

EXHIBIT A

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16 *Attorneys for Plaintiffs*

17
18 **UNITED STATES DISTRICT COURT**

19 **DISTRICT OF ARIZONA**

20 Samuel Luckey and Michael Calhoun,
21 on behalf of themselves and those
22 similarly situated, and

23 Arizona Attorneys for Criminal Justice,

24 Plaintiffs,

25 v.

26 Allister Adel, in her official capacity as
27 County Attorney for Maricopa County,

28 Defendant.

CV-21-01168-PHX-JJT (ESW)

**INDEX OF EXHIBITS IN
SUPPORT OF COMPLAINT FOR
INJUNCTIVE RELIEF**

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EXHIBIT 1

Declaration of Edith Lucero

1. My name is Edith Lucero and I swear that the following is true and correct to the best of my knowledge.

2. I am a public defender in the Maricopa County Public Defender's Office. I have been at the office for approximately a year-and-a-half, having returned to the office. Initially, I spent 11 years with the office: approximately 5 years in the Trial Group, and approximately 6 years in the Appeals Division. Subsequently, I worked as an administrative law judge (ALJ) for the Arizona Department of Transportation (ADOT) for approximately 4 years. After ADOT, I worked for the U.S. Department of Homeland Security (DHS), as an Immigration and Customs Enforcement (ICE) attorney for approximately 4 years. And now, I have returned to the Maricopa County Public Defender's Office in the Early Disposition Courts (EDCs), where I have handled hundreds of cases.

The EDC "Substantially Harsher" Policy

3. The Maricopa County Attorney's Office (MCAO) has a harmful policy of making plea offers "substantially harsher," if criminal defendants assert their rights in the EDCs.

4. Some of my clients receive a form that threatens, in bold, capitalized, and underlined letters at the top, that any offer on the table is "withdrawn," if the defendant exercises their right to a preliminary hearing under the Arizona Constitution and Arizona statutory law. *See* Exhibit A (EDC Plea Offer Form, dated February 18, 2021). That form also says at the top that "County Attorney policy dictates" if the defendant rejects the offer on the table—which is to say, if the defendant asserts their constitutional right to trial—the offer will not only be withdrawn but be made "**SUBSTANTIALLY HARsher.**" *Id.*

5. In other cases, deputy county attorneys (DCAs) have confirmed the policy over email. In one exchange, I asked another DCA if my client would be “subject to MCAO’s “substantially harsher” policy for going forward on her PH.” Exhibit B (Email from DCA to APD Edith Lucero, dated May 27, 2021). The DCA responded, “Yes, that is our policy.” *Id.*

6. And in virtually every EDC status conference—the court proceeding immediately prior to the preliminary hearing—the DCA makes a record called a *Donald* advisement. *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000). The *Donald* advisement, even though it is named after an Arizona court case, addresses the MCAO’s own policy that if a defendant affirms their preliminary hearing, any subsequent plea offer will become substantially harsher and the plea agreement offered in EDC is automatically withdrawn.

7. This policy is extremely coercive for several reasons.

8. First, it threatens my clients with “substantially harsher” plea offers simply for exercising their rights, without regard for mitigating facts or even innocence. This destroys any belief in my clients that they are operating in a fair system.

9. Second, DCAs almost never provide additional discovery during the EDC process aside from police reports, which are often redacted. This is true even if the DCAs has or can easily obtain other information at their disposal.

10. Third, the compressed timelines—even when continuances are granted—leave little time for investigation. And if my client is being held in jail, the continuance itself creates harmful, additional time spent incarcerated, increasing the chances the client will succumb to the pressure, waive their rights, and take a felony conviction to end the ordeal.

11. MCAO DCAs readily admit that obtaining convictions quickly, eliminates the need for additional work, which are the goals of the EDCs. Exhibit C (Email from DCA to DPD

Edith Lucero, dated May 24, 2021) (“The purpose of EDC is facilitate speedy resolutions . . . because once the case leaves EDC, MCAO must expend significant resources for trial preparation.”); Exhibit B (“Providing BWC [body worn camera] is inconsistent with the goal of EDC, which is to promote the early resolution of felony cases. If we had to collect, review, and produce BWC in every case, or even the subset of cases where the Defendant thought there was a legal or factual defense, given the high volume of cases in EDC, it would bog the entire system down and swamp the law enforcement agencies.”).

Samuel Luckey

12. Samuel Luckey, a 34-year-old male, is a current client of the Maricopa County Public Defender. He was recently my client in EDC before he moved on to Superior Court, where is he is currently awaiting trial under the representation of Troy Luster.

13. In EDC, Mr. Luckey was charged with drug- and gun-related crimes. Mr. Luckey was arrested, based on the word of two tipsters whom police had pulled a few days before they arrested Mr. Luckey. They implicated Mr. Luckey in selling drugs but had no first-hand knowledge of him having done so. Police never presented the witnesses with Mr. Luckey for identification before they arrested him, nor did police ever personally witness Mr. Luckey selling drugs.

14. At Mr. Luckey’s initial appearance after his arrest, the magistrate gave him a \$10,000 bond. Mr. Luckey made clear that he could not afford that amount and requested alternative conditions for release. Mr. Luckey also told the judge that, if incarcerated pretrial, he would miss the birth of his daughter.

15. The magistrate stated he had “received a written recommendation from the state, with respect to this case, which the court had considered.” The magistrate then imposed a

\$10,000 cash-only bond. *See* Exhibit D (video of Mr. Luckey's initial appearance). The state's "written recommendation" submitted to the court at the initial appearance has yet to be disclosed to the defense. The state's written recommendation carried great weight, given that the court considered it when determining a bond amount, yet the document remains undisclosed.

