

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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4	Manuel de Jesus Ortega)	
	Melendres, et al.,)	
5)	
	Plaintiffs,)	CV 07-2513-PHX-GMS
6)	
	vs.)	Phoenix, Arizona
7)	July 19, 2012
	Joseph M. Arpaio, et al.,)	8:37 a.m.
8)	
	Defendants.)	
9)	

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE G. MURRAY SNOW

17 (BENCH TRIAL DAY 1 - Pages 1 - 277)

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22 Court Reporter: Gary Moll

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Proceedings taken by stenographic court reporter

Transcript prepared by computer-aided transcription

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I N D E X

<u>Witness:</u>	<u>Page</u>
RALPH BRECKEN TAYLOR	
Direct Examination by Mr. Byrnes	54
Cross-Examination by Mr. Liddy	110
Redirect Examination by Mr. Byrnes	187
VICTOR DAVID VASQUEZ	
Direct Examination by Ms. Ramirez	197
Cross-Examination by Mr. Liddy	202
DAVID RODRIGUEZ	
Direct Examination by Ms. Gallagher	210
Cross-Examination by Mr. Casey	219
Redirect Examination by Ms. Gallagher	235
LOUIS DiPIETRO	
Direct Examination by Mr. Segura	238
Cross-Examination by Mr. Casey	259
<u>Opening Statements</u>	
By Mr. Young	37
By Mr. Casey	41

