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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

OSCAR LUNA, ALICIA PUENTES,  
DOROTHY VELASQUEZ, and GARY  
RODRIGUEZ,

Plaintiffs,

v.

COUNTY OF KERN, KERN  
COUNTY BOARD OF  
SUPERVISORS, and MICK  
GLEASON, ZACK SCRIVNER,  
MIKE MAGGARD, DAVID  
COUCH, and LETICIA PEREZ, in  
their official capacity as members of  
the Kern County Board of  
Supervisors, and JOHN NILON, in  
his official capacity as Kern County  
Administrative Officer, and MARY  
B. BEDARD, in her official capacity  
as Kern County Registrar of Voters,  
inclusive,

Defendants.

Case No. 1:16-CV-00568-DAD-JLT

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR PARTIAL  
SUMMARY JUDGMENT [FRCP 56(a)]**

JUDGE: Hon. Dale A. Drozd  
COURTROOM: 5  
HEARING DATE: May 2, 2017  
TIME: 9:30 a.m.

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on Tuesday, May 2, 2017, at 9:30 a.m., or as soon thereafter as the parties may be heard, Plaintiffs OSCAR LUNA, *et al.*, will move this Court, at the Robert E. Coyle United States Courthouse located at 2500 Tulare Street, Fresno, California, 93721, Courtroom #5 (7th Floor), for an order granting Plaintiffs' Motion for Partial Summary Judgment under Federal Rule of Civil Procedure 56(a). By this Motion for Partial Summary Judgment, Plaintiffs seek to establish that Latinos in Kern County are a sufficiently large and geographically compact group to constitute a majority of the voter-eligible population in two single-member districts, and that Plaintiffs have thus satisfied the first prong of the three-prong analysis set forth in *Thornburg v. Gingles*, 478 U.S. 30, 50-51, (1986) for judicial determination of a violation of Section 2 of the Voting Rights Act as amended, 52 U.S.C. § 10301.

This motion is based on the following documents: this Notice of Motion and the attached Points & Authorities; Joint Statement of Undisputed Facts ("JSUF"); Plaintiffs' Statement of Undisputed Material Facts ("PSUMF"), filed herewith, and accompanying Declaration of Denise Hulett; and all the other papers, documents, or exhibits on file or to be filed in this action, and the argument to be made at any hearing on the motion ordered by the Court.

This motion is made following the conference of counsel pursuant to Paragraph 6 of this Court's scheduling order. Counsel for Plaintiffs Denise Hulett, signatory below, certifies that the parties have met and conferred as ordered by this Court. Counsel for Plaintiffs met and conferred with Mr. Skinnell and Ms. Leoni, counsel of record for Defendants on the afternoon of March 16, 2017, to discuss the motion and to review the proposed statement of undisputed facts, which Plaintiffs' counsel submitted to defense counsel on March 10, 2017. Defense counsel indicated that there were a number of facts that may be deemed as true, that counsel would return a set of facts to which Defendants could stipulate, and conveyed that Defendants do not agree with Plaintiffs' position and that they would not agree to Partial Summary Judgment under Rule 56(a).

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Respectfully submitted,

Dated: April 3, 2017

MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL FUND

By: /s/ Denise Hulett  
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EASTERN DISTRICT OF CALIFORNIA

OSCAR LUNA, ALICIA PUENTES,  
DOROTHY VELASQUEZ, and GARY  
RODRIGUEZ,

Plaintiffs,

v.

COUNTY OF KERN, KERN COUNTY  
BOARD OF SUPERVISORS, and  
MICK GLEASON, ZACK SCRIVNER,  
MIKE MAGGARD, DAVID COUCH,  
and LETICIA PEREZ, in their official  
capacity as members of the Kern County  
Board of Supervisors, and JOHN  
NILON, in his official capacity as Kern  
County Administrative Officer, and  
MARY B. BEDARD, in her official  
capacity as Kern County Registrar of  
Voters, inclusive,

Defendants.

Case No. 1:16-CV-00568-DAD-JLT

**PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**[FRCP 56(A)]**

JUDGE: Hon. Dale A. Drozd  
COURTROOM: 5  
HEARING DATE: May 2, 2017  
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**POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs are Latino citizens and registered voters of Kern County who seek to protect their individual voting rights by enjoining the current districting plan for the election of Kern County Supervisors. The current supervisorial plan contains one Latino-majority district. Plaintiffs allege that in 2011 Kern County unlawfully fractured a second Latino voting community between two supervisorial districts, so that it is the voting majority in neither. Under Section 2 of the Voting Rights Act, the 2011 districting plan dilutes the voting strength of Latino voters by depriving them of a second district in which they could constitute a majority of the eligible voters and from which they could elect a candidate of choice.

By this motion for partial summary judgment, Plaintiffs seek to establish that the Latino voter eligible population in Kern County is sufficiently large and geographically compact to constitute a majority of the voter-eligible population in not just one, but two single-member districts, and that Plaintiffs have thus satisfied the first prong of the three-prong analysis set forth in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986) for judicial determination of a violation of Section 2 of the Voting Rights Act as amended, 52 U.S.C. § 10301.

Plaintiffs submit herewith an illustrative plan (“Illustrative Plan” or “Illustrative Map”) that contains two districts in which Latinos constitute 60.8% and 61.2% of the citizen voting age population (“CVAP”). Defendants’ expert concedes that Plaintiffs’ expert has correctly reported the demographics of the Illustrative Plan containing two districts that exceed the 50% Latino CVAP *Gingles* prong one threshold. In addition, Kern County’s map-drawer, designated as the person most knowledgeable about, *inter alia*, district map options in the 2011 supervisorial redistricting process, concedes that Plaintiffs’ Illustrative Map demonstrates that it was possible in 2011 to draw a supervisorial map that contains two reasonably compact Latino majority CVAP districts.

Plaintiffs filed this lawsuit on April 26, 2016. The Court denied Defendants’ Motion to Dismiss on September 6, 2016. The parties have completed discovery, and a Pre-Trial Conference is scheduled for June 5, 2017, with Trial to commence on August 29, 2017. The next



election for Board of Supervisors will take place in November of 2018.

## **A. BACKGROUND**

Plaintiffs are Latino citizens and voters who allege that the current supervisorial plan violates Section 2 of the Voting Rights Act. Joint Statement of Undisputed Facts (“JSUF”) ¶ 2. During the decade prior to the 2011 decennial redistricting process, the Latino population in Kern County had grown significantly, from approximately 38 percent to 49 percent of the total population. JSUF ¶¶ 8, 10.

The Board of Supervisors are elected from five single-member districts, and Latinos comprise a majority of the eligible voters in only one of the five districts—District 5, which is located in Bakersfield and surrounding areas. Plaintiffs’ Statement of Undisputed Material Facts (“PSUMF”) ¶¶ 5, 17; JSUF ¶¶ 11-12. District 5 is the only one of the districts that regularly elects Latino candidates. *See* JSUF ¶ 23; PSUMF ¶ 8.

In the 2011 redistricting process, Kern County held 15-20 community workshops and four public Board hearings. JSUF ¶¶ 16-17. During the workshops and the hearings, Latino voters who live in the agricultural areas of Northern Kern County urged the Board to unite their community in a second Latino majority district, a request that Latino voters from that area had repeatedly and unsuccessfully made in the last three redistricting cycles. PSUMF ¶¶ 27-28. Latino community members and MALDEF testified before the Board in 2011, expressing strong support for a plan that would create a second Latino majority district by consolidating the Latino agricultural communities of Delano, McFarland, Wasco, Shafter, Buttonwillow, and Lost Hills within a single district. PSUMF ¶ 27. Rather than unite that politically cohesive Latino agricultural area into one district, the Board adopted a plan that split the community into two districts, Districts 1 and 4, districts in which Latino voters are submerged in the larger non-Latino voting population. PSUMF ¶¶ 5-9.

Allan Krauter, Senior Administrative Analyst in the Kern County Administrative Office, was designated under Rule 30(b)(6) of the Federal Rules of Civil Procedure as the County’s person most knowledgeable about the 2011 redistricting process, including the process for receiving and conveying public comment to the Board, and the various map options considered

1 by the Board in 2011. PSUMF ¶ 30. Mr. Krauter performed the actual mapping and reported to  
 2 the Board, presenting it with a total of seven map options, most of which were based on  
 3 community input. PSUMF ¶¶ 29, 39. During the four formal public hearings and 15-20  
 4 redistricting workshops, County staff failed to present to the Board or to the workshop  
 5 participants, orally or in its reports, specific CVAP data from the American Community Survey  
 6 describing each district in the seven map options, even though Mr. Krauter knew that Latino  
 7 CVAP data was legally required for assessing whether a district was protected under the Voting  
 8 Rights Act.<sup>1</sup> PSUMF ¶¶ 25, 35; JSUF ¶¶ 16, 17, 20. Mr. Krauter made no serious attempts to  
 9 draw, preserve, and present to the Board two Latino majority districts in 2011. PSUMF ¶¶ 32-36.

10 However, Mr. Krauter testified that Plaintiffs' Illustrative Map demonstrates that it was  
 11 possible in 2011 to draw a supervisorial map that contains two reasonably compact Latino  
 12 majority CVAP districts. PSUMF ¶¶ 29, 31.

13 Nonetheless, the Board adopted Mr. Krauter's Map Option 7, in which Latinos constitute  
 14 the majority of the CVAP in only one district—District 5. PSUMF ¶¶ 5-7.