16. Soon after Mr. Luckey was incarcerated, I became his public defender.

17. The first DCA assigned to Mr. Luckey's case threatened to pull the plea agreement, and end plea negotiations, if Mr. Luckey affirmed his preliminary hearing. Exhibit E (Email from DCA to APD Edith Lucero, dated March 10, 2021).

18. When I proposed an alternative plea agreement, I received an unequivocal denial from the DCA, and the DCA specified "that'll be it for plea negotiations," if Mr. Luckey affirms his preliminary hearing. *Id.*

19. In an effort to settle Mr. Luckey's case in EDC, I highlighted several substantive legal issues that I saw in the discovery I received and proposed an alternative plea agreement, but the DCA declined to entertain an alternative resolution. *Id.*

20. At Mr. Luckey's final status conference, he expressed many concerns with his treatment in EDC. He pointed out that he received virtually no discovery and was making the decision to waive his preliminary hearing blind. He said he felt threatened. He said he was "damned if I do, damned if I don't." However, with the threat of a substantially harsher offer hanging over his head, he waived his right to a preliminary hearing. Exhibit F (Video of Mr. Luckey's status conference).

Michael Calhoun

21. Michael Calhoun is a current client of mine in the EDCs. He is a 61-year-old male with a history of substance use issues. In 2019, he was arrested for selling \$20 of

methamphetamine to an undercover officer. MCAO is offering him 9.25 years of prison time, firm.

22. MCAO is basing their initial offer on the fact that Mr. Calhoun has prior felony convictions. But these felonies, also prosecuted by MCAO, involve simple drug possession and one case for the sale of drugs. MCAO will not offer diversion to Mr. Calhoun for him to receive treatment. From my review of the record, MCAO has *never* offered Mr. Calhoun diversion, or treatment, for any of his prior drug convictions yet uses those convictions to justify higher and higher sentences.

23. Mr. Calhoun is currently deciding whether to reject this plea offer and affirm his preliminary hearing, or face an even harsher plea just for doing so. Either way, he is terrified of dying in prison.

I, Edith Lucero, certify that the information in this declaration is true and correct to the best of my knowledge.

Edith M. Lucero

Edith Lucero

EXHIBIT 1(a)

EDC PLEA OFFER

Defendant: [REDACTED]

Date: February 18, 2021

CR#: [REDACTED]

***THE OFFER IS WITHDRAWN IF THE WITNESS PRELIMINARY HEARING IS SET OR WAIVED. THE OFFER MAY BE CHANGED OR REVOKED AT ANY TIME BEFORE THE COURT ACCEPTS THE PLEA.**

***NOTE: COUNTY ATTORNEY POLICY DICTATES THAT IF THE DEFENDANT REJECTS THIS OFFER, ANY SUBSEQUENT OFFER TENDERED WILL BE SUBSTANTIALLY HARSHER.**

PRIORS: 4/ 1 STRIKES: 0 PROB/PAROLE: no/no RELEASE: no

OFFER: PODD, F4 ☐ A ☐ F ☐ H ☐ B ☒ H4

STIPULATIONS: ☒ PROB ☐ SUPERV PROB ☐ N/A ☐ DOC

INITIAL JAIL _____ months ☐ FLAT ☐ NO CREDIT

☐ MCAO does not object to early release if Defendant successfully completes Mosaic or enters Reachout, however, MCAO makes no promises Defendant will be able to participate in either program and may have to serve the entire jail sentence.

☐ This offer is contingent on entry/acceptance of _____

☐ This offer is contingent upon defendant not commencing the currently scheduled bail hearing.

**Unless otherwise stated, the State shall oppose work release.

**Unless otherwise indicated above, work furlough or 2-for-1 credit is not prohibited.

**Unless otherwise indicated, all F6 open offers include "earned misdemeanor" language.

FINE + 78 % surcharge ☐ \$750 ☒ \$1000 ☐ \$1200 ☐ \$2000

DIVERSION ELIGIBLE: ☐ YES ☒ NO Priors

If you are requesting the plea, please email the assigned attorney at farrellh@mcao.maricopa.gov.

[REDACTED]

EXHIBIT 1(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Thursday, May 27, 2021 9:32 AM
To: Edie Lucero (OPD) [REDACTED]
Subject: RE: State v. [REDACTED]

Yes, that is our policy

From: Edie Lucero (OPD) [REDACTED]
Sent: Thursday, May 27, 2021 8:48 AM
To: [REDACTED]
Subject: RE: State v. [REDACTED]

[REDACTED]

Will [REDACTED] plea be subject to MCAO “substantially harsher” policy for going forward on her PH?

Thanks, Edie

From: [REDACTED]
Sent: Thursday, May 27, 2021 8:43 AM

To: Edie Lucero (OPD) [REDACTED]

Subject: RE: State v. [REDACTED]

Yes, if a defendant affirms, we withdraw it.

From: Edie Lucero (OPD) [REDACTED]

Sent: Thursday, May 27, 2021 8:42 AM

To: [REDACTED]

Subject: RE: State v. [REDACTED]

If [REDACTED] affirms the PH, will it impact her plea agreement?

From: [REDACTED]

Sent: Wednesday, May 5, 2021 8:38 AM

To: Edie Lucero (OPD) [REDACTED]

Subject: RE: State v. [REDACTED]

No. We'll leave other offers open but not diversion.

From: Edie Lucero (OPD) [REDACTED]

Sent: Wednesday, May 5, 2021 8:37 AM

To: [REDACTED]

Subject: RE: State v. [REDACTED]

If she SW, will you leave the diversion offer available for her until the IPTC?

