

**APPLICATION FOR NOMINATION TO  
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION  
(QUESTIONS 1 THROUGH 65)**

**PERSONAL INFORMATION**

1. Full Name:

**Maria Elena Cruz**

2. Have you ever used or been known by any other name? Yes If so, state name:

**Maria Elena Avino  
Maria Elena Cruz Avino**

3. Office Address:

**1501 W Washington St, Suite 302  
Phoenix, AZ 85007**

4. How long have you lived in Arizona? What is your home zip code?

**I have lived in Arizona for 32 years.  
My home zip code is 85364.**

5. Identify the county you reside in and the years of your residency.

**With the exception of the years I resided in Tucson for undergraduate and law school studies, I have resided in Yuma County for 27 years.**

6. If nominated, will you be 30 years old before taking office?  yes  no

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor?  yes  no

6. List your present and any former political party registrations and approximate dates of each:

**I registered as a Democrat on September 24, 2002. Prior to that date I was unregistered.**

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: **Female**

Race/Ethnicity: **Black/Latina**

<b>EDUCATIONAL BACKGROUND</b>
-------------------------------

9. List names and locations of all post-secondary schools attended and any degrees received.

**University of Arizona  
James E. Rogers College of Law  
Tucson, Arizona  
8/1998-6/2001  
Degree earned: Juris Doctor**

**University of Arizona  
Tucson, Arizona  
6/1996-7/1998  
Degree earned: Bachelor of Arts, Psychology**

**Arizona Western College  
Yuma, Arizona  
8/1990-6/1991 & 8/1994-8/1995  
Degree earned: Associate of Arts, General Studies**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

10. List major and minor fields of study and extracurricular activities.

**Undergraduate:**

**Major in Psychology.**

**Member of the Phi Alpha Delta, Pre-law Fraternity.**

**Law School:**

**Member of the Hispanic National Bar Association.**

**Member of the Black Law Students Association.**

**Member of the Law Women's Association.**

**Law degree with emphasis in criminal law. While in law school, I participated in the Prosecution Clinic, as a student prosecutor pursuant to Arizona Rule of Supreme Court 38(e). In that capacity I represented the State of Arizona in the prosecution of misdemeanor cases.**

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

**While in law school I was also a law clerk at the Pima County Attorney's Office. There I researched legal issues, drafted pleadings and assisted felony prosecutors in their preparation for hearings and trials in cases of driving under the influence, drug trafficking, crimes against children, sex crimes and homicides.**

### **PROFESSIONAL BACKGROUND AND EXPERIENCE**

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.
- a. **Supreme Court of the State of California, admitted December 4, 2001.**
  - b. **United States District Court, Southern District of California, admitted March 12, 2002.**
  - c. **Supreme Court of the State of Arizona, admitted May 24, 2002.**
  - d. **United States District Court, District of Arizona, admitted April 6, 2005.**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No. If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? No. If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
State of Arizona, Court of Appeals, Judge	5/16/2017-Present	Phoenix, AZ
State of Arizona, Superior Court Judge	01/01/2009-05/15/2017	Yuma, AZ
Cocopah Indian Tribe, Judge	09/01/2005-12/31/2008	Yuma, AZ
Law Office of Maria Elena Cruz, PLLC	01/01/2005-12/31/2008	Yuma, AZ
Yuma County Legal Defender's Office	06/01/2004-12/31/2004	Yuma, AZ
Yuma County Attorney's Office	05/14/2002-05/14/2004	Yuma, AZ
Pima County Attorney's Office	08/01/1999-03/31/2002	Tucson, AZ

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

**As a result of my judicial service since the year 2009, I have had no law partners or associates within the last five years.**

**The following is a list of judges on the bench in the Arizona Court of Appeals, the court in which I currently serve:**

James P. Beene	Paul J. McMurdie
Sean E. Brearcliffe	James B. Morse
Michael J. Brown	Jennifer M. Perkins
Jennifer B. Campbell	Christopher R. Staring
Kent E. Cattani	Peter B. Swann
Peter J. Eckerstrom	Jon W. Thompson
Karl C. Eppich	Samuel A. Thumma
Philip G. Espinoza	Garye L. Vasquez
Randall M. Howe	David D. Weinzweig
Diane M. Johnsen	Lawrence F. Winthrop
Kenton D. Jones	

Filing Date: January 25, 2019  
 Applicant Name: \_\_\_\_\_

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

**In the five years prior to my judicial service, the nature of my law practice was distributed approximately as follows:**

<b>Criminal Prosecution</b>	<b><u>20%</u></b>
<b>Criminal Defense</b>	<b><u>40%</u></b>
<b>Judge Pro Tem</b>	<b><u>20%</u></b>
<b>Family Law</b>	<b><u>5%</u></b>
<b>Civil</b>	<b><u>10%</u></b>
<b>Other</b>	<b><u>5%</u></b>

17. List other areas of law in which you have practiced.

**None.**

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

**None.**

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

**In 2007, I was involved in the process of amending the Yuma County Superior Court Local Rules of Practice. Currently, as an appellate court judge, I draft memorandum decisions and publish opinions regarding appeals in criminal cases, complex civil litigation, and rulings by the Industrial Commission, the Department of Economic Security unemployment compensation, and the Tax Court.**

**Additionally, I currently lead the workgroup on Unbundling Legal Services and Alternative Business Solutions, a subgroup of the newly-formed Arizona Supreme Court's Task Force on Delivery of Legal Services. Along with my group-mates, I am in the process of drafting proposed rule changes to Arizona Supreme Court Rule 42, Ethical Rule 1.2, and researching whether Arizona Supreme Court rules should be redrafted to allow for co-ownership by lawyers and non-lawyers in entities providing legal services.**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

20. Have you practiced in adversary proceedings before administrative boards or commissions? No. If so, state: **Though I did not practice in adversary proceedings before administrative boards or commissions prior to my judicial service, I now routinely review their decisions.**

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency. Not applicable.

b. The approximate number of these matters in which you appeared as:

Sole Counsel: Not applicable.

Chief Counsel: Not applicable.

Associate Counsel: Not applicable.

21. Have you handled any matters that have been arbitrated or mediated? No  
If so, state the approximate number of these matters in which you were involved as:

**I have not arbitrated or mediated matters as counsel in civil litigation; however, as a prosecutor, criminal defense attorney, and superior court judge, I have participated in countless criminal and civil case settlement conferences.**

Sole Counsel: Not applicable.

Chief Counsel: Not applicable.

Associate Counsel: Not applicable.

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

*Michael P. Snyder v. The Hon. Richard W. Donato*, 118 P.3d 632, 459 Ariz. 117 (2005)

- a. Relevant dates: March 14, 2005-March 23, 2005
- b. Court and Judge: Superior Court in Yuma County,  
Judge Richard W. Donato (deceased)
- c. Opposing Counsels: David Haws (currently Superior Court Judge)  
[dhaws@courts.az.gov](mailto:dhaws@courts.az.gov)  
Roger Nelson (currently Superior Court Judge)  
[rognelson@courts.az.gov](mailto:rognelson@courts.az.gov)  
250 W 2<sup>nd</sup> St, Suite E  
Yuma, AZ 85364  
(928)817-4078

Paul E. Kittridge  
Former Deputy County Attorney, Maricopa County  
Now Retired.  
No contact info, per Arizona State Bar website.

In the first of two cases (case 1), the defendant was charged with one count of sexual conduct with a minor, a class two felony, for having sexual intercourse with a teenager. According to the State, the defendant fathered a child with the victim and a DNA test would conclusively establish that fact. But the State never pursued a DNA sample from the victim.

In the second of two cases (case 2), the defendant was charged with molestation of a child, a class two felony, for having sexual contact with another teenage girl.

The defendant was represented by court-appointed counsel when I entered my appearance on his behalf as to both cases. On initial review I determined that speedy trial time limits had expired as to case 1. On the defense's motion, that case was dismissed. Still, the State sought to obtain DNA evidence from the victim in case 1 and the newborn child in order to introduce it in case 2 as "other acts evidence" of the defendant's aberrant sexual propensity. The trial court had not ruled on the admissibility of the case 1 DNA evidence for case 2.

As to case 2, speedy trial time limits were close to lapsing. Therefore, pursuant to Arizona Rules of Criminal Procedure 8.1(d), 8.2(a)(1), 8.6, and the Sixth Amendment to the U.S. Constitution, I moved for the case to be immediately tried or dismissed. The State still had not collected and analyzed the DNA evidence from case 1. Consequently, the State asked for the case to be designated as a "complex case" under Rule 8.2(3). This designation would significantly increase the time the State had to prepare to try the case. In support of its motion for complex case designation, the State argued that the very fact that DNA evidence was to be presented at trial made the case of a complex nature and necessitated

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

expansion of speedy trial time limits. Over defense objection, the Superior Court found that DNA evidence made the case complex and granted the State's motion. This ruling expanded the speedy trial deadline under State rule from 150 days to one year.

On behalf of my client, I filed a Petition for Special Action with the Arizona Court of Appeals. Although the Court of Appeals enjoys discretion on whether to accept jurisdiction over this type of petition, it did so in this instance, because "this case involve[d] an issue of first impression and an issue of law likely to recur." *Snyder v. Donato*, 211 Ariz. 117, 119, (App. 2005).

In its decision, the Court of Appeals clarified that "[t]he mere fact that scientific evidence may be involved in a case does not automatically render it complex." *Id.* at 122. Further, the court established a threshold requirement that the State demonstrate the delay was caused by the complexity alleged.

The defendant accepted the State's offer to plead guilty to Attempted Child Molestation, a lesser felony, with a stipulation to lifetime probation and sex offender registration. Case 1 was dismissed without prejudice.

*State v. Heather Nicole King*, S1400CR200300074  
S1400CR200300075  
S1400CR200300122  
S1400CR200300182  
S1400CR200300183  
S1400CR200300184  
S1400CR200300269

- a. Relevant dates: January/2003-February/2004
- b. Court and Judge: Superior Court in Yuma County,  
Judge Tom C. Cole (deceased)
- c. Opposing Counsel: Victoria Thompson (deceased)  
202 S 1<sup>st</sup> Ave #103  
Yuma, AZ 85364  
(928)276-9942

I represented the State of Arizona as Deputy County Attorney in the above-listed cases. The defendant was charged as follows:

S1400CR200300074-Fraudulent Schemes and Artifices, Taking the Identity of  
Another, Fraudulent Use of a Credit Card  
S1400CR200300075- Fraudulent Schemes and Artifices, Taking the Identity of  
Another, Fraudulent Use of a Credit Card, Theft of Means of Transportation  
S1400CR200300122-Fraudulent Use of a Credit Card x 2 counts  
S1400CR200300182-Burglary in the Second Degree, Criminal Trespass in the First

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

Degree, Fraudulent Schemes and Artifices x 2 counts, Forgery x 2 counts,  
Forgery of a Credit Card, Fraudulent Use of a Credit Card  
S1400CR200300183-Forgery of a Credit Card, Fraudulent Use of a Credit Card  
S1400CR200300184-Forgery, Burglary in the Second Degree  
S1400CR200300269-Forgery x 2 counts, Theft x 2 counts

Over the course of two months, the defendant, a 19 year old woman along with a ring of co-conspirators engaged in a series of thefts, burglary and fraudulent schemes that affected at least 10 victims. Disclosure was voluminous and the number of witnesses, including investigative law enforcement officers was also great. Negotiations, interviews and discovery proceeded for a year. I settled these seven felony cases without the need for costly trials and further burdening the victims. The defendant accepted a plea offer requiring she serve prison time and probation supervision to follow. This case was emotional for many in our small community because of the extensive financial damage she caused the victims, the young age of the defendant, her general likeability, her substance abuse history and the fact that her mother was a Victim Advocate in our own County Attorney's Office and her father was an administrative court employee.

