

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

SHANNON PEREZ et al.,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, (MALC),	§	
	§	
<i>Plaintiff,</i>	§	
	§	
	§	
TEXAS LATINO REDISTRICTING§ TASK FORCE, <i>et al.</i> ,	§	
	§	
<i>Plaintiffs,</i>	§	
v.	§	CIVIL ACTION NO.
	§	5:11-CV-0360-OLG-JES-XR
	§	(Consolidated)
STATE OF TEXAS, <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	

**LEAGUE OF UNTIED LATIN AMERICAN CITIZENS  
PLAINTIFF-INTERVENOR POST TRIAL BRIEF**

TO THE HORNORABLE THREE JUDGE COURT:

Comes now the League of United Latin American Citizens (hereinafter LULAC) and pursuant to this Courts Order, submits it's post trial brief and in support thereof would show the following;

1. LULAC supports and adopts all the legal and factual arguments made by all other plaintiffs that are not in conflict with that of LULAC.
2. In this regard and in an effort to avoid duplication in the post trial briefing process

involving as many plaintiffs and Intervenors as are in this consolidated case, LULAC will dispense with an extensive legal analysis of Section 2. Rather LULAC will focus on the facts in the areas of LULAC particular concern.

3. From 2000 through 2010 the Texas population increased from 20,851,763 to just under 25,000,000. (LULAC ex 1-A). Of this almost 4,000,000 person growth, the Anglo population represents only 10.8% while the minority population contributed 89.2%. (LULAC ex 1-G). Latinos made up approximately two thirds of the overall growth. As a result of this growth, Texas was apportioned four additional Congressional seats. Had the minority community growth been at the same rate as the Anglo population, it is likely that Texas would have lost at least one Congressional District.

4. Under questioning from the Court, the prime expert witness for the state conceded that the 2011 redistricting ignored the population growth.

15 JUDGE GARCIA: Now, one final question. Are you  
16 surprised that given the minority growth in Texas, which  
17 counts for 66<sup>1</sup> percent of the growth, that Texas -- that the  
18 legislature did not draw more than one minority opportunity  
19 district?

20 THE WITNESS: I think it is very hard to look at  
21 those numbers, and we hear a lot of that number, almost always  
22 based on population growth, to hear that number and not  
23 believe that automatically that would turn into new districts.

24 JUDGE GARCIA: No. Not automatically, but what is  
25 your opinion on it?

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<sup>1</sup>/ Actually the minority population contributed 90% of the growth. Hispanics as a group made up the lion's share of the minority growth. See LULAC ex .

1842

1 THE WITNESS: Okay. Well, first -- I mean, my first  
2 thought about that is that automatically, at the very least,  
3 it ought to automatically improve the chances of Hispanics  
4 electing candidates in the districts that are already drawn as  
5 Hispanic districts, because the population was going up.

Tr. at 1841 ll15-25, 1842 ll 1-5 (footnote added)

and

14 JUDGE GARCIA: And under the new plan, how many  
15 minority-majority districts or those districts that  
16 potentially could elect a minority?

17 THE WITNESS: Under the --

18 JUDGE GARCIA: Under 185.

19 THE WITNESS: Under 185, you basically are restored  
20 to the seven districts that will elect candidates of choice,  
21 so you restore it to the seven districts you had before....

Tr. at 1835 ll 14-21

5. The parties plaintiff in this case all argue that the current redistricting of the State House of Representatives and the members of Congress violate Section 2 of the Federal Voting Rights Act. It is claimed that the redistricting, the way the lines are drawn, results in racial gerrymander. This gerrymander is effectuated in some districts by cracking, or the division of the minority population among several districts. This has the effect of insuring that in none of the cracked districts the minority community is able to elect the representatives of their choice. In other districts, already heavily minority districts, are packed with minority population far beyond what is necessary to elect the choice of the minority community.

6. This type of gerrymander that has the effect of limiting the ability of racial and ethnic minorities to elect the representatives of their choice. The first hint of a gerrymander is the shape of the districts. In this case the Congressional districts in Dallas, Bexar, Harris

Travis and Nueces counties in particular are preposterous.