From: [REDACTED]

Sent: Tuesday, May 4, 2021 3:03 PM

To: Edie Lucero (OPD) [REDACTED]

Subject: RE: State v. [REDACTED]

Edie,

I see we have a status conference in this case tomorrow and recall that I did not yet respond to your email below. Providing BWC is inconsistent with the goal of EDC, which is to promote the early resolution of felony cases. If we had to collect, review, and produce BWC in every case, or even the subset of cases where the Defendant thought there was a legal or factual defense, given the high volume of cases in EDC, it would bog the entire system down and swamp the law enforcement agencies. Plus, it makes no sense to engage in discovery where the State has offered the Defendant diversion. We've sent you the motion to suspend packet. If the Defendant would like to avail [REDACTED] of the diversion option, you can return that paperwork to our diversion department. If not, the alternative offer in EDC would be to PDP 6 open and a stipulation to supervised probation, or she can straight waive or affirm.

Just let me know how she'd like to proceed.

Sincerely yours,

[REDACTED]
[REDACTED]

Maricopa County Attorney's Office

From: Edie Lucero (OPD) [REDACTED]

Sent: Friday, April 9, 2021 3:29 PM

To: [REDACTED]
Subject: RE: State [REDACTED]

Hi [REDACTED]
I know we get limited discovery in RCC but can I see the body camera? I think it's important that I see it, so I can properly advise my client about her case. The police report indicates the officer had his body camera activated. This case screams 4th Am. These 2 ladies weren't engaged in any criminal activity, when the officer stops them. This is not a consensual encounter. The police report reads that the officer stopped them for "possible trespassing." At 4 p.m. in the afternoon. Come on. The officer did not arrest [REDACTED] yet he puts her in handcuffs and places her in the backseat of his patrol car and gives her Miranda warnings. The officer did not issue a citation. The officer then releases the 2 ladies. [REDACTED] was surprised, when she learned of this case, because she was under the impression from the officer that nothing was going to come about.

Thanks, Edie

Edie Lucero
Deputy Public Defender – RCC
Maricopa County Office of the Public Defender
620 West Jackson Street, Suite 4015
Phoenix, Arizona 85003
[REDACTED]

From: [REDACTED]
Sent: Thursday, April 8, 2021 9:30 AM
To: Edie Lucero (OPD) [REDACTED]
Subject: RE: State v. [REDACTED]

Thanks Edie. That's sort of what I figured but thought I'd check in to see if there's anything we can do to move the case forward.

From: Edie Lucero (OPD) [REDACTED]
Sent: Thursday, April 8, 2021 9:28 AM
To: [REDACTED]
Subject: RE: State v. [REDACTED]

I can try. I have had trouble reaching her in the past. Honestly, I am not certain, which direction this case may go re. settling, etc. Thanks, Edie

Edie Lucero
Deputy Public Defender – RCC
Maricopa County Office of the Public Defender
620 West Jackson Street, Suite 4015
Phoenix, Arizona 85003
[REDACTED]

From: [REDACTED]
Sent: Thursday, April 8, 2021 9:14 AM
To: [REDACTED]
Subject: State v. [REDACTED]

Good morning Edie. This case has recently been assigned to me, and I see we have a status conference tomorrow. My review of the file shows that we offered the Defendant diversion but that the motion to suspend packet hadn't been returned yet. Any chance we could get that done at or before tomorrow's hearing?

Sincerely yours,

[REDACTED]
[REDACTED]

Maricopa County Attorney's Office

EXHIBIT 1(c)

Edie Lucero (OPD)

From: [REDACTED]
Sent: Tuesday, June 22, 2021 7:42 AM
To: Edie Lucero (OPD)
Subject: RE: Offer: State v. [REDACTED]

Hi Edie,

Yes, the policy will apply here as well.

Best,

[REDACTED]

From: Edie Lucero (OPD) [REDACTED]
Sent: Monday, June 21, 2021 4:35 PM
To: [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

Hello [REDACTED]

If [REDACTED] affirms her PH, will she be subject to MCAO's policy that the next plea will be "substantially harsher," if she affirms?

Please let me know, thanks, Edie

From: [REDACTED]
Sent: Monday, May 24, 2021 9:58 AM
To: Edie Lucero (OPD) [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

Hi Edie,

I can understand your concern. To clarify, if convicted at trial [REDACTED] would be sentenced as a Category Three offender (presumptive 10 years DOC). MCAO policy is that the presumption in such cases is to offer a plea to the highest charge with a stipulation to prison as a Category Two offender.

I have made the offer lenient by capping DOC. As of yet, I have received no deviation request; I have no basis for making further departure from the policy presumption. As always, if you would like to submit a deviation request, I would be happy to review it.

Best,

[REDACTED]

From: Edie Lucero (OPD) [REDACTED]
Sent: Monday, May 24, 2021 9:43 AM
To: [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

This seems like a policy offer with PTC w/ 1 prior, as opposed to leniency. Edie

From: [REDACTED]
Sent: Monday, May 24, 2021 9:36 AM
To: [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

Hi Edie,

The purpose of EDC is to facilitate speedy resolutions. An EDC plea is the most lenient offer a defendant will get because once the case leaves EDC, MCAO must expend significant resources for trial preparations.

Best,

[REDACTED]

From: [REDACTED]
Sent: Monday, May 24, 2021 9:20 AM
To: [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

I don't understand. If she SW, and agrees to probable cause, why would you pull the plea?
Thanks, Edie

From: [REDACTED]
Sent: Monday, May 24, 2021 9:13 AM

To: Edie Lucero (OPD) [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

Hi Edie,

No, this offer is available in EDC only.