#### 15 **B. PLAINTIFFS' ILLUSTRATIVE PLAN**

16 Plaintiffs' expert, David R. Ely, created Plaintiffs' Illustrative Plan in accordance with  
 17 traditional redistricting criteria with particular focus on communities of interest and the simplicity  
 18 and recognizability of boundaries. PSUMF ¶ 12. Plaintiffs' Illustrative Plan maintains District 5  
 19 as a Latino majority CVAP district, but combines the agricultural areas northeast and south of the  
 20 city of Bakersfield into an additional majority Latino CVAP district.<sup>2</sup> PSUMF ¶ 13.

21 The parties have exchanged reports from their demographic experts that include total  
 22 population and CVAP for the various 2001 and 2011 supervisorial districts and for the County as  
 23 a whole. There are minor differences in some of the totals for these categories of populations.

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24  
 25 <sup>1</sup> In 2011, The American Community Survey CVAP data from the California Statewide Database  
 was in the possession of County Counsel for legal review of redistricting options. JSUF ¶¶ 18-19.

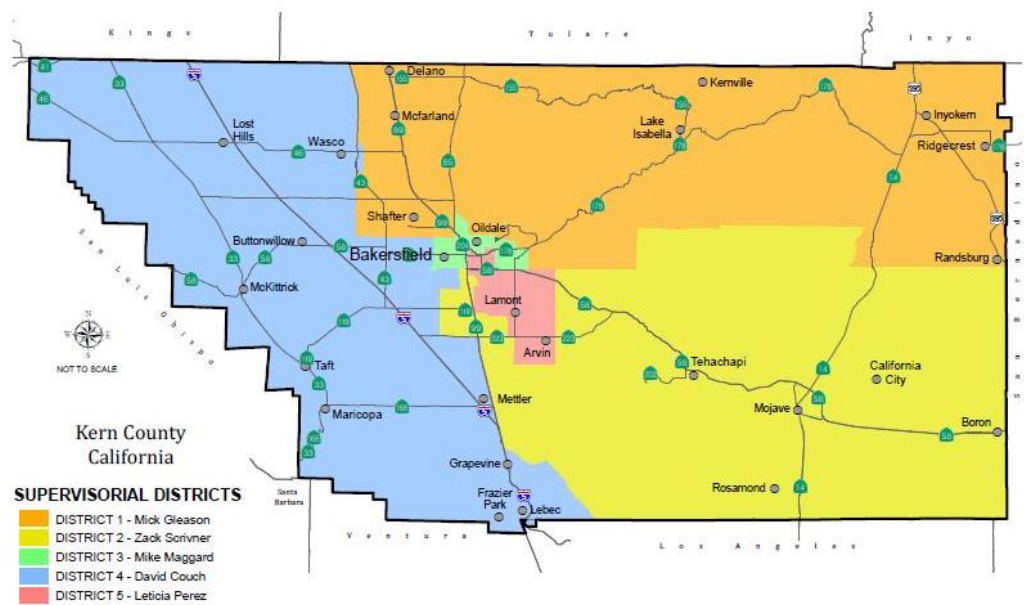
26 <sup>2</sup> David Ely, Plaintiffs' expert, analyzed the current Kern County map and created the Plaintiffs'  
 Illustrative Map using the following data sources: The 2010 Census PL94-171 redistricting data  
 27 file was the source for total population and voting age population ("VAP") by race and Latino  
 Origin; data from the 2014 5-year American Community Survey ("ACS") was the source for  
 28 citizen voting age population breakdowns. PSUMF ¶¶ 1-2.

The differences are slight. PSUMF ¶ 3. More importantly, the slight differences in the experts' calculations of population within the adopted maps do not affect the variances between the districts, and do not make a substantive difference in whether or not any district is a majority Latino CVAP district. PSUMF ¶ 4.

### **Kern County Adopted Plan**

#### **Kern County Supervisorial District Map**

The Supervisorial District boundaries shown on this map were approved by the Kern County Board of Supervisors on August 9, 2011 (ordinance effective September 8, 2011). Using information from the 2010 Census, each district contains nearly the same number of people.



PSUMF ¶ 17.

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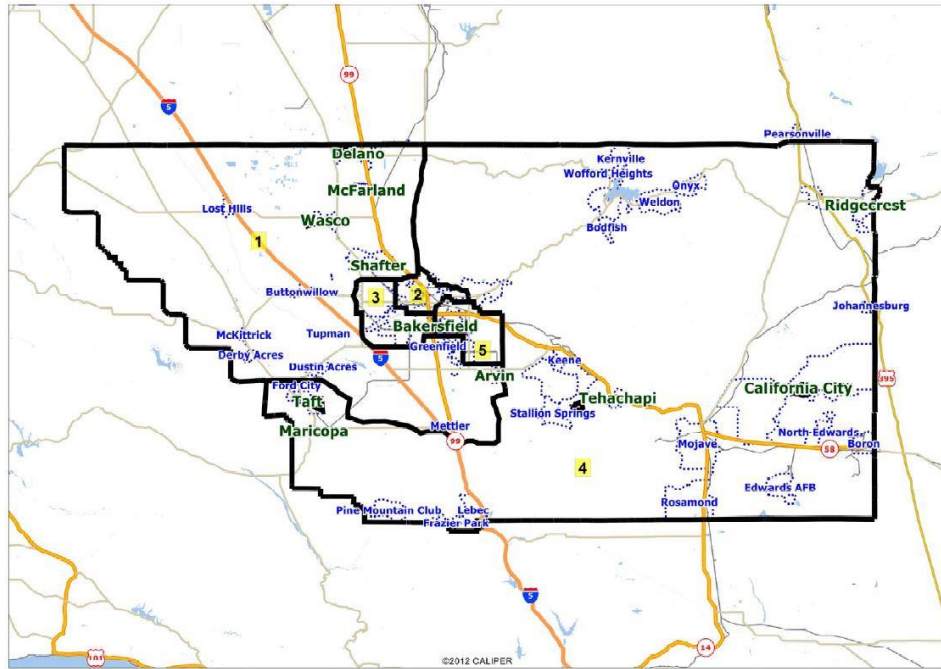
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## Plaintiffs' Illustrative Plan

Kern County - Plaintiff Illustrative Map



PSUMF ¶ 17.

## **II. ARGUMENT**

### **A. Summary Judgment Standard**

Summary judgment is appropriate when there is no genuine issue as to any material facts and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A party may seek summary judgment with respect to all or any part of a claim. Fed. R. Civ. P. 56(a). “Partial summary judgment that falls short of a final determination, even of a single claim, is authorized by Rule 56 in order to limit the issues to be tried.” *FiTeq Inc v. Venture Corp.*, 169 F. Supp. 3d 948, 954 (N.D. Cal. 2016) (citing *State Farm Fire & Cas. Co. v. Geary*, 699 F.Supp. 756, 759 (N.D. Cal. 1987)). Plaintiffs here bear the initial burden of demonstrating that no genuine issues of material fact exist. *Celotex Corp. v. Cotrett*, 477 U.S. 317, 323 (1986). The burden then shifts to Defendant to demonstrate specific genuine issues of material fact that require resolution by a fact finder at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). To meet its burden, Defendant must present “significant probative evidence . . .

1 supporting the claim that a genuine issue of material fact exists.” *Taylor v. First Advantage*  
 2 *Background Servs. Corp.*, No. 15-cv-02929, 2016 WL 4762268, at \*2 (N.D. Cal. Sept. 13, 2016).  
 3 Mere allegations or a “scintilla” of evidence will not meet Defendant’s burden. *See id.*; *Celotex*  
 4 *Corp.*, 447 U.S. at 248.

5 Here, to prevail on a motion for partial summary judgment, Plaintiffs must demonstrate  
 6 that there is no genuine issue of material fact in opposition to their claim that the Latino  
 7 population in Kern County is sufficiently large and geographically compact to constitute a  
 8 majority of the citizen voting age population in two of the five Kern County Supervisorial seats.  
 9 *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1390 (E.D. Wash. 2014) (citing *Gingles*, 478 U.S.  
 10 at 50).

#### 11 **B. Section 2 of the Voting Rights Act**

12 In 1982, Congress amended the Voting Rights Act to reach discriminatory conduct that  
 13 might otherwise evade liability under the more stringent intent standard established in *City of*  
 14 *Mobile v. Bolden*, 446 U.S. 55 (1980). The Section 2 amendment created a “results-based” test to  
 15 analyze vote dilution claims. S. Rep. No. 97-417, at 40 (1982), *reprinted in* 1982 U.S.C.C.A.N.  
 16 177, 218.

17 *Thornburg v. Gingles* provides the framework for determining whether Kern County’s  
 18 supervisorial plan impairs the ability of Latinos to elect representatives of their choice in violation  
 19 of Section 2. In *Gingles*, the Supreme Court established a two-step inquiry for analysis of vote  
 20 dilution claims. 478 U.S. at 50-51. First, the minority group must be able to demonstrate: (1)  
 21 “that it is sufficiently large and geographically compact to constitute a majority in a single-  
 22 member district;” (2) “that it is politically cohesive;” and (3) “that the white majority votes  
 23 sufficiently as a bloc to enable it—in the absence of special circumstances, . . . usually to defeat  
 24 the minority’s preferred candidate.” *Id.*

25 The second step of the inquiry requires the Court “to consider the totality of the  
 26 circumstances and to determine, based upon a searching practical evaluation of the past and  
 27 present reality whether the political process is equally open to minority voters.” *Id.* at 79  
 28

(citations and internal quotation marks omitted). The Senate Judiciary Committee, in a report accompanying the 1982 amendments to the Voting Rights Act, provided a non-exclusive list of factors that a court may consider in determining “whether the challenged practice impermissibly impairs the ability of the minority group to elect their preferred representatives.” *Ruiz v. City of Santa Maria*, 160 F.3d 543, 550 (9th Cir. 1998).<sup>3</sup> The *Gingles* framework arose in the context of challenges to multimember districts, but is applicable to the judicial review of single member districting plans as well. *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399, 425 (2006).

