

1 LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
2 JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
3 PROSKAUER ROSE LLP
2029 Century Park East, 24th Floor
4 Los Angeles, California 90067-3010
Telephone: (310) 557-2900
5 Facsimile: (310) 557-2193

6 JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
jrodriguez@maldef.org
7 THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
tsaenz@maldef.org
8 MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
9 634 S. Spring St.
11th Floor
10 Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

11 Attorneys for Mendoza Plaintiffs
12

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,
16 Plaintiffs,
17 v.
18 United States of America,
19 Plaintiff-Intervenors,
20 v.
21 Anita Lohr, et al.,
22 Defendants,
23 Sidney L. Sutton, et al.,
24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' RESPONSE
TO TUSD SECOND SUPPLEMENTAL
NOTICE AND REPORT OF
COMPLIANCE: DIVERSITY PLAN FOR
TEACHERS AND ADMINISTRATORS
AND OBJECTION TO THE DISTRICT'S
REQUEST (DOC. 2329) THAT IT BE
AWARDED PARTIAL UNITARY
STATUS WITH RESPECT TO SECTION
IV,A, F,1, AND I,3 OF THE USP**

Hon. David C. Bury

1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
al.,

7 Defendants.
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11 Under this Court’s Orders of September 6, 2018 (“9/6/18 Order”) (Doc. 2123),
12 April 22, 2019 (Doc. 2217), and September 10, 2019 (“9/10/19 Order”) (Doc. 2273)
13 Mendoza Plaintiffs submit this Response to TUSD’s Second Supplemental Notice and
14 Report of Compliance: Diversity Plan for Teachers and Administrators (Docs. 2329, 2329-
15 1 (“TDP GYOP Plan”) and 2329-2), and objection to the District’s request that it be
16 granted partial unitary status with respect to USP Section IV,A, F,1, and I,3.¹
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26 ¹ Without waiving any of their other objections to the District’s request, the Mendoza
27 Plaintiffs note that the District’s request is erroneous because the teacher diversity
28 provisions addressed in the District’s submission regard USP Section IV, E, 2 (and related
Sections IV, E, 1, and IV, E 3-4) rather than the USP sections cited in the request. (*See*
4/22/2019 Order (Doc. 2217) at 8, n.5.)

ARGUMENT

Attached to the TDP GYOP Plan (and Therefore Incorporated as Part of it) is a Prior Version of the TDP GYOP Plan That was Non-Compliant With This Court’s 4/22/19 Order, and a TDP Report That Applies Incorrect Measures, Resulting in the Very Inconsistency and Confusion This Court Expressly Sought to Avoid

In the 9/10/19 Order, this Court issued the following order:

To avoid future confusion, the revisions previously ordered and again required here shall be presented to the Court as follows... The District shall file a Diversity Plan for Teachers and Administrators for Certified Staff transfer programs and GYOPs, which shall include previously reviewed and approved provisions (Docs 2159-1-2159-3; 2016-1) and revisions previously ordered by the Court.. and the directives ordered here... [and TUSD] shall update the TDP target school reports...

(9/10/19 Order at 17:2-13.)

First, the above Court-ordered revisions were directed to the District’s previously filed Plan for Recruitment of Teachers for Diversity and Grow Your Own Programs (Doc. 2221-1) as was the requirement that the section within it concerning the teacher diversity plan (“TDP”) include administrators, and that the Grow-Your-Own Programs (“GYOPs”) section extend to teachers. (9/10/19 Order at 13:25-14:3.) While the Mendoza Plaintiffs see that the TDP GYOP Plan’s diversity plan component (Doc. 2329-1, Exhibit 1) and GYOP component (*id.*, Exhibit 2) (together comprising the TDP GYOP Plan) now extend to teachers and administrators, the District has oddly included the prior version of its plan (Doc. 2221-1) that this Court found to be non-compliant with the 4/22/19 Order in the TDP GYOP Plan. (*Compare* TDP GYOP Plan (Doc. 2329-1) at ECF 41-43² *with* Plan for Recruitment of Teachers for Diversity and Grow Your Own Programs (Doc. 2221-1).) As

² Because the TDP GYOP Plan includes many exhibits (including exhibits within exhibits), to avoid confusion, Mendoza Plaintiffs refer to specific “ECF” pages within the TDP GYOP Plan (Doc. 2329-1).