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	1	Email chain last dated March 11, 2009 re "Three Presidents" (Exhibit 7 to the Deposition of Joseph Sousa, taken on October 22, 2010)	35
3	2	Email chain, last dated June 13, 2009 re "FW: Thought you'd find this interesting" containing status purported to be from the L.A. Times (Exhibit 5 to the deposition of Brett Palmer, taken on November 9, 2010)	35
4	5	Email dated May 29, 2008 re "3511 stuff" and attaching a copy of a "Mexifornia" Driver's License, email dated 6/3/2008 forwarding "3511 Stuff" (Exhibit 34 to the deposition of Joseph Arpaio, taken on November 16, 2010)	35
5	7	Email last dated May 1, 2008 re "FW: MORE: Mexican Words of the Day" (Exhibit 22 to the Deposition of Brian L. Sands, taken on November 15, 2010)	35
6	11	MCSO News Release dated October 21, 2009, "Arpaio: 'We Will Still Use Indicators in the Enforcement of Illegal Immigration Laws'" (ORT 000616-617 / Exhibit 3 to the deposition of Brett Palmer, taken on October 23, 2009)	35
7	12	Excerpt from "Workbook: Statutory Authority, ICE Academy" dated Fall 2005 (ORT 000618 / Exhibit 4 to the deposition of Brett Palmer, taken on October 23, 2009)	35
8	13	Oct. 30, 2009 email from Palmer to Madrid, Armendariz, Rangel, Sousa (Carveout MCSO 0000431)	35
9	16	Email chain last dated July 2, 2008 re "FW: Some we haven't seen yet, just scroll down" attaching image of "No Illegals - No Burritos" (Carveout MCSO 0003188-97, 3205)	35
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
17	Email chain last dated July 1, 2008 re "RE: FUNNY MEXICAN WORDS" (Carveout MCSO 0004961-62)	35
18	Email chain last dated July 2, 2008 re "A RARE PHOTO OF A MEXICAN NAVY SEAL" (Carveout MCSO 0005586-88)	35
19	Email chain last dated November 12, 2005 re "FW: Guadalupe Handgun revision" and attaching image of "Hispanic Shooting Range" (Carveout MCSO 0006209-10)	35
20	Dec. 16, 2008 email from Sousa to Rangel, Palmer, Madrid, Armendariz; Jerez reply (Carveout MCSO 0023530-31)	35
29	Email chain last dated June 25, 2008 re "Indian Yoga vs. Mexican yoga" (Carveout MCSO 0038846-49)	35
30	Email dated September 2, 2008 re "Fw: Mexican Jews" (Carveout MCSO 0103100)	35
31	Email chain dated December 15, 2008 re "FW: Learn the Mexican Words of the Day" (Carveout MCSO 0132232)	35
32	Email dated July 10, 2008 re "FW: Word of the Day" attaching Mexican word of the day.doc (Carveout MCSO 0162905-06)	35
35	Attachment to July 30, 2008 email from Gonzales to Barron-Irby; titled "Brian Sands/Dave Trombi" (Carveout MCSO 0227729-30)	35
43	Mar. 11, 2009 email from Siemens to Rios, Sousa (Carveout MCSO 0350979)	35
44	Email chain, last dated September 29, 2009 re "Mexican Engineering at It's Best!!" (Carveout MCSO 0426255-70)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	45	Email chain, dated February 24, 2009 re "FW: Mexican words of the day" (Carveout MCSO 0496147-48)	35
3	46	Email dated July 22, 2009 re "MEXICAN TEST" (Carveout MCSO 0497277-80)	35
4	47	Email chain dated November 3, 2009 re "FW: Mexican Recliners" (Carveout MCSO 0501203-05)	35
5	50	MCSO CAD Incident History, Incident # MA07222192 (MCSO CAD Database)	35
6	51	MCSO CAD Incident History, Incident # MA07222209 (MCSO CAD Database)	218
7	54	MCSO CAD Incident History, Incident # MA08115843 (MCSO CAD Database)	74
8	65	MCSO Memorandum re "Complaint on Deputy Matt Ratcliffe" and other complaints against the MCSO with various dates (Melendres MCSO 000001-30)	35
9	66	MCSO Arizona Ticket and Complaint Form (Melendres MCSO 000004 / Exhibit 6 to the deposition of Matthew Lucas Ratcliffe, taken on October 15, 2009)	35
10	67	DHS officer training manual: PowerPoint presentation discussing delegation of authority under 287(g) (Melendres MCSO 000081-104)	35
11	68	Civil Rights file with 287(g) Officer Training Participant Workbook (Melendres MCSO 000179-198 / Exhibit 1 to the deposition of Brett Palmer, taken on October 23, 2009)	35
12	69	DHS officer training manual: Lesson plan re use of race by federal law enforcement (Melendres MCSO 000222-37)	35
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
70	MCSO CAD Incident History 9/27/2007 Incident #MA07181873 (Melendres MCSO 001785-87 / Exhibit 1 to the deposition of Carlos Rangel, taken on October 20, 2009)	35
71	CAD Incident History (MA08054641 MA08054636 MA08054640) and Incident Report (MA08054636) (Melendres MCSO 001811-20 / Melendres MCSO 001811 - Exhibit 9 to Kikes Deposition / Melendres MCSO 001812-14 - Exhibit 12 to Armendariz November 24, 2009 Deposition / Melendres MCSO 001816 - Exhibit 7 to Beeks Deposition / Melendres MCSO 001817-20 - Exhibit 7 to Kikes Deposition)	35
73	CAD Incident History MA08054636 (Melendres MCSO 001817-20)	35
74	Enforcement Support Unit organizational chart (Melendres MCSO 001821)	35
75	Saturation Patrol Documents 32nd Street and Thomas, January 18-19, 2008 (Melendres MCSO 001822-24)	35
76	MCSO Human Smuggling Unit, Shift Summary for Saturation Patrol 12/14/07 at Aguila and surrounding area (Melendres MCSO 014905-07)	35
77	Saturation Patrol Stats, January 18th, 2008 from 1500 to 2300 (Melendres MCSO 001825)	35
78	MCSO Crime Suppression / Saturation Patrol Totals (Melendres MCSO 001826)	35
79	Saturation Patrol Documents 32nd Street and Thomas, March 21-22, 2008; Operation Summary, stat sheet for saturation patrol, arrest list / handwritten Notes dated 3/21/2008 of arrests (Melendres MCSO 001834-40)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	80	MCSO Human Smuggling Unit Shift Summary, for 11/29/2007 in the Area of Broadway and Stapley, Mesa (Melendres MCSO 014898)	35
3	81	MCSO Human Smuggling Unit Shift Summary, for 12/5/07 in the Area of Broadway and Stapley, Mesa (Melendres MCSO 014900)	35
4	82	Saturation Patrol Documents, Cave Creek and Bell, March 27-28, 2008 / Incident action plan, Patrol statistics, personnel sign-in rosters, Arrest lists, Mar. 27-28, 2008 at Cave Creek and Bell Rds. In Phoenix (Melendres MCSO 001844-52; Melendres MCSO 014547-48; MCSO 14644-45)	35
5	83	Stat Sheet for Saturation Patrol 03/28/08 (Melendres MCSO 001848)	35
6	84	MCSO Personnel Sign-In for Cave Creek & Bell, 3/28 (Melendres MCSO 001849-50)	35
7	85	Handwritten arrest logs (Melendres MCSO 001851-52 / Exhibit 6 to the deposition of Douglas W. Beeks, taken on October 22, 2009)	35
8	86	Saturation Patrol Documents, Guadalupe, April 3-4, 2008 (Melendres MCSO 001853-59)	35
9	87	Incident action plan, patrol statistics, personnel sign-in roster, arrest lists, email correspondence to Phoenix, Tempe and Ahwatukee PDs, Apr. 3-4, 2008 in Guadalupe (Melendres MCSO 001853-77)	35
10	88	Email dated April 4, 2008 re "Guadalupe Saturation patrol 04/04/08 and stat totals" (Melendres MCSO 001864-65)	35
11	89	Saturation Patrol Sign-in Roster for Guadalupe Saturation Patrol 4/3-4/2008 (Melendres MCSO 001866-73)	35
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E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	90	Saturation Patrol Documents, incident action Plan, III Strike Team protocol, officer safety bulletin, aerial photographs and maps of Mesa, supplemental operations plan, stats for last four sweeps, arrest lists, personnel sign-in roster, copy of East Valley Tribune article: "Arpaio plans to sweep Mesa on Thursday," patrol Statistics, June 26-27, 2008 in Mesa (Melendres MCSO 001878-925; Melendres MCSO 014578-79)	35
3	91	Saturation Patrol Documents, Mesa, June 26-27, 2008 (Melendres MCSO 001878-98)	35
4	92	Illegal Immigration Enforcement Protocols (April 25, Oct. 8, and Oct. 21, 2008) (Melendres MCSO 001887-88; Melendres MCSO 014951-53; Melendres MCSO 014966-67)	35
5	93	Email dated June 28, 2008 re "Mesa Saturation Patrol 08/27/08 and stat totals for operation" (Melendres MCSO 001899-1900)	35
6	94	MCSO Crime Suppression / Saturation Patrol Arrest List, Mesa Op / 06-26-27, 2008 (Melendres MCSO 001904-20)	35
7	95	MCSO Crime Suppression / Saturation Patrol Arrest List for Mesa Op; (Melendres MCSO 001904-06; 1911-14)	35
8	96	Form for MCSO Crime Suppression / Saturation Patrol Totals (Melendres MCSO 058706)	35
9	97	Saturation Patrol Documents, Mesa, July 14, 2008 / Incident action plan, III Strike Team protocol, officer safety bulletin, aerial photographs and maps of Mesa, July 14, 2008 in Town of Mesa (Melendres MCSO 001926-47)	35
10	98	Email dated July 15, 2008 re "Mesa Saturation Patrol 07/14/08" (Melendres MCSO 001941)	35
11	99	Sign-in Roster, dated 07/14/08 for Operation: Mesa-OP (Melendres MCSO 001942-46)	35
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E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	100	Saturation Patrol Documents, Food Vendor Detail, Maryvale, July 31, 2008 (Melendres MCSO 001948-54)	35
3	101	Saturation Patrol Documents, Sun City / Sun City West / US 60 / I-17, August 13-14, 2008 (Melendres MCSO 001970-73)	35
4	102	Saturation Patrol Documents, Operation plan, maps of Sun City and Sun City West, patrol statistics, email correspondence, shift summaries, arrest lists, personnel sign-in roster, Aug. 13-14, 2008 in Sun City/Sun City West (Melendres MCSO 001970-98)	35
5	103	Email dated August 15, 2008 re "Sun City Detail 08/13 and 08/14" (Melendres MCSO 001974)	35
6	104	MCSO Crime Suppression / Saturation Patrol Arrest List and Sign-in Roster for Sun City (Melendres MCSO 001978-95)	35
7	107	Aug. 5, 2008 internal MCSO email re named plaintiffs in lawsuit (Melendres MCSO 008968)	35
8	108	Emails dated May 6 & 7, 2008 attaching Shift Summaries of saturation patrols in Fountain Hills (Melendres MCSO 014432-36 / Exhibit 8 to the deposition of Brian L. Sands, taken on December 14, 2009)	35
9	109	Email correspondence, patrol statistics, Aug. 19, 2008 in Cave Creek (Melendres MCSO 014458-59)	35
10	110	Email originally dated January 11, 2009 re "Interdiction & Crime Suppression Detail 01-10-2009_Two Day Totals" (Melendres MCSO 014484-85)	35
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
111	Operations plan, maps of southwest valley, illegal immigration activity and crime statistics for 2008, officer safety bulletin, email correspondence, patrol statistics, personnel sign-in roster, arrest lists, Jan. 9-10, 2009 in Buckeye (Melendres MCSO 014484-87; MCSO 014632-4; Melendres MCSO 15553-77; Melendres MCSO 56976-98)	35
112	Email correspondence, patrol statistics, arrest list, Sept. 4, 2008 in Cave Creek (Melendres MCSO 014496-99)	35
113	Shift summary Jan. 4, 2008 at 24th and Bell Rds. in Phoenix (Melendres MCSO 014512)	35
114	Shift summaries and email correspondence re: Patrol statistics, Oct. 2007-Mar. 2008 smaller operations near 32nd/36th St. & Thomas Rd. in Phoenix (Melendres MCSO 014512, 014519, 014525, 014533, 014537, 014659, 014663-67, 014672-73, 014678, 014693, 014876-77, 014893, & 014909-10)	35
115	Email dated March 17, 2008 from M. Madrid regarding "36th Street and Thomas stats" (Melendres MCSO 014537 / Exhibit 9 to the Deposition of Joseph Sousa taken on December 10, 2009)	35
116	Email originally dated 3/22/2008 re "Saturation patrol on 3/22/08" (Melendres MCSO 014541)	35
117	Email correspondence; patrol statistics, July 8, 2008 in Cave Creek (Melendres MCSO 014586-87)	35
118	Email originally dated March 28, 2008 re "Saturation patrol stat form 3/28/08-Cave Creek & Bell & totals for the two day operation" (Melendres MCSO 014644-45)	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
119	Shift summary for February 29, 2007 in Avondale (Melendres MCSO 014651-52)	35
120	Email originally dated November 15, 2007 re "Saturation patrol, 11/15/07" for area of Stapley & Main in Mesa (Melendres MCSO 014670)	35
121	Email re Nov. 14, 2007 in Cave Creek (Melendres MCSO 014671)	35
122	Email originally dated September 24, 2007 re "Good Sheppard of the Hills (Cave Creek Church)" (Melendres MCSO 014686)	35
123	Email originally dated October 22, 2007 re "Fountain Hills Detail" (Melendres MCSO 014691-92)	35
124	Email from 25th St. And Bell Rd. Supporter (Melendres MCSO 014707)	35
125	Email originally dated Oct. 11, 2008 re stats of "Saturation Patrol 7th Street and Thunderbird" (Melendres MCSO 014715)	35
126	Email chain, originally dated September 27, 2007 re "Cave Creek day labors and tip line" (Melendres MCSO 014861 / Exhibit 2 to the deposition of Carlos Rangel, taken on October 20, 2009)	35
127	MCSO Enforcement Support Division Operations Plan, Southeast Valley, Human Smuggling Interdiction / Crime Suppression Patrol, for July 23-25, 2009 (Melendres MCSO 056999-57001)	35
128	MCSO Crime Suppression / Saturation Patrol Arrest List, July 23-24, 2009 (Melendres MCSO 057029)	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
129	Email, originally dated 10/4/2007 re "Queen Creek Detail" from Manuel Madrid (Melendres MCSO 014865-66 / Exhibit 5 to the deposition of Joseph Sousa, taken on December 10, 2009)	35
130	INTENTIONALLY LEFT BLANK	
131	Email dated October 15, 2007, re HSU detail near 36th and Thomas (Melendres MCSO 014876-877 (dup) MCSO 071618 / Exhibit 4 to the October 20, 2009 deposition of Rangel)	35
132	MCSO Policy & Procedure document, Subject of Traffic Law Enforcement Guidelines, effective 12-29-05 (Melendres MCSO 014913-16 / Exhibit 4 to the deposition of Matthew Lucas Ratcliffe, taken on October 15, 2009)	35
133	MCSO Policy and Procedure on Subject Search and Seizure, dated 9-16-06 (Melendres MCSO 014917-25)	35
134	MCSO Policy and Procedure on Subject Traffic Violator Contacts and Citation Issuance, dated 10-03-06 (Melendres MCSO 014926-28)	35
135	Human Smuggling Unit growth time line, April of 2006 - 2007 (Melendres MCSO 014930 / Exhibit 9 to the deposition of Bennie R. Click, taken on March 18, 2011)	35
136	MCSO's The Briefing Board, Number 08-52, October 21, 2008, re Illegal Immigration Enforcement Protocol (Melendres MCSO 014951-53)	35
137	MCSO Operation Manual re Human Smuggling Unit Standard Operating Procedures, revised 10-30-08 (Melendres MCSO 014956)	35
138	MCSO Memorandum re "Enforcement Support Protocol for Response to Human Smuggling Cases" dated April 20, 2006 (Melendres MCSO 014961-65)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	139	MCSO Policy and Procedure on Subject Arrest Procedures, dated 11-03-00 (Melendres MCSO 014968-76)	35
3	140	MCSO CAD/RMS codes (Melendres MCSO 015012-14)	35
4	141	Model Lesson Plan: Laws of Arrest (Melendres MCSO 015055-87)	35
5	142	Arizona Peace Officer Standards and Training Board, 585-Hour Basic Curriculum, Model Lesson Plan, Lesson Title: Search and Seizure 2.3, dated July 2006 (Melendres MCSO 015088-112 / Exhibit 6 to the Deposition of Bennie R. Click, taken on March 18,2011)	35
6	143	Arizona Peace Officer Standards and Training Board, Model Lesson Plan: Cultural Awareness (Melendres MCSO 015258-306)	35
7	144	Arizona Peace Officer Standards and Training Board, 585-Hour Basic Curriculum, Model Lesson Plan, Lesson Title: Traffic Citations 4.2, Revised March 2008 (Melendres MCSO 015180-15201)	35
8	145	MCSO Operation Clean House, Date of Operation 2/11/09 (Melendres MCSO 015468-84)	35
9	146	Enforcement Support Division, Operations Plan, Southwest Valley, Human Smuggling Interdiction / Crime Suppression Patrol January 9-10, 2009 (Melendres MCSO 015553-59 / Exhibit 6 to the Initial Expert Report of Ralph B. Taylor)	35
10	147	Email dated January 11, 2009 re "Interdiction & Crime Suppression Detail 01-10-2009_Two Day Totals" for area of Southwest Valley, and attaching stats for January 9-10 (Melendres MCSO 015560-65)	35
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
148	January 9-10, 2009 Sign-in Roster for Operation: Southwest Valley and MCSO Interdiction Patrol for Human Smuggling / Crime suppression Totals (Melendres MCSO 015566-77 / Exhibit 7 to the Initial Expert Report of Ralph B. Taylor (MCSO 15566 - 15569) / Exhibit 8 to the Initial Expert Report of Ralph B. Taylor (MCSO 015576-15577)	35
149	MCSO III Strike Team statistics (Melendres MCSO 016218)	35
150	MCSO Operational Manual, Human Smuggling Unit Standard Operating Procedures, Revised on 10-30-08 (Melendres MCSO 016219-20)	35
152	MCSO Policy & Procedure document, Subject of Code of Conduct, dated 08-20-99 (Melendres MCSO 016296-309)	35
153	MCSO Arizona Ticket and Complaint Form (Melendres MCSO 016857, 16918)	35
156	287(g) Personnel Assignments (Melendres MCSO 021382-84)	35
164	Enforcement Support Division, Operations Plan, Southwest Valley, Human Smuggling Interdiction / Crime Suppression Patrol April 23-24, 2009 (Melendres MCSO 056976-82)	35
165	Email dated April 25, 2009 re "Interdiction & Crime Suppression Detail 04-23 & 04-24 2009_Two Day Totals" (Melendres MCSO 056983)	35
166	MCSO Crime Suppression / Saturation Patrol Arrest List, April 23-24, 2009 (Melendres MCSO 056988-90)	35
167	Sign-in Roster, dated 04-23 and 04-24-2009 for Operation: West Valley (Melendres MCSO 056991-98)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	168	Enforcement Support Division Operation Intel, Southeast Valley, Human Smuggling Interdiction / Crime Suppression Patrol, July 2009; Arrest Lists; Email dated July 25, 2009 re summary of Crime Suppression Patrol (Melendres MCSO 057002-57028)	35
3	169	Enforcement Support Division Operations Plan, Durango/35th Avenue Corridor, Human Smuggling Interdiction / Crime Suppression Patrol, September 5-6, 2009 (Melendres MCSO 057030-34)	35
4	170	Sign-in Roster and Arrest Lists, dated September 5-6, 2009 (Melendres MCSO 057035-45)	35
5	171	Email dated September 7, 2008, re "Crime Suppression Shift Summary Totals" (Melendres MCSO 057046-47)	35
6	172	MCSO Internal Investigations Policy & Procedure (Melendres MCSO 057566-70)	35
7	173	Email dated October 15, 2009 subject "Effective Immediately" re deputies who are 287g certified to cease actions (Melendres MCSO 058704-705)	35
8	174	Enforcement Support Division Operations Plan, Northwest Valley, Human Smuggling Interdiction / Crime Suppression Patrol, October 16-17, 2009. Arrest Lists, Sign-in Rosters, email with totals (Melendres MCSO 058708-30)	35
9	175	Email originally dated May 29, 2009 re "Saturation patrol 05/29/09" in District II (Melendres MCSO 059523-24)	35
10	176	Enforcement Support Division Operations Plan, Maricopa County, Human Smuggling Interdiction / Crime Suppression Patrol, November 16-18, 2009 (Melendres MCSO 059649-54)	35
11	177	Sign-in Roster, November 16, 2009 (Melendres MCSO 059656-59)	35
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E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	178	MCSO Arrest List (Melendres MCSO 059660-62)	35
3	179	Sign-in Roster, November 17, 2009 (Melendres MCSO 059664-65)	35
4	180	MCSO Arrest List (Melendres MCSO 059666-67)	35
5	181	MCSO Interdiction patrol for human smuggling / Crime suppression Totals, November 16-17, 2009 (Melendres MCSO 059668, 59689)	35
6	182	MCSO Interdiction patrol for human smuggling / Crime suppression Totals, November 16, 2009 (Melendres MCSO 059668-59688)	35
7	183	MCSO News Brief, dated April 5, 2008 re "Guadalupe Crime Suppression Operation Complete" (Melendres MCSO 068349)	35
8	184	MCSO News Release, dated March 29, 2007 "Arpaio Deploys First of 160 Deputies & Officers in Comprehensive Fight Against Illegal Immigration" (Melendres MCSO 068373-74)	35
9	186	MCSO News Release dated July 8, 2008 "Sheriff's Deputies Saturate Cave Creek in Crime Suppression Operation" (Melendres MCSO 068331)	35
10	190	Complete file re IA investigation into Mayor Phil Gordon's letter, IA #2008-083 (Melendres MCSO 069274-359)	35
11	191	Email chain, last dated September 4, 2007 re "FW: Ak" containing attachment of The Mexican 300 video (Melendres MCSO 069381-82 / Exhibit 5 to the deposition of Carlos Rangel, taken on November 8, 2010)	35
12	192	Email dated November 20, 2007 from Manuel Madrid, "Saturation Patrol 36th Street and Thomas 11/21/07" (Melendres MCSO 069550 / Exhibit 5 to the deposition of Manuel Joseph Madrid, taken on October 20, 2010)	35
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
193	License, Registration, Warrant Checks conducted by MCSO (Disc) (Melendres MCSO 069841)	81
194	Oct. 3, 2008 email to Hendershott, Sands; Forwarded to Palmer, Rangel, Madrid, Armendariz (Melendres MCSO 070577)	35
196	March 14, 2008 email from Sousa to various (Melendres MCSO 070839-40)	35
199	Jan. 8, 2008 email from Sousa to various RE "Stats" and attaching HSU status as of 01-08-08 (Melendres MCSO 071352-53)	35
200	May 6, 2008 email from Sousa to Plata RE "New Protocol put in place for ICE" (Melendres MCSO 071789-90)	35
201	Aug. 14, 2007 letter from SAC Pena to State Rep. Miranda; Arpaio forwards to Sands, Hendershott, and others (Melendres MCSO 071805-07)	35
210	Listing of comments made by Arpaio to May's Statements, 4/16/2008 (Melendres MCSO 072766-68)	35
213	MOA between MCSO and ICE (Melendres MCSO 073327-42)	35
215	Email dated January 21, 2009 to The Class West re "Requested response by Sheriff from Paula", thanking them for support (Melendres MCSO 074146)	35
219	Email chain, last dated 10/4/2007 "FW: Corner of Queen Creek & Ellsworth" re day laborers (Melendres MCSO 075244-47 / Exhibit 30 to the Deposition of Joseph Arpaio, taken on November 16, 2010)	35
221	Letter dated June 27, 2008 from Richard H to Chief Gascon (Melendres MCSO 075284 / Exhibit 14 to the deposition of Joseph Arpaio, taken on November 16, 2010)	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
224	July 25, 2009 Arpaio notes on conversation with Matt Allen (Melendres MCSO 075444-45)	35
240	July 25, 2008 letter from Arpaio to Sharon M (Melendres MCSO 076133)	35
250	Letter dated June 24, 2008 to Chief George Gascon from Sheriff Arpaio (Melendres MCSO 076995)	35
265	Operations Plan for Nov. 16-18, 2009, attached to Nov. 10, 2009 email from Sousa to Palmer, Sands (Melendres MCSO 078443-50)	35
266	Sept. 22, 2009 Shift Summary by Madrid (Melendres MCSO 078551)	35
267	Operations Plan attached to Oct. 14, 2009 email from Palmer to Sousa (Melendres MCSO 078678-85)	35
268	Feb. 13, 2009 email from Palmer to Mr. Pacheco (Melendres MCSO 078945-46)	35
269	July 17, 2009 email from Palmer to Sousa (Melendres MCSO 079204-05)	
270	Oct. 19, 2007 email from Ross to Sousa et al. (Melendres MCSO 080278-81)	35
271	Sept. 12, 2007 email from Siemens to McCall (Melendres MCSO 080382-86)	35
272	June 18, 2007 email from Baranyos to Stevens (Melendres MCSO 080471)	35
273	Jan. 3, 2008 email from Baranyos to Sousa and various (Melendres MCSO 080669)	35
274	Sept. 19, 2008 email from Sousa to Palmer (Melendres MCSO 080707-08)	35
275	Apr. 8, 2008 email from Trombi to Sousa (Melendres MCSO 080768)	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
276	Jan. 2, 2008 email from Baranyos to Madrid, Sousa (Melendres MCSO 080811)	35
277	Mar. 13, 2008 email from Baranyos to Madrid, Sousa (Melendres MCSO 080819)	35
278	June 25, 2008 email from Palmer to Armendariz (Melendres MCSO 081359-61)	35
279	Email chain last dated April 15, 2008 re "Enforce EVENT numbers" and prior chain re "287g Deputies" (Melendres MCSO 081362-66 / Exhibit 3 to the deposition of Joseph Sousa, taken on October 22, 2010)	35
280	Email chain dated October 13, 2009 re "Tuesday in Anthem???" (Melendres MCSO 081403)	35
281	MCSO Crime Analysis Services Brochure (Melendres MCSO 081425-26)	35
282	Dec. 17, 2008 email from Palmer to Collins/Sousa (Melendres MCSO 081512-14)	35
283	Operations plan attached to July 5, 2007 email from Siemens to Sands, Madrid (Melendres MCSO 081548-51)	35
284	July 27, 2008 Shift Summary (Melendres MCSO 095907)	35
285	MCSO Operation Manual re Human Smuggling Unit Standard Operating Procedures, revised 05-22-08 (Melendres MCSO 095926-29)	35
286	Email correspondence, patrol statistics, Jan. 23, 2009 at 7th St & Thunderbird (Melendres MCSO 14494-95)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	287	Email chain originally dated December 1, 2007 re "detail, 12/1" / Shift Summary for 12/5/07 / Email originally dated 12/8/2007 re "detail, 12/08/07 / Shift Summary 12/14/07 / Aguila Saturation Patrol Totals 12-14-07 to 12-15-07 / Email originally dated December 19, 2007 re "detail, 12/19/07" / Shift Summary 12/22/07 (Melendres MCSO 14665-66; MCSO 14900; MCSO 14663-64; MCSO 14905-07; MCSO 14659; MCSO 14909)	35
3	288	B1/B2 Visa, Nov. 13, 2007 I-94, Jan. 9, 2009 I-94 and Federal Mexican Voter ID (ORT 000001)	35
4	289	April 29, 2008 letter Andrew Thomas to Sheriff Arpaio (ORT 000002-11)	35
5	290	Memorandum of Agreement (ORT 000014-29)	35
6	291	Fact Sheet: Delegation of Immigration Authority (ORT 000030-36)	35
7	307	MCSO News Brief, dated September 27, 2007 "Sheriff's Office Not Waiting for Loitering and Soliciting Ordinance to Take Effect" (ORT 000103)	35
8	308	MCSO News Release, dated October 4, 2007, "Sheriff Arpaio Goes After Day Laborers" (ORT 000104 / Exhibit 10 to the deposition of Joseph Arpaio, taken on December 16, 2009)	35
9	309	MCSO News Release dated December 5, 2007 "Arpaio Intensifies Presence at Pro-Illegal Immigration Protest at Pruitt's" (ORT 000105-06)	35
10	310	MCSO News Release, dated January 18, 2008, "Sheriff Mobilizes Posse in Central Phoenix" (ORT 000107-108 / Exhibit 11 to the deposition of Joseph Arpaio, taken on December 16, 2009)	35
11	311	MCSO News Release dated March 27, 2008 "Arpaio's Crime Suppression Operation Migrates North to Bell Road" (ORT 000109-110)	35
12			
13			