7. Texas is not a late comer to the raucous roadhouse that is redistricting. Since 1960, no decade has passed without the required intervention of the Federal Courts to fix statewide redistricting in Texas. In each decade since the 1970s when Congress extended the special provisions of the Federal Voting Rights Act to Texas, there have been Section 5 objections to Texas redistricting plans. Judicial intervention in the Texas redistricting process has been transformed into an immutable reality as regular as old faithful.
8. District 23 The 2001 redistricting of District 23 is essentially a replay of the 2003 redistricting so roundly criticized in *LULAC v. Perry*. Dr. Alford put it in a nutshell by observing “we feel like we are all having *deja vu*.” Tr. at 1929 lines 20-21.
9. As it currently exists District 23 is the godchild of the plan invalidated in *LULAC v. Perry*. This is the easiest of the fact situations before this Court. The analysis of District 23 by the State’s own expert witness is that District 23 has been changed from a district in which Latino voters could elect the representatives of their choice in two out of three elections into one where it can be expected that Latinos will not elect the representatives of their choice.
10. Plaintiff’s expert Dr. Groffman testified that based on his analysis of election in the District 23 as apportioned by the legislature in 2011 “the Latino candidate win...one of eight [elections]” Tr. at 545 ll 17-18. Indeed Dr. Alford, the prime expert offered by the state agreed with the plaintiff’s expert. (“I haven’t counted the 23rd as an effective minority district in the newly adopted plan....” Tr. at 1839 line 8).
11. Dr Alford further stated that District 23 that been redrawn by this Court as a result of the

direction of the Supreme Court to do so in *LULAC* was never an effective district where minority voters could elect the representative of their since it had elected the choice of the minority community on only two of the three elections that had been held since it was ordered into effect. This he continued was proven by the fact that District 23 had elected the choice of the minority community on only two of the three elections that had been held since it was ordered into effect. *Id.*

12. Now the simple minded response to this argument is that Ty Cobb was the best we ever had, yet he only hit 400 in one season. Thus, according Dr. Alford, when the choice of the Latino community hits 667 the district is indeed effective.

13. In a larger sense the Supreme Court dealt with this issue in *LULAC*. District 23 had never elected the representative of choice of the minority community but the Supreme Court looked beyond the simplistic. “The fact that a group does not win elections does not resolve the vote dilution issue. *De Grandy*, 512 U.S., at 1014, n. 11, 114 S. Ct. 2647, 129 L. Ed. 2d 775.” *LULAC v Perry*, 548 U.S. 399 at 428.” In words that describe what was done to District 23 in 2011, the Supreme Court in *LULAC* said;

14. “In old District 23 the increase in Latino voter registration and overall population, the concomitant rise in Latino voting power in each successive election, the near victory of the Latino candidate of choice in 2002, and the resulting threat to the incumbent's continued election were the very reasons the State redrew the district lines. Since the redistricting prevented the... success of the..... Latino majority in District 23, there was a denial of opportunity in the real sense of that term. [The Congressional redistricting]

Plan's version of District 23, by contrast, is unquestionably not a Latino opportunity district." *LULAC, Id.*

15. It is conceded by the State that the changes in District 23 were the result of an effort to preserve the 2010 election of Rep. Conseco who was not the choice of the minority community. Dr Alford conceded as much. "I think the changes were driven predominantly by the interests of Congressman Bonilla, and this case driven dominantly by the interests of Representative Canseco." Tr. at 1928 lines 7-10.

Q. All of this... redistricting is related to the decision to shore up the reelection prospects of Congressman Bonilla at the cost of weakening the power of Hispanic voters in the 23rdDistrict.

A. That is correct.

Q. And you agreed with me in your deposition that with respect to the adopted plan, C-185, that changes have been made to CD-23 to shore up the reelection chances of Mr. Canseco, yes?

A. That is correct.

Tr. at 1880-1881 lines 22-25, 1-7

16. As a result of growth over the decade, District 23 was 149,000 persons too large so it was necessary to remove that number of persons. Instead of removing population from the current district 23, the 2011 redistricting plan for 23 **added** 10 new counties. Having added significant population to an already overpopulated district, the state then removed much of the area that had overwhelmingly voted for the choice of the Latino Community.