1 a result, the District's submission is inconsistent and likely to confuse the public, including
2 the TUSD parents and community that would presumably be able to review this plan if
3 approved by the Court and posted on TUSD's website.

4 Second, attached to the TDP GYOP Plan is the previously filed Teacher Diversity
5 Plan for SY 18-19: Results, Analysis and Conclusions ("TDP Results") (Doc. 2159-1 at
6 ECF 26 - ECF 31), which applies incorrect TDP measures. As Mendoza Plaintiffs have
7 repeatedly demonstrated-- and they regret that they must burden the Court with a request to
8 address this topic yet again-- the TDP is based on an agreed-upon measure of success that
9 looks at white and Latino Teaching Staff. It does not look at only African American and
10 Latino staff. (*See* Mendoza Plaintiffs' Supplementary Response to TUSD Notice and
11 Report of Compliance: Teacher Diversity Plan, Attrition and GYOP Studies and Objection
12 to the District's Request That it be Awarded Unitary Status With Respect to Sections IV,
13 A, F.1 and I.3 of the USP ("1/7/19 Mendoza Response") (Doc. 2166 at 3:8-6:16) (detailing
14 the parties' agreement concerning TDP measures and TUSD's attempts to abandon it);
15 Special Master's 5/17/16 Memo (Doc. 2166-1, Exhibit 2); 4/22/19 Order (Doc. 2217) at
16 8:17-20 (with respect to the Special Master's application of a TDP measure that looks at
17 white teachers: "To have done otherwise would have made no sense because a school with
18 an entirely White teaching staff would in fact not be racially diverse.").)

19 Yet, the TDP Results document within the TDP GYOP Plan includes for each of the
20 2016-17 through 2018-19 years an application of the incorrect TDP measure that fails to
21 take into account white teachers, and that thereby results in the District reporting
22 improperly inflated success in implementing the TDP. (*Compare* TDP Results (Doc.
23 2329-1) at ECF 28-30 (applying a measure that looks at only "African American or Latino
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1 teaching staffs”) with 1/7/19 Mendoza Response at 7:1-8 (chart comparing results of
 2 application of incorrect TDP measure which matches TDP Report data, to results based on
 3 the correct TDP measure).) Thus, because the TDP GYOP Plan further nowhere makes
 4 clear that the TDP applies to white staff, the public is likely to misunderstand the measures
 5 and objectives of the TDP, and to be misled about TUSD’s success in implementing it.
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7 Accordingly, Mendoza Plaintiffs respectfully request that this Court order the
 8 District to revise the TDP GYOP Plan to unambiguously state that the TDP applies to
 9 Latino and white teaching staff and that the District be ordered to revise the TDP Results
 10 to apply the correct agreed-upon TDP measure and to include such corrected TDP Results
 11 in all of its public reporting. (See 4/22/19 Order at 8:17-20.)³
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 14 ***In the Last Two School Years, the District Has Reversed All Progress Made in***
 15 ***Implementing the TDP With the Result That After a Three Year Implementation***
 16 ***Period, TUSD Does not now Meet the TDP’s “Initial Objective” That was to Have***
 17 ***Been Achieved by the “Beginning of the 2016-17 School Year.”***

18 As discussed above, the District’s purported progress as detailed in the TDP Report
 19 within the TDP GYOP Plan applies an incorrect measure to inflate the District’s progress
 20 in diversifying site teaching staff.⁴ In the table below, Mendoza Plaintiffs copy the table
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 23 ³ They further suggest that the previous version of the TDP GYOP Plan that this Court
 24 rejected in its 9/10/19 Order as noncompliant with its 4/22/19 Order be omitted from the
 25 District’s public filings including its website posting as it is unnecessary and likely to
 cause confusion.

26 ⁴ Per the TDP and the USP, the standard by which a target school’s diversity is measured is
 27 whether there exists “more than a 15 percentage point variance [] between the percentage
 28 of [Latino and white] certified staff or administrators at an individual school and district-
 wide percentages for schools at the comparable grade level (Elementary School, Middle
 School, K-8, High School).” (see TDP GYOP Plan at ECF 33; USP Section IV, E, 2;

1 included in the 1/7/19 Mendoza Response comparing TDP progress as described in the
 2 TDP Report with its actual progress arrived at by applying the correct TDP measure (that
 3 looks at white teachers) to TUSD data. They have included in that table a new column for
 4 the end of the 2018-19 school year (which reflects TDP data included in the District's
 5 recently filed Appendix IV-10 to the 2018-19 Annual Report (Doc. 2301-1 at ECF 52 –
 6 ECF 53)⁵):