Best,

[REDACTED]

From: Edie Lucero (OPD) [REDACTED]
Sent: Monday, May 24, 2021 9:09 AM
To: [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

If she SW, will you allow the plea to stay available until the IPTC? Thanks, Edie

From: [REDACTED]
Sent: Thursday, April 22, 2021 11:32 AM
To: [REDACTED]
Subject: RE: Offer: State v. [REDACTED]

I inherited this case. I've been waiting for the state to offer a plea. I'm not aware of having to necessarily request one. Thanks, Edie

Edie Lucero

Deputy Public Defender – RCC
Maricopa County Office of the Public Defender
620 West Jackson Street, Suite 4015
Phoenix, Arizona 85003

[REDACTED]

From: [REDACTED]
Sent: Thursday, April 22, 2021 11:27 AM
To: [REDACTED]
Subject: Offer: State v. [REDACTED]

Hi Edie,

I have received no request for a plea in this matter, but if [REDACTED] is interested, please see the attached offer.

Best,

[REDACTED]

EXHIBIT 1(d)

**Non-Electronic Exhibit to be filed
upon leave of Court**

EXHIBIT 1(e)

Edie Lucero (OPD)

From: [REDACTED]
Sent: Wednesday, March 10, 2021 1:12 PM
To: Edie Lucero (OPD)
Subject: RE: [REDACTED]

Sorry, that's not something the State would be interested in. I am confident of being able to prove the drug charges at trial.

Your client has already had a pretty long MTC at RCC. If he straight-waives, I'll leave the offer open until the IPTC. If he affirms his prelim, that'll be it for plea negotiations. He'll need to make a decision one way or the other at his next RCC setting.



From: [REDACTED]
Sent: Wednesday, March 10, 2021 12:47 PM
To: [REDACTED]
Subject: RE: [REDACTED]

Hi [REDACTED]

I have a proposal for a speedy resolution here in RCC, if you're interested. What if [REDACTED] PGs to the MIW, stip DOC, and the other counts are dismissed? The drug charges are not a slam dunk by any stretch-of-the-imagination and will require a significant amount of time in trial prep, etc.

I know in RCC we get limited discovery, unfortunately. But from what I'm seeing in the police report I have, I'm not seeing any direct, or circumstantial, evidence to establish that [REDACTED] is a drug seller or some drug lord. Rather, we have hearsay statements from [REDACTED] and an unnamed passenger who tell police a person named [REDACTED] is involved in selling drugs at this apartment complex. The police do not conduct any 1-1 identification w/ [REDACTED] or the unnamed passenger to establish that their statements actually point to [REDACTED]. It's not clear to me how we jump from an unrelated traffic stop with [REDACTED] to her divulging information to an officer that a person named [REDACTED] is selling drugs in this apartment complex.

Deputy Public Defender – RCC
Maricopa County Office of the Public Defender
620 West Jackson Street, Suite 4015
Phoenix, Arizona 85003

From: [REDACTED]
Sent: Friday, February 12, 2021 5:32 AM
To: Edie Lucero (OPD) [REDACTED]
Subject: RE: [REDACTED]

I just looked at this. I'm fine leaving the offer open until the IPTC if you straight waive at the next setting. We'll need to have the IPTC set as an appearance hearing though, just so we can get your client's decision on the record one way or the other.

From: Edie Lucero (OPD) [REDACTED] >
Sent: Thursday, February 11, 2021 3:48 PM
To: [REDACTED]
Subject: RE: [REDACTED]

Sure, thanks, Edie

Edie Lucero

Deputy Public Defender – RCC
Maricopa County Office of the Public Defender
620 West Jackson Street, Suite 4015
Phoenix, Arizona 85003

From: [REDACTED]
Sent: Thursday, February 11, 2021 3:47 PM

To: Edie Lucero (OPD) [REDACTED]

Subject: Re: [REDACTED]

I'll look at this tomorrow and let you know. It's been a bit since I've looked this one over.

Get [Outlook for Android](#)

From: Edie Lucero (OPD) [REDACTED]

Sent: Thursday, February 11, 2021 3:23:43 PM

To: [REDACTED]

Subject: [REDACTED]

Hi [REDACTED]

I'm looking to SW at the next SC on 03.05 to keep the RCC offer available until the IPTC; please let me know otherwise.

Thanks, Edie

Edie Lucero

Deputy Public Defender – RCC

Maricopa County Office of the Public Defender

620 West Jackson Street, Suite 4015

Phoenix, Arizona 85003

[REDACTED]

EXHIBIT 1(f)

**Non-Electronic Exhibit to be filed
upon leave of Court**

EXHIBIT 2

Declaration of Chris Simonds

1. My name is Chris Simonds and I swear that the following is true and correct to the best of my knowledge.

2. I graduated law school and passed the Bar Exam in 2009. I currently own and operate a private practice focusing on family law in Peoria, Arizona. Prior to starting my firm, I worked as an Assistant District Attorney in Racine County, Wisconsin from 2010 – 2014. In February 2014, I opened and operated my own firm in Racine, Wisconsin, practicing criminal defense and civil litigation. I relocated to Arizona and I was employed as a public defender in Maricopa County, AZ from December 2017 – April 2021.

3. I left public defense in part because of the way the Maricopa County Attorney's Office approached criminal cases, especially in the Early Disposition Courts, or EDCs.

4. I handled over 1,000 cases in the EDCs. In the EDC's, clients are presented with plea offers, sometimes before discovery is even available. Clients are pressured to waive their rights and plead guilty with limited discovery. Plea offers are contingent on clients waiving their prelim and pleading guilty, frequently on extremely tight timelines. The plea agreements are made conditioned on a client waiving their preliminary hearing. If my clients actually asserted their right to a preliminary hearing, their plea offers were revoked and a threat was made that subsequent plea offers, if even offered by the prosecutor, would get "substantially harsher."