17. Virtually all of the Harlendale ISD area was removed from District 23 and added to the already packed Congressional District 20 (Congressman Gonzalez) and a portion into the newly created District 35. Thus the large Latino population of Southside San Antonio was cracked into 3 separate Congressional Districts. Congressman Ciro Rodriguez was

clear about running for reelection in District 23. The plan before this Court preserves some of the home of Congressman Rodriguez in District 23. However, the heavy Latino community that had overwhelmingly elected him to Congress for 14 years into three separate districts. District 35 is a district that runs from the southernmost point of San Antonio to the northernmost point of Austin.

18. Maverick county also a consistent overwhelming supporter of the choice of the minority voters was cut in half unnecessarily slicing three voting precincts. The County Judge of Maverick Country was clear on the problems that this will result in.

19. Overall there were a total of 41 voting precincts cut by District 23 as well as three unnecessary cuts of counties (Atascosa, Maverick, LaSalle). (LULAC ex 8-A). Plaintiff's expert Mr. Korbel indicated that to reach a zero population deviation it is necessary to cut only one or two voting precincts. Tr. at 688.

20. One of the redistricting principles is "respecting municipal boundaries" *Larios v. Cox* 300 F. Supp. 2d 1320 (ND Ga ) aff'd 542 U.S. 947 (2004) to not cut existing boundaries such as voting precincts.

Again LULAC Perry describes the current situation:

"The changes to District 23 undermined the progress of a racial group that has been subject to significant voting-related discrimination and that was becoming increasingly politically active and cohesive. Cf. *De Grandy*, supra, at 1014, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (finding no § 2 violation where "the State's scheme would thwart the historical tendency to exclude Hispanics, not encourage or perpetuate it"); *White v. Regester*, 412 U.S. 755, 769, 93 S. Ct. 2332, 37 L. Ed. 2d 314 (1973) (looking in the totality of the circumstances to whether the proposed districting would "remedy the effects of past and present discrimination against Mexican-Americans, and to bring the community into the full stream of political life of the county and State by encouraging their further registration, voting, and other political activities" (citation and internal quotation marks omitted)).

*LULAC v. Perry*, at 2621, 2622

21. As stated earlier, when the Court inquired of the State's Expert Dr. Alford, had he been asked what advice he (Dr. Alford) would have given the state on the drawing of District 23, Dr. Alford stated the obvious when he responded;

THE WITNESS: Okay. Well, first -- I mean, my first thought about that is that automatically, at the very least, it ought to automatically improve the chances of Hispanics electing candidates in the districts that are already drawn as Hispanic districts, because the population was going up.

Tr. at 1841 ll15-25, 1842 ll 1-5 (footnote added)

In sum, Dr Alford conceded that "I think the changes were driven predominantly by the interests of Congressman Bonilla, and this case driven dominantly by the interests of Representative Canseco." Tr. at 1928 lines 7-10.

Q. All of this... redistricting is related to the decision to shore up the reelection prospects of Congressman Bonilla at the cost of weakening the power of Hispanic voters in the 23rdDistrict.

A. That is correct.

Q. And you agreed with me in your deposition that with respect to the adopted plan, C-185, that changes have been made to CD-23 to shore up the reelection chances of Mr. Canseco, yes?

A. That is correct.

Tr. at 1880-1881 lines 22-25, 1-7

22. The plan that the LULAC plaintiffs will offer to remedy the District 23 problems follows Dr. Alford's advice. It starts with District 23 as it currently existed after *LULAC v. Perry* and removes the 149,000 persons necessary to bring the district into compliance. The core components of the District, Maverick County and the Harlendale ISD area of Bexar County remain in the District 23. The plan will cut no voting precincts. The plan will cut no county lines except that of Bexar County. This is the obvious and simple remedy.

23. The Dallas and Tarrant County Metroplex

'During the decade 2000-2010 the total population in the greater Dallas and Tarrant County areas grew by a total of approximately 1.2 million persons. Anglos 155,000 or 13% of the growth while minorities added 87%. LULAC Exhibit 1-H.<sup>2/</sup>

24. Tarrant County

LULAC Exhibit 2-A<sup>3/</sup> is a map from the redappl computer system of the proposed Congressional Districts in Plan C185, Dallas, Tarrant and the immediate surrounding Counties that is shaded by race and ethnicity. As the Court can see, the State legislature cracked heavily minority population communities into 8 parts. District 30 currently electing black Congressman Eddie Bernice Johnson is packed with 86.9% minority population while the balance of the minority community is divided among the remaining seven Districts.