Diverse Schools Under the TDP

	Beginning of 2016-17	End of 2016-17	End of 2017-18	End of 2018-19
TDP Progress as described in the TDP Report (Doc. 2159-1; Doc. 2329-1 at ECF 27)	No Data Reported	16 of 26 (61.5%)	16 of 26 (61.5%)	18 of 26 ⁶ (69.2%)
<i>Actual</i> TDP Progress	10 of 26 (38.5%)	14 of 26 (53.8%)	13 of 26 (50%)	10 of 26 (38.5%)

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 19 As the table above indicates, following three years of TDP implementation, only 10
 20 of 26 (38.5%) of the original TDP target schools were diverse under the TDP.

21 Unfortunately, this data reveals that the District has reversed progress in each of the last
 22 two school years, and by the end of 2018-19, reversed all progress made since
 23

24 Special Master's 5/17/16 Memo (Doc. 2166-1, Exhibit 2); 4/22/19 Order (Doc. 2217) at
 25 8:17-20)

26 ⁵ Because Appendix IV-10 reflects teacher diversification data as of the end of the 2018-19
 27 school year, Mendoza Plaintiffs have omitted the data concerning and column titled
 "Beginning of 2018-19" that was included in the original table within the 1/7/19 Mendoza
 Response.

28 ⁶ The TDP Report states that this figure is recent as of "November 6, 2018."

1 implementation of the TDP began. Tellingly, District progress now falls below the TDP's
2 express "initial objective [] to reduce the number of schools with significant racial
3 disparities from 26 to 13 by the beginning of SY 2016-17." (TDP, Doc. 2329-1, at ECF
4 33.) Significantly, given the inflated progress reflected in the TDP Report (which purports
5 to concern "Results, Analysis, and Conclusions"), the TDP wholly fails to engage in any
6 analysis of what caused TUSD to actually reverse all progress it made in implementing the
7 TDP. Mendoza Plaintiffs respectfully submit that this failure, coupled with the fact that
8 the TDP GYOP Plan details only the incorrect TDP measure, puts TUSD at risk of failing
9 to examine and correct whatever issues it has experienced as it now seeks to diversify a
10 new set of TDP target schools, or to further the goals of the USP.

13 Given the reversal of all progress initially made in implementing the TDP, this
14 Court should, for this reason alone, deny the District's request that it be awarded partial
15 unitary status with respect to the USP provisions relating to teaching staff diversity.
16 Further, Mendoza Plaintiffs respectfully request that this Court direct the District to
17 expressly and accurately detail how success of the TDP is measured in the TDP GYOP
18 Plan, and that it be required to revise the TDP Report to use the correct measure that looks
19 at both Latino and white teaching staff.
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23 ***The TDP GYOP Plan Fails to Comply With This Court's Order That it "Identify
24 how its GYOPs are TOCs or AOCs, and if not, Refashion Them and/or
25 Implement Others to Serve the Purposes of the USP."***

26 In the 9/10/19 Order, this Court stated the following with respect to the version of
27 the TDP GYOP Plan that then was before the Court:
28

1 The Court [in its 4/22/19 Order] ordered the District to ensure that its GYOPs were
2 growing teachers and administrators of color, not just addressing overall staffing
3 shortages... The District has [] failed to comply with the Court’s directive that it
4 “must identify how its GYOS’s [sic] are TOCs or AOCs,” and if not, the District
5 “must refashion them and/or implement others to serve the purposes of the USP.”

6 (9/10/19 Order at 13:22-24, 14:27-15:2 (citing 4/22/19 Order (Doc. 2217) at 13-14).)

7 Unfortunately, the TDP GYOP Plan fails to describe how the GYOP programs are
8 TOCs or AOCs beyond a general footnoted assertion of “targeted recruitment” (TDP
9 GYOP Plan at ECF 47, n.1) (which notably appears to reflect the general “targeted”
10 recruitment the District has reported in the past and which has produced unsatisfactory
11 results, as reported, for example, with respect to the Leadership Prep Academy (LPA)).
12 (*See e.g.*, TUSD 2016-17 Annual Report (Doc. 2057-1) at IV-120 – IV-121 (“To ensure the
13 LPA fulfilled the USP goal of diversifying the leadership staff , the District made targeted
14 recruitment efforts... includ[ing] disseminating [information]... encouraging teachers to
15 ask their supervisors about the program, ILAs, and direct outreach to prospective
16 candidates by central and cite administrators.”); 4/22/19 Order (Doc. 2217) at 12:15-16
17 (“Over the past six years, the District has indiscriminately grown as many White
18 administrators as it has grown administrators of color... Over a four-year period,
19 participation in its... [LPA] has been almost 50/50.”) (citations omitted).)