*State v. Camella Ann Edington*, S1400CR200400659  
S1400CR200400897  
S1400CR200401124  
S1400CR200401127  
S1400CR200500310  
S1400CR200500434

- a. Relevant dates: May 24, 2004-July 1, 2005
- b. Court and Judge: Superior Court in Yuma, County,  
Judge Andrew W. Gould (now Justice Gould)
- c. Opposing Counsel: Yuma County Deputy Attorneys:  
James Eustace  
S1400CR200400659, S1400CR200400897  
[Jim.eustace@yumacountyaz.gov](mailto:Jim.eustace@yumacountyaz.gov)  
Thomas Varela  
S1400CR200401134  
[Thomas.varela@yumacountyaz.gov](mailto:Thomas.varela@yumacountyaz.gov)  
Deann L. Sandry (deceased)  
S1400CR200500310  
250 W 2<sup>nd</sup> Street, Suite G  
Yuma, AZ 85364  
(928)817-4300

I represented the defendant in six different felony cases. Her charges were:

S1400CR200400659-Possession of Dangerous Drugs, Possession of Drug Paraphernalia  
S1400CR200400897-Possession of Marijuana, Possession of Drug Paraphernalia  
S1400CR200401124-Forgery, Theft  
S1400CR200401127-Possession of Marijuana, Possession of Drug Paraphernalia  
S1400CR200500310-Possession of Dangerous Drugs for Sale, Possession of Marijuana for Sale, Possession of Drug Paraphernalia, Misconduct Involving Weapons, Misconduct Involving Weapons  
S1400CR200500434-Theft

My client—a married, middle class, Anglo woman in her mid-twenties, mother of three small children—enjoyed hobbies like decorating her home, baking, and volunteering at her children’s elementary school. In the first case, though suspected of involvement in drug trafficking, she was charged with personal possession of dangerous drugs. I secured her expeditious release from custody, she entered a plea agreement and started serving a probation term. In short order my client was re-arrested for forgery charges related to a stolen check. Investigation revealed she was likely involved in trafficking stolen property, and that she possessed a weapon. I negotiated a second plea agreement as to the new charges. Then, she was incarcerated again on a theft charge and I negotiated a final plea agreement on her behalf. Her probation was revoked, and she was sentenced to prison terms for all admitted charges.

Ms. King’s and Mrs. Edington’s cases gave me the opportunity to participate in two very similar criminal cases, but from opposite perspectives, that of a prosecutor and of defense counsel. I learned about the stages of addiction and of detoxification from dangerous drugs, as well as the disservice done by releasing an addict from custody without an appropriate safety plan. I also learned that defense attorneys are in a unique position to help their clients by not focusing exclusively on vigorously advocating in terms of their constitutional and statutory rights, but also by helping the defendant find resources to address the underlying drug problem that brought them into the justice system in the first instance.

Cases such as these prepared me for the rewarding role I would later play as a Drug Court Judge and in a probation program known as Project S.A.F.E. They also taught me about the direct impact of crime on victims and motivated me to start a Restitution Court program in Yuma County.

Because Yuma is a small community, I run into Mrs. Edington from time to time. She has been sober and a productive member of our community since her release. She tells me her incarceration saved her life. Likewise, Ms. King has turned her life around, obtained an education and is a nurturing parent to her three daughters. Though not very pleased with her young daughter’s incarceration at the outset, Ms. King’s mother later thanked me for having taken a

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

**such a strong position on behalf of the State.**

23. Have you represented clients in litigation in Federal or state trial courts? **Yes.**  
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 2

State Courts of Record: 605

Municipal/Justice Courts: 60

The approximate percentage of those cases which have been:

Civil: 20%

Criminal: 80%

The approximate number of those cases in which you were:

Sole Counsel: 98%

Chief Counsel: 0%

Associate Counsel: 2%

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion:

20%

You argued a motion described above

20%

You made a contested court appearance (other than as set forth in the above response)

40%

You negotiated a settlement:

98%

The court rendered judgment after trial:

0%

A jury rendered a verdict:

2%

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

The number of cases you have taken to trial:

Limited jurisdiction court   3  

Superior court   9  

Federal district court   0  

Jury   9  

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts?   No.   If so, state:

The approximate number of your appeals which have been:

Civil:   Not applicable.  

Criminal:   Not applicable.  

Other:   Not applicable.  

The approximate number of matters in which you appeared:

As counsel of record on the brief:   Not applicable.  

Personally in oral argument:   Not applicable.  

25. Have you served as a judicial law clerk or staff attorney to a court?   Yes.   If so, identify the court, judge, and the dates of service and describe your role.

**Arizona Superior Court in Pima County, Judge Deborah Bernini, Summer/1999. As a summer law clerk, conducted legal research and drafted proposed orders on other pending matters. Also, I observed Judge Bernini's death penalty trial and gained her judicial perspective of the proceedings.**

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

(5) a statement of any particular significance of the case.

***State v. Vanessa Renee Kelly, S1400CR200200721***

- a. Relevant dates: July 1, 2003-December 30, 2003
- b. Court and Judge: Superior Court in Yuma County,  
Judge Andrew W. Gould
- c. Opposing Counsel: James Tilson (disbarred 11/10/15)  
PO Box 5485  
Yuma, AZ 85366-2474  
(928) 920-8065

**As Deputy County Attorney, I charged and prosecuted the defendant for Possession of Dangerous Drugs for Sale (Methamphetamine) and Possession of Drug Paraphernalia.**

**A burglary investigation, wherein two handguns and a shotgun were stolen, led law enforcement to discover and seize, 69 firearms, methamphetamine, marijuana, and various items of drug paraphernalia. The defendant traded methamphetamine for a firearm. I tried the case before a jury and the defendant was convicted on all counts.**

***State v. Alan E. Coats, S1400CR200201098***

- a. Relevant dates: December 13, 2002-April 23, 2003
- b. Court and Judge: Superior Court in Yuma County,  
Judge Andrew W. Gould  
(now Justice Gould)
- c. Opposing Counsel: Christopher Weede  
2440 W 28th St  
Yuma, AZ 85364  
[chris.weede@yumacountyaz.gov](mailto:chris.weede@yumacountyaz.gov)  
(928) 314-1800

**I prosecuted this case. The defendant was indicted for Unlawful Flight, a felony, after he fled down a canal road at high rates of speed from a pursuing law enforcement vehicle.**

**At trial, the defendant argued that due to the rattling of his older vehicle on the canal road, and the dust cloud brewing as he drove, he was completely unaware of the fact that a law enforcement officer was chasing him with lights and siren activated. As part of his case in chief, the defendant attempted to introduce demonstrative evidence of the chase. He offered a video, recorded by his**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

defense team, depicting the rearview of a vehicle making its way down the canal bank with a cloud of dust and loud noise. The video also contained a running narrative of the conditions as observed by defense counsel, who was simultaneously manning the recording device.

On behalf of the State, I objected to the admission of this demonstrative evidence citing foundational objections to the introduction of the video without proper testimony and hearsay objections to the running commentary of defense counsel. The court sustained the State's objections and precluded introduction of the video. In addition, the State offered its own demonstrative video depicting a high-speed chase along the same canal bank, at the same rates of speed as reported by the law enforcement officer involved in the chase, and with the same patrol vehicle used on the day of the defendant's crime. The State's video was admitted, and the defendant was convicted.

*State v. Todd P. Goodenough, S1400CR200500316*

- a. Relevant dates: March 23, 2005-January 11, 2006
- b. Court and Judge: Superior Court in Yuma County,  
Judge Tom C. Cole (deceased)
- c. Opposing Counsel: Amanda Lewis (now Amanda Denise Lauer)  
Maricopa Legal Defender's Office  
222 N. Central Ave., Suite 8100  
Phoenix, AZ 85004-2531  
[Amanda.Lauer@old.maricopa.gov](mailto:Amanda.Lauer@old.maricopa.gov)  
(602)689-4933

I represented the interests of the defendant, Mr. Goodenough ("Father") in this matter. He was charged with one count of aggravated domestic violence for allegedly harassing the mother of his child ("Mother") after having previously disobeyed a separate order of protection and having previously harassed the same person. Although it was clear that the relationship between the two could not work, what was unclear is how and when Father would have access to the child, as well as any child support to be paid.

The prior conviction for disobeying an order of protection occurred in jurisdiction other than Yuma County. That prior conviction was a requisite element of the offense pending before the court in this new case. After settlement attempts and pre-trial motions failed, the matter was set for trial by jury. On the day of trial and after the jury was sworn, I moved to dismiss the case with prejudice on the basis of the State's inability to establish the prior conviction from a different court. The State conceded they lacked the necessary proof and moved to dismiss the case with prejudice.

Because of the contentious nature of the relationship between the parties,

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

Father's frustration at his inability to contact Mother to have access to his son, and Mother's frustration that Father would likely begin contact with her again, there was an obvious need for definitive structure on issues of parenting time and child support. I offered to represent the defendant in this separate family law matter at no additional charge. Also, Mother agreed to meet with me. That day of trial, instead of ending with my client going into custody, ended with both parties agreeing to a plan for parenting time and child support. More than the satisfaction of "winning" in the courtroom, I felt satisfied that I had helped this family put together a workable plan that benefitted all parties, most importantly their child.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

**Arizona Court of Appeals, Division One**

**05/16/17-present Judge, appointed by Governor Douglas A. Ducey.**

As an Arizona Court of Appeals judge, I sit on 3-judge panels to hear and decide appeals in criminal cases, complex civil litigation, and rulings by the Industrial Commission, the Department of Economic Security unemployment compensation, and the Tax Court. As part of that process, I draft memorandum decisions and publish opinions that serve as binding legal precedent.

In addition to my regular duties as a jurist, I remain active within the legal community by volunteering to help mentor law students and young lawyers, I support events hosted by the Arizona Women Lawyers Association and The Latina Mentoring Project, among others, and I remain available to citizens in general who wish to visit the courthouse, meet me and discuss the service our court provides.

**Arizona Superior Court in Yuma County**

**03/25/16-05/15/17 Presiding Judge of Superior Court, appointed by Arizona Supreme Court Chief Justice Scott Bales.**

Presided over a criminal caseload (approximately 676 cases), while performing the administrative duties of Presiding Judge.

As Presiding Judge, I provided administrative oversight to the Superior Court in Yuma County, including its Juvenile Court Division and the Adult Probation

Department, as well as the Justice Courts and Municipal Courts. Of necessity, I was also assigned, for a time, the administrative oversight over the day to day operations of a local municipal court.

The criminal caseload continues to include the responsibilities and duties as previously listed and includes currently presiding over a six-victim 11-year-old death penalty case.

Arizona Superior Court in Yuma County  
01/01/2010-05/15/17 Superior Court Judge, elected.

Presided over a criminal caseload (approximately 676 cases) and a family law caseload (approximately 173 cases).