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
312	MCSO News Brief dated March 28, 2008 "News from the Sheriff's Office" (ORT 000111)	35
313	MCSO News Release dated April 3, 2008 "Sheriff's Crime Suppression Operation Moves to Guadalupe" (ORT 000112-113)	35
314	MCSO News Release dated April 4, 2008 "Sheriff's Operation in Guadalupe Returns" (ORT 000114)	35
315	MCSO Press Release, "Sheriff's Deputies Arrest Thirteen Illegal Aliens in the City of Mesa" (May 8, 2008) (ORT 000115)	35
316	MCSO News Release dated June 26, 2008 "Sheriff's Crime Suppression/Illegal Immigration Operation Moves Into Mesa" (ORT 000116 / Exhibit 1 to the deposition of Louis DiPietro, taken on October 21,2009)	35
317	MCSO News Release, dated February 3, 2009, "Arpaio Orders Move of Hundreds of Illegal Aliens to Their Own Tent City" (ORT 000117-118 / Exhibit 21 to the deposition of Joseph Arpaio, taken on December 16, 2009)	35
320	Jeffrey S. Passel and David L. Word, "Constructing the List of Spanish Surnames for the 1980 Census: An Application of Bayes' Theorem," U.S. Bureau of the Census (1980) (ORT 000245-350)	35
326	MCSO public records request for personnel file (ORT000383-406)	35
327	Documents received pursuant to FOIA (ORT 000410-20)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	328	MCSO News Release, dated July 20, 2007, "Sheriff's Crackdown on Illegal Immigration Heats Up, Hundreds of deputies/volunteer posse targeting profile vehicles, Arpaio Opens Hotline for Citizens to Report Illegal Aliens" (ORT 000421-422 / Exhibit 7 to the deposition of Joseph Arpaio, taken on December 16, 2009 / Exhibit 4 to the Initial Expert Report of Ralph B. Taylor)	35
3	329	MCSO News Release dated August 8, 2007 "Sheriff's Anti-Human Smuggling Unit Arrests 8 More Illegals" (ORT 000423-24)	35
4	330	MCSO News Brief dated July 15, 2008 "Mesa Crime Deterrence Operation" (ORT 000424)	35
5	331	MCSO News Release dated August 13, 2008 "Sheriff Intensifies Search for Human Smugglers" (ORT 000425-26)	35
6	332	MCSO News Brief dated September 4, 2008 "Sheriff's Crime Suppressions Arrest Eleven More Illegal Aliens in Cave Creek" (ORT 000427)	35
7	333	MCSO News Release dated January 8, 2009 "Sheriff's Crime Suppression and Human Smuggling Operation Comes to Buckeye Area" (ORT 000428-429)	35
8	334	MCSO News Release dated April 23, 2009 "Sheriff Plans Two Day Crime Suppression Crackdown" (ORT 000430-31)	35
9	342	MCSO News Release dated July 23, 2009 "Sheriff Joe Arpaio Says It Is Business As Usual" (ORT 000499-500)	35
10	343	MCSO News Release dated October 6, 2009 "Department of Homeland Security Decides to Strip Arpaio's Office of Its Federal Immigration Status Arpaio Outraged..." (ORT 000522-525)	35
11	345	May 2, 2007 I-94 (ORT 000550-51)	35