5. The policy that subsequent plea offers would be "substantially harsher" is the current policy of the Maricopa County Prosecutor's Office. Deputy County Attorneys assigned to court coverage would read this policy into the record if a client affirmed their right to a preliminary hearing. As part of this policy, the County Attorney would also read into the record the maximum penalty following a conviction at trial, which was usually prison.

6. I find this policy to be vindictive and cruel. This policy made it extremely difficult to represent indigent clients. The County Attorney's policy was to not disclose anything but the initial police reports prior to the preliminary hearing. This created situations where I did not have enough time to investigate a case and review complete discovery. The County Attorney also forced cases to move extremely quick. Before COVID, the general policy was that cases in the EDC's should be resolved in 30 days. Clients were pressured into "take-it-or-leave it offers" instead of considering alternative solutions based on individualized circumstances. Considering that most of the client's I represented had prior convictions, and Arizona law makes prison mandatory for repeat offenders, clients were forced into pleading guilty to avoid the chance of a lengthy term of incarceration.

7. This policy created scenarios where my clients would plead guilty in the EDC's rather than pursuing litigation. Clients would make a simple cost/benefit analysis of the plea weighed against their worst-case scenario following a trial conviction, rather than making a decision about their plea on the underlying merits of the case.

8. One case like this was Deniece Pierce's case.

9. Last year, Ms. Pierce stole \$2,180 via forged checks from her father's account during a family dispute. She immediately admitted to it and tried to pay it back, but the County Attorney's Office charged her in a six-count felony complaint anyway. She received one felony count for each of the dates a check was written for a couple hundred dollars. Based on the progressively tougher sentencing structure of the criminal statutes in Arizona, four of the charges carried mandatory prison sentences. Her total exposure for this case at trial was 71.25 years.

10. Denise is a 51 year old female with no criminal history. She struggles with anxiety and had no idea how to deal with this situation. I had to get at least one continuance because she was having a panic attack just before a court proceeding.

11. Because of her non-existent criminal history, I tried to work out a solution where Deniece could earn the money to pay back her father, and then we could have the case dismissed. The prosecutor would not allow her sufficient time to obtain employment and make the payments. She was offered a plea deal for probation, but she had to plead guilty to one felony and one misdemeanor. I did not think this was a reasonable plea offer given her age, lack of criminal history, the nature of the offense, and her ability to make a victim whole.

12. Deniece was too scared of the potential prison term to affirm her preliminary hearing or take the case to trial. She was also too scared to affirm the preliminary hearing, which would have given her additional time to obtain employment and work to pay back the money. In fact, I suggested to her that she could affirm the preliminary hearing, pay back the money, and work toward a better offer.

13. Denice weighted the costs and benefits of the plea and ended up pleading guilty to two charges, one felony and one misdemeanor, as offered by the County Attorney. We both agreed it was unfair and punitive, and that the prosecutors had essentially pressured her into doing it with the opportunity for probation, or threat of a mandatory prison sentence following a trial conviction with a maximum exposure of 71.25 years.

14. Lavonta Barker's EDC case also troubles me. In that case, there was a drug deal gone bad, and the victim was pistol whipped by the perpetrator. The victim called the police and the police arrested Lavonta as he was exiting a convenience store. He had nothing to do with the

incident. He just happened to be the first black man the police saw on the scene, which partly met the physical description of the perpetrator.

15. Lavonta swore he was innocent and that this was mistaken identity. However, by the time I got the case, prosecutors had already made an extremely harsh plea deal: plead guilty to kidnapping as a class 2 felony, and aggravated assault as a class 3 felony, and agree to term in prison for 7.5 years, followed by a term of probation with gang terms. I also knew that if Lavonta affirmed his preliminary hearing, that plea deal would be revoked and get even harsher.

16. The prosecutors had not turned over any evidence except the police report, so I scrambled to put together proof of his innocence. The only discovery available was the police reports. I was able to independently obtain a booking photo of Lavonta following the incident, which did contain some exculpatory information: he was wearing a purple shirt instead of a black shirt alleged in the police reports. Following this confirmed discrepancy, and Lavonta maintaining his innocence, I contacted the prosecutor the day the preliminary was set and asked if we could work together to obtain additional items of disclosure before the hearing. Thankfully, the prosecutor assigned to the case agreed and continued the preliminary hearing. We continued the prelim and the prosecutor completed a follow up investigation. The case was dismissed before the subsequent preliminary hearing was scheduled - it was discovered Lavonta was not the perpetrator. To this day, I do not know what supplemental item of discovery was used by the prosecutor to make this analysis.

17. Lavonta's individual case drove home how dangerous the Maricopa County Attorney's Office's EDC policy is as a general matter. They had already made a plea offer in Lavonta's case, meaning they were willing to convict him on those terms, without proof of guilt or even confirming the correct suspect, if he had accepted before the case was dropped.

18. Whether clients are factual guilty like Deniece, or factually innocent like Lavonta, Maricopa County prosecutors send plea offers early in a case, without providing corresponding discovery. They then threaten defendants with worse offers if the defendants seek to investigate their case, work out alternative solutions, or even assert their rights under Arizona law.

19. This approach values quick convictions over true justice and has caused harm to many clients.

I, Chris Simonds, certify that the information in this declaration is true and correct to the best of my knowledge. This document is acknowledged and signed July, 1, 2021.