In the criminal case assignment, I conducted over 30 jury trials, one civil bench trial, settlement conferences, presided over violation of probation proceedings, heard pre-trial motions, evidentiary hearings, conditions of release hearings, took changes of pleas, decided on issues of victim restitution, and met with community members to provide education on the role of the judge and functions of the judiciary within our system of government. In addition to all regularly assigned duties for a criminal division, I preside over specialty courts. Specifically, I preside over a Drug Court, Restitution Court, and the SAFE Program. For part of this year I also presided over our Regional Mental Health Court.

I took the opportunity to bring Restitution Court to Yuma County in November of the year 2013. Since its inception, Restitution Court has recovered well over \$160,000.00 otherwise not recoverable money in restitution for victims of criminal offenses in our community.

In the family law case assignment, I conducted over 100 bench trials, settlement conferences, heard pre-trial motions, decided on legal decision-making, parenting time, child support, and division of community property.

Arizona Superior Court in Yuma County  
01/01/2009-12/31/2009 Juvenile Court Division Judge, elected.

Presided primarily over juvenile delinquency contested matters, including non-jury trials. Conducted two dependency matters and finalized approximately ten adoptions.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

***State of Arizona v. Preston Alton Strong, S1400CR201400685***

- a. Relevant dates: August 8, 2014-August 29, 2017
- b. Court: Superior Court in Yuma County
- c. State's Counsel: Karolyn Kaczorowski  
Deputy County Attorney  
250 W 2<sup>nd</sup> Street  
Yuma, AZ 85364  
[ycattyoffice@yumacountyaz.gov](mailto:ycattyoffice@yumacountyaz.gov)  
(928)817-4300
- d. Defense Counsel: Ray Hannah  
1570 Plaza Dr,  
Prescott, AZ 86303  
(928) 445-6827

Bill Fox  
Yuma County Assistant Legal Defender  
201 S 2<sup>nd</sup> Avenue  
Yuma, AZ 85364  
(928)817-4650

In this death penalty case, Preston Alton Strong was charged with the murder of a family of six (four children and two adults). Aside from the additional demands of a capital case, the Strong case presented challenges relating to the fact that the homicides occurred 11 years prior to the trial, that there were multiple victims, and that there was a great deal of media attention around the time of the crimes and the trial. I presided over the 4-month long trial, from jury selection through sentencing, and post-trial motions.

The matter has not been presented to the Arizona Supreme Court for review.

***State of Arizona v. Aimee Rose Patrick, S1400CR201300678***

- a. Relevant dates: January 18, 2014-March 11, 2014
- b. Court: Superior Court in Yuma County
- c. State's Counsel: James Eustace  
Deputy County Attorney  
250 W 2<sup>nd</sup> Street  
Yuma, AZ 85364  
[Jim.eustace@yumacountyaz.gov](mailto:Jim.eustace@yumacountyaz.gov)  
(928)817-4300

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

**Defense Counsel:** German Salazar  
Garcia Law Group PLLC  
1302 W Camelback Rd  
Phoenix, AZ 85013-2107  
(602)228-8670

The defendant stood charged with two counts of burglary and one count of theft for entering onto the property of a community member and attempting to steal tools and other various items therein. She acted in concert with a co-participant and later denied involvement in the offense, explaining she was unaware of any illegal activity was occurring on the night of the offense. Some of the items the victim claimed to be stolen were located at defendant's property.

I held a settlement conference where we discussed the risks of proceeding to trial and the defendant's underlying drug addiction issues. The parties reached an agreement whereby the defendant would be placed on probation, but only if accepted into the Drug Court program. Acceptance into the Drug Court program is discretionary with the sentencing court. The alternative was 2.5 years in prison.

The defendant was accepted into the Drug Court program and successfully completed the same. She has since become a champion for Yuma County's Drug Court program. In fact, she and her husband presented their story at the 2016 Arizona Problem Solving Courts Conference in Prescott, AZ.

*National Bank of Arizona v. Reagan A. Dahl and Denise B. Dahl,*  
S1400CV201000788

- a. Relevant dates: May 15, 2012-October 23, 2012
- b. Court: Superior Court in Yuma County
- c. Plaintiff's Counsel: Jeremy J. Claridge  
1405 W. 16th St. Suite G  
Yuma, AZ 85364  
[jeremy@jclaridgelaw.com](mailto:jeremy@jclaridgelaw.com)  
(928) 388-8027

**Defendant's Counsel:** Thomas H. Allen  
1850 N. Central, Suite 1150  
Phoenix, AZ 85004  
[tallen@asbazlaw.com](mailto:tallen@asbazlaw.com)  
(602)256-6000

The National Bank of Arizona filed suit against Reagan A. Dahl and Denise B. Dahl, dba Sandwich Sensations, Inc. for breach of contract. More specifically, plaintiffs

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

alleged defendants defaulted on a business loan agreement with an aggregate original principal balance of \$300,000.00. Defendants answered the complaint admitting defendants entered into a loan agreement with plaintiffs and thereafter defaulted on the loan. Defendants, however, claimed to be entitled to a credit of the fair market value of the collateral securing the promissory note. Defendants further alleged the promissory note required arbitration and barred the instant action.

Plaintiffs moved for partial summary judgment, seeking judgment against defendants for the balance owing on the principal plus interest, averring efforts to use commercially reasonable means to sell fixtures and furnishings of two store locations yielded insufficient funds to cover the outstanding amount owed to principal, interest, attorney's fees and costs.

Defendants countered that contested issues of fact were present, as follows: (1) whether the failure to pay the full amount due on the contract constitutes a breach; (2) whether plaintiff used commercially reasonable means to sell fixtures and furnishings of two store locations; (3) whether defendants' actions/inactions constitute a breach of the commercial guarantee; (4) whether there is any money due and owing on the loan that was guaranteed by defendants; and (5) the amount of damages, if any.

I heard the matter at a settlement conference and helped the parties reach an agreement.

***State of Arizona v. Shakira Dwan Barnette, S1400CR201101160***

- a. Relevant dates: March 27, 2012-December 26, 2012
- b. Court : Superior Court in Yuma County
- c. Plaintiff's Counsel: Karolyn Kaczorowski  
250 W 2<sup>nd</sup> St, Suite G  
Yuma, AZ 85364  
[ycattyoffice@yumacountyaz.gov](mailto:ycattyoffice@yumacountyaz.gov)  
(928) 817-4300

Defendant's Counsel: Cary Grace  
PO Box 1004  
Yuma, AZ 85366-2345  
(928) 783-0345

Emergency services were called to the defendant's home when her infant child was found deceased. According to reports, upon entry into the home it was discovered that the family was living under filthy conditions with trash, rotten food, dirty laundry and diapers with feces on the floor. The infant's death was ruled as Sudden Infant Death Syndrome. However, Shakira Dwan Barnette was charged with four counts of child abuse for subjecting her other children to the living conditions as described.

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

The three children in her care were removed by Arizona Department of Child Safety. Though they were of sufficient age to communicate, their communication skills were so limited they could not be interviewed. Throughout the pendency of the proceedings, the State expressed an interest in ensuring the defendant would receive services and eventually be reunited with her children in a healthy home environment. The defendant resisted the State's offer, claiming her living conditions were not as extreme as described by the State's witnesses, and citing post-partum depression as a reason for failing to keep the home in clean condition.

I managed the case as Discovery Master and held ten hearings revolving around discovery issues, and two settlement conferences in this case. After the second settlement conference the parties reached an agreement. More importantly, the defendant admitted responsibility for allowing her home to get into such an unclean state that the health and safety of her children was endangered. This was the first step in helping this mother on the road to recovering from the death of her infant, while providing a clean and healthy home for her other three children.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

**None.**

<b>BUSINESS AND FINANCIAL INFORMATION</b>
---

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? No. If so, give details, including dates.
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? No. If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed?  
**Not applicable.** If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? Yes. If not, explain.

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

33. Have you paid all state, federal and local taxes when due? Yes. If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? No. If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No. If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? Yes. If so, identify the nature of the case, your role, the court, and the ultimate disposition.

**I was the defendant in a personal injury lawsuit resulting from a vehicular collision occurring around the year 1994. The plaintiff was the driver of an oversized farm tractor. I reached a settlement with his employer's insurance carrier. Later, the driver filed suit against me in the Quechan Tribal Court. Neither the driver, nor I are tribal members and the Tribe was not a party to the lawsuit. The matter was dismissed for lack of jurisdiction over the parties.**

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No. If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? No. If so, explain.

<b>CONDUCT AND ETHICS</b>
---------------------------

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No. If so, provide details.
40. Have you ever been arrested for, charged with, and/or convicted of any felony,

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

misdemeanor, or Uniform Code of Military Justice violation? No.

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition. Not applicable.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. Not applicable.

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

**None.**

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

**None.**

44. List and describe any sanctions imposed upon you by any court.

**None.**

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? No. If so, in each case, state in detail the circumstances and the outcome.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? No. If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? No. If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No. If so,

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No. If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

**PROFESSIONAL AND PUBLIC SERVICE**

50. Have you published or posted any legal or non-legal books or articles? Yes If so, list with the citations and dates.

**D. Smith, C. Campbell, and B. Kavannagh. Trends in State Courts 2017.**  
**Article: *Arizona's Task Force on Fair Justice for All*, p. 48**

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? Yes If so, describe.
- 2018 Making the System Work: Using Victim Advocacy Clinics and Institutionalized Trainings to Promote Competency and Confidence in Mexican Justice Reforms: Voz de las Víctimas. Tecnológico de Monterrey and Arizona State University, Sandra Day O'Connor College of Law Collaboration. Trial Advocacy Instructor.**
- 2017 Arizona Judicial Conference, Fair Justice Opening Plenary. Panelist.**
- 2017 Arizona Judicial Conference, Victims in the Courts Course. Faculty.**
- 2017 Arizona Judicial Conference, Animal Cruelty Course. Faculty.**
- 2017 Annual State Bar of Arizona Convention, Fair Justice for All—Avoiding Disparate Penalties While Serving and Protecting the Public. Panelist.**
- 2016 Arizona Leadership Conference, “Justice for All in Arizona... A review of the Recommendations of Arizona’s Fair Justice Task Force: Changing the Way Business is Done.” Panelist.**
- 2016 Arizona Judicial Conference, Panel Presenter. “The Ethical Parameters of Judges’ Involvement in Politics.”**
- 2016 Annual State Bar of Arizona Convention, “So You Want to Be a Judge.” Panelist.**
- 2016 Annual State Bar of Arizona Convention, “Options for Delinquent Youths and Tips from the Bench.” Panelist.**
- 2016 Annual State Bar of Arizona Convention, Panel Presenter. “Exceed Your Expectations: Essential Skills for Success in Life and Family Law Practice.”**
- 2016 National Association of Drug Court Professionals Trainer in Mexico City, MX**
- 2014 “Maestría en Litigación Oral (L.L.M.),” San Diego, California, (Masters in Oral Litigation), sponsored by California Western School of Law.**

12/4/2014. Lecturer/Instructor.