25

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
349	MCSO News Release dated October 16, 2009 "Sheriff Arpaio: 'Nothing Changes'" (ORT 000613-14)	35
350	MCSO News Release dated October 19, 2009 "Weekend Crime Suppression Operation Concludes" (ORT 000615)	35
351	MCSO News Release dated November 16, 2009 "Sheriff Arpaio Launches County-Wide Crime Suppression / Illegal Immigration Operation" (ORT 000623-24)	35
353	MCSO News Release dated April 28, 2009 "Arpaio Says Swine Flu Underscores Need for Illegal Immigration Enforcement" (ORT 000637-39)	35
358	MCSO News Release dated March 1, 2010 "Sheriff's Patrol Deputies Ramping Up Enforcement of Human Smuggling Laws" (ORT 001237)	35
359	MCSO News Release dated March 18, 2010 "Arpaio Announces 14th Crime Suppression Operation as Human Smuggling Arrests Have Dramatically Increased This Year..." (ORT 001239-40)	35
360	MCSO News Release dated March 19, 2010 "Sheriff Joe Arpaio Announces an Upcoming 15th Crime Suppression Operation" (ORT 001241-242)	35
361	MCSO News Release dated April 6, 2010 "Sheriff Arpaio Will Conduct 15th Suppression Operation in High Crime Neighborhood in Phoenix" (ORT 001244-245)	35
362	MCSO News Release dated April 29, 2010 "Sheriff Arpaio Kicks off 15th Crime Suppression / Illegal Immigration Operation" (ORT 001249-250)	35
363	MCSO News Release dated April 30, 2010 "15th Crime Suppression / Illegal Immigration Operation Has Successful First Day" (ORT 001251)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	364	MCSO News Release dated June 29, 2010 "Sheriff Arpaio to Citizens of Arizona 'Do Not Worry About Federal Government's Threat to Sue State - It's An Intimidation Tactic'" (ORT 001257-58)	35
3	368	Ortega Melendres Visa and Mexican ID (ORT 12-13)	35
4	369	Thank you letter from Arpaio to Mr. Se, dated February 24, 2009 (OSLS 000028)	35
5	370	Thank you letter from Arpaio to Ms. B, dated July 26, 2007 (OSLS 000121)	35
6	387	CAD Database (Disc)	72
7	392	Defendant Maricopa County Sheriff's Office Answers to Plaintiffs' First Set of Interrogatories dated March 27, 2009	35
8	393	Defendant Maricopa County Sheriff's Office Response to Plaintiffs' First Set of Request for Production of Documents and Things	35
9	394	Defendant Maricopa County Sheriff's Office Response to Plaintiffs' Second Set of Requests for Admission and Requests for Production and Third Set of Interrogatories (Exhibit 5 to the Initial Expert Report of Ralph B. Taylor)	35
10	395	Email chain, last dated June 13, 2009 from Brett Palmerre "FW: Thought you'd find this interesting..." (Exhibit 6 to the deposition of Ramon Charley Armendariz, taken on November 8, 2010)	35
11	396	Excerpts from the book "Joe's Law" by Sheriff Joe Arpaio and Len Sherman (Exhibit 1 to the deposition of Joseph Arpaio, taken on December 16, 2009)	35
12	397	Hand drawing of intersection (Exhibit 13 to the November 24, 2009 Deposition of Armendariz)	35
13			

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
402	Report of Steven Camarota, Ph.D., Hispanic Surname Analysis of Maricopa County Sheriff's Office Patrol Activity 2005 to 2009 dated January 20, 2011	35
406	MCSO CAD Incident Report, Incident #MA08054585 / (Exhibit 9 to the November 24, 2009 Deposition of Armendariz / Exhibit 3 to the Initial Expert Report of Ralph B. Taylor)	35
411	Photos (Exhibit 24 to the November 24, 2009 Deposition of Armendariz)	35
1005	Memorandum from Deputy M. Ratcliffe, #1553 to Sgt. Wes Ellison, #752 re Complaint/Rodriguez (Melendres MCSO 056862)	35
1006	MCSO Traffic Ticket and Complaint #684751 re David Rodriguez with charge of Failure to Obey A Traffic Control Device (Melendres MCSO 056863)	35
1018	Audio CD re 911 call from Manuel's Repair Shop (Melendres MCSO 000031)	35
1045	Book about illegal immigration authored by Diana E. (Melendres MCSO 074447-74738)	35
1070	Expert Report of Bennie Click dated January 21, 2011	35
1106	Operations Manual, Human Smuggling Unit Standard Operating Procedures (Melendres MCSO 014954-60)	35
1114	MCSO Policy EB1 re Traffic Law Enforcement Guidelines (Melendres MCSO 014935-38)	35
1115	MCSO Policy EB-2 re Traffic Violator Contacts and Citation Issuance (Melendres MCSO 014939-41)	35
1116	MCSO Policy GJ-3 Policy re Search and Seizure (Melendres MCSO 014942-50)	35
1117	MCSO Policy EA-11 re Arrest Procedures (Melendres MCSO 014968-93)	35

E X H I B I T S

	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
3	1118	MCSO Policy EA-3 re Field Interviews (Melendres MCSO 014911-12)	35
4	1119	Human Smuggling Unit growth time line (Melendres MCSO 014910)	35
6	1120	HSU Triple I Stats as of 11/10/09 (Melendres MCSO 059586)	35
8	1140	09/27/07 Cave Creek Saturation Patrol Documents (Melendres MCSO 014079)	35
9	1141	10/04/07 Queen Creek Saturation Patrol Documents (Melendres MCSO 014036-14037; 014865-14866; 015466-15467)	35
11	1142	10/09/07 Queen Creek Saturation Patrol Documents (Melendres MCSO 014870-14871)	35
13	1149	11/19/07 Wickenburg Saturation Patrol Documents (Melendres MCSO 014669)	35
14	1160	01/18-01/19/08 32nd Street and Thomas Road Saturation Patrol Documents (Melendres MCSO 001825-1833; 014041-14049; 014704; 015767-15775)	35
16	1163	02/20/08 Wickenburg Saturation Patrol Documents (Melendres MCSO 014653-14654)	35
18	1165	03/17/08 Wickenburg Saturation Patrol Documents (Melendres MCSO 014712)	35
19	1166	03/21/-03/22/08 32nd Street and Thomas Roads Saturation Patrol Documents (Melendres MCSO 001837-1842; 014071-14074; 014099-14101; 014541-14543; 014696-14697)	35
22	1167	03/27-03/28/08 Cave Creek and Bell Road MCSO Documents (Melendres MCSO 001847-1852; 014093-14098; 014547-14548; 014644-14646; 015750-15764)	35
24	1168	04/03-04/04/08 Guadalupe MCSO Documents (Melendres MCSO 001861-1877; 014109-14121; 014549-14554; 015638-15651)	35

E X H I B I T S

1	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
2	1169	05/06-05/07/08 Fountain Hills MCSO Documents (Melendres MCSO 014038; 014433-14434, 14436)	35
3	1170	06/26-06/27/08 Mesa MCSO Documents (Melendres MCSO 001899-1925; 014218-14251; 014576-14582; 015597-15630)	35
4	1171	07/05/08 Mesa MCSO Documents (Melendres MCSO 014191-14198; 014583-14585; 015798-15805)	35
5	1172	07/08/08 Cave Creek MCSO Documents (Melendres MCSO 014586-14587; 015464-15465; 014700)	35
6	1173	07/14/08 Mesa MCSO Documents (Melendres MCSO 001941-1947; 014588-14590; 015518-15525)	35
7	1174	07/31/08 Food Vendor Detail, Maryvale MCSO Documents (Melendres MCSO 001957-1969; 014261-14294; 014607; 015713-15716)	35
8	1175	08/13-08/14/08 Sun City/Sun City West/US 60/I-17 MCSO Documents (Melendres MCSO 001974-1998; 014178-14190; 014608-14609; 15529-15552; 001970-1973; 014175-14177; 015526-15528)	35
9	1176	08/13/08 I-17 & Mile Post 234 (north of Anthem) MCSO Documents (Melendres MCSO 014080-14090; 014612)	35
10	1180	01/09-01/10/09 Town of Buckeye MCSO Documents (Melendres MCSO 014484-14487; 014632-14634; 015460-15463; 015560-15577; 015553-15559; 015497-15499)	35
11	1185	04/23-04/24/09 West Valley - Buckeye, Avondale, Goodyear, Tolleson, Gila Bend, Tonopah MCSO Documents (Melendres MCSO 056983-56998; 056976-56982)	35
12	1186	07/23-07/25/09 Southeast Valley - Chandler, Tempe, Gilbert, Queen Creek MCSO Documents (Melendres MCSO 057005-57029; 056999-57004)	35
13			

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
1187	09/05-09/06/09 Durango and 35th Avenue Corridor MCSO Documents (Melendres MCSO 057040-57052; 057030-57039)	35
1189	11/16-11/18/09 Maricopa County MCSO Documents (Melendres MCSO 059602-59648; 059655-59707; 59649-59654)	35
1190	Department of Homeland Security Officer Training Manual (Melendres MCSO 000038-1784)	35
1194	U.S. DOJ article, "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" (ORT 000037-46)	35
1195	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re Law Enforcement Services 1.3 (Melendres MCSO 015015-40)	35
1196	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re Ethics and Professionalism (Melendres MCSO 015041-54)	35
1199	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re Patrol and Observation (Melendres MCSO 015127-69)	35
1201	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re Title 28 - Traffic Law 4.6 (Melendres MCSO 015202-57)	35
1203	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re Police and the Community 6.5 (Melendres MCSO 015307-29)	35
1204	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re High Risk Vehicle Stops Instructor 8.4 Section I: Introduction to Course (Melendres MCSO 015330-34)	35

E X H I B I T S

2	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
3	1205	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re High-Risk Vehicle Stops Instructor 8.4 Section II: Pre-Stop Procedures (Melendres MCSO 015335-39)	35
6	1206	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re High Risk Vehicle Stops Instructor 8.4 Section III: Vehicle Positioning (Melendres MCSO 015340-44)	35
9	1207	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re High-Risk Vehicle Stops Instructor 8.4 Section IV: Removal of Subject(s) from the Vehicle (Melendres MCSO 015345-49)	35
12	1208	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re High-Risk Vehicle Stops Instructor 8.4 Section V: Clearing the Suspect Vehicle (Melendres MCSO 015350-54)	35
15	1209	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re High Risk Vehicle Stops Instructor 8.4 Section VI: Clearing Unconventional Vehicles (Melendres MCSO 015355-58)	35
18	1211	Lesson Plan, Vehicle Position (Melendres MCSO 015411-22)	35
19	1212	Lesson Plan, High Risk Vehicle Stops Instructor (Melendres MCSO 015423-34)	35
21	1213	Arizona Peace Officer Standards and Training Board 585-Hour Basic Curriculum Model Lesson Plan re Search and Seizure 2.3 (Melendres MCSO 015435-59)	35

23

24

25

P R O C E E D I N G S

1
2
3 THE COURT: Please be seated. Good morning, Counsel.