This motion seeks to establish that Plaintiffs have met their burden of proof on the first of the three *Gingles* prongs.

**C. There is No Genuine Issue of Material Fact that Plaintiffs Have Satisfied the First *Gingles* Prong: Kern County’s Latino Population is Sufficiently Large and Compact to Constitute the Majority of the Citizen Voting Age Population in Two of the Five Supervisorial Districts.**

*Gingles* requires a Plaintiff to prove, *inter alia*, that Latinos are sufficiently geographically compact to constitute a majority of the eligible voters in a single member district. 478 U.S. at 50.

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<sup>3</sup> These factors include, but are not limited to:

- (1) the extent of any history of official discrimination in the state or political subdivision affecting the right of a member of a minority group to register, vote, or participate in the democratic process;
  - (2) the extent to which voting in government elections is racially polarized;
  - (3) the extent to which the state or political subdivision has used voting practices or procedures that end to enhance the opportunity for discrimination against the minority group (for example, unusually large election districts, majority vote requirements, prohibitions against bullet voting);
  - (4) exclusion of minorities from a candidate slating process;
  - (5) the extent to which minority group members in the state or political subdivision bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
  - (6) the use of overt or subtle racial appeals in political campaigns;
  - (7) the extent to which minorities have been elected to public office in the jurisdiction.
- Ruiz*, 160 F.3d at 550 n.15.

Additional factors are “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs” of the minority group and “whether the policy underlying the . . . use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” S. Rep. at 29; *see also Gingles*, 478 U.S. at 48 n.15.



Courts typically divide *Gingles* prong one inquiry into two criteria—numerosity and compactness. *City of Yakima*, 40 F. Supp. 3d at 1391.

The numerosity question is purely mathematical. Have Plaintiffs proffered an illustrative district in which the majority of the eligible voters are Latino? *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009). The Ninth Circuit holds that the measure of “eligible voters” is that part of the population who are citizens over 18 years of age, or CVAP. *See Romero v. City of Pomona*, 883 F.2d 1418, 1425-26 (9th Cir.1989). Plaintiffs’ Illustrative Map has the following demographic characteristics which demonstrate two majority Latino CVAP districts in an equipopulous five district plan:

**Kern County Illustrative Supervisorial Districts**

Illustrative Districts					
District	1	2	3	4	5
Census Population	182092	160764	161755	171974	163046
Non-Prison Pop.	163917	160764	161755	160625	163046
Deviation	1896	-1257	-266	-1396	1025
% Deviation	1.2%	-0.8%	-0.2%	-0.9%	0.6%
Citizen Voting Age Population					
2009 Special Tabulation					
% Latino	53.2%	21.2%	25.2%	12.9%	54.5%
% White	29.9%	70.6%	60.2%	76.0%	29.3%
% African American	8.1%	3.6%	7.6%	5.7%	12.8%
% Asian	7.1%	2.5%	5.0%	2.3%	1.4%
2014 Special Tabulation					
% Latino	60.8%	26.5%	30.8%	16.7%	61.2%
% White	23.6%	63.5%	52.8%	73.1%	24.3%
% African American	7.7%	4.2%	8.1%	5.0%	10.8%
% Asian	6.4%	3.3%	6.5%	2.9%	1.4%

PSUMF ¶ 14.

In fact, both of the Latino majority illustrative districts have a higher Latino share of eligible voters than the single majority district which was adopted. PSUMF ¶¶ 5, 14-15. This is true whether measured by the most recent CVAP Tabulation or by the 2009 Tabulation which

1 was available at the time the current districts were adopted. JSUF ¶ 13; PSUMF ¶ 15. As  
 2 required by law, the districts in the Illustrative Plan are as nearly equal in population as possible,  
 3 with an overall deviation of total population across districts of 2.1%. PSUMF ¶ 14; *Reynolds v.*  
 4 *Sims*, 377 U.S. 533, 568 (1964). Deviations under 10% are presumptively constitutional. *Harris*  
 5 *v. Arizona Indep. Redistricting Comm’n*, 136 S. Ct. 1301, 1307 (2016). Defendants’ own expert,  
 6 Dr. Douglas Johnson, examined Plaintiffs’ Illustrative Map and found no technical error with Mr.  
 7 Ely’s data confirming that the five districts are equipopulous and that two of the districts exceed  
 8 50% Latino CVAP. PSUMF ¶¶ 3-4. Dr. Johnson’s CVAP calculations are minimally different  
 9 from Mr. Ely’s, but confirm that District 1 and District 5 in Plaintiffs’ Illustrative Map are over  
 10 60.8% and 61.2% Latino CVAP, respectively. PSUMF ¶¶ 3-4. The numerosity of Latino eligible  
 11 population is not disputed; the mathematical threshold in the first *Gingles* prong is cleared.

12 In Supreme Court voting rights jurisprudence, the word “compactness” in the *Gingles*  
 13 context refers to the compactness of the minority population—*e.g.* whether it is sufficiently  
 14 concentrated to enable it to constitute the majority of the CVAP in a single-member district—not  
 15 to the shape of the district. *LULAC*, 548 U.S. at 433;<sup>4</sup> *see also Houston v. Lafayette Cnty., Miss.*,  
 16 56 F.3d 606, 611 (5<sup>th</sup> Cir. 1995) (district courts should “focus [] on the size and concentration of  
 17 the minority population, rather than only on the shape of the district in the plaintiff residents’  
 18 specific proposals.”).

19 There is no question that Latinos in Kern are sufficiently geographically compact to

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20  
 21 <sup>4</sup> The inquiry in a *Gingles* prong one analysis is distinct from and “not to be confused with  
 22 compactness in the context of a challenge under the Equal Protection Clause . . .” *City of*  
 23 *Yakima*, 40 F. Supp. 3d at 1391 (citing *LULAC*, 548 U.S. at 433). The latter inquiry, inapplicable  
 24 here, asks whether race was the predominant factor in drawing the lines such that the districts  
 25 were deliberately gerrymandered by race. In contrast to the equal protection analysis, the *Gingles*  
 26 prong one compactness inquiry does not require a court to determine whether the illustrative  
 27 district subordinates traditional redistricting principles to race. *Id.* at 1391-92 (citing *Shaw v.*  
 28 *Reno*, 509 U.S. 630, 647 (1993)); *Easley v. Cromartie*, 532 U.S. 234 (2001). “In other words, the  
 court must first determine whether *Gingles* is met before ensuring that the proposed remedy  
 complies with the Equal Protection Clause.” *Id.* at 1401 (quoting *Ga. State Conference of*  
*NAACP v. Fayette Cnty. Bd. of Comm’rs*, 950 F. Supp. 2d 1294, 1304-06 (N.D. Ga. 2013))  
 (internal quotation marks omitted); *see also, Ruiz*, 160 F.3d at 559 (consideration of the scrutiny  
 required for a future remedy premature in the liability phase of a lawsuit under Section 2 of the  
 Voting Rights Act).



1 constitute the majority in a reasonably drawn equipopulous district. First, District 1 in the  
 2 Illustrative Plan combines the largely Latino agricultural area in North Kern County into one  
 3 district, a community that has been inexplicably and persistently split in the last three rounds of  
 4 redistricting, despite strong support for unification from Latino community members. PSUMF ¶  
 5 13. Indeed, the Illustrative Map is able to create two Latino majority CVAP districts because,  
 6 unlike the current map, it does not “crack” that agricultural Latino community into two districts,  
 7 one of which currently stretches from Delano, across the mountains, all the way to the eastern  
 8 edge of the county. PSUMF ¶¶ 9, 13. Rather, Plaintiffs’ Illustrative Plan joins those Latino  
 9 communities together with an additional agricultural community to create a second, compact,  
 10 Latino majority district. PSUMF ¶¶ 11-15.

11 Plaintiffs’ Illustrative Plan was created in accordance with traditional redistricting criteria  
 12 and its districts are at least as compact, if not more compact, than those adopted by the Board.  
 13 PSUMF ¶¶ 12, 17. Indeed, Defendants’ expert admits that the adopted map is no more compact  
 14 than Plaintiffs’ Illustrative Plan, and that linking the agricultural areas in the north with the  
 15 agricultural areas around Arvin, as they are linked in Plaintiffs’ Illustrative District 1, can be  
 16 compliant with the definition of compactness. PSUMF ¶ 18. It is even more clear from the aerial  
 17 view of the maps below that the Illustrative Map follows the land use contours of the county far  
 18 better than does the current map. PSUMF ¶ 13. The aerial view of the two maps demonstrates  
 19 that while the current map splits agricultural areas in North Kern, and it also divides in half the  
 20 mountainous areas in the East, the Illustrative Map preserves each of those very different areas in  
 21 compact districts that comply with traditional redistricting principles. PSUMF ¶ 13.