- 2014 "Congreso Internacional del Juicio Oral," Tijuana, Baja California, Mexico (International Congress on Oral Trials), sponsored by PACCJO and PantaRei. Lecturer/Instructor.
- 2014 "Formación de Formadores," Guanajuato, Mexico, (Training the Trainers). 1/13-17/2013. Lecturer/Instructor.
- 2013 "Taller de Litigación," Mexico Distrito Federal (Litigation Workshop), sponsored by the National Law Center for Inter-American Trade, Universidad Nacional Autónoma de Mexico, and the United States Embassy in Mexico City. Lecturer/Instructor.
- 2013 "Juicio Oral Civil & Mercantil: Un Curso Teórico-Práctico," San Diego, California, (Civil and Commercial Oral Trials: A Course Focused on Theory and Practice), sponsored by California Western School of Law and National Law Center for Inter-American Trade. 8/24/2013. Lecturer/Instructor.
- 2013 Arizona Problem Solving Courts Conference, "Rural Successes by Thinking Outside the Box." Panel Presenter.
- 2010 Arizona Western College Guest Lecturer
- 2008 "62da Jornada Informativa del IME: Jueces y Funcionarios del Sistema de Justicia en Estados Unidos" (62<sup>nd</sup> Informative Workshop by the Institute of Mexicans in the Exterior: Judges and Public Officials in the United States Justice System). Invitee.
53. List memberships and activities in professional organizations, including offices held and dates.

**Arizona Judges Association**

2009-present, Member  
2014-2015, President  
2013-2014, Vice President  
2012-2013, Secretary  
2011-2012, Treasurer  
2009-2011, Rural Judges' Representative

**Arizona Women Lawyers' Association**

2017-present, Member

**Yuma County Bar Association**

2002-2004, 2012, 2019, Member

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

**Yuma County Judicial Selection Committee**  
2005-2016, Member

**Los Abogados**  
2011, Member

**Hispanic National Bar Association**  
1999-2001, Law Student Member  
2017-present, Member

**Law Womens' Association**  
1998-2001, Law Student Member

**Black Law Students Association**  
1999-2001, Law Student Member

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? Yes.

**2018 State Bar of Arizona, Bar Leadership Institute. "Meet the Bench." Panelist.**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

**2017-Present Judicial and Attorney Engagement Workgroup. Coordinate pro bono opportunities for Arizona judges and attorneys. Member.**

54. Describe the nature and dates of any relevant community or public service you have performed.

**2018-Present Task Force on Delivery of Legal Services, Member and Workgroup Leader**

**2018-Present Advisory Committee on Rules of Evidence, Member**

**2015-Present Arizona Supreme Court Commission on Access to Justice, Member**

**2015-Present Arizona Supreme Court Commission on Victims in the Courts, Member**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

**2014-Present Arizona Supreme Court Special Code of Judicial Conduct Workgroup**

**2014-2015 Arizona Judges Association, President**

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

**2015 Recipient, Recognition Award for Collaboration with ACCESO Capacitación, PantaRei and PACCJO for the consistent support of continuing legal education in the State of Baja California, Mexico.**

**2012 Recipient, Class of 2012 Award for efforts to help empower the PPEP- YouthBuild AmeriCorps students to become productive citizens, community service advocates, and future leaders in their communities.**

**2010 Nominee for the "Heart of Yuma" Award, for bringing the Juvenile Court Mock Sentencing Program to local High Schools and thereby promoting prevention and awareness in youth drug trafficking.**

**1997 National Mock Trial Competition, Phi Alpha Delta Pre-Law. First Place Team Competition.**

**1997 National Mock Trial Competition, Phi Alpha Delta Pre-Law. Most Outstanding Defense Attorney for Cross-Examinations.**

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

**2009-2017 Arizona Superior Court Judge, Yuma County**  
**2017-present Arizona Court of Appeals Judge**

Have you ever been removed or resigned from office before your term expired? No. If so, explain.

Have you voted in all general elections held during the last 10 years? Yes. If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

**My primary interest outside the practice of law is my family. My husband Glen and look forward to celebrating 22 years of marriage in March. Together we are primarily focused on guiding our children Diego (18) and Sofia (16). In Yuma, we attend Immaculate Conception Catholic Church and in Phoenix, we attend St. Francis Xavier Parish.**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

**When I am not with my family, I enjoy outdoor sports such as running, hiking, and kayaking. In the year 2013 I met my goal of running 13 half-marathons. I also enjoy traveling, reading, dancing and singing.**

**HEALTH**

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? Yes.

**ADDITIONAL INFORMATION**

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

**Aside from my professional qualifications to fill this vacancy, I bring diversity of gender, race, culture and life experience to the Arizona Supreme Court.**

**I am the daughter of Maxima Mercedes Baez, a woman born in the Dominican Republic, and Eduardo Cruz, a man born in Puerto Rico. Both of my parents are part of that special group of people who, not knowing exactly what challenges they will face, nonetheless choose to leave their communities in search of opportunities to fulfill their potential, and thereby provide a better future for their families.**

**Born in New York, but raised in Puerto Rico, I moved to Yuma when my father was hired by the United States Border Patrol. My native language is Spanish, and I read and write it proficiently. At fourteen years of age I entered the school system as an "English language learner." Within two years I was proficient in the English language and most people were not able to discern that I was not a native speaker.**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

My life experience is also diverse in that I was born into a conservative religious discipline. From as early as I can remember in my childhood, I recall waking up on Saturday mornings to go door-to-door evangelizing. We were taught to respect government, without participating in it and higher education was discouraged. Early in my young adult life, I moved away from that religion and, though I hold on to the positive lessons my mother's religion taught me, I am defined by different ideals. My priorities are: God, family and country. Together, my husband and I worship our God and care for our family. I no longer see myself as detached from my community.

Instead of alienation, I share a unique bond with the community that has helped shape me professionally. Yuma County gave me the opportunity to serve as a superior court judge and later supported me through the road to the Court of Appeals appointment. They know me and they know my family. It's not unusual for people to approach me at the store and remark on how my children have grown, or to tell me that they have been following my career from my days as a prosecutor to now, and that I've done well. Some community members I once sentenced to prison will ask if I remember them, only to share how they have turned their lives around since they last appeared before me. I've even been introduced to their new spouses and babies. Prior Drug Court participants, now sober, smile at me when I see them working around the city and I can't help but remember all the work we did together to get to that point. My fellow Yuma High School classmates and old teachers enjoy joking about my change from Yuma High "Criminal" (our mascot) to Yuma Judge and now Appellate Court Judge. I am no longer detached. My community is continuously expanding. Now serve a broader group and strive to serve my entire state. My career in the judiciary is my service to my community and my contribution to my country.

I am a person of color, a woman, Latina, and for some an unexpected jurist. Though multi-cultural, I am blessed to relate to the Hispanic culture that defined my younger years just as much as I relate to the mainstream American culture and experience that has been my adult life, and that defines my husband's and our children's experience. I am diverse, but I am not foreign.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

**No additional information.**

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes. If not, explain.
62. Attach a brief statement explaining why you are seeking this position.

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

I was on the path to becoming an elementary school teacher when I was involved in a terrible car accident and everything changed. I came out of that experience knowing that if I survived an accident where my small vehicle was turned to shreds by an industrial-size tiller, there was nothing I could not accomplish. My perspective was broadened. The limitations others had imposed on me on account of being a young Latina raised in a very conservative family were no longer enough to keep me from asking myself, "if I could do anything, anything at all, what career would I choose?"

Though I enjoyed the love and support of my parents, as a young Latina, I was led to believe that my career aspirations were limited. I can remember times when my mother looked at me working hard on my high school homework and beaming with pride would say, "I can almost see you now... sitting there, so beautiful outside a lawyer's office, taking his calls." I was discouraged from seeking a career that required years of education and training in favor of short technical training, so that I may focus on evangelizing full-time. No one forbid me from pursuing an education, but I knew going to college went against the plan for my future.

The accident eventually put me face to face with an attorney for the first time in my life. I was in awe of his profession. To be able to help another navigate through the daunting legal system and receive redress at a time when they feel helpless seemed fascinating to me. After all, I had been raised to focus on goals of great import, like saving people's lives through our church work. I asked that attorney questions about the path to becoming a lawyer. For the first time in my life I believed that the lawyer in my mother's musings could actually be me.

I subscribe to a life philosophy of personal fulfillment through our collective advancement as a community. Every member of the community counts with an overriding talent or calling. I have been called to be of service to others. It is important to me that the work I do serves the greater good. From the beginning of my legal career, my personal need to be of service to others manifested itself in my choice of area of practice. I became a prosecutor. I participated in the Prosecution Clinic as a law student prosecutor with the Pima County Attorney's Office and decided that, without a doubt, I would be a career prosecutor. I knew that representing the State in criminal matters was important to the community and I wanted to be a part of that important work. Advocating on behalf of the State also came very naturally to me because of my upbringing. My father served as a member of the Military Police in the New York National Guard, the Muñiz Air National Guard Base in Puerto Rico, the Air Force Reserve, and the United States Border Patrol. My father's dream was to become a lawyer. I knew that, for him, having a lawyer for a daughter was a source of great pride, but having that daughter be a prosecutor as well was the greatest honor yet. Respect for the rule of law was engrained in his core and mine. My mother, on the other hand, made

our spirituality the focal point of our daily lives. During my entire childhood and into my young adult years, I attended church functions at least three times per week, with bible study in between those days, and door-to-door evangelizing. My decision to pursue legal education and change the course of my life was difficult for my mother to accept. But the realization that my life could end at any moment, together with my desire to serve others and my respect for our system of justice were powerful forces within me that I could no longer suppress. I left home and my family with a goal of fulfilling my purpose.

Once at the Yuma County Attorney's Office, my passion for justice was evident. The Yuma County Attorney's Office allowed me the room to grow as a litigator and the allowed me to exercise my discretion in deciding what cases to charge. For me, a young prosecutor, this level of prosecutorial discretion meant that I had to be especially careful with every single decision I made in every case. I was responsible ethically and morally. I took every opportunity to learn from senior prosecutors and I offered to assist in challenging cases. Within the first year in that office I was second chair in a first degree murder case. Several senior attorneys who saw my passion for the work of prosecuting and knew this was my long-term career plan suggested that I hone my litigation skills by obtaining some amount of experience as a criminal defense attorney. Reluctantly, I decided to give the other side a try. Perhaps it was no coincidence that in the first set of cases assigned to me as a defense attorney there was the case of a factually innocent person. This case opened my eyes to the importance of the role of the defense in a criminal case. No longer did I see defense counsel as lawyers unreasonably questioning and challenging every aspect of their clients' cases; a dispensable annoyance. For the first time I understood, in a real and raw way, that our system of justice only works when the defense holds the State to its burden and when convictions are gained only after the case has been scrutinized by a true adversary not beholden to the State. As sometimes is the case, my path continued in a direction I did not initially plan. After a short time as an Assistant Legal Defender, I decided there was another way in which I could continue to grow professionally and serve others.

I opened a solo practice and undertook representation of clients in family law matters, criminal cases, debt collection cases, and served the Cocopah Indian Tribe as a Judge *Pro Tem*. I continued to grow my practice until I was approached and asked to consider serving my community in a judicial capacity. At 35 years of age I took on a political campaign in a community that had never before elected a woman, a minority, or a person of color to the superior court bench. I prayed the right result would come about. I knew that my community, which had been so welcoming from the first day, would not decide based on these factors. At the end of that long campaign year, I became the first woman, and the first Latina, elected to the superior court in Yuma County. I never ceased to feel grateful and blessed to have had my community trust me with a responsibility of this magnitude. As a way to show my appreciation, I did

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

everything I could to grow as a judge, to get involved in statewide service, to teach, to be the bridge between that allowed for the innovations of Maricopa County to reach the corner of the State in Yuma County.

