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12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE DISTRICT OF ARIZONA**

14 Manuel de Jesus Ortega Melendres,  
15 et al.,

16 Plaintiffs,

17 Joseph M. Arpaio, et al.,

18 Defendants

) No. CV 07-02513-PHX-GMS

)  
) **RESPONSE TO DEFENDANTS'**  
) **OBJECTIONS TO PLAINTIFFS'**  
) **MONITOR NOMINEES AND**  
) **RESPONSE TO DEFENDANTS'**  
) **NOMINATIONS OF MONITOR**  
) **CANDIDATES**  
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)

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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

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.<sup>1</sup> 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  
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21 <sup>1</sup> 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-crime-sweep) [http://www.kpho.com/story/23737670/sheriff-arpaio-defends-latest-](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 RESPECTFULLY SUBMITTED this 13th day of December, 2013.  
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**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:

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