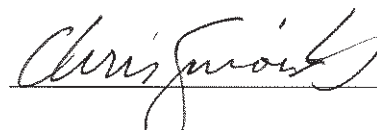

Chris Simonds

EXHIBIT 3

Declaration of Karen Emerson

1. My name is Karen Emerson and I swear that the following is true and correct to the best of my knowledge.

2. I am currently an Attorney Manager in the Maricopa County Public Defender's Office. I manage five divisions within the Public Defender's Office which include approximately 90 public defenders (PDs). I have been a public defender in Maricopa County for 17 years and handled over a thousand cases in the Maricopa County Superior Court including hundreds in the Early Disposition Courts (EDCs).

Timeline of an EDC case

3. When a defendant is arrested and booked into jail in Maricopa County, they must be promptly taken before a magistrate for an initial appearance (IA) pursuant to Ariz. R. Crim. P. 4.1(a).

4. When a person is booked into jail in Maricopa County on felony charges, the IA magistrate, among other things like setting release conditions, sets two court dates in the EDCs: (1) a status conference (SC) and (2) a preliminary hearing (PH).

5. When the defendant is held in custody on a bond or non-bondable, the SC is set about six days after the IA and the PH is set about 9 days after the IA. If the defendant is not held in custody, the SC date is set out approximately 14 days and the PH date is set out approximately 18 days. The timing of the PH setting is because, under Ariz. R. Crim. Pro. 5.1, "[a] preliminary hearing must commence before a magistrate no later than 10 days after the defendant's initial appearance if the defendant is in custody, or no later than 20 days after the defendant's initial appearance if the defendant is not in custody..."

6. If the IA magistrate determines a defendant is indigent, the Public Defender's Office or other indigent defense agency is appointed for further proceedings. Counsel is not provided for the in-jail IA proceeding itself.

7. If the prosecutor's office does not file a direct complaint within 48 hours of the in-jail IA, or obtains an indictment from the grand jury between the time of the IA and the SC, the SC and PH dates are vacated and the case does not proceed via the EDC. If the prosecutor files a direct complaint the EDC process continues.

8. Most prosecutions in the Maricopa County Superior Court are commenced by the Maricopa County Attorney's Office (MCAO) and the direct complaints filed by Deputy County Attorneys (DCAs).

9. When a defendant is not arrested and booked into jail, or the direct complaint is not filed within 48 hours of the in-jail IA, the prosecutor's office may file a direct complaint and summons a person to court for an IA. The summonsed IAs proceed in the same manner as the in-jail IAs.

10. Between the dates of the IA and SC, the DCA typically sends the defendant a police report regarding the alleged offense(s). In most cases, the police report is provided to the defense attorney one day prior to the SC. That is the only discovery DCAs typically provide during the EDC process. While some DCAs may provide additional disclosures when requested by the defense, such disclosures are not required at the PH stage of the proceedings pursuant to Ariz. R Crim. Pro. 15.1(a).

11. *Brady* material and other information not included in the police report that may exculpate the defendant, impeach witnesses, or mitigate sentences are not routinely provided by MCAO during the EDC process.

12. Between the dates of the IA and SC, the DCA also typically sends the defendant a plea offer. The plea offer is usually sent in conjunction with the police report one day prior to the SC. Some defendants may receive an offer to participate in a diversion program rather than a plea offer.

13. Either at the transmission of the offer or at the SC, the defendant is informed of the MCAO's EDC-specific policy that if the defendant exercises their right under Arizona law to the PH, the current offer will be revoked and any subsequent plea offer will be "substantially harsher."

14. This policy may be conveyed on the initial plea offer form or conveyed by the DCA orally or via email to defense counsel. DCAs repeat this policy on the record whenever a defendant seeks to "affirm" their preliminary hearing.

15. Some DCAs may permit an EDC plea offer to remain "open" until the first pretrial conference date at the trial level but only if the defendant agrees to waive the PH.

16. The EDC process is pre-arraignment. Under Arizona's Rules of Criminal Procedure, the right to discovery is extremely limited prior to the arraignment but extensive after the arraignment occurs. Additionally, suppression motions and other matters related to unlawfully obtained evidence cannot be litigated until after the arraignment occurs.

17. In most cases, PDs seek to continue the SC and PH for purposes of case investigation, plea negotiation, additional attorney-client discussions, or other case-specific needs. These continuances are sought because of the high-stakes nature of the EDC process. Defendants typically have two options: plead guilty under the terms of the proffered plea agreement without the protections afforded by a probable cause hearing, liberal pretrial discovery, and pre-trial

suppression hearings, or reject the plea agreement and face a “substantially harsher” plea offer after probable cause is found at the PC or through a grand jury proceeding.

18. When a defendant continues the preliminary hearing, they must agree to waive their right to have their preliminary hearing within the time specified in rule 5.1(a).

19. When a defendant pleads guilty at the EDC, no probable cause hearing is held, and the case is set for sentencing approximately 30 days after entry of the guilty plea.

20. When a defendant rejects the plea agreement and probable cause is found at the PH or through a grand jury proceeding, the defendant is arraigned and the case is set for an initial pre-trial conference in a trial division in the Superior Court.

I, Karen Emerson, certify that the information in this declaration is true and correct to the best of my knowledge.


 7/6/21
Karen Emerson Date

EXHIBIT 4

Declaration of Gary M. Kula

1. My name is Gary M. Kula and I swear that the following is true and correct to the best of my knowledge.

2. I am the Maricopa County Public Defender and head the Maricopa County Office of the Public Defender (OPD), the largest indigent criminal defense office in Arizona with an annual budget of \$47.1 million. OPD employs 216 attorneys, referred to as Deputy Public Defenders (DPDs) and 219 support staff, including paralegals, investigators, mitigation specialists, and legal secretaries. I also serve on the Board of the Arizona Public Defender Association, a non-profit corporation comprised of all the county, city, federal, and tribal indigent representation offices and programs in Arizona.