During my tenure as a superior court judge in Yuma County, I demonstrated a strong work ethic, and ability to be just, patient, to take in and process large volumes of new and diverse information. I have also demonstrated an ability to work collaboratively with other judicial officers, a necessary skill for an Arizona Supreme Court Justice. As a judge I have been painstakingly aware of the importance of respecting the separation of powers. I believe my primary responsibility is to fairly and consistently apply the law. The Legislature, not the Courts, has the primary responsibility to enact statutes. Our citizens look to judges to fairly and predictably apply the rule of law, as written. Judicial restraint requires respect for the Legislature's and Executive's power to determine what the law is, and how to enforce it.

As an appellate court judge, I have now had time to reflect more deeply on my judicial philosophy than ever before and to demonstrate it through my work. I have been earnest to exercise restraint by deciding no more than what the case before us requires. I have kept salient in my mind the importance of being consistent in my decisions. And I have endeavored to give the law as faithful an interpretation as the text will allow in order to give our state community the predictability it needs in conducting their businesses and other personal affairs.

In the spring of last year, I was asked to join the Arizona Supreme Court as a Judge *Pro Tem* in a death penalty case. During the pendency of the case, I enjoyed the high-level legal analysis, as well as the collegiality and collaboration exhibited by all of the justices. I would treasure the opportunity to do that work full-time.

Though in my younger years I was taught to refrain from involvement in our government system, my years of legal training and law practice taught me the real story of our nation. I learned that I can worship my creator without being completely detached from the community around me. I learned that I was never really detached from that community in the first instance, because it was thanks to their collective work and self-governance principles that I was free to exercise my faith in whatever manner I chose; that after the states drafted their respective constitutions and, later the United States Constitution, it took the dedication of many to help secure those freedoms and guarantees to us all.

The line of cases beginning with *Minersville School District v. Gobitis*, 310 U.S. 586 (1940), and *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), and the interplay between subsequent federal and state supreme court decisions left me convinced of various inescapable truths. Not only was our system of government relevant to my everyday life, but those rights could not be

taken for granted. Someone has to hold the fort and ensure that our rights are not eroded by political waves of the day or individual interests. Our life, liberty and pursuit of happiness depends, to a great degree, on the faithful adherence to the United States Constitution, which anticipates that the States, in turn, will govern themselves according to the protections they have guaranteed to their citizens. I want to be a part of the group of jurists that scrupulously reviews the decisions of its courts with an eye towards keeping us all within the bounds of the Arizona Constitution, and statutes, while rendering decisions that interpret the law in a manner that is true to the text as written by the Legislature.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

**SEE ATTACHMENTS "A" AND "B"**

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

**SEE ATTACHMENTS "C" AND "D"**

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

**Although I am currently serving as a judicial officer subject to the system of judicial performance review, my first evaluation has not yet occurred.**

**-- INSERT PAGE BREAK HERE TO START SECTION II  
(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

Filing Date: January 25, 2019  
Applicant Name: \_\_\_\_\_

# **ATTACHMENT "A"**

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 RELEVANT FACTS:

3 On the 6<sup>th</sup> day of September, 2007, was indicted by the Yuma Count  
4 Grand Jury, on the following charges:

5 Count One: Prisoners Who Commit Assault with Intent to Incite Riot or Participate in Riot, Cou  
6 Two: Riot, and Count Three: Criminal Damage.

7 A copy of the Indictment is attached as Exhibit "A" hereto and made a part hereof.

8 LAW:

9 I. THE DEFENDANT WAS DENIED A SUBSTANTIAL PROCEDURAL RIGH  
10 WHEN THE INSTANT CASE WAS PRESENTED BEFORE THE Grand Jury.

11 Rule 12.9(a) of the Arizona Rules of Criminal Procedure provide that Grand Jur  
12 proceedings may be challenged when the defendant in a criminal action has been denied  
13 substantial procedural right.

14  
15 A review of the Grand Jury transcript, a copy of which is attached hereto marked Exhibit "B  
16 and made a part hereof, is lacking facts to support all the elements of each of the crimes charged i  
17 the three counts of the indictment or the elements of criminal liability based upon conduct of anothe  
18 as defined in A.R.S. § 13-303.

19 A. Sufficiency of the Evidence or No Evidence At All

20 Rule 12.9, recognized that the work of the Grand Jury and any resulting Indictment may b  
21 challenged on the basis of failure of due process. What constitutes denial of a substantial procedun  
22 right is not delineated by Rule 12.9, and we are left to prior case law and this Court's discretion.

23 The case of Preimsberg v. Rosenblatt, 112 Ariz. 461, 543 P.2d 773 (1975) holds at 112 Ari:  
24 462:

25 [t]here was no intention in the adoption of Rule 16.7 to change the  
26 long established rule that an indictment valid on its face is not subject  
27 to challenge on the ground that the Grand Jury acted on the basis of  
28 inadequate or incompetent evidence. United States v. Colandra, 414  
U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974); Costello v. United  
States, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed. 397 (1956), Holt v.  
United States, 218 U.S. 245, 31 S.Ct. 2, 54 L.Ed. 1021 (1910). A

1 trial court has no power to inquire into or weigh the legal sufficiency  
2 of the evidence presented to the Grand Jury from which an indictment  
resulted.

3 There is a distinction between sufficiency or competency of evidence and a case of n  
4 evidence at all. The concept of no evidence at all was recognized by the U. S. Supreme Court i  
5 Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed. 2d 654 (1960). Therein, th  
6 Court concluded that a state violates a defendant's constitutional due process right when it convict  
7 the defendant of a crime without evidence to support an essential element of the crime. Also se  
8 Vachon v. New Hampshire, 414 U.S. 478, 480, 94 S.Ct. 664, 38 L.Ed. 2d 666 (1974); Harris v  
9 United States, 404 U.S. 1232, 1233, 92 S.Ct. 10, 30 L.Ed. 2d 25 (1971); Spencer v. Jago, 603 F.2  
10 1208 (1978) 6<sup>th</sup> Cir.

11 The application of the "no evidence at all" principle to Grand Jury proceedings as the basi  
12 to quash, dismiss or remand an indictment has been recognized by the Ninth Circuit Court c  
13 Appeals. United States v. Romero, 505 F.2d 391 9<sup>th</sup> Cir.(1978) and United States v. Vargas, 607 I  
14 2d. 831 9<sup>th</sup> Cir. (1979). In the Romero, 585 F.2d at 398, the court stated:

15 [w]e agree with The District Court's statement that '(a)lthough a  
16 complete absence of evidence might serve to invalidate an indictment,  
17 see Costello v. United States, *supra* at 364, 76 S.Ct. 406 (Burton, J.  
18 concurring) and United States v. Tance, 329 F.2d 848, 853-54 (2d  
Cir. 1964), we do not find a complete absence of competent evidence  
here.' Further, it is well established that a Grand Jury may return an  
indictment based solely upon hearsay evidence. Costello supra.

19 The Arizona Supreme Court in Preimburg, *supra* and the 9<sup>th</sup> Circuit in Romero, *supra* bot  
20 cite to Costello v. United States, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed. 397 (1956) as authority. Th  
21 clearly distinguishing factor is "no evidence at all" vs. "sufficiency or competency of the evidence.  
22 The common factor is there was some evidence to support the Grand Jury decision and therefore th  
23 motion was rejected.

24 The Court should not substitute its judgment for that of a duly empaneled Grand Jury or an  
25 other judicial or quasi judicial body. However, this rule does not apply in where there is no evidenc  
26 upon which the judicial or quasi judicial body based its decision. The total lack of evidence is  
27 violation of the constitutional right to due process.

28 **B. Lack of Evidence for Crimes Charged**

1 In this case there was no evidence at all presented to the Grand Jury to show that  
2 participated in inciting a riot or participated in a riot as set forth in Counts I and II. I  
3 order for there to be a riot, there must be a disturbance of the public peace. "Public" is defined i  
4 A.R.S. § 13-2901 (2) as follows: " 'Public' mean affecting or likely to affect a substantial group c  
5 persons". It is submitted that the acts must also be committed in a public place in order for th  
6 "public" peace to be disturbed. It is generally viewed that this section of the criminal code applie  
7 to disorderly demonstrations which threaten harm and exceed the limits of free expression. Se  
8 Criminal Law of Arizona 2<sup>nd</sup> Edition, Honorable Rudolph J. Gerber, Court of Appeals of Arizona  
9 Chapter 29.

10 The facts of this case show that approximately 18 male inmates while locked in their cell  
11 in units Red 1 and Red 2 damaged windows and sprinkler heads and flooded their cells by stuffin  
12 paper or rags and flushing. All 18 Defendants are charged with criminal damage. Criminal damag  
13 was removed as a basis of rioting when former A.R.S. § 13-631 now § 13-2903 was recodified i  
14 1978. Hence the damage to the cells by each inmate cannot be the basis of a riot even if done i  
15 concert. There was no public demonstration as this occurred while each individual Defendant we  
16 locked in his own separate locked cell. He could not threaten violence or threaten to use forc  
17 accompanied by the immediate power of execution, a required element of the crime of riot. Give  
18 the fact that the Defendant and other inmates were locked in their individual cells, there was n  
19 power of execution, and therefore and inability to participate in a riot.

#### 20 I. Count One

21 In Count One, it is alleged Mr. committed assault upon five Detention Officers, y  
22 the Grand Jury testimony of Detective was that "Detention Officer 's report ju  
23 stated that they entered the cell, handcuffed him, an exited the cell." (Exhibit B, p. 67, ll. 12-13  
24 Det. Avenetti went on to testify, "Officer Rangel reported that inmate refused to cuff u  
25 without a fight. D.O. Rangel said -stated that they entered the room, they struggled to contr  
26 and finally restrained him and he was moved out- moved out to another room." (Exhibit I  
27 p. 67, ll. 15-19). By the Detective's own testimony, it is impossible to support the charge that M  
28 engaged in assaultive behavior against the six named officers. Assuming arguendo there we

1 a riot, there is no evidence at all of an assault occurring while the inmates were allegedly wer  
2 rioting. In fact, the extractions from the individual inmate cells occurred some considerable tim  
3 after the damage to the windows, or alleged altercation.

4 **ii. Count Two**

5 A to Count Two, there is no evidence of specific intent to injure, nor scare, any detentio  
6 officer. Mr. was in a locked cell. The officers initiated the contact by going into Mr.  
7 cell. Assault is a specific intent crime. There was no evidence presented that this Defendant ha  
8 any specific intent to assault or from which the Grand Jury could infer a specific intent to assault an  
9 officer. As previously stated, the reports from the detention officers support Mr. ' account th  
10 there was not aggression on Mr. ' part.

11 **iii. Count Three**

12 As to Count Three, there was no evidence presented of this Defendant doing damage to an  
13 cell other than his own. Counsel is not aware of any theory or principle of law in which the state ca  
14 add together property damage committed by single individuals in distinctly separate locations bein  
15 aggregated in value to reach felony levels. Even if the state can prove that each Defendant was a  
16 aider and abettor of each of the other inmates, there is nothing to allow the damage in each case t  
17 be aggregated to one total. This is permitted in the theft/check cases where the statute specificall  
18 provides for it. See A.R.S. § 13-1801(B) which states in regard to Chapter 18 Theft that:

19 In determining the classification of the offense, the state may aggregate in the  
20 indictment or information amounts taken in thefts committed pursuant to one scheme  
or course of conduct, whether the amounts were taken from one or several persons.