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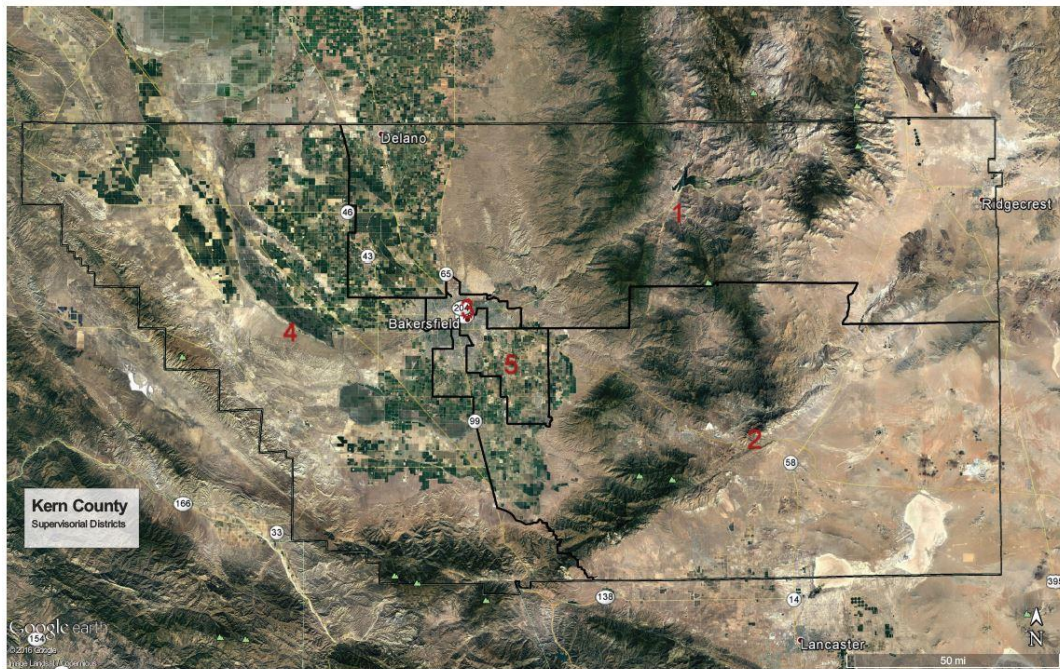
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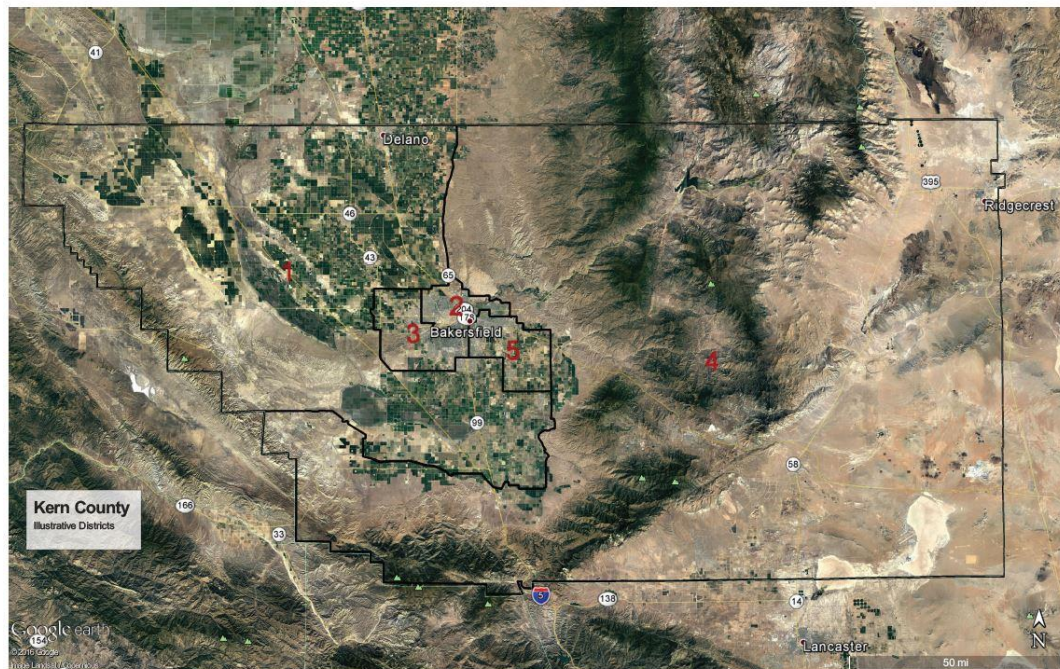
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**Kern County Adopted Plan**



**Plaintiffs' Illustrative Plan**



PSUMF ¶ 13.

Moreover, District 1 in Plaintiffs' Illustrative Plan captures rural areas of similar communities with shared interests in issues such as pesticide use, contaminated water,



1 transportation, economic issues, fracking, teen pregnancies, low college success rates,  
 2 infrastructure, public health, crime, water quality, agriculture, unemployment. PSUMF ¶ 16.

3 Finally, the shape of the new Latino district in Plaintiffs' Illustrative Plan follows the  
 4 contours of the legislative districts for the State Senate (SD 14), Assembly (AD 32) and  
 5 Congressional (CD 21) seats, districts that were drawn by the California Supreme Court's Special  
 6 Masters in 1991, adopted again by the legislature in 2001, and again by the California  
 7 Redistricting Commission in 2011. PSUMF ¶ 23.

8 Kern County's experts do not argue that it is not *possible* to create a plan in which two of  
 9 the five reasonably compact supervisorial districts are over 50% Latino CVAP. Indeed,  
 10 Defendants' expert Dr. Doug Johnson never attempted to determine whether two reasonably  
 11 compact Latino CVAP districts could be drawn in Kern County, because he "knew [Plaintiffs'  
 12 attorney] would be asking" whether or not he had attempted such a plan, and because he wasn't  
 13 "hired to do so," and making such an attempt "wasn't part of [his] assignment." PSUMF ¶ 24.

14 Instead, Defendants argue that the new, second Latino majority district in Plaintiffs'  
 15 Illustrative Plan does not adequately capture communities of interest. Specifically, Kern  
 16 County's two experts on this subject opine that the two agricultural communities in Plaintiffs'  
 17 second Latino majority district, one in the northern end of the district and the other just south of  
 18 Bakersfield, are distinct in other ways and should not be in the same district, despite all the  
 19 evidence of commonality already in the record, and despite their own expert's testimony that  
 20 linking those two areas can be "compliant with the definition of compactness." PSUMF ¶ 19.  
 21 Defendants believe that the Voting Rights Act considerations set forth above are outweighed by  
 22 the fact that the shortest distance between Arvin and Delano is through Bakersfield, so that  
 23 drivers in Arvin would have to leave their district if they wanted to drive to Delano. Again,  
 24 Defendants' own expert, Dr. Johnson, concedes that the ability to drive the shortest route from  
 25 one population center to another without leaving the district is not considered by courts to be a  
 26 traditional redistricting goal, and that therefore he does not consider it a traditional redistricting  
 27 principle. PSUMF ¶ 20.

28 A showing of compactness in the *Gingles* liability phase does not require that every

community of interest be captured perfectly, or that the shape of the illustrative district be without imperfection. The district court in *City of Yakima* summarized this issue, noting:

What the first *Gingles* precondition does not require is proof that a perfectly harmonized districting plan can be created. Indeed, conditioning a § 2 plaintiff's right to relief upon his or her ability to create a letter-perfect districting plan would put the cart before the horse.

40 F. Supp. at 1399 (citing *Clark v. Roemer*, 777 F. Supp. 445, 463 (M.D. La. 1990)).

Accordingly, the *City of Yakima* court granted summary judgment to plaintiffs, noting that “the compactness of the minority districts in these proposals is easily confirmed by simply looking at the maps of the proposed districts . . . .” *Id.* at 1393. The court also found it probative that the districts in the illustrative plan were more compact than the existing Districts, as they are in Kern County. *Id.* at 1396; (Compare Illustrative Plan, District 1 with Exhibit C, Current Plan, District 2) PSUMF ¶¶ 13, 17.

Plaintiffs' *Gingles* prong one proof is legally and factually unassailable. Plaintiffs' expert drew a five-member plan containing two reasonably compact Latino majority CVAP districts. Kern County's entire prong one defense rests on criticisms based on expert testimony from two experts regarding “community of interest” factors that are more appropriately raised at the remedy phase. *See City of Yakima*, 40 F. Supp. 3d at 1399.

### III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully submit that their motion for partial summary judgment should be granted.

Respectfully submitted,

Dated: April 3, 2017

MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL FUND

By: /s/ Denise Hulett  
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Matthew J. Barragan  
Thomas A. Saenz  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

OSCAR LUNA, ALICIA PUENTES,  
DOROTHY VELASQUEZ, and GARY  
RODRIGUEZ,

Plaintiffs,

v.

COUNTY OF KERN, KERN  
COUNTY BOARD OF  
SUPERVISORS, and MICK  
GLEASON, ZACK SCRIVNER,  
MIKE MAGGARD, DAVID  
COUCH, and LETICIA PEREZ, in  
their official capacity as members of  
the Kern County Board of  
Supervisors, and JOHN NILON, in  
his official capacity as Kern County  
Administrative Officer, and MARY  
B. BEDARD, in her official capacity  
as Kern County Registrar of Voters,  
inclusive,

Defendants.

Case No. 1:16-CV-00568-DAD-JLT

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
[FRCP 56(a)]**

JUDGE: Hon. Dale A. Drozd  
COURTROOM: 5  
HEARING DATE: May 2, 2017  
TIME: 9:30 a.m.