4 I just have a few matters that I think will be
5 time-saving before we begin. The parties in the joint pretrial
6 statement stipulated to the admission of a number of exhibits. 08:37:18

7 Has there been any subsequent objection to the
8 admission of those exhibits?

9 MR. YOUNG: Your Honor, we have had a discussion about
10 the expert reports in the issue, and this relates in particular 08:37:35
11 to the reports of the defendants' experts. We would be fine
12 with having all of the expert reports admitted. We think the
13 Court has -- we know the Court has seen them earlier in
14 connection with the summary judgment proceedings and we think
15 it would be efficient. 08:37:53

16 We actually did stipulate to the admission of the
17 defendants' expert's reports. There's been an objection raised
18 to the plaintiffs' expert's report's admission. We think that
19 they should all be treated the same, and to the extent we need,
20 would request a revision of the pretrial order pursuant to 08:38:11
21 Rule 16(e) we would ask the Court to consider that at this
22 time.

23 THE COURT: Mr. Casey.

24 MR. CASEY: Your Honor, I don't care to play gotcha,
25 but they stipulated to ours, we objected on hearsay and 08:38:22

1 duplication, and obviously you can't cross-examine a report.

2 I will throw this suggestion out. If the Court is
3 inclined to allow some sort of parity or equity, none of the
4 reports should come in.

5 THE COURT: Well, what I'm going to do -- I take joint 08:38:41
6 pretrial statements seriously. I'm going to admit the exhibits
7 that have been stipulated to in the joint pretrial statement.
8 You can make your objection when the expert reports come up
9 that you've preserved in the joint pretrial statement. I'll
10 make a ruling at that time. 08:38:57

11 If you anticipate that you're going to have such an
12 objection, we can take it up at a break. If you feel like we
13 need further discussion, Mr. Young, we can discuss it then
14 during the break before we take up matters.

15 But I propose what you do now is get out your lists, 08:39:09
16 'cause I'm going to read into -- into the record the exhibits
17 that I'm admitting into evidence.

18 MR. CASEY: Yes, Your Honor.

19 THE COURT: And they will then be admitted.

20 If I've got -- if I make some sort of mistake, please 08:39:21
21 correct me, but I am reading from your joint pretrial -- from
22 the final pretrial order.

23 So the Court is exhibiting -- is admitting Exhibits 1,
24 2, 5, 7, 11, 12, 13, 16, 17, 18, 19, 20, 29, 30, 31, 32, 35,
25 43, 44, 45, 46, 47, 50, 65, 66, 67, 68, 69, 70, 71, 73, 74, 75, 08:39:49

1 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91,
2 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107,
3 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119,
4 120, 121, 122, 123, 124, 125 -- yes, 124. 125, 126, 127, 128,
5 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140,
6 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153,
7 156, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174,
8 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 186, 190,
9 191, 192, 194, 196, 199, 200. 201.

08:40:59

10 You have stipulated to the admission of an exhibit
11 number that is intentionally left blank, that's 207.

08:41:59

12 210, 213, 215, 219, 221, 224, 240, 244, 250, 265, 266,
13 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278,
14 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290,
15 291, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317,
16 320, 326, 327, 328, 329, 330, 331, 332, 333, 334.

08:42:44

17 So I've got you 328. I'll start again. 329, 330,
18 331, 332, 333, 334, 342, 343, 345, 349, 350, 351, 353, 358,
19 359, 360, 361, 362, 363, 364, 368, 369, 370, 392, 393, 394,
20 395, 396, 397, 402, 406, 411, 1005, 1006, 1017, 1018, 1020,
21 1043, 1045, 1070, 1106, 1114, 1115, 1116, 1117, 1118, 1119,
22 1120, 1140, 1141, 1142, 1149, 1152, 1160, 1163, 1165, 1166,
23 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176,
24 1180, 1185, 1186, 1187, 1189, 1190, 1194, 1195, 1196, 1199,
25 1201, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1211, 1212, and

08:43:52

08:45:14

1 1213.

2 Those are the exhibits that in the final pretrial
3 order all parties stipulated to.

4 Do you have any corrections?

5 MR. YOUNG: Your Honor, I believe you may have missed 08:45:36
6 No. 277.

7 THE COURT: Nope, I didn't.

8 MR. YOUNG: Thank you.

9 THE COURT: Any other corrections, Mr. Casey?

10 Then those exhibits -- 08:45:52

11 MR. CASEY: No, Your Honor. I just wanted to point
12 out, pursuant to Ms. Zoratti's direction, there are some
13 defense exhibits that have been stipulated in evidence but are
14 duplicative of plaintiffs'. We're going to be using the
15 plaintiffs', but everything is correct as you've read. 08:46:08

16 THE COURT: All right. Then I'm going to admit the
17 exhibits that I have just read.

18 (Exhibits admitted into evidence.)

19 The reason why I've gone through that exercise is I've
20 given you both strict time limits. I intend to keep to those 08:46:17
21 time limits. To the extent that there is material in the
22 exhibits that you want me to refer to, you can simply say that
23 or have the witness say that, and I will look at the exhibits.
24 You don't have to spend time drag -- with the witness dragging
25 me through the exhibit. 08:46:34

1 Couple of other points. I realize that discovery in
2 this matter for the most part closed some time ago, and that it
3 remained open only for the documents that were subsequently
4 produced by Maricopa County, and as a result, because there
5 have been some intervening actions by the executive branch of
6 the United States Government and other sources that may or may
7 not have an effect on this action, there may be a little bit of
8 disconnect between discovery and the trial testimony.

08:46:56

9 I'm going to ask and I'm going to remind the parties
10 that I'm going to make the decision in this case based on the
11 evidence presented here and based on the request for injunctive
12 relief and based on the facts as they now stand, not as they
13 may have stood two years ago.

08:47:19

14 I realize that facts that existed two years ago may,
15 nevertheless, be relevant to the request for injunctive relief,
16 but I'm going to ask you to keep in mind that I'm going to make
17 the decision for -- any decision pertaining to injunctive
18 relief based on the facts as I understand them today.

08:47:35

19 To that end, there may -- and because there may be
20 some disconnect, and because this is not a jury trial but a
21 trial to the bench, I'm going to be a little bit less hesitant
22 to ask questions than I normally am. That doesn't mean that
23 I'm not going to let you present your cases; I hope that I
24 will, for the most part, allow you to present your cases. But
25 if I have some points of clarification, I'm not going to

08:47:53

08:48:12

1 hesitate to ask questions.

2 If I do that, I will try to ask the questions at the
3 end of cross-examination so that I've allowed you to direct
4 your witness, to cross the witness, and then if I have
5 remaining questions, I will ask them then and then allow the
6 attorney who is on cross to ask any follow-up questions and
7 then the other side will get redirect, so both sides will be
8 able to question after my questions, if there are any points of
9 clarification.

08:48:26

08:48:43

10 Is there any misunderstanding as to that?

11 MR. YOUNG: No, Your Honor.

12 MR. CASEY: None from the defendants, Your Honor.

13 THE COURT: All right. Is there anything else that
14 needs to be taken up before we begin?

15 MR. YOUNG: Your Honor, I do have a very brief
16 statement to make in the nature of introducing the people who
17 will be involved in the case, and with your permission I would
18 like to approach the podium to do that.

08:48:52

19 THE COURT: One moment, please.

20 (Pause in proceedings.)

08:49:23

21 THE COURT: All right. I am reminded that I never had
22 the case called. I assume we all know why we're here, but I
23 will have the case called.

24 THE CLERK: This is CV-07-2513, Melendres v. Arpaio,
25 on for bench trial.

08:49:35

1 THE COURT: All right. Mr. Young, you may proceed.

2 MR. YOUNG: Thank you, Your Honor. The fundamental
3 values of our nation --

4 THE COURT: Can I ask you to hold? We apparently have
5 a snafu; the court reporter can't hear you. 08:50:07

6 MR. YOUNG: Your Honor, Stanley Young for the
7 plaintiffs.

8 A fundamental value for our nation is equal protection
9 of the laws, regardless of race or ethnicity. Plaintiffs have
10 brought this case in order to protect that value. 08:50:19

11 The Maricopa County Sheriff's Office has engaged in a
12 pattern and practice of racial discrimination. We intend to
13 show that the MCSO's policies, in particular its use of
14 saturation patrols to apprehend illegal immigrants, has
15 resulted in disparate treatment of Hispanics. We also intend 08:50:38
16 to show that this disparate treatment results from an intent to
17 treat people differently based on their race or ethnicity. If
18 proven, these facts warrant injunctive relief, including
19 appointment of a monitor by the Court that will prevent future
20 discrimination. 08:50:57

21 This case is about racial discrimination in law
22 enforcement. It is not about immigration policy. Our goal
23 here is not to impede enforcement of the immigration laws.
24 Rather, our goal is to ensure that the actions of the MCSO
25 comply with the requirements of the Constitution. 08:51:15

1 During the course of this trial, Your Honor, you will
2 see a number of co-counsel presenting witnesses, and I would
3 like to introduce them now. Starting from the far right we
4 have Andre Segura from the ACLU Immigrant Rights Project; Dan
5 Pochoda from the ACLU of Arizona; Cecilia Wang from the ACLU
6 Human Rights Project; Nancy Ramirez from the Mexican American
7 Legal Defense and Education Fund; Lesli Gallagher from
8 Covington & Burling; Annie Lai, cooperating attorney with the
9 ACLU of Arizona; and Andrew Byrnes, also with Covington &
10 Burling. Our associate, David Hults, sitting on the bench
11 there, is also going to assist during the course of trial.

08:51:36

08:51:59

12 We anticipate the following witnesses. Today you will
13 hear from Dr. Ralph Taylor, who is our statistical expert, who
14 will testify about stop rates for Hispanics on saturation
15 patrols and the lengths of stops involving Hispanics.

08:52:20

16 We will also be calling a number of named plaintiffs
17 and members of the class. Your Honor will hear from David
18 Vasquez, who was stopped during the Mesa sweep in June 2008,
19 supposedly for a cracked windshield, but with no citation
20 resulting.

08:52:40

21 You will hear from named plaintiff David Rodriguez,
22 who was treated disparately while on a lake outing with his
23 family.

24 You will hear from Velia Meraz and Manny Nieto who,
25 during a saturation patrol, had guns drawn on them, not having

08:52:55

1 committed any crime.

2 Diona Solis will also testify about the stop involving
3 her with a car full of Boy Scouts when all were asked for
4 identification.

5 Lydia Guzman, who is with the named organizational
6 plaintiff, SOMOS America, will also testify about the effects
7 of the sheriff's policies on her group. 08:53:10

8 Lorena Escamilla will also testify. She was treated
9 roughly by MCSO officers while pregnant, in a stop that
10 featured shifting explanations for why she was stopped. 08:53:34

11 We will not, unfortunately, have Mr. Ortega Melendres,
12 who is one of the named plaintiffs in the case. We understand
13 that he has some medical issues that prevent him from traveling
14 to be with us for this trial.

15 We also intend to submit the testimony of a number of
16 MCSO officers and officials. They will show, we believe, that
17 the tone and the culture of the MCSO is characterized by a
18 denigration of Hispanics, by a lack of training, lack of
19 supervision to prevent racial profiling, and by the use of race
20 as a basis for suspicion as to illegal immigration status. 08:54:15

21 We believe that the evidence will show that the MCSO
22 in this regard falls below generally accepted law enforcement
23 agency standards and fosters racial profiling and illegal
24 seizures.