21 There is no such corresponding provision in Chapter 16 of the Arizona Criminal Code. A  
22 most, the State might prove 18 misdemeanors and they haven't even presented any evidence of valu  
23 of damage to each cell to the Grand Jury, but rather a guess with no basis, not even hearsay.

24 **II. The Grand Jury Function and the Prosecutor's Role in the Grand Jury Proceeding**

25 The Supreme Court has described the Grand Jury as "a primary security to the indictmen  
26 against hasty, malicious and oppressive persecution; it serves the invaluable function in our societ  
27 of standing between the accuser and the accused...to determine whether a charge is founded upo  
28

1 reason or was dictated by an intimidating power or by malice or ill will." Wood v. Georgia, 370 U.S.  
2 375, 390, 8 L.Ed 2d. 569, 82 S.Ct. 1364 (1962). The Grand Jury's mission is "to bring to trial those  
3 who may be guilty and clear the innocent." Martson's Inc. v. Strand, 114 Ariz. 260, 264, 560 P.5  
4 778, 782, (1977). To do its job effectively, the Grand Jury must receive a fair and impartial  
5 presentation of the evidence. Crimmins v. Superior Court, 137 Ariz. 39, 41, 668, P.2d 882, 88  
6 (1983); State v. Emery, 131 Ariz. 493, 506, 642 P.2d 838, 851 (1982).

7 Because defendants enjoy few procedural rights before the Grand Jury, grand juries must be  
8 unbiased and independent and must act "independently of either prosecutor or judges."  
9 Marston's, 114 Ariz. at 264, 560 P.2d at 782.

10 It is the responsibility of the Grand Jury to find probable cause, not the prosecutor. It is the  
11 exclusive responsibility of the Grand Jurors to find that a crime has been committed and that the  
12 person charged committed that crime. The Grand Jury's duty is not to find guilt beyond a reasonable  
13 doubt, or to acquit. United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 618, 38 L.Ed. 2d 561  
14 569 (1974). Its duty is to determine "whether probable cause exists to believe that a crime has been  
15 committed and the individual being investigated was the one who committed it." State v. Bauman  
16 125 Ariz. 404, 408, 610 P.2d 38, 42 (1980).

17 Given the ex-parte nature of Grand Jury proceedings, Arizona courts have carefully  
18 circumscribed the prosecutor's role. See State v. Rocker, 113 Ariz. 450, 454, 556, P.2d 784, 78  
19 (1976), disapproved on other grounds by State v. Jarzab, 123, Ariz. 308, 311, 599 P.2d 761, 76  
20 (1979). The prosecutor who appears before a Grand Jury has a particularly weighty duty not to  
21 influence the jury because the defendant has no representation to watch out for his interests. *Id.*

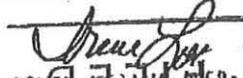
22 The prosecutor's role before the Grand Jury is cogently set forth by Justice Berch of the  
23 Arizona Supreme Court in the case of Maretick v. Jarrett, 204 Ariz. 194, 197, 62 P.3d 120, 12  
24 (2003). In Maretick, the court stated:

25 The prosecutor's role before the Grand Jury is unique in our system. The prosecutor  
26 acts not simply as an advocate, but as a "minister of justice," who assists the jurors  
27 in their inquiry. See Ariz. R.Sup.Ct. 42, ER 3.8 cmt. Prosecutors bear a "particularly  
28 weighty duty not to influence the jury because the defendant has no representative to  
watch out for his interests" before the Grand Jury. State v. Rocker, 113 Ariz. 450,  
454, 556 P.2d 784, 788 (1976), disapproved on other grounds, State v. Jarzab, 123  
Ariz. 308, 311, 599 P.2d 761, 764 (1979). The prosecutor therefore "must not take

# **ATTACHMENT "B"**

1 LAW OFFICE OF MARIA ELENA CRUZ, PLLC  
2 MARIA ELENA CRUZ, BAR ID No. 021639  
3 152 SOUTH FIRST AVENUE  
4 YUMA, ARIZONA 85384  
5 TELEPHONE: 928/343-0700  
6 FAX: 928/343-2434  
7 ATTORNEY FOR DEFENDANT

2006 NOV 24 PM 7:40

  
M. E. CRUZ  
SUPERIOR COURT

8 **IN THE SUPERIOR COURT**  
9 **COUNTY OF YUMA, STATE OF ARIZONA**

10 **STATE OF ARIZONA,**

**No. S1400CR0200600394**

11 **Plaintiff,**

12 **vs.**

**DEFENDANT'S RESPONSE TO  
MOTION TO CONTINUE TRIAL**

13  
14 **Defendant.**

**Hon. Mark W. Reeves**

15  
16 COMES NOW, the defendant, \_\_\_\_\_, by and through counsel  
17 undersigned, and hereby requests this honorable Court deny the State's Motion to Continue Trial.  
18 The reasons for this request are more fully set forth in the attached Memorandum of Points and  
19 Authorities.

20 DATED NOVEMBER <sup>24</sup>24, 2006.

  
\_\_\_\_\_  
MARIA ELENA CRUZ  
Counsel for Defendant

21  
22  
23 Copy of the foregoing delivered  
November <sup>27</sup>27, 2006, to:

24 Hon. Mark Reeves, Division II

25 Deann Sandry, Deputy County Attorney

26 By:   
27 \_\_\_\_\_

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 FACTS:

4 On April 3, 2006, Mr. [redacted] was arraigned on charges alleging a first time  
5 simple possession drug offense. From the time of the Final Management Conference held August  
6 25, 2006 to present, Mr. [redacted] has demanded his right to a speedy trial. The last day for trial has  
7 been calculated to be December 2, 2006.

8 On September 27, 2006, the matter was set for jury trial. Mr. [redacted] owns and operates  
9 several companies located throughout the United States which employ about 300 persons. Since  
10 trial-setting, all interviews have been conducted and Mr. [redacted] has aligned his personal affairs in  
11 such a fashion that he would be able to appear in Yuma for trial on November 28, 2006. The  
12 opening of a new division of one of his companies necessitates Mr. [redacted] fly to Texas on  
13 December 6, 2006. Mr. [redacted] does not expect to return from this planned business trip until  
14 approximately January 10, 2007.

15 At this juncture the State seeks a continuance of the jury trial based on the absence of a  
16 witness, Mr. [redacted], who was previously employed by the Yuma County Sheriff as a deputy.  
17 Mr. [redacted]'s absence from the country has been known to the State since at least July of this year.  
18 Rather than bringing it to the Court's attention in a timely fashion, the State waited four months  
19 before filing its request to continue the trial. In fact, at the time this matter was set for trial, on  
20 September 27, 2006, the State knew of the unavailability of Mr. [redacted] and that it would not be  
21 prepared to proceed to trial. Still, no action was taken by the State. Now, two weeks before trial,  
22 the State moves to continue the trial based on "extraordinary circumstances." The defense requests  
23 this Court deny the State's request and uphold the trial date as set.

24 LAW:

25 **I. NO "EXTRAORDINARY CIRCUMSTANCES" EXIST IN THIS CASE TO**  
26 **JUSTIFY A CONTINUANCE**

27 Rule 8.2(2) of the Arizona Rules of Criminal Procedure requires that persons released from  
28 custody be tried within 180 days from arraignment, barring any excluded periods. Rule 8.5, on the

1 other hand, provides continuances may be granted in cases where "extraordinary circumstances"  
2 exist.

3 In the case at bar, the matter is set to proceed to trial on Tuesday, November 28, 2006. Last  
4 week the State filed a motion requesting the trial be continued due to alleged "extraordinary  
5 circumstances." Specifically, the State has argued Mr. 's absence constitutes such  
6 circumstances. However, the mere fact that a State's necessary witness is out of the country does  
7 not, in and of itself, translate into an extraordinary circumstance necessitating a continuance of the  
8 trial.

9  
10 A. Availability of Witnesses and Prosecutor's Duty-Heise

11 In its motion, the State cites *State v. Heise*, 117 Ariz. 524, 573 P.2d 924 (1977) for the  
12 proposition that "the unavailability of a material witness constitutes extraordinary circumstances."  
13 The facts in *Heise* closely follow those presented in the instant case. In *Heise*, a case involving  
14 murder charges, the trial date was initially set at a time when the medical examiner was available  
15 to testify. The medical examiner had "timely and dutifully notified the prosecutor of his vacation  
16 schedule and at that time the expected trial date did not interfere." *Id.* at 526. Subsequently the trial  
17 court, on its own motion continued the trial date to a time when the medical examiner was no longer  
18 available. The prosecutor failed to advise the Court of the newly created conflict. The Court  
19 explained, "[i]t was this failure on the part of the prosecutor's office which must be analyzed to  
20 determine whether "extraordinary circumstances" exist." *Id.* At 526. The Court reiterated the fact  
21 that "some discretion must be vested in the trial court to determine what are extraordinary  
22 circumstances under the particular facts of each case," and further declared that cases in which the  
23 trial court must choose between denying a State-requested continuance, which would result in  
24 dismissal of the case, and granting the continuance, but violating the defendant's rights to speedy  
25 trial are particularly difficult. *Id.* At 526. Nevertheless, the Court decided the issue as follows,

26 "In the vast majority of cases, we would not fault the trial court for coming down on  
27 the side of granting a continuance. However, when the sole reason the trial court is  
28 placed in this dilemma is the failure of the prosecutor to keep track of its trial  
schedule and availability of witnesses, we must reluctantly conclude that the trial

1 court abused its discretion in finding the existence of extraordinary circumstances.”

2 *Id.* at 526. (Emphasis added.)

3 The Court remanded *Heise* with instructions to dismiss prosecution.

4 Likewise, in *State v. Strickland*, 27 Ariz.App. 695, 558 P.2d 723, cited by the State for the  
5 proposition that a police officer’s vacation may justify a continuance, although the Court did not  
6 reverse the trial court’s ruling, it did find the continuance was erroneously granted. The *Strickland*  
7 Court highlighted the prosecutor’s duty to ensure that trials are not scheduled during the  
8 prosecutor’s or State witness’ vacations. Here, the same principle applies when the prosecutor  
9 permitted a trial to be set at a time when she knew a material witness would be unavailable. In fact,  
10 the State knew of Mr.       ’s absence as early as the month of July.

11  
12 B. *Lukezic*

13 In *Lukezic* the trial court continued the defendant’s trial for reasons of unexpected illness of  
14 the trial judge. The Arizona Supreme Court stated in *Lukezic* that *Heise* was still good law and  
15 distinguished the facts of the two cases indicating, “that [in *Heise*] the delay was caused by a  
16 scheduling conflict which the prosecutor’s office could have easily foreseen.” 117 Ariz. at 526, 573  
17 P.2d at 926.

18 Although the State argues *Lukezic* approved seven factors to consider when deliberating on  
19 a requested continuance, no such factors are found in *State v. Lukezic*, 143 Ariz. 60, 691 P.2d 1088)  
20 or in any of the other three cases cited by the State in its motion. Assuming arguendo such factors  
21 are to be considered by the Court, the State offers no facts regarding factor number 5, “[w]hether the  
22 requesting party was diligent and acting in good faith,” which would tend to support its request for  
23 a continuance. See *State’s motion*, p. 3, l. 23. A review of the history of this case reveals no  
24 diligence or good faith on the part of the State. The State’s failure to admit at trial setting that it  
25 would not be able to meet its burden at a trial on November 28, and its failure to advise the Court  
26 of this issue in a timely manner speak against a finding of extraordinary circumstances and warrants  
27 a denial of the State’s motion.



