

**TUCSON UNIFIED SCHOOL DISTRICT
LEGAL DEPARTMENT**

1010 E. Tenth Street
Tucson, AZ 85719
(520) 225-6040
Samuel E. Brown (State Bar No. 027474)
Samuel.Brown@tusd1.org

STEPTOE & JOHNSON LLP

201 East Washington Street, Suite 1600
Phoenix, Arizona 85004-2382
Telephone: (602) 257-5200
Facsimile: (602) 257-5299
P. Bruce Converse (005868)
bconverse@steptoe.com
Paul K. Charlton (012449)
pcharlton@steptoe.com

*Attorneys for Tucson Unified
School District No. 1*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

Sidney L. Sutton, et al.,

Defendants-Intervenors,

4:74-cv-00090-DCB
(Lead Case)

**RESPONSE TO THE MENDOZA
PLAINTIFFS' MOTION TO
STRIKE [ECF 1942]**

1 Maria Mendoza, et al.

4:74-cv-00204-DCB
(Consolidated Case)

2 Plaintiffs,
3 United States of America,

4 Plaintiff-Intervenor,
5 v.

6 Tucson Unified School District No. One, et al.,
7 Defendants.

8 The Court should deny the Mendoza Plaintiffs' motion to strike (ECF 1942). The
9 Mendoza Plaintiffs cite no rule or case law prohibiting TUSD's response to the
10 Mendoza Plaintiffs' objection. But more importantly, given the procedural history,
11 TUSD has had no other opportunity to be heard in connection with the Mendoza
12 Plaintiffs' misguided effort to have this Court declare TUSD to be in non-compliance
13 with the Unitary Status Plan with respect to culturally relevant curriculum. Striking
14 TUSD's response would thus violate fundamental notions of due process.

15 The Mendoza Plaintiffs cite to Fed. R. Civ. P. 53(f)(2), asserting that it has no
16 provision expressly authorizing a response to their objection. Of course, this does not
17 mean that a response is prohibited. But more fundamentally, they fail to cite the
18 immediately preceding subsection of the rule, Fed R. Civ. P. 53(f)(1), which provides:

19 "In acting on a master's order, report, or recommendations, the court must
20 give the parties notice and an opportunity to be heard[.]" [Emphasis
added.]

21 If the Court does not hold a live hearing on the underlying Report and Recommendation
22 (ECF 1925), a written response to the plaintiffs' objection is the only meaningful (and
23 most efficient) vehicle affording an opportunity for TUSD to be heard on the matter.
24 This is confirmed by the advisory committee note to the 2003 amendment to the rule,
25 which states:

26 The requirement that the court must afford an opportunity to be heard can
27 be satisfied by taking written submissions when the court acts on the
28 report without taking live testimony.

1 Accordingly, TUSD respectfully requests that the Court deny the Mendoza Plaintiffs'
2 motion to strike TUSD's only opportunity to be heard on the underlying issue.

3 DATED this 27th day of June, 2016.

4 **STEPTOE & JOHNSON LLP**

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6 By /s/ P. Bruce Converse
7 P. Bruce Converse
8 Paul K. Charlton

9 **TUCSON UNIFIED SCHOOL DISTRICT**
10 **LEGAL DEPARTMENT**
11 Samuel E. Brown

12 *Attorneys for Tucson Unified*
13 *School District No. 1*

14
15 **CERTIFICATE OF SERVICE**

16 The foregoing document was filed with the Court via the CM/ECF Electronic
17 Notification System this 27th day of June, 2016, with an electronic copy sent via the
18 eFiling system to counsel registered therein.
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21 /s/ Diane Linn
22 Employee of Steptoe & Johnson LLP
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