**ORDER**

Plaintiffs' Motion for Partial Summary Judgment came before the Court for hearing on May 2, 2017. After considering the papers filed in support of and in opposition to the motion and the arguments of counsel, and all other matters presented to the Court, this Court finds that Plaintiffs have established that Latinos in Kern County are a sufficiently large and geographically compact group to constitute a majority of the voter-eligible population in two single-member districts, and that Plaintiffs have thus satisfied the first prong of the three-prong analysis set forth in *Thornburg v. Gingles*, 478 U.S. 30, 50-51, (1986) for judicial determination of a violation of Section 2 of the Voting Rights Act as amended, 52 U.S.C. § 10301.

IT IS HEREBY ORDERED that Plaintiffs' motion is GRANTED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE DALE A. DROZD  
UNITED STATES DISTRICT COURT JUDGE

Denise Hulett (State Bar No. 121553)  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

OSCAR LUNA, ALICIA PUENTES,  
DOROTHY VELASQUEZ, and GARY  
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Plaintiffs,

v.

COUNTY OF KERN, KERN  
COUNTY BOARD OF  
SUPERVISORS, and MICK  
GLEASON, ZACK SCRIVNER,  
MIKE MAGGARD, DAVID  
COUCH, and LETICIA PEREZ, in  
their official capacity as members of  
the Kern County Board of  
Supervisors, and JOHN NILON, in  
his official capacity as Kern County  
Administrative Officer, and MARY  
B. BEDARD, in her official capacity  
as Kern County Registrar of Voters,  
inclusive,

Defendants.

Case No. 1:16-CV-00568-DAD-JLT

**JOINT STATEMENT OF  
UNDISPUTED FACTS**

**JOINT STATEMENT OF UNDISPUTED FACTS**

1. The events that are the subject of this lawsuit occurred in Kern County.

2. Plaintiffs Oscar Luna, Alicia Puentes, Dorothy Velasquez, and Gary Rodriguez are Latino U.S. citizens and registered voters of Kern County who challenge the configuration of the current plan for election of members of the Kern County Board of Supervisors (“Board of Supervisors” or the “Board”).

3. Kern County is a political and geographical subdivision of the State of California established under the laws of the State of California, operating under the laws of the State of California and created for the provision of government services.

4. The Kern County Board of Supervisors is the County’s legislative body and is responsible for establishing county policies and the overall administration of the Kern County government.

5. Defendants Mick Gleason, Zack Scrivner, Mike Maggard, David Couch, and Leticia Perez are members of the Board of Supervisors of Defendant Kern County. Each supervisor is sued in his or her official capacity.

6. From 2009 to February 2017, John Nilon was the County Administrative Officer for Defendant Kern County and was responsible for enforcing the rules, regulations, and policies and ordinances enacted by Defendant Board of Supervisors, and was responsible for supervising the redistricting map options and public workshops during the 2011 redistricting process undertaken by Defendant Board of Supervisors. Mr. Nilon was sued in his official capacity.

7. Defendant Mary B. Bedard is the Registrar of Voters for Kern County, responsible for conducting county elections in Kern County. Defendant Bedard is sued in her official capacity.

***Demographics***

8. According to the 2010 United States Census, Kern County had a total population of 839,631, of whom approximately 49% were of Hispanic/Latino origin, 4% were Asian, and 5% were African American.

9. The U.S. Census Bureau’s American Community Survey (“ACS”) 1-year estimate concludes that in 2010, Kern County had a total citizen-voting age population (“CVAP”) of 476,399, of whom an estimated 34% were Latino.



1 10. According to the 2000 United States Census, Kern County had a total population of  
2 661,645 persons, of whom 38% were of Hispanic/Latino origin.

3 ***Kern County Current Supervisorial Plan***

4 11. Kern County is divided into five supervisorial districts.

5 12. Latinos are estimated to comprise more than half of the CVAP in the current District 5.

6 13. Both of the Latino majority districts in the *Gingles* prong one illustrative map are  
7 estimated to have a higher Latino share of eligible voters than the single majority district in the  
8 map adopted by the Board of Supervisors in 2011. This is true whether measured by the 2010-  
9 2014 five-year ACS CVAP Tabulation or by the 2005-2009 Tabulation, which was the most  
10 recent that was available at the time the current districts were adopted.

11 ***Redistricting Process***

12 14. Defendant Kern County is required to redistrict its five supervisorial districts every 10  
13 years in order to comply with applicable state and federal laws.

14 15. John Nilon, as the County Administrative Officer, provided staff support to the Board of  
15 Supervisors, and the County Administrative Office staff was responsible for public outreach and  
16 the public workshops conducted in connection with the 2011 redistricting process and for  
17 providing information, including redistricting plan options to the Board of Supervisors.

18 16. County staff conducted between 15 and 20 public “workshops” in 2011 regarding  
19 redistricting. There are no formal minutes of the discussions that took place at each of those  
20 workshops. Contemporaneous notes of the discussions that took place have not been located.

21 17. In July and August of 2011, Kern County held a total of four formal public hearings on  
22 supervisorial redistricting – two hearings on July 5, 2011, one on August 2, 2011, and one on  
23 August 9, 2011.

24 18. In 2011, Kern County staff acquired publicly available American Community Survey data  
25 for Kern County from the California Statewide Database, which is the official redistricting data  
26 repository of the State of California.

27 19. The 2005-2009 American Community Survey CVAP data from the California Statewide  
28 Database were in the possession of County Counsel for legal review of redistricting options.

20. County staff did not provide attendees of the County's public redistricting workshops in 2011 with CVAP data from the American Community Survey.

*Elections*

21. Elections for Board of Supervisors are non-partisan.

22. Regular elections for Board of Supervisors are held in even-numbered years.

23. Since 1994, a total of 4 Latinos have been elected to the Kern County Board of Supervisors – Leticia Perez in 2012, re-elected in 2016 (District 5); Pete Parra in 1996, re-elected in 2000 (District 5); Michael Rubio in 2004, re-elected in 2008 (District 5); and Steve Perez in 1994, re-elected in 1998 (District 2).

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**JOINT STATEMENT OF UNDISPUTED LEGAL ISSUES**

1. Federal jurisdiction exists under the Voting Rights Act, 52 U.S.C § 10301. Jurisdiction for Plaintiffs' claim for attorneys' fees, costs, expert witness fees and associated costs and related non-taxable costs exists under 52 U.S.C § 10310(e) and 28 U.S.C. § 1920.

2. This Court has personal jurisdiction over the parties and venue is appropriate in this Court.

3. This is an action under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, which is applicable to Kern County.

4. Section 2 of the Voting Rights Act of 1965, 52 U.S.C §10301, applies nationwide and prohibits voting practices and procedures that result in the denial or abridgment of the right of any citizen to vote on account of race, color, or membership in a language minority group.

5. In *Thornburg v. Gingles*, the U.S. Supreme Court set out a framework for determining whether a districting plan dilutes minority voting strength in violation of Section 2. In *Gingles*, the Supreme Court established a two-step inquiry for analysis of vote dilution claims. 478 U.S. at 50-51. First, the minority group must be able to demonstrate: (1) "that it is sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) "that it is politically cohesive;" and (3) "that the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, . . . usually to defeat the minority's preferred candidate."

*Id.*

6. The second step of the inquiry requires the Court "to consider the totality of the circumstances and to determine, based upon a searching practical evaluation of the past and present reality whether the political process is equally open to minority voters." *Id.* at 79 (citations and internal quotation marks omitted). The Senate Judiciary Committee, in a report accompanying the 1982 amendments to the Voting Rights Act, provided a non-exclusive list of factors that a court may consider in determining "whether the challenged practice impermissibly impairs the ability of the minority group to elect their preferred representatives." *Ruiz v. City of Santa Maria*, 160 F.3d 543, 550 (9th Cir. 1998).

7. These factors include, but are not limited to:

1) the extent of any history of official discrimination in the state or political subdivision

1 affecting the right of a member of a minority group to register, vote, or participate in  
 2 the democratic process;

3 2) the extent to which voting in government elections is racially polarized;

4 3) the extent to which the state or political subdivision has used voting practices or  
 5 procedures that may enhance the opportunity for discrimination against the minority  
 6 group (for example, unusually large election districts, majority vote requirements,  
 7 prohibitions against bullet voting);

8 4) exclusion of minorities from a candidate slating process;

9 5) the extent to which minority group members in the state or political subdivision bear  
 10 the effects of past discrimination in areas such as education, employment, and health,  
 11 which hinder their ability to participate effectively in the political process;

12 6) the use of overt or subtle racial appeals in political campaigns; and

13 7) the extent to which minorities have been elected to public office in the jurisdiction.

14 8. Additional factors are “whether there is a significant lack of responsiveness on the part of  
 15 elected officials to the particularized needs” of the minority group and “whether the policy  
 16 underlying the . . . use of such voting qualification, prerequisite to voting, or standard, practice or  
 17 procedure is tenuous.” S. Rep. at 29; *see also Gingles*, 478 U.S. at 48 n.15.