# **ATTACHMENT "C"**

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

DISCUSSION

¶1 Mother argues the juvenile court erred when it interpreted A.R.S. § 8-533(B) to require her, a private party, to prove she made reasonable efforts to reunify Father with J.G. or that such efforts would have been futile.<sup>1</sup>

¶2 We review *de novo* the court's interpretation of a statute. See *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 78, ¶ 7 (App. 2005). When construing a statute, we look first to the statutory language; if the language is plain and unambiguous, we apply it without resorting to other rules of statutory construction. *Ariz. Dep't of Econ. Sec. v. Superior Court*, 186 Ariz. 405, 408 (App. 1996). If the language of a statute or rule is unambiguous, "we apply it as written." *Roberto F. v. DCS*, 237 Ariz. 440, 441, ¶ 6 (2015). Only if the language is unclear do "we apply secondary principles of construction." *Id.*

¶3 To terminate parental rights, a juvenile court must first find by clear and convincing evidence, A.R.S. § 8-863(B), the existence of at least one statutory ground for termination pursuant to A.R.S. § 8-533(B). *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). Section 8-533(B)(3) permits the termination of parental rights when it is shown "[t]hat the parent is unable to discharge parental responsibilities because of . . . a history

---

<sup>1</sup> No answering brief was filed. Thus, since Mother has raised a debatable issue, we may "treat the lack of a response as a confession of error and reverse on that basis." *In re Pinal Cty. Juv. Action No. S-389*, 151 Ariz. 564, 565 (App. 1986). In our discretion, we decline to do so.

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

of chronic abuse of . . . alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.”

I. When the State Petitions to Terminate Parental Rights

¶4 Although the Department of Child Safety (“DCS”) is the moving party on most parental terminations in Arizona, the relevant statute specifically allows private parties to petition for severance. A.R.S. § 8-533(A) (“Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, a foster parent, a physician, the department or a private licensed child welfare agency,” may commence a severance proceeding); *see* A.R.S. §§ 8-531(2), -501(A)(3) (defining “agency” and “department”).

¶5 At issue here is a requirement applicable to some grounds for severance that the parent must have received “appropriate reunification services.” The statute expressly requires proof of “reunification services” when a parent’s rights are to be severed based on the length of time the child has been in the care of the DCS. A.R.S. § 8-533(B)(8) (six months, nine months, fifteen months in care); § 8-533(B)(11)(b) (child who has been returned to parent but is removed again within eighteen months). In these situations, the statute expressly places on the State the burden of providing the parent with reunification services, requiring proof that “the agency responsible for the care of the child has made a diligent effort to provide reunification services.” A.R.S. § 8-533(B)(8), (11). In these instances, the State must show that it made reasonable efforts to

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

reunify the family or demonstrate such efforts would have been futile. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 18 (App. 2004) (“rehabilitative measures on the part of ADES would have been futile in remedying the cause for Appellant’s inability to discharge parental responsibilities by the time of the severance hearing.”).

¶6 Although not an express requirement of the statute, this court has held the State likewise must prove it offered reunification services to a parent whose rights it seeks to sever on grounds of mental illness or chronic substance abuse, including alcohol. See *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12 (App. 2005); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34 (App. 1999). In *Mary Ellen C.*, this court found the State has a duty under the constitution to show it has made reasonable efforts to preserve the family before it can seek severance based on mental health grounds. 193 Ariz. at 192, ¶ 32. Specifically, we reasoned, “our courts have defined it on constitutional grounds as a necessary element of any state attempt to overcome what the United States Supreme Court has described as the ‘fundamental liberty interest of the natural parents in the care, custody and management of their child.’” *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)). Accordingly, DCS must give parents the time and opportunity to participate in programs that could help them become effective parents prior to moving for severance. See *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). The same reasoning was later applied to severances based on chronic substance abuse, including alcohol, in *Jennifer G.*, 211 Ariz. at 453.

II. When a Private Party Petitions to Terminate Parental Rights

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

¶7 Severance proceedings implicate the same fundamental constitutional liberty interests of a parent, whether commenced by DCS or a private party, because the object of the proceedings is the same—namely, a court-ordered permanent loss of the parent’s relationship with the child. “The combined effect of the fundamental character of a parent’s right to his child and the severity and permanence of termination dictates that the court sever the parent-child relationship only in the most extraordinary circumstances, when all other efforts to preserve the relationship have failed.” *Maricopa Cty. Juv. Action No. JA 33794*, 171 Ariz. 90, 91-92 (App. 1991) (citations omitted). But the question here is whether private parties seeking a severance must meet the same requirements as the State.

¶8 Mother sought severance based on A.R.S. § 8-533(B)(3), arguing that Father was “unable to discharge parental responsibilities because of . . . chronic abuse of . . . alcohol.” We conclude a private party seeking severance on that ground must show that the parent was offered reunification services or that such services would have been futile.

¶9 To be clear, although the statute does not explicitly require private parties to prove that reasonable efforts at family reunification have been made when seeking severance of parental rights on the basis of chronic substance abuse, we hold that in such a case, severance requires proof *that services were offered*, but the parent’s alcohol abuse was not amenable to rehabilitative services, or that providing such services would be pointless.

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

¶10 We do not hold, however, that a private party seeking severance on grounds of alcohol abuse must herself have offered or provided those “appropriate reunification services” to the parent. As noted, A.R.S. § 8-533(B) expressly imposes that requirement on the State in certain situations, but the statute does not impose the same duty on a private party seeking severance. Accordingly, the private party need not necessarily attempt to persuade the parent to seek treatment, or seek treatment referrals for the parent, or attempt to coax the parent into services by offering some incentive in the hope rehabilitation will somehow materialize. We recognize that, unlike a government agency, private parties may not be in a position to make available to the parent the “type of therapy [that] offer[s] the most hope for enabling the [parent] to carry out [their] parental responsibilities[,]” nor can most private parties engage in the type of “prolonged,” painstaking efforts readily available to the State. *Maricopa Cty. Juv. Action No. JS-5209 & JS-4963*, 143 Ariz. 178, 189 (App. 1984). Neither are private parties usually able to engage in the follow up necessary to sufficiently secure a service provider’s medical or therapeutic records to adequately monitor the parent’s progress, or lack thereof; nor should they be required to do so.

¶11 Instead, the private party need only show that the parent whose rights are to be severed has either already received or been offered the necessary rehabilitative services from some provider to no avail or that engaging the parent in rehabilitative services would be futile. Evidence of efforts by the private party to encourage or induce

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

the parent to participate in services may be offered by the private party seeking severance, but it is not required.

III. Mother's Burden in This Case

¶12 The juvenile court found "Mother failed to prove by clear and convincing evidence that she made reasonable efforts to reunify the family or that such efforts would have been futile," but also found "Father's unawareness of his substance abuse issues, even today, shows that *any attempts at persuasion would likely have been futile.*" We look to the record to resolve these inconsistent findings. We review a juvenile court's order in a severance matter for an abuse of discretion and accept the court's factual findings unless clearly erroneous. *Mary Lou C.*, 207 Ariz. at 47, ¶ 8.

¶13 In determining what reasonable efforts Mother could have made to assist Father in his rehabilitation, the court reached the following conclusions:

The Court recognizes Mother's difficulty in determining what efforts would be reasonable for her to take. Mother has no authority to control Father because he is an adult and can make his own decision. She could not have forced Father to go to outpatient treatment, inpatient treatment, alcoholics anonymous, or some other support group. For this reason, *the main efforts that Mother could have made would have been to try to persuade him to seek treatment for his substance abuse.*

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

(Emphasis added.) The court also found that, although Mother testified she talked to Father about his drinking and told him to get help and “Father agreed that Mother and Father had spoken about Father’s drinking, and that Mother told him he should not drink after work,” that nonetheless Mother enabled Father’s drinking when she assisted him in driving impaired by blowing into the breathalyzer machine installed on his vehicle and that “she never requested that Father be ordered, [in the family court case,] to treatment or counseling.” Therefore, it found “Mother did not take reasonable efforts to help Father address his alcohol abuse issues, and thereby reunify the family (Father and [J.G.]).”

¶14 In determining whether efforts to assist Father would have been futile, the court stated there was “no evidence to suggest that it would have been futile for Mother to have offered Father unsupervised parenting time if he successfully an [sic] completed alcohol abuse treatment[,]” and that there was “no evidence that asking the Court to condition parenting time on providing clean alcohol tests and obtaining alcohol abuse treatment would not have been futile.”<sup>2</sup>

¶15 Contrary to the court’s findings at ¶ 18 *supra*, the record contains ample evidence to suggest Father’s parenting time had already been adversely affected by his

---

<sup>2</sup> Although this latter statement reads as supporting a finding of futility, the context suggests a typographical error in the inclusion of the word “not,” and that the court intended to say, “no evidence that asking the Court to condition parenting time on providing clean alcohol tests and obtaining alcohol abuse treatment *would* have been futile.”

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

substance abuse. The frequency, location and supervised nature of his parenting time were the result of his alcohol abuse, and yet, those limitations did not cause him to address his alcohol abuse issues. Also, Mother testified that in the parties' family court case,<sup>3</sup> Mother asked the court to deny Father parenting time because his chronic alcohol abuse made him unfit to parent. Further, as her petition alleged:

Domestic violence has occurred between the parties. He drinks almost every night and can become violent when he drinks. He will come home drinking after leaving the gym. He does not spend time with our son or attempt to have a parent/child relationship. He has a breathalyzer installed in his vehicle. He has an interest in different women, and not having the parent/child relationship has ended the relationship. I feel our son deserves better.

¶16 In that contested proceeding Mother was awarded sole legal decision-making authority over J.G. and Father was granted parenting time, but only when supervised by a third party as approved by Mother. The juvenile court heard testimony from J.G.'s maternal grandfather and his wife. The two grandparents relocated to Lake Havasu to serve as third party supervisors of Father's parenting time with J.G. They both testified to the need for their relocation to assist with parenting time supervision, that during a visit Father arrived smelling of alcohol, "that he just sat there on the bench . . .

---

<sup>3</sup> The court took judicial notice of Mother's Petition to Establish Legal Decision Making, Parenting Time Rights, and Child Support as filed on October 24, 2014, and of the minutes of the default hearing held on June 29, 2015, both filed in Mohave County Superior Court case no. DO-2014-07830.

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

was just all sprawled over, had [an] energy drink in his hand, eyes bloodshot, just . . . he wasn't interacting at all." Given the previous family court proceedings, Father was well aware that his chronic alcohol consumption affected his parenting time and was the reason for the supervised nature of the visits. The findings that there was "no evidence to suggest that it would have been futile for Mother to have offered Father unsupervised parenting time, if he successfully an [sic] completed alcohol abuse treatment," and that there was "no evidence that asking the Court to condition parenting time on providing clean alcohol tests and obtaining alcohol abuse treatment would not have been futile" are not supported by the record.