20 Specifically, with respect to the four categories of the Make the Move GYOP, the
21 District in a footnote acknowledges that the programs are “not innately designed to grow
22 teachers of color” but it classifies these programs as TOCs because of what it generally
23 asserts is “targeted recruitment of Hispanic and African staff members.” (TDP GYOP
24 Plan at ECF 47, n.1.) None of the descriptions of the categories of the Make the Move
25 GYOP describe how they grow TOCs. (*Id.* at ECF47-49.) Further, TUSD has wholly
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1 failed to identify how the Arizona Teaching Fellows, Master’s Cohort in Educational
2 Leadership, or Leadership Prep Academy are TOCs or AOCs (beyond inclusion of the
3 acronyms “TOC” or “AOC” in the headings corresponding to those programs’
4 descriptions). (*Id.* at ECF 50-51.) Further, the District fails to follow this Court’s order to
5 refashion these programs to make them TOCs or AOCs, or to include additional programs
6 to further the USP purposes. (*Id.*; 9/10/19 Order at 14:27-15:15-2.) Mendoza Plaintiffs
7 see that the Teacher Cadet program is the result of a partnership that includes the MASSD,
8 and that the UA/District CRC Teacher Pathways program relates to the growth of CRCs.
9 (TDP GYOP Plan at ECF 49, 51.) That those programs generally involve MASSD or
10 CRCs implicitly suggests to the Mendoza Plaintiffs that they may be TOCs. However,
11 TUSD does not actually explain how the programs are designed to grow TOCs, suggesting
12 that at a minimum, further explanation is required.

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15 For these reasons, TUSD has failed to comply with the 9/10/19 Order that it identify
16 how its GYOPs are TOCs or AOCs, and if they are not, to refashion them and/or
17 implement others to further USP purposes. (9/10/19 Order at 14:27-15:2.)
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21 ***The District’s new TDP Target School List Includes an Already Diverse School***
22 ***While Omitting Schools With Greater Need for Diversification Than Some***
23 ***Schools on the List***

24 The District’s Diversity Transfer Plan Target Schools for Teachers (“2019-20 TDP
25 Data”) (TDP GYOP Plan at ECF 15) largely lists new and old TDP target schools that
26 Mendoza Plaintiffs believe to be appropriate for teacher diversification efforts. However,
27 the District also includes Magee Middle School with respect to which the number of white
28

1 and Latino teachers fall within the “plus or minus” 15% standard set out in USP Section
2 IV, E, 2. (*See id.*) Mendoza Plaintiffs gather that TUSD included Magee on the basis that
3 the number of Asian/PI teachers falls out of that 15% standard range. (*See id.*) However,
4 given that the District’s TDP targeting should be directed at furthering the purposes of the
5 USP, Mendoza Plaintiffs respectfully submit that there are, as detailed below, other
6 schools that are far more appropriate for inclusion as new TDP target schools.
7

8 There are certain schools, including schools in the initial TDP target list and with
9 respect to which TUSD failed to diversify teaching staff, that should again be targeted for
10 diversification and included in the 2019-20 TDP Data. For example, as of the end of the
11 2018-19 school year, Dunham Elementary School’s number of white teachers went over
12 the TDP standard range by 16% points and its number of Latino teachers fell below the
13 TDP standard range by 8%. (Appendix IV-10 to 2018-19 TUSD Annual Report (Doc.
14 2301-1 at 52).) Similarly, Dietz K-8’s number of white teachers went over the TDP
15 standard range by 15% and its number of Latino teachers fell below the standard by 10%.
16 (*Id.*) Notably, each of these were original TDP target schools whose teaching staff TUSD
17 failed to diversify. (*See id.*; TDP GYOP Plan at ECF 33, n.2.) In contrast, Henry
18 Elementary School, whose number of Latino teachers fell within the TDP standard range
19 and whose number of white teachers went over the standard by 3%, is included in the
20 2019-20 TDP Data as a new target school. The above data suggests that the District may
21 not be targeting for TDP purposes the schools with the greatest need for teacher
22 diversification.
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27 Given the above, Mendoza Plaintiffs believe that the District should be ordered to
28 describe how it determined which schools it would begin targeting for teacher

1 diversification in 2019-20, and, to the extent it has not targeted those schools furthest away
2 from falling within the TDP target range with respect to white and Latino teachers, that it
3 be ordered to do so.