18 9. The Senate Factors are “neither comprehensive nor exclusive.” *Id.* at 45. Accordingly,  
 19 plaintiffs “need not prove a majority of these factors, nor even any particular number of them in  
 20 order to sustain their claims.” *Ga. State Conference of NAACP v. Fayette Cnty.*, 950 F. Supp. 2d  
 21 1294, 1298 (N.D. Ga. 2013); *see also Gomez v. City of Watsonville*, 863 F.2d 1407, 1412 (9th  
 22 Cir. 1988) (noting these factors are not intended to be “used as a mechanical ‘point counting’  
 23 device,” and “[t]he failure of plaintiff to establish any particular factor is not rebuttal evidence of  
 24 no violation”) (internal quotation marks, citation, and alterations omitted).

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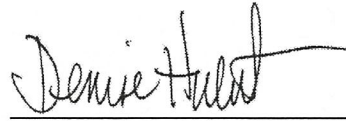
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1 Dated: April 3, 2017

MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL FUND

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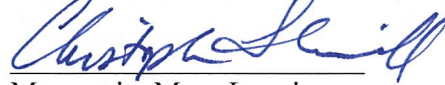


Denise Hulett  
Matthew J. Barragan  
Thomas A. Saenz

5  
6  
7 Dated: April 3, 2017

NIELSEN MERKAMER  
PARRINELLO GROSS & LEONI LLP

8  
9 By:



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

OSCAR LUNA, ALICIA PUENTES,  
DOROTHY VELASQUEZ, and GARY  
RODRIGUEZ,

Plaintiffs,

v.

COUNTY OF KERN, KERN  
COUNTY BOARD OF  
SUPERVISORS, and MICK  
GLEASON, ZACK SCRIVNER,  
MIKE MAGGARD, DAVID  
COUCH, and LETICIA PEREZ, in  
their official capacity as members of  
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his official capacity as Kern County  
Administrative Officer, and MARY  
B. BEDARD, in her official capacity  
as Kern County Registrar of Voters,  
inclusive,

Defendants.

Case No. 1:16-CV-00568-DAD-JLT

**PLAINTIFFS' STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

JUDGE: Hon. Dale A. Drozd  
COURTROOM: 5  
HEARING DATE: May 2, 2017  
TIME: 9:30 a.m.

1 Plaintiffs OSCAR LUNA, *et al.*, pursuant to Rule 56 of the Federal Rules of Civil  
 2 Procedure and Rule 260 of the Local Rules for the United States District Court, Eastern District  
 3 of California, file this Statement of Undisputed Material Facts in support of Plaintiffs' Motion for  
 4 Partial Summary Judgment. The following facts are undisputed and constitute material facts  
 5 necessary to a determination in favor of Plaintiffs' Motion. All record citations are attached to  
 6 the Declaration of Denise Hulett in Support of Plaintiffs' Motion for Summary Judgment (April  
 7 3, 2017) ("Hulett Decl."), which accompanies this filing.

### 8 *Demographic Data Sources*

9 1. David R. Ely, Plaintiff's expert, analyzed the Kern County current map and  
 10 created the Plaintiffs' Illustrative Map using the following data sources: The 2010 Census PL94-  
 11 171 redistricting data file was the source for total population and voting age population ("VAP")  
 12 by race and Latino Origin; data from the 2014 5-year American Community Survey ("ACS") was  
 13 the source for citizen voting age population ("CVAP") breakdowns. [Report of David R. Ely, ¶  
 14 18 (Nov. 14, 2017) (Hulett Decl., Ex. 7 and hereinafter cited as "Ely Report")]

15 2. The PL94-171 redistricting data file has data by Census Block. A Special  
 16 Tabulation of CVAP data by race and Latino Origin from the 2014 5-year ACS is available at the  
 17 Census Block Group ("BG") level of geography from the 2010 Census. [Ely Report, ¶ 18 (Hulett  
 18 Decl., Ex. 7)]

19 3. The parties have exchanged reports from their demographic experts that set out  
 20 population and CVAP for the various 2001 and 2011 supervisorial districts and for the County as  
 21 a whole. There are minor differences in some of the totals for these categories of populations.  
 22 The differences are slight. [Deposition of Douglas Mark Johnson at 24:22-25:17 (Feb. 7, 2017)  
 23 (Hulett Decl., Ex., 8 and hereinafter cited as "Johnson Dep.")]

24 4. The slight differences in the experts' calculations of population within the adopted  
 25 maps do not affect the variances between the districts, and do not make a substantive difference in  
 26 whether or not any district is a majority Latino CVAP district. [Johnson Dep. at 83:14-84:3  
 27 (Hulett Decl., Ex. 8)]

28 ///

**Kern County Current Supervisorial Plan**

5. The demographics calculated by Mr. Ely for the current Kern County Supervisorial districts are as follows:

**Kern County Adopted Supervisorial Districts**

Adopted Districts					
District	1	2	3	4	5
Census Population	169774	174404	162853	166296	166304
Non-Prison Pop.	157309	165887	162853	157754	166304
Deviation	-4712	3866	832	-4267	4283
% Deviation	-2.9%	2.4%	0.5%	-2.6%	2.6%
% Latino	47.7%	41.7%	43.0%	38.2%	75.6%
% White	40.2%	41.7%	47.4%	49.3%	14.2%
% African American	3.9%	9.0%	4.0%	4.9%	7.1%
% Asian	6.1%	5.2%	3.1%	5.6%	1.7%
Voting Age Population					
% Latino	42.2%	37.1%	37.4%	34.1%	71.0%
% White	44.8%	46.7%	53.3%	53.4%	18.2%
% African American	4.7%	8.3%	3.5%	4.9%	7.1%
% Asian	6.2%	5.5%	3.3%	5.6%	2.0%
Citizen Voting Age Population					
2009 Special Tabulation					
% Latino	31.0%	25.3%	27.2%	23.5%	52.0%
% White	56.2%	58.0%	64.6%	65.0%	32.1%
% African American	5.0%	10.1%	3.8%	5.4%	12.2%
% Asian	5.5%	4.0%	2.4%	3.9%	2.0%
2014 Special Tabulation					
% Latino	32.6%	32.1%	34.2%	28.4%	59.4%
% White	54.4%	51.9%	56.7%	59.1%	25.5%
% African American	4.7%	9.6%	4.2%	5.6%	10.8%
% Asian	5.6%	4.8%	2.7%	5.2%	2.0%

[Ely Report, ¶ 21, Table X (Hulett Decl., Ex. 7)]

6. Latinos comprise more than half of the CVAP in the current District 5. [Ely Report, ¶ 20-21, Table X (Hulett Decl., Ex. 7)]

7. Latinos do not comprise more than half the CVAP in any other current supervisorial district. [Ely Report, ¶ 20-21, Table X (Hulett Decl., Ex. 7)]

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8. The only supervisorial district in Kern County to regularly elect a Latino in the last two decades is District 5, currently represented by Leticia Perez. [Joint Statement of Undisputed Facts, ¶ 23]

9. The supervisorial plan adopted in 2011 “cracks” an agricultural Latino community into two districts, one of which stretches from Delano, across the mountains, all the way to Ridgecrest on the eastern edge of the county. [Adopted Districts, Shaded for Latino CVAP (Hulett Decl., Ex., 5 and hereinafter “Shaded Map”); Deposition of Gary Gerard Rodriguez at 37:6-38:11, 65:3-69:4 (Jan. 12, 2017) (Hulett Decl., Ex., 9 and hereinafter cited as “Rodriguez Dep.”); Deposition of Sam Ramirez at 86:14-88:12 (Hulett Decl., Ex., 10 and hereinafter cited as “Ramirez Dep.”); Johnson Dep. at 24:22-25:17 (Hulett Decl., Ex. 8)]

10. Defendants’ expert, Dr. Douglas Mark Johnson describes District 2 in the current Adopted Plan as “less than ideally compact.” [Johnson Dep. at 89:3-90:13 (Hulett Decl., Ex. 8)]

### ***Plaintiffs’ Illustrative Plan***

11. The Latino population was sufficiently numerous and geographically compact to form the majority of the eligible voter population with the meaning of *Thornburg v. Gingles*, 478 U.S. 30 (1986) in two geographically identifiable areas. [Ely Report, ¶ 22 (Hulett Decl., Ex. 7)]

12. Plaintiffs’ expert, Dave Ely, created Plaintiffs’ *Gingles* prong one illustrative district in accordance with traditional redistricting criteria with particular focus on Communities of Interest, connectedness within districts, and the simplicity and recognizability of boundaries. [Ely Report, ¶ 21 (Hulett Decl., Ex. 7)]

13. Plaintiffs’ Illustrative Plan maintains District 5 as a Latino majority CVAP districts, and combines the agricultural areas northeast and south of the city of Bakersfield into an additional majority Latino CVAP district. The Illustrative plan also combines the eastern and southern mountainous and desert areas into one district rather than the two eastern districts that are in the current plan. [Ely Report, ¶ 21, Tables X, Y (Hulett Decl., Ex. 7); Adopted and Illustrative Maps, Aerial View (Hulett Decl., Ex., 6 and hereinafter cited as “Aerial View Maps”)]

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14. The demographics of Plaintiffs' Illustrative Plan are as follows:

**Kern County Illustrative Supervisorial Districts**

Illustrative Districts					
District	1	2	3	4	5
Census Population	182092	160764	161755	171974	163046
Non-Prison Pop.	163917	160764	161755	160625	163046
Deviation	1896	-1257	-266	-1396	1025
% Deviation	1.2%	-0.8%	-0.2%	-0.9%	0.6%
% Latino	74.3%	30.4%	38.0%	24.0%	77.3%
% White	14.0%	58.7%	44.3%	64.9%	12.8%
% African American	4.9%	4.1%	7.8%	5.1%	7.3%
% Asian	5.8%	4.3%	7.8%	2.9%	1.2%
Voting Age Population					
% Latino	69.2%	26.3%	33.2%	21.4%	73.1%
% White	17.2%	63.3%	49.6%	68.2%	16.5%
% African American	6.2%	3.6%	7.1%	4.7%	7.4%
% Asian	6.3%	4.3%	8.0%	2.8%	1.4%
Citizen Voting Age Population					
2009 Special Tabulation					
% Latino	53.2%	21.2%	25.2%	12.9%	54.5%
% White	29.9%	70.6%	60.2%	76.0%	29.3%
% African American	8.1%	3.6%	7.6%	5.7%	12.8%
% Asian	7.1%	2.5%	5.0%	2.3%	1.4%
2014 Special Tabulation					
% Latino	60.8%	26.5%	30.8%	16.7%	61.2%
% White	23.6%	63.5%	52.8%	73.1%	24.3%
% African American	7.7%	4.2%	8.1%	5.0%	10.8%
% Asian	6.4%	3.3%	6.5%	2.9%	1.4%

[Ely Report, ¶ 21, Table Y (Hulett Decl., Ex. 7)]

15. Both of the Latino majority districts in the *Gingles* prong one illustrative map have a higher Latino share of eligible voters than the single majority district in the map adopted by the Board of Supervisors in 2011. This is true whether measured by the most recent CVAP Tabulation or by the 2009 Tabulation which was available at the time the current districts were adopted. [Ely Report, ¶ 22 and Tables X, Y (Hulett Decl., Ex. 7)]

16. District 1 in Plaintiffs' illustrative plan captures rural areas of similar communities with shared interests in issues such as pesticide use, contaminated water, transportation, economic

1 issues, fracking, teen pregnancies, low college success rates, infrastructure, public health, crime,  
 2 water quality, agriculture, unemployment. [Rodriguez Dep. at 38:12-40:21, 47:10-11, 48:5-11,  
 3 48:14-49:3, 50:17-52:9, 101:1-9, 102:12-103:9, 105:5-10 (Hulett Decl., Ex. 9) ; Ramirez Dep. at  
 4 38:1-41:10, 42:14-43:8, 44:11-45:6, 51:12-52:21, 53:3-9, 71:19-72:9 (Hulett Decl., Ex. 10) ;  
 5 Deposition of Dolores Huerta at 24:9-25:10, 50:13-52:9, 91:7-92:24, 93:4-10 (Jan. 30, 2017)  
 6 (Hulett Decl., Ex., 11 and hereinafter cited as “Huerta Dep.”)]

7 17. The districts in Plaintiffs’ illustrative plan are at least as compact, if not more  
 8 compact, than those adopted by the Board. [Ely Report, ¶ 21(Hulett Decl., Ex. 7); Adopted and  
 9 Illustrative Maps, Cities and Highways (Hulett Decl., Ex., 1 and hereinafter cited as “Cities and  
 10 Highways Maps”); Johnson Dep. at 144:1-144:19 (Hulett Decl., Ex. 8)]

11 18. Defendants’ expert, Dr. Douglas Johnson, concedes that Kern County’s Adopted  
 12 district map is no more compact than Plaintiffs’ Illustrative district map. [Johnson Dep. at 88:14-  
 13 88:20 (Hulett Decl., Ex. 8)]

14 19. Defendants’ expert, Dr. Douglas Johnson, concedes that linking Arvin to Delano,  
 15 as is done in District 1 of Plaintiffs’ Illustrative Plan, can be compliant with the definition of  
 16 compactness. [Johnson Dep. at 120:16-25 (Hulett Decl., Ex. 8)]

17 20. Defendants’ expert, Dr. Douglas Johnson, concedes that the ability to drive from  
 18 one population center to another in the same district without leaving the district is not considered  
 19 by courts to be a traditional redistricting goal, and that therefore he does not consider it a  
 20 traditional redistricting principle. He does consider it to be one factor in defining community of  
 21 interest, although he does not consider it to be his “criterion.” [Johnson Dep. at 135:25-138:19  
 22 (Hulett Decl., Ex. 8)]

23 21. Defendants’ expert, Dr. Douglas Johnson, concedes there is not “public transit  
 24 connectedness within the adopted map.” [Johnson Dep. at 153:3-10 (Hulett Decl., Ex. 8)]

25 22. Defendants’ expert, Dr. Douglas Johnson, concedes that the communities in North  
 26 Kern, Delano, McFarland, Wasco, Lost Hills, that are tied together by highways and transit, and  
 27 that those communities are split in the adopted plan and joined in Plaintiffs’ Illustrative Plan. Dr.  
 28 Johnson similarly concedes that there are areas in East Kern, Ridgecrest, Tehachapi, California

1 City, Lancaster that are tied together by highways and transit but are split in the adopted plan and  
 2 joined in Plaintiffs' Illustrative Plan. [Johnson Dep. at 155:8-156:5 (Hulett Decl., Ex. 8); *see also*  
 3 Ramirez Dep. at 49:13-51:11 (Hulett Decl., Ex. 10)]

4 23. The additional Latino majority district in Plaintiffs' illustrative plan follows the  
 5 contours of the legislative districts for the State Senate ("SD 14"), Assembly ("AD 32") and  
 6 Congressional ("CD 21") seats, districts that were drawn by the California Supreme Court's  
 7 Special Masters in 1991, adopted again by the legislature in 2001, and again by the California  
 8 Redistricting Commission in 2011. [2011 Congressional, Assembly, Senate District Maps (Hulett  
 9 Decl., Ex., 5 and hereinafter cited as "2011 Legislative District Maps"); Johnson Dep. at 158:11-  
 10 23 (Hulett Decl., Ex. 8); Rodriguez Dep. at 62:15-64:9 (Hulett Decl., Ex. 9); Huerta Dep. at 18:2-  
 11 15 (Hulett Decl., Ex. 11)]

12 24. Defendants' expert, Dr. Douglas Johnson, never attempted to determine whether  
 13 two reasonably compact Latino CVAP districts could be drawn in Kern County, because he  
 14 "knew [Plaintiffs' attorney] would be asking," whether or not he had attempted such a plan, and  
 15 because he wasn't "hired to do so," and making such an attempt "wasn't part of [his]  
 16 assignment." [Johnson Dep. at 51:21-53:1, 165:15-166:5, 168:8-169:1 (Hulett Decl., Ex. 8)]

### 17 *Redistricting Process*

18 25. During the three formal public hearings on July 5, 2011, August 2, 2011 and  
 19 August 9, 2011, County staff did not present to the Board, orally or in its reports, specific CVAP  
 20 data from the American Community Survey describing each district in the 7 map options that  
 21 staff presented to the Board. [Defendants' Answers and Objections to Plaintiffs' First Requests  
 22 for Admission to Defendants at 19 (Nov. 10, 2016) (Hulett Decl., Ex. 12 and hereinafter cited as  
 23 "Defs.' Admission"); Deposition of Allan David Krauter at 39:6-40:4, 42:24-43:4 (Jan. 9, 2017)  
 24 (Hulett Decl., Ex., 13 and hereinafter cited as "Krauter Dep."); Rodriguez Dep. at 106:25-107:4;  
 25 108:10-18 (Hulett Decl., Ex.9 ); Ramirez Dep. at 73:17-24 (Hulett Decl., Ex.10 )]

26 26. Defendants' expert, Dr. Douglas Johnson, concedes that providing CVAP data to  
 27 governing bodies and community members is standard practice during any redistricting process.  
 28 [Johnson Dep. at 34:24-35:8, 43:17-44:22 (Hulett Decl., Ex. 8)]

27. Latino community members and MALDEF testified before the Board, expressing strong support for a plan that would create a second Latino majority district by consolidating the Latino agricultural communities of Delano, McFarland, Wasco, Shafter, Buttonwillow, and Lost Hills within a single district. [Krauter Dep. at 47:2-48:20, 94:22-96:7 (Hulett Decl., Ex. 13 ); Rodriguez Dep. at 106:25-107:4; 109:4-18, 110:10-20 (Hulett Decl., Ex.9 ); Huerta Dep. at 72:11-73:3, 75:4-76:14, 87:14-88:4 (Hulett Decl., Ex. 11 ); Deposition of Allan David Krauter, Part II, at 164:24-166:8 (Mar. 17, 2017) (Hulett Decl., Ex., 14 and hereinafter cited as “Krauter II Dep.”)]