25 You will hear, Your Honor, from Sheriff Arpaio and 08:54:36

1 Chief Sands. It is our view that the problem here starts from
2 the top. This testimony will show the influence of race on the
3 MCSO's highest level decision making and operations.

4 Finally, you will hear from our police practices
5 expert, Robert Stewart, who will show how the MCSO has, in 08:54:56
6 fact, departed from generally accepted police practices.

7 We hope the Court will compel the MCSO to honor the
8 Constitution and put in place the standard practices that other
9 law enforcement agencies around the country have used to
10 prevent racial discrimination and comply with the equal 08:55:17
11 protection laws.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Mr. Casey.

15 MR. CASEY: Thank you, Your Honor. 08:55:27

16 If I may have a minute to set up.

17 THE CLERK: Counsel, do you intend to display that?

18 MR. CASEY: Pardon me?

19 THE CLERK: Do you intend to display something?

20 MR. CASEY: Yes, I do. 08:56:08

21 Your Honor, very briefly, my name, as you know, is Tim
22 Casey, been on the case for a long period of time. With me at
23 counsel table is Tom Liddy of the Maricopa County Attorney's
24 Office. Next to him is James Williams of my office. Next to
25 James is Ann Uglietta, who's also with the Maricopa County 08:56:26

1 Attorney's Office, and we represent the defendants in this
2 case, Maricopa County Sheriff Joe Arpaio and the Maricopa
3 County Sheriff's Office which, as you know throughout the
4 course, we abbreviate MCSO.

5 We're here today because the plaintiffs, as you've
6 just heard, allege that they've been the victims of racial
7 discrimination by MCSO deputies during traffic stops, and
8 particularly what their lawyers focus on is the traffic stops
9 that occurred during saturation patrols.

08:56:43

10 At essence what they claim, throughout this
11 litigation, is that Joe Arpaio in 2007 started, initiated a
12 policy, pattern, or practice, of initiating saturation patrols
13 pursuant to citizen requests that are, at best, racially
14 insensitive, at worst racist, and that that sort of thing
15 trickles down into law enforcement operations. It permeates
16 the entire operation, and therefore there's a discriminatory
17 effect on Latinos during saturation patrols, and there is
18 racial animus, discriminatory purpose.

08:57:00

08:57:24

19 Your Honor, there are two sides, as you're aware, to
20 every story. If the truth was anything like what the
21 plaintiffs' lawyers are suggesting, it would be a very
22 disturbing picture. But I'm here to tell you, Your Honor, that
23 the evidence is going to show something very different. And
24 what I'd like to do is just very briefly go through two themes
25 about the evidence that you're going to hear.

08:57:44

08:58:02

1 At the end of this trial, whether it finishes on
2 August 1st or August 2nd, when you've heard evidence that the
3 plaintiffs have put together and you've heard the evidence that
4 the defendants put together, then you need to decide how to
5 resolve the matter.

08:58:19

6 Now, my client, Sheriff Arpaio and the MCSO, believe
7 the charges of plaintiffs and their lawyers are unfair. But we
8 understand that that is the decision that you, as the trier of
9 fact in this case, have to make. And to help you understand
10 how the evidence is going to come in, I want to go over very
11 briefly two points.

08:58:34

12 The first is we have five plaintiffs on three stops.
13 The evidence is going to show race and ethnicity had nothing to
14 do with the traffic stops of those individuals, the detention
15 of those individuals, or whether citations were issued.

08:58:52

16 The next point of the evidence, Your Honor, is their
17 Fourteenth Amendment racial profiling claim fails because race
18 and ethnicity had nothing to do with the initiation, planning,
19 or execution of these things.

20 Now again, I'm going to go through this quickly
21 because we have -- the Court is familiar with it. Deputy
22 DiPietro handled the stop of Mr. Melendres. He's going to be
23 called today. Race had nothing to do with this. He did not
24 see the race of the truck's driver. He did not see the race of
25 the truck's passengers. It played no role, race or ethnicity

08:59:10

08:59:28

1 played no role in his decision to find probable cause to stop
2 the truck for speeding. The probable cause was race neutral,
3 speeding.

4 Plaintiffs' racial profiling expert, Mr. Stewart, who
5 was mentioned during opening, can't testify that Deputy
6 DiPietro acted with any racial animus. And Mr. Stewart
7 basically says if you're targeting possible criminal activity
8 at a location, you must be targeting Latinos.

9 Even Mr. Melendres, and I'm sorry to hear that he
10 would choose to file his lawsuit, is not here in this courtroom
11 to testify that he had no opinion on whether he was racially
12 profiled.

13 The next set of plaintiffs are Mr. and Mrs. Rodriguez,
14 who were traveling on Bartlett Dam Road. The deputy who
15 stopped him was Deputy Ratcliffe. He could not see the race of
16 the driver or the occupants. He stopped them on race neutral
17 grounds. The Court has already determined that he had probable
18 cause to stop them for driving on a closed road.

19 His decision, which I believe is still an issue here,
20 and that you're going to hear Mr. Rodriguez testify to about
21 the issuance of a citation, was based solely on the fact that
22 he was driving on an unsafe, closed road. Mr. Rodriguez
23 admitted in traffic court responsibility for the violation, and
24 again, Mr. Stewart has no opinion as their expert on whether
25 Deputy Ratcliffe had any discriminatory intent or purpose.

08:59:47

09:00:10

09:00:27

09:00:43

09:01:03

1 Now I'm going to go through this, quite frankly, one
2 of other things you're going to hear from David Rodriguez is
3 that he believed that he was given a citation and Caucasian
4 drivers were not. And the fact of the matter is that many of
5 the drivers, you're going to hear from Deputy Ratcliffe, he
6 pulled over, turned over to the jurisdiction that had primary
7 responsibility, the Tonto National Forest, and they actually
8 issued citations regarding those. Another deputy was the one
9 that allowed certain people ingress and egress to the lake to
10 deal with property damage.

09:01:24

09:01:43

11 I have put these things up very quickly. The final
12 set of plaintiffs are a brother and sister.

13 THE COURT: Let me ask you before we move off of
14 Ratcliffe, I assume that the -- was there any allegation that
15 Ratcliffe was stopped during a saturation patrol?

09:01:58

16 MR. CASEY: Ratcliffe was a deputy on --

17 THE COURT: I'm sorry, I meant Rodriguez.

18 MR. CASEY: It is not. That's significant here,
19 because if you look at the plaintiff Melendres, it was a small
20 HSU operation, not a typical --

09:02:13

21 THE COURT: But it was an HSU operation.

22 MR. CASEY: It was an HSU special operation, so
23 technically it's classified. Then you go to Rodriguez, there
24 was no saturation patrol. We've already stipulated into
25 evidence what days those occurred, no saturation patrols there.

09:02:28

1 Then you go to Manuel Nieto and Velia Meraz, the
2 brother and sister. There was a saturation patrol that day,
3 but the facts are going to show that their stop, the
4 interaction, really had nothing to do with the saturation
5 patrol. Deputy Kikes was a motorcycle cop who did not know or
6 see the race of the occupants. 09:02:44

7 Mr. Stewart is going to testify as plaintiffs' expert.
8 He has no evidence, he can offer no opinion that Kikes offered
9 any racial discriminatory intent. Mr. Stewart again, I guess
10 some of this is duplicate. 09:03:05

11 The bottom line as to the five plaintiffs on the three
12 stops, there's absolutely no evidence that race or ethnicity
13 played any factor in any aspect. That's why they go to the
14 citizen complaints that Arpaio -- that said rotten from the
15 head down. The evidence is going to show, Your Honor, that
16 Sheriff Arpaio's statements don't show racial animus. And I'm
17 going to go through these quickly because I want to be
18 commensurate with the plaintiffs' time. 09:03:30

19 MCSO operations focus on crime and only crime. They
20 enforce all the laws whether they're popular or not. And
21 you're going to hear evidence, and you talked about this on
22 December 22nd at our hearing last year, there are press
23 statements and there are actual field operations. We're going
24 to talk about what is actually going on in the field with the
25 law enforcement professionals versus some of the things that 09:04:07

1 the plaintiffs are going to show you about -- or show you
2 during the trial.

3 The next thing, too, is when you're going to hear
4 Sheriff Arpaio and plaintiffs' theme is he gets letters from
5 citizens saying, Please come to location A to do a saturation
6 patrol, and that somehow he goes out, he does it. He sends
7 thank you letters because he's an elected official; he thinks
8 that's prudent. If they take the time to write him, he will
9 write them back.

09:04:24

10 He makes no law enforcement decision or value
11 assessment about the letters. If they come in and they mention
12 animal abuse in Wickenburg in the county, he'll send it off to
13 Animal Control. If he thinks it mentions drugs, he sends it to
14 drugs. If it has anything to do remotely with an issue he
15 believes is dealing with immigration, he sends it off to Brian
16 Sands. He makes no value assessment. He expects his staff to
17 determine what value, if any, to put on that.

09:04:40

09:04:59

18 He does not select, "he" being Sheriff Arpaio, does
19 not select the sites for the saturation patrols. He has never
20 suggested a site based on a citizen letter.

09:05:19

21 The other thing that's important for the Court to
22 remember, when the plaintiffs argue that this letter came in on
23 day 1, Arpaio sees it on day 10, and on day 14 a saturation
24 patrol was conducted, the evidence is going to show it takes 30
25 to 60 days to plan a large-scale saturation patrol. If it is

09:05:40

1 just HSU members -- and there are 15 of those, the evidence
2 will show -- it takes two to three weeks to plan those.

3 THE COURT: Let me ask you, Mr. Casey: Is there any
4 dispute about whether HSU members are all 287(g) certified?

5 MR. CASEY: There is not. Lieutenant Sousa was not
6 287(g) certified. The two deputies underneath him, Brett
7 Palmer, Manuel Madrid -- you'll see Sergeant Madrid today --
8 were 287(g). Under each one is a squad. There are five 287(g)
9 certified before that was revoked in October of '09, and then
10 each one had a 287(g) detention officer.

09:05:58

09:06:19

11 THE COURT: And then all of those are 287(g)
12 certified?

13 MR. CASEY: All are 287(g) certified, Your Honor.

14 THE COURT: Now, when we're talking saturation
15 patrols, saturation patrols involve more personnel than HSU
16 personnel.

09:06:32

17 MR. CASEY: There are HSU saturation patrols and there
18 are large scale. For example, Sun City --

19 THE COURT: I understand that. In the larger scale --

20 MR. CASEY: Yes.

09:06:44

21 THE COURT: -- are all the participants 287(g)
22 certified?

23 MR. CASEY: No.

24 Here are the criteria that you're going to hear for
25 the selection of the sites, Your Honor, combination of factors.

09:06:53

1 Sands makes the decision of where, when, and how to do a
2 saturation patrol. He does it based on the area's crime
3 history and data. Intelligence and data about criminal
4 activity. The ethnic constituency of a neighborhood plays no
5 role. Information about areas involving crime that come in
6 from other police officers. There's no focus or targeting of
7 areas believed to contain a high percentage of illegal aliens,
8 illegal immigrants, undocumented workers, whatever we may wish
9 to characterize them as. The race or ethnicity of people play
10 no role in Sands' decision.