Function of OPD and Involvement in EDC

3. Pursuant to Arizona statutes, OPD is tasked with providing quality legal representation to indigent criminal defendants assigned to OPD by the court.

4. Of the 216 DPDs that are employed by OPD, 34 are assigned to represent criminal defendants in EDC. On any given day, OPD has approximately 3,500 active cases pending in EDC. Over the past 11 months, 42% of the total cases resolved were resolved by plea in EDC.

5. OPD also employs 12 support staff to accomplish the administrative tasks associated with the representation of criminal defendants in EDC.

6. The attorneys assigned to EDC Court are tasked with working on serious felony cases where the police report is typically the only discovery available and is only disclosed the day before the Status Conference. The Status Conference is the setting where the attorney meets

with their client and advises them of their case options. Additional discovery material in the possession of the State, including exculpatory *Brady* material, bodycam videos, and forensic test results are not routinely disclosed to Defense Counsel prior to the Status Conference date. At the Status Conference, Defense Counsel must advise their client of the position of the State that, in the event the plea offer is not accepted at the EDC, any subsequent plea offer will be substantially harsher. This information on the State's position is critical for a client when making a decision whether to assert their right to proceed with a preliminary hearing to challenge the evidence and/or to wait on making a decision on a plea until discovery is completed and issues litigated. This is significant as the plea offers in EDC may include a substantial sentence in the Department of Corrections.

I, Gary M. Kula, certify that the information in this declaration is true and correct to the best of my knowledge.

July 6, 2021

Gary M. Kula
Gary M. Kula

EXHIBIT 5

Declaration of Louis Fidel

1. My name is Louis Fidel and I swear that the following is true and correct to the best of my knowledge.

2. I am an attorney in Tucson, Arizona and the President of Arizona Attorneys for Criminal Justice (AACJ), which is a statewide not-for-profit membership organization of criminal defense lawyers, law students and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system and the role of the defense lawyer. AACJ was formed in 1986 and is the Arizona state affiliate of the National Association of Criminal Defense Lawyers (NACDL).

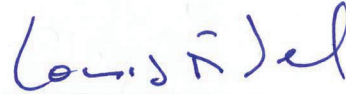
3. AACJ is deeply troubled by the violation of criminal defendants' Sixth Amendment right to trial and Fourteenth Amendment right to due process caused by the Maricopa County Attorney's Office (MCAO) Early Disposition Court (EDC) Retaliatory Plea Policy.

4. AACJ's mission is to (1) protect and insure by rule of law those individual rights guaranteed to all people, rich and poor alike, by the Arizona and Federal Constitutions, and to resist all efforts made to curtail such rights; (2) improve the professional status of all lawyers and to encourage cooperation between lawyers engaged in the furtherance of our objectives through publications, education, and mutual assistance; and (3) engage in all activities on a local, state and national level that will advance the purposes for which this organization is formed in order to promote justice and the common good of the citizens of the United States.

5. AACJ's members are the first line of defense in the fight to preserve the constitutional rights of the accused and to see that justice is fairly administered. We are deeply concerned with the violation of important constitutional rights by MCAO's Retaliatory Plea Policy in EDC as that policy frustrates the mission and purpose of AACJ and often places our criminal defense attorney members in an ethical quandary of trying to provide effective representation without necessary discovery or time to investigate. As such, our mission compels us to stop this retaliation policy, allowing for robust discovery prior to plea deals and reasonable time to conduct the type of independent investigation into our cases that is compelled by the ethical rules governing our profession. Only then will our members be able to effectively represent criminal defendants in Maricopa County.

6. MCAO's Retaliatory Plea Policy has already caused AACJ to expend funds in an effort to ameliorate the harms caused by that policy. To fulfill its mission to educate our members and other criminal defense attorneys in Arizona, AACJ offers educational opportunities throughout the year, including providing continuing legal education (CLE) to our members and others. AACJ also co-sponsors an annual week-long CLE conference with the Arizona Public Defender Association. Over the years AACJ has used funds to co-sponsor CLE presentations to counter the harmful effects of Maricopa County's EDC system and MCAO's Retaliatory Plea Policy. For example, in 2015 AACJ co-sponsored a CLE presentation entitled "Effective and Ethical Representation in Early Disposition Courts," which, in part, discussed the ethical dilemma imposed on criminal defense attorneys, including AACJ members, practicing in EDC by MCAO's policy. In 2017 and 2018, AACJ co-sponsored CLE presentations entitled, "The Use of Subpoenas in Early Resolution Courts to Compel Discovery," which instructed on how

criminal defense attorneys, including AACJ members, could use the subpoena power of the court to investigate their cases without meaningful discovery in EDC due to MCAO's policy.

A handwritten signature in blue ink, appearing to read "Louis Fidel", is positioned above a horizontal line.