28. Latino community members in northern Kern County, in the cities of Delano, McFarland, Wasco, and Shafter, have been asking unsuccessfully for decades to be joined in one district. [Krauter Dep. at 123:10-25, 125:9-126:5 (Hulett Decl., Ex. 13); Ramirez Dep. at 71:19-72:9 (Hulett Decl., Ex. 10); 1991 and 2001 Adopted Maps (Hulett Decl., Ex., 6 and hereinafter cited as “1991 and 2001 Maps”)]

29. Allan Krauter, Senior Administrative Analyst in the Kern County Administrative Office, performed the actual mapping and reported to the Board. [Krauter Dep. at 18:11-19:13 (Hulett Decl., Ex. 13)]

30. Allan Krauter is designated by Defendants in this case under Fed. R. Civ. Pro. 30(b)(6) as the person most knowledgeable to testify about the 2001 and 2011 supervisorial redistricting processes, Kern County’s use of redistricting software including mapping programs and statistical programs, Kern County’s training of the County’s Administrative Office during the 2011 supervisorial redistricting process., Kern County’s process for receiving and or soliciting public comment, public participation, and how that information was communicated to the Board of Supervisors in 2011, Kern County’s 2011 public redistricting workshops, PowerPoint presentations and handouts, and election district map options used in the 2011 supervisorial redistricting process. [Krauter Dep. at 9:9-12:5 (Hulett Decl., Ex. 13); Plaintiffs’ Notice of Deposition Under Rule 30 (b)(6) of the Federal Rules of Civil Procedure (Hulett Decl., Ex. 15 and hereinafter cited as “Dep. Notice”)]

31. Mr. Krauter concedes that Plaintiffs’ Illustrative Map demonstrates that it was

1 possible in 2011 to draw a supervisorial map that contains two reasonably compact Latino  
 2 majority CVAP districts. [Krauter II Dep. at 183:18-184:5 (Hulett Decl., Ex.14 )]

3 32. Administrative staff and the Board operated on the understanding that compliance  
 4 with the Voting Rights Act required no more than the preservation of the existing Latino majority  
 5 district. [Krauter Dep. at 37:15-21, 40:23-41:8, 65:24-66:13, 68:2-11, 77:15-22, 112:18-113:15  
 6 (Hulett Decl., Ex. 13)]

7 33. Mr. Krauter testified that he did not know whether it was even possible to draw  
 8 two Latino majority districts, and never wondered whether it could be done, and never advised  
 9 the Board to consider whether adoption of a plan with two Latino districts might be required to  
 10 comply with the Voting Rights Act. [Krauter Dep. at 65:10-66:13, 108:13-17 (Hulett Decl., Ex.  
 11 13); Krauter II Dep. at 146:22-147:1 (Hulett Decl., Ex. 14)]

12 34. Allan Krauter made no serious attempts to draw two Latino majority districts. In  
 13 Mr. Krauter's first deposition, he denied ever making any attempts to draw two Latino districts at  
 14 all. However, and only after he was apprised by counsel, Mr. Krauter corrected and directly  
 15 contradicted his prior testimony. Mr. Krauter filed an errata changing his responses from "No,  
 16 we did not," to "Yes, we did," and from "I did not" to "I did," in answer to questions regarding  
 17 whether or not he ever tried to create draft maps containing two Latino majority districts.  
 18 [Krauter Dep. at 65:13-66:13 (Hulett Decl., Ex. 13); Errata Sheet and Certification of Allan David  
 19 Krauter (Hulett Decl., Ex., 16 and hereinafter cited as "Krauter Errata"); Krauter II Dep. at 141:1-  
 20 146:21 (Hulett Decl., Ex. 14)]

21 35. Following the issuance of the errata, Mr. Krauter testified during his second  
 22 deposition that his attempts to draw a second Latino majority district were confined to five hours  
 23 on one day early in August, during the week prior to the final August 9 redistricting hearing, that  
 24 he used only voting age population data, not CVAP data, even though he knew CVAP was legally  
 25 required for assessing whether a district was protected under the Voting Rights Act, and that VAP  
 26 was not a certain predictor of CVAP. [Krauter II Dep. at 148:9-20, 149:5-17, 151:17-152:3,  
 27 159:2-17, 160:12-162:11; 163:1-24, 168:23-169:19, 170:24-171:24, 173:3-174:1 (Hulett Decl.,  
 28 Ex. 14)]

1           36. Mr. Krauter did not save and so could not produce any of the draft attempts he  
2 made during the five hours, either to the Board or to Plaintiffs in this litigation. [Krauter II Dep.  
3 at 152:22-154:2, 183:9-17 (Hulett Decl., Ex.14)]

4           37. When Mr. Krauter drew map options for the Board in 2011, he only took into  
5 account what community members “identified with as community of interest,” which was almost  
6 “exclusively geographic,” *e.g.* that community members in Delano and McFarland and Shafter  
7 and Wasco and Lost Hills wanted to be together, but that the community members in the east  
8 believed that the desert area in the northeast was different from the desert area in the southeast  
9 and so they did not want to be in the same district. [Krauter Dep. at 117:10-118:11 (Hulett Decl.,  
10 Ex. 13)]

11           38. When Mr. Krauter drew map options for the Board in 2011, including the map that  
12 was adopted by the Board, he did not take into account the particular community of interests  
13 relevant to Tejon Ranch Commerce Center, issues regarding public transit, vacation areas,  
14 tourism, recreational areas, the location of China Lake Naval Weapon Center or Naval Air  
15 Weapons Station, the level of technological training required by employees in Indian Wells  
16 Valley, the Mohave Air & Space Port, the location of oilfields, industries involved in renewable  
17 energy. [Krauter Dep. at 113:16-118:11 (Hulett Decl., Ex. 13)]

18           39. Mr. Krauter drew a total of 7 map options, most of which were based on  
19 community input. None of the map options created a second district in which Latinos constituted  
20 the majority of the eligible voters. [Defendants’ Responses and Objections to Plaintiffs’ First  
21 Interrogatories to Defendants at 9 (Nov. 10, 2016) (Hulett Decl., Ex. 17 and hereinafter cited as  
22 “Defs.’ Responses”)]

23 Dated: April 3, 2017

MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATONAL FUND

24  
25 By: /s/ Denise Hulett  
26 Denise Hulett  
27 Matthew J. Barragan  
28 Thomas A. Saenz  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

OSCAR LUNA, ALICIA PUENTES,  
DOROTHY VELASQUEZ, and GARY  
RODRIGUEZ,

Plaintiffs,

v.

COUNTY OF KERN, KERN  
COUNTY BOARD OF  
SUPERVISORS, and MICK  
GLEASON, ZACK SCRIVNER,  
MIKE MAGGARD, DAVID  
COUCH, and LETICIA PEREZ, in  
their official capacity as members of  
the Kern County Board of  
Supervisors, and JOHN NILON, in  
his official capacity as Kern County  
Administrative Officer, and MARY  
B. BEDARD, in her official capacity  
as Kern County Registrar of Voters,  
inclusive,

Defendants.

Case No. 1:16-CV-00568-DAD-JLT

**DECLARATION OF DENISE HULETT  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT [FRCP 56(a)]**

JUDGE: Hon. Dale A. Drozd  
COURTROOM: 5  
HEARING DATE: May 2, 2017  
TIME: 9:30 a.m.

**DECLARATION OF DENISE HULETT**

I, DENISE HULETT, hereby declare under penalty of perjury as follows:

1. I am over 18 years of age and make this declaration of my own personal knowledge.

2. I am one of the attorneys for Plaintiffs in the above-captioned matter.

3. Attached hereto as Exhibit 1 is a true and correct copy of the adopted and illustrative maps with cities and highways, produced by the Parties in the course of discovery.

4. Attached hereto as Exhibit 2 is a true and correct copy of the adopted and illustrative maps produced by Plaintiffs' expert, David R. Ely, in the course of discovery.

5. Attached hereto as Exhibit 3 is a true and correct copy of a map of the adopted and illustrative maps shaded for Latino CVAP, produced by Plaintiffs in the course of discovery.

6. Attached hereto as Exhibit 4 is a true and correct copy of an aerial view of the adopted and illustrative maps, produced by Plaintiffs' expert, David R. Ely, in the course of discovery.

7. Attached hereto as Exhibit 5 is a true and correct copy of maps of the 2011 legislative districts for the State Senate ("SD 14"), Assembly ("AD 32") and Congressional ("CD 21") seats, produced by Plaintiffs in the course of discovery.

8. Attached hereto as Exhibit 6 is a true and correct copy of Kern County's 1991 and 2001 Supervisorial District Maps, produced by Defendants in the course of discovery.

9. Attached hereto as Exhibit 7 is a true and correct copy of the Report of David R. Ely, dated November 14, 2016.

10. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the deposition transcript of Douglas Mark Johnson, Ph.D., dated February 7, 2017.

11. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the deposition transcript of Gary Gerard Rodriguez, dated January 12, 2017.

12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the deposition transcript of Sam Ramirez, dated January 25, 2017.

///

1           13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the  
2 deposition transcript of Dolores Huerta, dated January 30, 2017.

3           14. Attached hereto as Exhibit 12 is a true and correct copy of Defendants' Answers  
4 and Objections to Plaintiffs' First Requests for Admission to Defendants, dated November 10,  
5 2016.

6           15. Attached hereto as Exhibit 13 is a true and correct copy of excerpts from the  
7 deposition transcript of Allan David Krauter, dated January 9, 2017.

8           16. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the  
9 deposition transcript of Allan David Krauter, Part II, dated March 17, 2017.

10          17. Attached hereto as Exhibit 15 is a true and correct copy of Plaintiffs' Notice of  
11 Deposition Under Rule 30 (b)(6) of the Federal Rules of Civil Procedure, dated January 4, 2017.

12          18. Attached hereto as Exhibit 16 is a true and correct copy of the Errata Sheet and  
13 Certification of Allan David Krauter, dated January 26, 2017.

14          19. Attached hereto as Exhibit 17 is a true and correct copy of Defendants' Responses  
15 and Objections to Plaintiffs' First Interrogatories to Defendants, dated November 10,

16           I declare under penalty of perjury under the laws of the United States of America that the  
17 foregoing is true and correct of my own personal knowledge except those matters stated on  
18 information and belief and, as to those matters, I believe them to be true. If called as a witness, I  
19 could competently testify thereto.

20           Executed on April 3, 2017, at San Francisco, California.

21  
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23 \_\_\_\_\_  
24 DENISE HULETT  
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