4 Mendoza Plaintiffs add that with respect to administrator diversity⁷, they understand
5 the District's explanation that many schools have a single administrator and that therefore
6 it is impractical to diversify administrative staff at those schools. However, they are
7 concerned that with respect to the District's resulting eight target schools for administrator
8 diversity (*see* TDP GYOP Plan at ECF 24), the District has failed to provide explanation of
9 how its proposed seemingly-broad exemptions (described at *id.* at ECF 12) apply. Thus, it
10 is entirely unclear how many (and which) schools the District will actually target for
11 administrator diversity, or what justification would apply for the schools TUSD proposes
12 to exempt. Mendoza Plaintiffs therefore respectfully request that TUSD be further
13 directed to explain how its proposed exemptions would apply to the schools targeted for
14 administrator diversification, and provide justification for each school for which any
15 exemption is claimed to apply.⁸

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24 ⁷ Mendoza Plaintiffs note that they are unclear on the extent to which TUSD's three
25 proposed administrator diversification incentives (at TDP GYOP Plan at ECF 12) reflect
26 what this Court envisioned would be "customized incentive strategies." (9/10/19 Order
27 (Doc. 2273)

28 ⁸ By requesting such information, Mendoza Plaintiffs do not suggest that they agree with
the TUSD proposed exemptions (TDP GYOP Plan at ECF 12), but they believe such
additional information would help to better inform the Mendoza Plaintiffs on why the
District proposes such exemptions.

CONCLUSION

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2 For the reasons set forth above, Mendoza Plaintiffs respectfully request the Court to
3 hold that the District has failed to comply with its 9/10/19 Order relating to the TDP and
4 GYOPs, and that it deny the District’s request that it be granted partial unitary status with
5 respect to Sections IV,A, F,1, and I,3 of the USP. They further respectfully request that
6 TUSD be ordered to revise the TDP GYOP Plan to unambiguously make clear that the
7 TDP applies to Latino and white teaching staff and revise the TDP Results to apply the
8 correct agreed-upon TDP measure, and that this Court again order compliance with its
9 previous orders that the District explain how its GYOPs are TOCs or AOCs and, if not,
10 that it refashion them and/or implement others to further USP purposes. They further
11 respectfully request that the District be required to describe how it determined which
12 schools it would begin targeting for teacher diversification in 2019-20, (and that, to the
13 extent it has not targeted schools furthest away from falling within the TDP target range
14 with respect to white and Latino teachers, that it be ordered to do so). With respect to
15 administrator diversification, they respectfully request that TUSD be required to detail at
16 which schools its proposed exemptions from administrator diversification would apply,
17 and that for each, it provide related justification.

18
19 In an excess of caution, Mendoza Plaintiffs respectfully invite the Court’s attention
20 to their earlier objections to requests by the District to be awarded unitary status and to
21 their Motion to Stay (Doc. 2186), expressly incorporate herein the arguments set forth in
22 those pleadings, and also note this Court’s statement when it denied that Motion that it will
23 not again reach the question of unitary status until after the District’s Executive Summary
24 filing and the proceedings relating thereto.

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Dated: October 24, 2019

MALDEF
JUAN RODRIGUEZ
THOMAS A. SAENZ

/s/ Juan Rodriguez
Attorney for Mendoza Plaintiffs

PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

/s/ Lois D. Thompson
Attorney for Mendoza Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD SECOND SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE: DIVERSITY PLAN FOR TEACHERS AND ADMINISTRATORS AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2329) THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION IV,A, F,1, AND I,3 OF THE USP** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

P. Bruce Converse
bconverse@dickinsonwright.com

Timothy W. Overton
toverton@dickinsonwright.com

Samuel Brown
samuel.brown@tusd1.org

Robert S. Ross
Robert.Ross@tusd1.org

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

James Eichner
james.eichner@usdoj.gov

Shaheena Simons
shaheena.simons@usdoj.gov

Peter Beauchamp
peter.beauchamp@usdoj.gov

Special Master Dr. Willis D. Hawley
wdh@umd.edu

/s/ Juan Rodriguez

Dated: October 24, 2019