Louis Fidel

EXHIBIT 6

Declaration of Hugo Polanco

1. My name is Hugo Polanco and I swear that the following is true and correct to the best of my knowledge.
2. I am a public defender in the Maricopa County Public Defender's Office (MCPD). I have been at the office for almost a year. Currently I am assigned to handle cases in the Early Disposition Courts (EDCs), where I have represented hundreds of indigent clients. Prior to working for the MCPD, I worked as a staff attorney with the Florence Immigrant and Refugee Rights Project in Arizona.
3. The Maricopa County Attorney's Office (MCAO) has a policy of making plea offers "substantially harsher" if my clients assert their right to a probable cause determination.
4. MCAO often sends my clients a form that contains this threat. That form also says at the top that "County Attorney policy dictates" if the defendant rejects the first offer, which is a form of asserting their right to trial, the offer will not only be withdrawn but any subsequent offer will be **"SUBSTANTIALLY HARSHER."**
5. Other clients of mine receive a Plea Offer Form, which lays out the parameters of MCAO's plea offer and threatens that "[t]his offer is withdrawn if the preliminary hearing is affirmed or waived." The form further threatens in bold: **"NOTE: County Attorney policy dictates that if the defendant rejects this offer, any subsequent offer tendered will be substantially harsher."** See Exhibit A (EDC Plea Offer Form, indicating "initial plea offer")
6. Prosecutors also often read the threat into the record, during their *Donald* advisement at the EDC status conference. My clients hear this threat directly.
7. MCAO's policy is coercive and retaliatory. It threatens my clients just for invoking their rights, with no regard for mitigating facts, legal defenses, or actual innocence. Also, DCAs

provide no discovery during the EDC process aside from police reports, even if the DCAs have that other information in their possession, e.g., body worn camera and witness identities. And by pressuring client to end cases before any preliminary hearing or suppression hearing, the policy effectively insulates police and prosecutors from accountability if they have broken the rules.

8. Finally, even if I am able to continue the case, the EDC structure leaves little time for investigation—and MCAO takes advantage. In fact, if my client is detained, the continuance itself creates harmful, additional time spent incarcerated, increasing the chances the client will succumb to the pressure, waive their rights, and take a bad plea to end the ordeal.

9. This policy makes my job as a defense attorney extremely difficult as it is nearly impossible to effectively represent someone without access to the evidence against them or the time to conduct an independent investigation into the facts and law applicable to my clients' cases. MCAO's policy can also often hinder my ability to build trust with my clients as feel helpless within the EDC system where they must make quick decisions without access to information, and I am mostly powerless to provide meaningful advice given EDC's compressed timelines, limited access to information, and threat of "substantially harsher" plea offers to come.



Hugo Polanco

EXHIBIT 6(a)

Defendant: [REDACTED] CR: [REDACTED] Date: August 31, 2020☒ INITIAL PLEA OFFER ☐ SUBSEQUENT PLEA OFFER ☒ Victim ☐ Business VictimOffer: Aggravated Assault, F2, stip DOCDate of Crime: August 25, 2020

- ☐ **Fast Track case — Fast Track option available for only 1 week from today's date. No deviations at RCC level. If Fast Track is desired, complete attached special Straight Waiver and enter with Court.**
- ☐ Unsupervised probation with compliance monitoring _____
- ☐ Supervised Probation _____
- ☐ Jail term _____ days/months ☐ Initial ☐ Deferred ☐ No credit for time served ☐ Flat time
- ☐ No Agreements ☐ If defendant is sentenced to probation, it shall be supervised probation.
- ☒ Department of Corrections
- ☐ cap at presumptive ☐ no less than presumptive ☐ for a term of _____ years

Including the following stipulations and avowals:

- ☒ Defendant avows no more than:
- | | | |
|--|--|------------------------------|
| <u>6</u> Prior Felony Convictions | <u>0</u> DUI Convictions | <u>4</u> Drug Convictions |
| <u>0</u> Domestic Violence Convictions | <u>0</u> Theft/Shoplifting Convictions | <u>0</u> Violent Convictions |
- ☒ Defendant was not on probation, parole, community supervision, or felony release in _____
- ☒ Defendant shall submit to DNA testing.
- ☒ Defendant shall pay restitution to all victims, including amended/dismissed counts capped at \$ _____
- ☒ Defendant shall have no contact with the victim:
- ☒ Whatsoever ☐ Without court approval ☐ Without APO approval
- ☒ Defendant shall not return to the scene of the crime:
- ☒ Whatsoever ☐ Without court approval ☐ Without APO approval
- ☐ Defendant shall forfeit all interest in the following seized items to the State:
- ☐ Weapons ☐ Currency ☐ Other: _____
- ☐ Defendant shall pay a fine of \$ _____ plus an _____ % surcharge.
- ☐ \$ _____ DUI Abatement Fund ☐ \$ _____ Prison Construction Fund ☐ \$ _____ Public Safety Equipment Fund
- ☐ \$ _____ DV Shelter Fund ☐ \$ _____ Address Confidentiality Fund ☐ \$ _____ Forensic Nurse Exam Fee
- ☐ Defendant's driver's license shall be revoked.
- ☐ Additional Terms of Probation:
- ☐ Mental Health terms ☐ Gang Terms ☐ Domestic Violence Terms ☐ IPS
- ☐ Required Counseling:
- ☐ Drug/Alcohol Counseling ☐ Parenting Classes ☐ Domestic Violence Counseling
- ☐ This offense may not be designated a misdemeanor unless and until the defendant successfully completes probation.
- ☒ The State will dismiss/not allege/not file:
- ☐ Counts: _____ ☒ Prior Conviction(s) ☒ Dangerous ☐ Over Threshold
- ☐ On Probation/Parole ☐ On Release ☐ Other: _____
- ☒ Defendant avows no other pending felony matters in any jurisdiction.
- ☐ Except in: _____
- ☒ Other: all applicable statutory conditions, _____

This offer is contingent upon victim input. This offer will be withdrawn and no longer available after today's hearing date. This offer is withdrawn if the preliminary hearing is affirmed or waived. The offer may be changed or revoked at any time before the court accepts the plea.

NOTE: County Attorney policy dictates that if the defendant rejects this offer, any subsequent offer tendered will be substantially harsher.