 MR. WILLIAMS: And I don't think that we would propose
25 that you not consider it. I think we would propose that the

10:47:17

1 appropriate target would be the forum district. And then I
2 think, as always, Your Honor has discretion to determine: What
3 is a reasonable hourly rate under all the facts? Including, as
4 Your Honor pointed out, the travel expenses down to meals and
5 trial snacks and parking and everything else. But I think you 10:47:31
6 have to look at the overall picture, and it sounds like that is
7 your intent. That would our position as well.

8 I will say with regard to the Arizona practices, we
9 noted in our brief that many of their attorneys do charge right
10 within the range of the Arizona rates, so it's not as if the 10:47:49
11 Arizona rates are artificially low or are not real numbers;
12 they are very much real numbers. But I think to the degree --

13 THE COURT: Different markets could have different
14 rate structures for different levels of experience, wouldn't
15 that make sense to you, Mr. Williams? 10:48:03

16 MR. WILLIAMS: No question they do, Your Honor, yes.

17 THE COURT: Let me ask the question that I started out
18 with Mr. Young: Should any fee award be without prejudice to
19 an additional request after appeal and/or after issues
20 pertaining to compliance and/or whether or not the MCSO -- and 10:48:22
21 again, I'm not trying to impugn the integrity of the MCSO in
22 providing a full disclosure of those materials that are -- they
23 are now disclosing, but it does seem to me that there is at
24 least the possibility that we are now -- it's clear that there
25 are recordings that were not turned over that seem to be -- 10:48:48

1 have been requested by the plaintiffs that might have affected
2 the trial of this case.

3 It seems also possible to this Court that the MCSO was
4 aware of those recordings, at least some or all of them, and
5 that that might affect whether or not the plaintiffs should be 10:49:06
6 reimbursed for their efforts necessitated in evaluating that
7 and coming forth with appropriate curative measures.

8 And I realize that that is deciding things -- or
9 assuming things that I have not yet decided and I'm not
10 expressing any opinion on at this point. But simply because 10:49:27
11 there are facts that I do not know on that point, is there any
12 reason why I should not grant this motion without prejudice?

13 MR. WILLIAMS: Your Honor, I think you should rule on
14 the fee ap before you. And I think the fee ap before you takes
15 us through -- 10:49:43

16 THE COURT: October 2nd.

17 MR. WILLIAMS: -- I believe Octobers 2nd.

18 THE COURT: All right.

19 MR. WILLIAMS: So no, I do not believe that that
20 forecloses their ability to then prove up eligibility, 10:49:48
21 entitlement, and reasonableness, should a further fee ap come.

22 THE COURT: All right. Anything else?

23 MR. WILLIAMS: As you said, I think we highlighted a
24 number of things in our brief, so I don't want to -- I don't
25 want to belabor the point if your Court -- if Your Honor 10:50:02

1 doesn't need it.

2 THE COURT: All right. Any rebuttal?

3 MR. YOUNG: No, Your Honor.

4 THE COURT: All right. I will review again the
5 materials and I will enter an order as expeditiously as
6 possible. Anything else we need to take up while we're all
7 together?

10:50:18

8 MR. YOUNG: None from plaintiffs, Your Honor.

9 MR. CASEY: None from the defense, Your Honor.

10 THE COURT: All right. Thank you all.

10:50:32

11 MS. WANG: Thank you.

12 MR. YOUNG: Thank you, Your Honor.

13 (Proceedings concluded at 10:50 a.m.)
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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly
appointed and qualified to act as Official Court Reporter for
the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

DATED at Phoenix, Arizona, this 27th day of August,
2014.

s/Gary Moll