25. District 33

Exhibit 2-B is a rendering of the District 33 in C185 taken from the redappl system.

As the Court can see from the map, District 33 contains all of Parker County and much of the population of Wise County. These heavily Anglo counties are attached with an arm

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<sup>2/</sup> Original LULAC Exhibits 1-2 contained minor errors that were corrected in the exhibit offered toward the end of the trial.

<sup>3/</sup> Unless otherwise specified all exhibits referred to in this brief are LULAC exhibits. For the most part we will dispense with the LULAC identification.

that extends into the Southern portion of Tarrant County picks and up the heavily minority areas of Southwestern Tarrant County. The arm continues under the heavily minority areas of center city Fort worth and connects with most of the heavily minority area of Eastern Tarrant County sometimes referred as the mid-cities area.

26. Exhibit 2-A-1 demonstrates that the State's rendition of District 33 contains a concentrated minority community in the Southeastern part of Fort Worth and the Mid cities area of more than 300,000 persons. That equals to 40% of a Congressional District. This minority area is more than 70% minority (63.4% Black + Hispanic). The balance of District 33 includes just below 400,000 persons and is 72.5% Anglo. When the minority area is combined with the Anglo area, the overall minority population of District 33 is 42%. (Tr. at 664 ll 1-16) This is a classic case of cracking. District 33 cuts a total of 32 voting precincts. LULAC Exhibit 8-A.

27. District 26

District 26 is perhaps the oddest shaped district that one could imagine. It includes virtually all of the heavily Anglo Denton County and then ties it in with a slice of the minority population in center city Fort Worth. The shape of this district is described as a square of Denton County attached to a lightning bolt. As drawn, District 26 overall population is 58.2% Anglo. But it contains an area of concentrated minority population of 134,829 that is 80% minority (76.5% Black plus Hispanic ). See LULAC exhibit 2-C-

1. District 26 cuts a total of 66 voting precincts. Exnibit 8-A.

28. District 12.

LULAC Exhibit 2-D depicts District 12. District 12 is a sheath or sock that surrounds the

lightning bolt portion of District 26. Exhibit 2-E-1 Demonstrates that District 12 as drawn contains a heavily concentrated minority area which is essentially the Southeastern portion of the City of Fort Worth. This concentrated minority area contains 198,299 persons and is 78.3% minority. District 12 cuts a total of 61 voting precincts. See LULAC Exhibit 8-A.

#### 29. A Tarrant County Remedy

If the Court will examine Districts 33, 12 and 26 it will see that each of the areas of minority concentration in these three districts are adjacent to each other. Together they comprise enough population to make a Congressional Districts. As a remedy plan for the Tarrant County area, the LULAC plaintiffs will propose a district that is essentially Plan C 196 included in Exhibit 12. This includes a minority population of 73.8% (67.9% Black plus Hispanic).

#### 30. Dallas County

District 6 as set out in C-185 includes all of the heavily Anglo Ellis and Navarro counties as well as the equally Anglo Southeastern portion of Tarrant County. This large Anglo area is added to a portion of the minority concentrated mid-cities area and a large clump of inner city Dallas. Exhibit 2-F-1 indicates that this heavily minority area included in District 6 contains a total of 388,256 persons of whom 80% are minority (62.5% Hispanic and 13.3% Black). District 6 cuts 30 voting precincts.