09:07:11

09:07:35

11 Again, you may get requests for assistance in a
12 particular area from legislatures -- legislators, and
13 information offered in the requests only if it's related to
14 criminal activity. You may get a request from city officials.
15 Chief Sands will testify, consistent with his deposition
16 testimony, he never has made a decision for a saturation patrol
17 based on a citizen letter that did not set forth details about
18 criminal activity and was not independently confirmed by the
19 MCSO investigation.

09:07:54

20 THE COURT: Let me ask another question, Mr. Casey.

09:08:12

21 MR. CASEY: Yes, Your Honor.

22 THE COURT: Does a saturation patrol involve officers
23 in vehicles as well as officers on foot, motorcycle officers,
24 whatever else?

25 MR. CASEY: Mostly officers in marked vehicles,

09:08:23

1 unmarked vehicles, and on motorcycles.

2 THE COURT: All right. That is the balance of a
3 saturation patrol?

4 MR. CASEY: That is the vast majority of it.

5 THE COURT: And I don't know, maybe we'll have to
6 develop this through testimony, but is -- is it MCSO's
7 contention that saturation patrols, whether they be smaller
8 scale HSU saturation patrols or the larger scale saturation
9 patrols, are run according to a zero tolerance policy?

09:08:33

10 MR. CASEY: At one point it became zero tolerance, and
11 you're going to hear the testimony of when it became. It
12 wasn't always. In 2007, 2008, you're going to have to hear
13 about when it was. But there were times that they did not have
14 a zero tolerance.

09:08:54

15 And you're going to hear testimony that zero tolerance
16 was in two fashions. One, if you're on a saturation patrol and
17 you pull over Stan Young and he has a warrant for his arrest,
18 there are actually some people would have the discretion
19 whether to execute that based on if he had his family there, if
20 he had an emergency. But on a zero tolerance, if he has an
21 arrest warrant he is arrested.

09:09:09

09:09:26

22 Zero tolerance also played a role in, if I'm a regular
23 deputy on patrol and I see office -- I see a violator going 75,
24 I have discretion whether or not I can pull them over. If I
25 see a speeder during a saturation patrol under zero tolerance,

09:09:48

1 I am to pull them over, I am to give a citation.

2 I'd like to end with this. The law enforcement
3 experts on both sides agree that the method chosen by the MCSO
4 for saturation patrols is reasonable and consistent with
5 standard law enforcement. Plaintiffs' expert, contrary to what 09:10:08
6 we've heard, is going to testify that he did not draw the
7 conclusion based on his analysis that any saturation patrol was
8 unjustified or unwarranted.

9 And finally, what you're going to hear from Bennie
10 Click, our police practices expert, former chief police of the 09:10:23
11 City of Dallas, is that everything that was going on was
12 properly planned, properly executed, properly supervised,
13 properly debriefed, met reasonable and appropriate standards of
14 care for law enforcement nationally, exceeded those standards,
15 and, quite frankly, he will also testify that these deputies 09:10:43
16 were properly trained on the prohibition to ever use race in
17 any aspect. That's why at the end of this trial I'm going to
18 ask you, Your Honor, to award the defendant -- the defendants a
19 defense verdict to deny the plaintiffs the requested relief.
20 Thank you very much. 09:11:08

21 THE COURT: Thank you.

22 Mr. Young, first witness.

23 MR. YOUNG: Yes, Your Honor. Mr. Byrnes will present
24 our first witness.

25 MR. BYRNES: Your Honor, plaintiff calls as our first 09:11:33

1 witness, Dr. Ralph Taylor.

2 Your Honor, I've prepared a binder of the exhibits I
3 intend to use with Dr. Taylor. May I approach?

4 MR. CASEY: I'm sorry, what --

5 THE COURT: What is the range of the exhibits? 09:11:50

6 MR. BYRNES: In numerical?

7 THE COURT: Yeah.

8 MR. BYRNES: They range from 54 to 399.

9 THE COURT: All right. Bring your -- bring your --
10 you may approach. 09:12:01

11 Dr. Taylor, will you please come forward to be sworn
12 by the clerk.

13 THE CLERK: Please step forward, sir.

14 Can you please state and spell your full name.

15 THE WITNESS: Ralph, R-a-l-p-h; Brecken,

16 B-r-e-c-k-e-n; Taylor, T-a-y-l-o-r. 09:12:29

17 THE CLERK: Please raise your right hand.

18 (Ralph Brecken Taylor was duly sworn as a witness.)

19 THE CLERK: Thank you. Please take our witness stand.
20 Go to the right, sir. 09:12:49

21 MR. LIDDY: Your Honor, before we begin, may I inquire
22 as to what it is that the plaintiff provided the Court?

23 THE COURT: Yes. Sorry.

24 Do you not have a copy for defendants?

25 MR. BYRNES: We provided the defendants with copies of 09:13:04

1 the demonstrative exhibits, which had not -- which are portions
2 of other exhibits that have been disclosed. We did not provide
3 witnesses -- I'm sorry, strike that -- opposing counsel with
4 the exhibits that they already have.

5 THE COURT: All right. Let me ask you, have you given 09:13:20
6 me anything in this notebook that hasn't already been admitted
7 into evidence?

8 MR. BYRNES: Yes, we have.

9 THE COURT: And what specifically have you given me
10 that's not been admitted into evidence? 09:13:29

11 MR. BYRNES: The exhibits that you have that have not
12 yet been admitted into evidence that are exhibits are 398 and
13 399, expert reports of Dr. Taylor.

14 They are Exhibit 54, and the other -- there are a
15 series of demonstrative exhibits which are designated with 09:14:01
16 suffixes off of the Exhibits 398 and 399, which are the expert
17 reports, and those demonstrative exhibits are portions of those
18 reports. And that's what my colleague just handed opposing
19 counsel.

20 THE COURT: I'll tell you what. Why don't you give 09:14:23
21 them this. They can follow from that, and I will just use the
22 exhibits as you call them out. I have them behind me.

23 MR. LIDDY: Thank you, Your Honor.

24 MR. BYRNES: May I proceed, Your Honor?

25 THE COURT: Please. 09:14:42

1 RALPH BRECKEN TAYLOR,
2 called as a witness herein, having been duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BYRNES:

09:14:43

6 Q. Dr. Taylor, what is your current position?

7 A. I'm currently a professor of criminal justice at Tempe
8 University, and I also hold a courtesy appointment in geography
9 and urban studies.

10 Q. Dr. Taylor, can you please describe your educational
11 background.

09:15:02

12 A. I received a Ph.D. in social psychology from Johns Hopkins
13 University in 1977.

14 Q. What is the focus of your work?

15 A. I have done work on a range of topics related to the causes
16 of crime, impact of crime, and a variety of criminal justice
17 topics.

09:15:15

18 Q. Dr. Taylor, have you authored or coauthored any
19 publications in scientific journals?

20 A. Yes. I've authored or coauthored over 60 publications that
21 appeared in journal articles.

09:15:33

22 Q. Do you serve on the board of any journal?

23 A. Yes. I currently serve on the editorial boards for the
24 Journal of Quantitative Criminology, Environment and Behavior,
25 and the Journal of Criminal Justice. I have previously served

09:15:50

1 on other editorial boards.

2 Q. Have you received any special recognition for your work?

3 A. Last fall I was elected a fellow of the American Society of
4 Criminology.

5 Q. Dr. Taylor, do you review scientific papers prior to their
6 publication? 09:16:05

7 A. Yes, I do. I do that as part of my work on the various
8 editorial boards, and then other journal editors will also ask
9 me to review articles.

10 Q. Dr. Taylor, do you review grant proposals as well? 09:16:33

11 A. Yes, I do.

12 Q. For which organizations do you review them?

13 A. I am regularly asked to review grant proposals for the
14 National Institute of Justice, and I've also previously
15 reviewed proposals for the National Science Foundation and the
16 National Institute of Mental Health. 09:16:48

17 Q. Have you taught statistics?

18 A. Yes, I have. I've taught undergraduate statistics and
19 graduate statistics.

20 Q. Have you taught courses in research methods? 09:17:06

21 A. Yes, I have. I have taught courses in undergraduate
22 research methods and in graduate research methods, and I
23 authored a research methods textbook in criminal justice
24 published by McGraw-Hill in 1994.

25 Q. Have you done any work on race and criminal justice? 09:17:22

1 A. Yes, I have.

2 Q. What work is that?

3 A. Well, race is a factor in many different studies that I've
4 completed. Specifically with regard to criminal justice, I
5 completed a study in the early 2000s at the request of the
6 Pennsylvania Supreme Court working group and examined the
7 impact of the racial composition of the neighborhood in which a
8 summoned juror lived, on the likelihood that the summoned juror
9 would show up for jury duty.

09:17:39

10 Q. Have any of your research publications addressed police
11 operations?

09:17:59

12 A. Yes, they have.

13 Q. Which of your publications have addressed police
14 operations?

15 A. There was a publication that appeared in 2005 in the
16 journal Justice Quarterly, which I was a coauthor with two
17 others who were then graduate students at that time. We
18 investigated the impact of Philadelphia Police Department's
19 Operation Safe Streets, which was an attempt to reduce drug
20 activity on specific corners in the City of Philadelphia.

09:18:09

09:18:30

21 Q. Have you worked with police data?

22 A. Yes, I have.

23 Q. In what context?

24 A. In a range of different -- different studies since 1978.

25 Q. Dr. Taylor, have you previously served as an expert

09:18:44

1 witness?

2 A. Yes, I have.

3 Q. In what case or cases?

4 A. There was a -- one case in the early 1980s, Greater
5 Baltimore Board of Realtors v. Harry Hughes, who was then
6 governor of Maryland. And the case questioned whether or not a
7 ban on real estate signs should be maintained in specific real
8 estate conservation areas.

09:18:57

9 Q. Have you ever served as an expert witness in a case against
10 the Maricopa County Sheriff's Office?

09:19:17

11 A. No, I have not.

12 Q. Have you ever served as an expert witness in any case
13 against any law enforcement agency?

14 A. No.

15 Q. Dr. Taylor, you've been retained by plaintiffs' counsel in
16 this case?

09:19:26

17 A. Yes.

18 Q. And what is your fee?

19 A. \$150 per hour.

20 Q. Is that in any way contingent upon the result of this case?

09:19:36

21 A. No.

22 MR. BYRNES: Your Honor, plaintiffs tender Dr. Ralph
23 Taylor as an expert witness in the field of criminal justice.

24 THE COURT: I don't make it my habit to certify people
25 as experts. I do allow them to offer opinions, and I will

09:19:48

1 allow Dr. Taylor to offer -- well, I will listen to the opinion
2 he's going to offer, subject to any objections by plaintiff
3 based on the qualifications -- or by defendant based on the
4 qualifications you've just set forth.

5 MR. BYRNES: Thank you, Your Honor.

09:20:07

6 BY MR. BYRNES:

7 Q. Dr. Taylor, what question were you asked to investigate in
8 this case?

9 A. I was asked to investigate the impact of major saturation
10 patrol operations carried out by the MCSO.

09:20:18

11 Q. On what in particular -- what impact in particular were you
12 asked to investigate?

13 A. I was asked to investigate the possibility of ethnic
14 disproportionality.

15 Q. During what time period did you analyze the activities of
16 the Maricopa County Sheriff's Office?

09:20:35

17 A. I analyzed data that were provided from January 1, 2007,
18 through October 31st, 2009.

19 Q. Why did you choose that time period?

20 A. I chose that time period because the first major saturation
21 patrol operation for which I received documentation took place
22 in January 2008. And if that was the program of interest, the
23 purpose was to come up with a baseline period, if you will,
24 that would be of sufficient length, and therefore 2007 serves
25 as the comparison period.

