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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' NOTICE
CONCERNING THE DIVESTITURE OF
THIS COURT'S JURISDICTION TO
RULE ON THE TUSD SUPPLEMENTAL
PETITION FOR UNITARY STATUS
[DOC. 2461]**

Hon. David C. Bury

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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 Out of an abundance of caution and to avoid potential procedural complications in
12 the future, the Mendoza Plaintiffs hereby provide notice to this Court of their
13 understanding that this Court has been divested of jurisdiction to rule on TUSD’s
14 Supplemental Petition for Unitary Status (Doc. 2461) (“TUSD Supp. Pet.”) pending
15 resolution by the United States Court of Appeals for the Ninth Circuit of TUSD’s pending
16 appeal (Case No. 20-16485) from ten of this Court’s orders. (*See* TUSD Notice of Appeal,
17 Doc. 2503.)
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20 Attached as Exhibit A is the Mediation Questionnaire TUSD filed in the Ninth
21 Circuit relating to that pending appeal. In its Mediation Questionnaire, the District asserts
22 that this court has “failed to dissolve the structural injunction” (by which it means the
23 USP) and identifies the following as the main issues on its appeal:
24

25 Whether the district court erred as a matter of law by refusing to dissolve
26 the injunction because the only vestiges of de jure discrimination were
27 eliminated by 1983, and TUSD has long since met the good-faith
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1 compliance standard... [or by] refusing to dissolve the injunction because
2 the vestiges of past discrimination by TUSD have been eliminated to the
3 extent practicable, and TUSD has complied in good faith with the whole of
4 the Unitary Status Plan.

5 (Exhibit A.) These are very issues now before the Court in the District's
6 Supplemental Petition for Unitary Status, Doc. 2406 ("Point I: No Vestiges of the
7 Prior Dual School System Remain"; "Point II: The District Meets the Good Faith
8 Compliance Standard"). By arguing that this Court erred in not having already
9 awarded it full unitary status and made the findings that it now seeks in the Court
10 of Appeals, TUSD has caused this Court to be divested of jurisdiction to rule on its
11 pending petition or any request to dissolve the USP. *U.S. v. Vroman*, 997 F.2d
12 627, 627 (9th Cir. 1993) ("filing of notice of appeal 'divests the district court of its
13 control over the aspects of the case involved in the appeal'") (*quoting Griggs v.*
14 *Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)); *Watchtower Bible &*
15 *Tract Soc. of New York, Inc. v. Colombani*, 712 F.3d 6, 11 (1st Cir. 2013)
16 ("Allowing more than one court to take charge of a case at any given moment
17 often disserves the interests of comity and judicial economy.").

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Respectfully submitted,

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Dated: October 14, 2020

MALDEF
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/s/ Juan Rodriguez
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/s/ Lois D. Thompson
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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' NOTICE CONCERNING THIS COURT'S DIVESTITURE OF JURISDICTION TO RULE ON THE TUSD SUPPLEMENTAL PETITION FOR UNITARY STATUS [DOC. 2461]** 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:

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/s/ Juan Rodriguez

Dated: October 14, 2020