#### 31. District 5 as set out in the plan before the Court is a District that includes 6 heavily Anglo

- rural counties (Anderson, Cherokee, Henderson, Kauffman, Van Zant counties as well as half of Wood County). Exhibit 2-H. The District includes a concentrated minority area of 233,277 persons in Dallas County that is 70.1% minority (66.9% Black plus Hispanic). The balance of the District is 71% Anglo. Overall when the minority area of District 5 is combined with the Anglo portions of the district, it is 57.2% Anglo. Exhibit 2-H-1
32. Districts 26 and 32 are located primarily in the North side of Dallas County. Each contains smaller but substantial minority populations that adjoin the minority populations of Districts 5 and 6.
33. District 30 is the District represented by Congressman Johnson. It is overwhelmingly minority. Exhibit 2-J.
34. Taken together Districts 5, 6, 26 and 32 are prime examples of cracking the minority area of Dallas County that is not located in Congressman Johnson's District 30. District 30, at well over 85% minority is the classic packed congressional district.
35. The remedy that the LULAC plaintiffs will propose is to combine the adjoining minority portions of Districts 5, 6, 26 and 32. Then a slight modification of adjoining District 30 results in a new minority district that is similar to that in plan C196 (Exhibit 12-1-B). This produces a district that is over 80% minority (65.6% Hispanic and 14.9% Black). The current District 30 is retained at over 80% minority (44.1% Black and 34.4% Hispanic).
36. Nueces County  
In 1981 as a result of a Section 5 Objection the three-judge District Court redrew the South Texas Districts 27 and 15. From that point on the predominantly Hispanic Nueces County was the dominant force in District 27 and Hidalgo County in District 15. For the

next 30 years the choice of the Hispanic community was elected to Congress in both districts. In the 2011 redistricting before the Court, Plan C-185, Nueces County was added to group of 12 heavily Anglo Central Texas Counties (All of Aransas, Calhoun, Jackson, Lavaca, Victoria, Refugio, Matagorda, Wharton and parts of Bastrop, Caldwell, Gonzales, and San Patricio Counties). Nueces County alone has a population of 340,223 persons of whom 54.7% are Hispanic. Hispanics comprise half of the registered voters in the county. The 12 central Texas Counties include a population of 358,264. Only 26% of the registered voters are Hispanic.

37. LULAC will propose a remedy that created a district which is anchored in Nueces County and runs South to pick up a portion of Hidalgo County. Current District 34 would retain the lion's share of the current core constituency. No voting precincts will be cut.

38. Harris County

Harris County currently elects two African American Congressmen. Sheila Jackson Lee represents District 18. (Exhibit 4-E) Congressman Al Green represents District 1(Exhibit 4-F). Each are heavily packed with minority residents in Plan C185.

39. District 36 as set before this court includes the seven heavily Anglo East Texas Counties (Chambers, Hardin, Jackson, Jasper, Liberty, Newton, Orange, Polk and Tyler). This area is attached to heavily minority ship channel area Pasadena and East Central Harris County. The heavily minority Harris County areas contain 192,679 persons of whom 67.4% are minority (55.2% Hispanic and 10.7% Black). The Anglo Balance of the

districts including the seven East Texas Districts is 25.9% minority (23.4% Hispanic plus Black). When these two areas are combined they form a district that is 62.6% Anglo. As with the Districts in Dallas County a heavily minority area is combined with a heavily Anglo area, diluting the minority voting population. Exhibit 4-C. District 36 cuts 17 Harris County voting precinct. Exhibit 8.

40. It should be noted that District 36 adjoins but does not include the heavily minority area of Jefferson County. The minority population of Jefferson County could have been included in District 36 and an equal population from the heavily Anglo districts been removed. With minor modifications to the current three Districts electing minority Congressman, a District 36 could have been created where minority voters could elect the representatives of their choice.

41. District 2 is an overwhelmingly Hispanic District located in the North Central area of Harris County. It has elected Congressman Gene Green (White Anglo) since the initial creation of the district in 1991. The district elected Congressman Green when it was predominately Anglo but as time has passed the district has increased in Latino population. It is generally conceded by all of the experts that this is a district where the Latino voters elect the representative of their choice who happens to be an Anglo. District 2 cuts 32 Harris County voting precincts. Exhibit 8.

42. District 7 is a deer shaped district located in the South Central area of Harris County. It adjoins three minority Congressional Districts 2, 18 and 9. District 7 has a minority population located primarily in the northern half of the District adjoining District 2 and in the Southern portion of the District adjoining District 9. The minority area involves

264,615 persons of whom more than 71% are minority (47.2% Hispanic and 17.8%

Black). District 7 cuts 23 Harris County voting precincts. Exhibit 8.