¶17 In contrast, the record most assuredly supports the juvenile court's finding that "Father's unawareness of his substance abuse issues, even today, shows that any attempts at persuasion would likely have been futile." As previously stated at ¶ 7, *supra*, in this case Mother was required to prove all elements of A.R.S. § 8-533 (B)(3), and she was also separately required to establish the futility of making attempts at reunification. The court found that all of the elements of A.R.S. § 8-533(B)(3) were established when it found that Father has a "history of alcohol abuse," that his "alcohol abuse causes him to be unable to discharge parental responsibilities," and that "there is a reasonable belief that the chronic alcohol abuse will continue." In light of our holding that Mother did, in fact, establish the futility of making reunification attempts, the result is that the statutory ground alleged is now proven.

IV. Best Interests Finding on Remand

ALYSSA W. v. JUSTIN G., J.G.  
Opinion of the Court

¶18 To grant a petition for severance, the court must also find by a preponderance of the evidence that termination is in the child's best interests. *See Kent K.*, 210 Ariz. at 284, ¶ 22. On remand, the juvenile court must determine whether termination of Father's parental rights would be in J.G.'s best interests.

CONCLUSION

¶19 Because the court's denial of Mother's petition to terminate Father's parental rights is based solely on Mother's failure to show that efforts to reunify the family (Father and child) would be futile, we reverse the court's orders and judgment and remand for further proceedings.

¶20 On remand, the court, having previously found Mother has proven by clear and convincing evidence all elements of termination pursuant to A.R.S. § 8-533(B)(3), shall now determine whether severance is also in the child's best interests.

# **ATTACHMENT "D"**

**C R U Z**, Judge:

¶1 The State of Arizona appeals from the superior court's judgment granting David Michael Wallace's motion to suppress. For the following reasons, we reverse the court's ruling.

### **FACTS AND PROCEDURAL HISTORY**

¶2 Callister, a police officer for more than ten years, was on duty near the Arizona-Nevada border when he noticed a black car pass him shortly after crossing the Arizona state line. The driver appeared to get nervous, locking his left arm on the steering wheel and tucking his head into his shoulder. Shortly afterward, the driver made a sudden lane change in front of a pickup truck, leaving three-fourths of a car length between the vehicles while they were both driving seventy-five miles per hour. Callister followed the black car for an additional mile-and-a-half and then conducted a traffic stop of the vehicle.

¶3 Callister identified Wallace as the driver by Wallace's Utah driver's license. While Wallace was stopped, Callister, who had "stopped many hundreds, maybe even approaching the thousands, of those types of violations," noticed Wallace appeared to be exceptionally nervous because he stared directly at Callister "not breaking eye contact, not even once," and his face twitched as he spoke. He also noticed that Wallace's eyes were red and watery, and he suspected that during the day Wallace may have used some

sort of illegal drug. Callister asked Wallace to exit the vehicle and briefly conducted a field sobriety test. He determined Wallace was not impaired, but it still appeared as though “[Wallace] had used drugs at some point during the day.” Callister informed Wallace he would be issuing him a warning for unsafe lane use. Wallace’s nervousness did not appear to abate but rather increased.

¶4 As Callister issued the warning, the two conversed. During the conversation, Wallace informed Callister that he had rented a car in St. George, Utah, traveled to Las Vegas, and was on his way back home from the trip. After Callister finished issuing the warning, he returned Wallace’s documents. Callister did not inform Wallace that the traffic stop had ended or that Wallace was free to leave, but he asked Wallace about whether there was anything illegal in his vehicle, “including drugs.” Wallace said no, and Callister asked if he would consent to a vehicle search. Wallace declined, and Callister asked an additional investigative question inquiring whether a drug dog would alert to anything illegal in Wallace’s vehicle if it were to sniff the vehicle. Wallace then admitted he had a methamphetamine pipe in his car. Callister asked him whether he had methamphetamine in the vehicle and Wallace said there was “a lot of [methamphetamine] in the vehicle.” In total, the stop lasted approximately fifteen minutes.

¶5 The State indicted Wallace for transportation of dangerous drugs for sale (methamphetamine), a Class 2 felony. Wallace moved to suppress all evidence obtained as a result of the stop, arguing reasonable suspicion did not exist to justify the traffic stop

and reasonable suspicion did not exist to detain him after the purpose of the stop was completed.

¶6 After an evidentiary hearing, the court granted the motion to suppress. The court found that reasonable suspicion existed to justify the traffic stop, but that Callister's purpose for the stop was completed upon Callister's return of Wallace's documents. It found Callister was not allowed to "add time" to the traffic stop absent reasonable suspicion, and it found that reasonable suspicion did not exist to further detain Wallace.

¶7 The State timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and 13-4032(6).

## DISCUSSION

¶8 The State argues the superior court erred in finding no objective reasonable suspicion that Wallace was involved in criminal activity to justify prolonging the stop.<sup>1</sup> We agree.

¶9 We review *de novo* "the superior court's ultimate legal conclusions about whether the totality of the circumstances warranted an investigative detention and whether its duration was reasonable." *State v. Woods*, 236 Ariz. 527, 530, ¶ 10 (App. 2015).

---

<sup>1</sup> The parties do not challenge the constitutionality of the initial stop; therefore, we do not address the issue.

“[W]e consider only the evidence presented at the suppression hearing and view the facts in the light most favorable to sustaining the trial court’s ruling.” *State v. Peltz*, 242 Ariz. 23, 29, ¶ 20 (App. 2017).

¶10 The Fourth Amendment protects against “unreasonable searches and seizures.” U.S. Const. amend. IV; *United States v. Sharpe*, 470 U.S. 675, 682 (1985). This includes investigatory traffic stops, which are only permissible when supported by an articulable, reasonable suspicion of a traffic violation. *State v. Sweeney*, 224 Ariz. 107, 111-12, ¶ 16 (App. 2010); *see also Terry v. Ohio*, 392 U.S. 1, 30 (1968). “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Sweeney*, 224 Ariz. at 112, ¶ 17 (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). After an officer has effectuated the purpose of the stop, the officer must end the stop unless “(1) the encounter between the driver and the officer becomes consensual, or (2) during the encounter, the officer develops a reasonable and articulable suspicion that criminal activity is afoot.”<sup>2</sup> *Id.* (citation omitted).

¶11 A reasonable suspicion exists “if, under the totality of the circumstances, an officer developed ‘a particularized and objective basis for suspecting . . . criminal activity.’” *State v. Kjolsrud*, 239 Ariz. 319, 323, ¶ 15 (App. 2016) (quoting *United States v.*

---

<sup>2</sup> *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), considered whether a dog sniff conducted after the completion of a traffic stop violated the Fourth Amendment, but it specifically reserved for consideration upon remand the question of whether reasonable suspicion existed to justify detaining Rodriguez beyond the initial stop. Because we find that Callister had reasonable suspicion to detain Wallace beyond the initial stop, *Rodriguez* is not controlling here.

*Cortez*, 449 U.S. 411, 417-18 (1981)). “Although ‘reasonable suspicion’ must be more than an inchoate ‘hunch,’ the Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory detention.” *State v. Teagle*, 217 Ariz. 17, 23, ¶ 25 (App. 2007). When determining whether circumstances give rise to reasonable suspicion, we consider “such objective factors as the suspect’s conduct and appearance, location, and the surrounding circumstances, such as the time of day, and taking into account the officer’s relevant experience, training, and knowledge.” *State v. Fornof*, 218 Ariz. 74, 76, ¶ 6 (App. 2008). The factors taken together “must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied.” *Teagle*, 217 Ariz. at 24, ¶ 25 (citation omitted).

¶12 “[S]eemingly innocent behavior can form the basis for reasonable suspicion if an officer, based on training and experience, can perceive and articulate meaning in given conduct[,] which would be wholly innocent to the untrained observer.” *State v. Boteo-Flores*, 230 Ariz. 105, 108, ¶ 12 (2012) (quotation omitted). Nor must an officer “expressly rule out the possibility of innocent explanations for the conduct.” *State v. Evans*, 237 Ariz. 231, 234, ¶ 11 (2015).

¶13 “Viewing the mosaic of facts and circumstances from the standpoint of an objectively reasonable police officer and giving due deference” to Callister’s training and experience of over ten years, *Teagle*, 217 Ariz. at 25, ¶ 29 (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996)), we conclude sufficient bases existed for developing a reasonable and articulable suspicion that criminal activity was afoot. Callister testified he suspected

Wallace was involved in criminal activity based on (1) the twitching of Wallace's face as he spoke, (2) the odd manner in which Wallace constantly stared at Callister, (3) Wallace's red and watery eyes, (4) Wallace's travel to Las Vegas to stay in a hotel while experiencing "hit-and-miss" employment, (5) the rental car, and (6) Wallace's exceptional nervousness from the inception of the stop which only increased after learning he would only receive a written warning for the traffic violation. Reasonable suspicion is based on all of the factors together, not an analysis that considers the factors in isolation. *See Kjolsrud*, 239 Ariz. at 324, ¶ 17 (explaining that the totality of the circumstances determines whether reasonable suspicion exists). Wallace's appearance led Callister to believe Wallace may have used illegal drugs earlier in the day. Callister also observed that, while it is normal for motorists to become nervous when stopped by police, Wallace appeared to be nervous to an "exceptional" degree based on Callister's experience, because Wallace stared directly at Callister and his face twitched as he spoke. Finally, Wallace's nervousness did not abate but rather increased when Callister informed him he would only be issuing Wallace a warning, which Callister, having stopped countless motorists in the past, testified was not normal behavior for an innocent traveler on the road.

¶14 Callister's suspicion that criminal activity was afoot started immediately "when [he] first made contact with [Wallace] when he was still sitting in the car." Although the superior court concluded that "Wallace's performance on the field sobriety tests demonstrated he was not under the influence which should have diminished Trooper Callister's suspicion[,] the lack of impairment did not eliminate Callister's

continued suspicion that Wallace had used drugs earlier in the day and was likely transporting illegal drugs. If so, the presence of that drug, or its metabolite, in Wallace's body at the time of driving supported further investigation for the crime of Driving Under the Influence, a violation of A.R.S. § 28-1381(A)(3), which states that "[i]t is unlawful for a person to drive or be in actual physical control of a vehicle in this state . . . [w]hile there is any drug defined in § 13-3401 or its metabolite in the person's body." Although Callister determined Wallace was not impaired, Wallace appeared as though he "had used drugs at some point during the day." Consistent with the reasoning in *Sweeney*, Callister was permitted to continue the investigation past the point of issuing the warning, because during the encounter Callister had developed a reasonable and articulable suspicion that criminal activity was afoot and that suspicion had not yet been dispelled. *Sweeney*, 224 Ariz. at 112, ¶ 20. Contrary to the dissent's conclusion that his reasonable suspicion ended when Callister returned the license and registration, there was still reasonable suspicion of the possibility that Wallace was driving with a drug metabolite in his system. Actual impairment is irrelevant to a determination of Driving Under the Influence for a § 28-1381(A)(3) charge, a criminal offense.

¶15 The dissent relies on *Sweeney* for the proposition that the officer relied on common behavior that would subject nearly everyone to a continued intrusive detention, however *Sweeney* is distinguishable. In *Sweeney*, an officer physically grabbed a defendant, detained him, and ordered him to stand in front of the patrol car until a second

officer arrived and stood by the defendant while the officer conducted the dog sniff. 224 Ariz. at 112, ¶ 20. Those are not the facts of this case.

¶16 Based on this record, we conclude Callister had reasonable suspicion that Wallace was involved in criminal activity to ask a few additional questions.

### CONCLUSION

¶17 For the foregoing reasons, we reverse the superior court's ruling and remand for further proceedings.