43. District 10 is a long District stretching from outside downtown Houston to the Lake Austin area in Western Travis County. In Harris County it adjoins Districts 2 and 7. The Western Harris County portion of the District 10 includes 85,000 persons that are more than 81% minority (65.5% Black plus Hispanic). The Travis county portion of District 10 includes a concentrated minority area of 100,480 persons of whom 72.3% are minority (66.7% Hispanic plus Black). District 10 cuts 49 voting precincts. Exhibit 8.

44. The remedy plans that LULAC plaintiffs propose would slightly reorganize the Harris County minority Congressional Districts so that they are less packed and include Jefferson and Galveston Counties in the mix. This would result in a far less packed and cracked set of congressional districts and another where the minority population can elect the representative of their choice.

45. Travis County, LULAC Exhibit 3-A, depicts the C-185 division of Travis County into five Congressional Districts. The minority population of Travis County is essentially divided among four of those districts 10, 21, 25 and 35. These districts stretch from Hays County to Tarrant County (District 25); from Lake Austin to Houston (District 10), from Austin to San Antonio (Districts 21 and 35) and from Waco to Austin (District 17 composed of 11 rural counties).

46. District 25 was overpopulated by 115,943 persons and had increased to just over 50% minority (46.7% Black plus Hispanic). The most logical way to deal with this would have been to retain the core constituency and remove population in the same way Dr.

Alford suggested should have been done in District 23. Instead the C-185 radically redrew District 25 running it from Hays to Tarrant County and including a large portion of East Austin and retained almost none of the core constituency. This radical redirection reduced the District from half minority to just under 30% minority. District 25 cuts 57 voting precincts. Exhibit 8.

47. District 35

This Congressional District runs along US Highway 35 stretching from the far South side of Loop 41 in San Antonio up to the northernmost part of Austin. While the District is more than 50% Hispanic, the district is challenging for any minority candidate and LULAC expert witness testified that it would not elect the choice of the minority voters. It is much like the District 25 so roundly criticized by the Supreme Court in *LULAC* because it simplistically presumed that there is a community of interest in minority areas that are located long distances from each other. The testimony before the Court is that the District contains two of the most expensive media markets in the country and a well funded Anglo incumbent running in the District. As far as we can tell Travis and Bexar Counties have never been in the same election district for Congress or any other elective position. The States expert testified that he saw parallels between District 35 and District 25 as criticized as by Justice Kennedy in *LULAC*, and he would have never had drawn the district that way. (TR 1929). District 35 cuts 100 voting precincts. Exhibit 8.

48. As a remedy LULAC will offer a plan that does the logical thing and takes the current 25 and removes the 115,000 persons necessary to have a correctly sized Congressional District anchored in Travis County and keeping the communities of

interest together. The District would be 50.4% Latino, 13.1 Black and 4.4% other making it 66.4% majority minority.

49. In summary as the Court can see from the Exhibits there is a consistent pattern of packing Congressional Districts that already elect a Hispanic or an African American. The balance of the minority community is cracked into ghoulishly shaped districts that are ham handedly designed to fracture the minority neighborhoods.

#### The State House

50. LULAC defers to the MALC on most of the House Districts.

51. LULAC will consult with the MALC and endeavor to minimize the number of plans that will be before the Court.

#### Conclusion

The process of litigating Section 5 and Section 2 cases is difficult for the Court and Counsel alike. The remedy on the other hand is much simpler. Redistricting has a logic to it. We believe that the Court will find that the logical redistricting solutions are driven by the numbers and history. These solutions can for the most part be drawn without cutting voting precincts or pairing incumbents, yet maintaining core constituencies. This is the goal of LULAC and the remedies it will offer.

DATED: October 11<sup>th</sup> 2011

Respectfully Submitted,

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/s/ Luis Roberto Vera, Jr.  
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**CERTIFICATE OF SERVICE**

I certify that on this October 11<sup>th</sup> 2011 a true and correct copy of Plaintiff-Intervenors Complaint was delivered by first class mail to Plaintiff's attorneys and to Defendants via electronic mail. Plaintiff and Defendant will also receive a copy via the federal court ECF system/

/s/ Luis Roberto Vera, Jr.  
Luis Roberto Vera, Jr.