09:20:54

09:21:23

1 Q. And why did you choose October 31st, 2009, as an end date?

2 A. That was the last date for which there were data from one
3 of the data sources.

4 Q. You've mentioned several times saturation patrols. At
5 least in your analysis, what is a saturation patrol?

09:21:39

6 A. A saturation patrol is an operation for which the MCSO
7 prepares operation plans and announces a date and location of
8 the operation.

9 Q. In reaching your conclusion, what were the underlying facts
10 that you investigated?

09:21:56

11 A. I looked at two -- two outcomes of interest. If a -- a
12 name was checked by an MCSO officer, what was the likelihood
13 that that name checked was a Hispanic versus non-Hispanic name?
14 And then I also looked at if a stop, a traffic stop or traffic
15 violation occurred, what was the length of the stop?

09:22:21

16 Q. And what did you conclude?

17 A. What I concluded were three -- three points. It appeared
18 that if -- if an incident took place during a day on which a
19 major saturation patrol operation was in effect, there was a
20 much higher likelihood that the name checked by the
21 officer would be Hispanic rather than non-Hispanic.

09:22:46

22 Second, focusing just on saturation patrol days
23 themselves, if a name was checked by an officer who was active
24 in a saturation patrol that day, it was much more likely that
25 the name would be Hispanic rather than non-Hispanic.

09:23:07

1 THE COURT: Can I get you to repeat those two things
2 you just said, please.

3 THE WITNESS: Yes, sir. The first finding was that if
4 saturation patrol days are compared to comparison days when
5 there's no saturation patrol taking place, the names checked
6 were much more likely to be Hispanic rather than non-Hispanic.

09:23:24

7 THE COURT: And that includes a database that includes
8 the operations of all Maricopa County sheriff's officers,
9 whether or not they're involved in the saturation patrol?

10 THE WITNESS: Correct.

09:23:44

11 And then the second point that I was making was that
12 if we focused just on saturation patrol days when there's a
13 major operation taking place, in contrast, the names of the
14 officers who are active in that operation, the names submitted
15 by those officers are much more likely to be Hispanic than are
16 the names submitted on the same day by officers not active in
17 that operation.

09:24:05

18 THE COURT: All right. So let me see if I can state
19 that. On the day that a saturation patrol takes place there is
20 a higher likelihood that any officer is going to stop -- any
21 officer involved in any operation is going to stop a Hispanic
22 than is normally the case for the MCSO. And if the officer is
23 in fact active in the saturation patrol, there is a higher
24 likelihood than the normal officer that he will stop someone
25 who has a Hispanic surname.

09:24:21

09:24:44

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: All right. Thank you.

3 THE WITNESS: And the third, the third point was that
4 if -- if you look at -- if you look at the incidents, or if, if
5 you will, the stops that take place, the incidents are more 09:25:03
6 likely -- and this is for the entire -- the entire series --
7 the incidents are more like -- are going to last about
8 22 percent longer, or about two minutes longer, if during that
9 incident the officer checks at least one Hispanic name, and
10 that's controlling for several other factors that could be 09:25:27
11 varying across the stops.

12 THE COURT: Let me break that down.

13 Did you do any study -- was this related to the
14 operations of all MCSO operations on that day, or was it
15 related only to those officers who checked -- who stopped 09:25:42
16 persons with Hispanic surnames that were involved in a
17 saturation patrol?

18 THE WITNESS: This is all -- all incidents that I
19 analyzed which were traffic stops and traffic violations,
20 regardless of the day on which they occurred. 09:25:58

21 THE COURT: Oh. So forget saturation patrols. All
22 traffic stops of persons that have somebody with a Hispanic
23 surname in the car are two minutes longer than other traffic
24 stops?

25 THE WITNESS: Yes, sir. All incidents, if -- if the 09:26:13

1 officer -- all the incidents where names are checked, or at
2 least one name is checked, because if -- where at least one
3 name is checked, if one of those names is Hispanic, then the
4 stop, controlling for other factors, the stop will last about
5 two minutes longer.

09:26:36

6 THE COURT: Thank you.

7 MR. BYRNES: Your Honor, I'm handing to Dr. Taylor
8 Exhibit 398 and 399. May I approach the witness?

9 THE COURT: You may.

10 BY MR. BYRNES:

09:27:03

11 Q. Dr. Taylor, focusing first on Exhibit 398.

12 Your Honor, may we put that exhibit on the screen?

13 THE COURT: Any objection?

14 MR. LIDDY: I object, Your Honor. I object to this
15 exhibit which has not yet been moved into evidence being
16 published to the fact-finder.

09:27:28

17 THE COURT: Okay, I'm going to sustain the objection
18 until the exhibit -- until and if the exhibit is admitted into
19 evidence.

20 BY MR. BYRNES:

09:27:41

21 Q. Dr. Taylor, do you recognize Exhibit 398?

22 A. Yes, I do.

23 Q. And what is Exhibit 398?

24 A. This is the initial report that I prepared analyzing the
25 data.

09:27:54

1 Q. Does this report set forth your conclusion as well?

2 A. Yes, it does.

3 MR. BYRNES: Your Honor, plaintiffs move Exhibit 398
4 into evidence for the purpose of showing the basis of
5 Dr. Taylor's conclusions.

09:28:07

6 MR. LIDDY: Objection, Your Honor, on the basis of
7 that it's hearsay, it's cumulative, and it's duplicative.

8 THE COURT: That's fine. It is hearsay, it seems to
9 me. So unless you're offering -- it seems to me like you're
10 offering it for the truth of the matter asserted, is that
11 correct?

09:28:21

12 MR. BYRNES: No, that's not correct, Your Honor.
13 We're offering it to show the basis of Dr. Taylor's conclusion.

14 I'll cite Your Honor to the Paddock case, 745 F.2d
15 1254 from the Ninth Circuit (1984), where a compliant audit
16 report, while rejected on the basis of hearsay, the circuit
17 court reversed with instructions to the district court to allow
18 into evidence that report --

09:28:33

19 THE COURT: Why don't you just have the doctor tell me
20 what the basis of his -- basis of his test was? He's here; he
21 can testify to it.

09:28:59

22 BY MR. BYRNES:

23 Q. Dr. Taylor, can you please look at Exhibit 399.

24 Dr. Taylor, what is Exhibit 399?

25 A. Exhibit 399 is the rebuttal expert report that I prepared.

09:29:24

1 Q. And this report reflects your analysis and conclusions and
2 rebuttal to Dr. Camarota's report?

3 A. Indeed, yes.

4 Q. Dr. Taylor, what data sources did you consider in
5 performing your analysis?

09:29:44

6 A. Initially I was provided with two data files from the
7 Maricopa County that were provided by Covington & Burling. I
8 was provided an MCSO CAD database, which went from January 1,
9 2005, through 2009, and this was -- and then in addition I was
10 also provided a separate -- separate database in PDF form that
11 was from the mobile, the mobile database from the terminals
12 that officers had in their car.

09:30:05

13 Subsequently, additional information that I was
14 provided included the list of the saturation patrol dates and I
15 was also provided with sign-in rosters for saturation patrols
16 and arrests, arrest lists for saturation patrols.

09:30:27

17 Q. Did you review any other materials in performing your
18 analysis?

19 A. Yes, I reviewed the original -- the original complaint and
20 also several -- several depositions.

09:30:46

21 Q. And whose depositions did you review?

22 A. I don't recall specifically, but there were several
23 depositions of MCSO officers.

24 MR. BYRNES: Your Honor, I would like to show
25 Dr. Taylor a demonstrative exhibit, exhibit marked 398A.

09:31:05

1 THE COURT: It should be on your screen, Doctor.

2 BY MR. BYRNES:

3 Q. Dr. Taylor, do you see the exhibit?

4 A. Yes, I do.

5 MR. BYRNES: Your Honor, may we publish this exhibit
6 on the courtroom screen?

09:31:34

7 THE COURT: No.

8 MR. BYRNES: Sorry, Your Honor?

9 THE COURT: No.

10 BY MR. BYRNES:

09:31:40

11 Q. Dr. Taylor, is this Exhibit 398 a list of the saturation
12 patrols you studied?

13 A. Yes.

14 Q. Does this exhibit also reflect the operations plans that
15 you considered?

09:31:54

16 A. Yes.

17 Q. And how many saturation patrols were that?

18 A. There were 13 patrols listed here. The first one is
19 January 2008 and the last one is November of 2009.

20 MR. BYRNES: Your Honor, I'm handing to Dr. Taylor
21 Exhibit 87, which has been admitted into evidence.

09:32:19

22 May I approach the witness?

23 THE COURT: You may.

24 BY MR. BYRNES:

25 Q. Dr. Taylor --

09:32:37

1 MR. BYRNES: Your Honor, may we publish the exhibit on
2 the courtroom screen?

3 THE COURT: You may.

4 BY MR. BYRNES:

5 Q. Dr. Taylor, do you recognize Exhibit 87? 09:32:46

6 A. Yes, this appears to be an operation -- an operation plan
7 for a -- for a saturation patrol in Guadalupe, and that
8 operation took place the 3rd and 4th of April, 2008.

9 Q. Dr. Taylor, I'd like to direct your attention first to page
10 1854 of the exhibit. You'll notice the pages are numbered in 09:33:12
11 the bottom right-hand corner.

12 What is -- and it appears -- actually, let me ask you,
13 Dr. Taylor, does this document, is this a collection of mul --
14 is this exhibit a collection of multiple documents?

15 A. Well, we have various information about the -- the 09:33:34
16 saturation -- the saturation patrol. And then there's
17 additional information about the -- about the patrol.

18 And then we've also got a -- it looks like a
19 sign-in -- a sign-in roster for the 3rd of April. It goes on
20 for three pages. It lists officers and -- and posse members 09:34:01
21 that signed in. And then there's also a sign-in roster for the
22 4th of April. And there appears to be an arrest list for the
23 3rd of April and the 4th of April, and there are other things
24 in here as well.

25 Q. Okay. I'd like to direct your attention first to the 09:34:29

1 initial material about which you spoke, which begins on page
2 1854. Earlier you testified you had reviewed operations plans
3 in conjunction with your analysis.

4 Is this portion of Exhibit 87 -- and I'm now referring
5 to pages 1854 through 1859 -- is that an operations plan? 09:34:51

6 A. Well, it -- yes, it appears to be. It provides guidelines
7 and talks about when it will happen and where it's happening,
8 and what officers were being called and what arrangements are
9 being made, yes.

10 Q. Did you use this -- this operations plan in arriving at 09:35:12
11 your conclusions?

12 A. Yes, because the -- the question was to identify the dates
13 on which there are major saturation patrols taking place. So
14 the definition used was if the MCSO published an operation
15 guideline or saturation patrol document, then the decision was, 09:35:36
16 okay, those days on which there are major saturation patrols
17 for which there is an operations manual will then be classified
18 as saturation patrol days.

19 Q. If you'd please turn to the page that begins 1866. The
20 number may be cut off slightly at the bottom. 09:36:00

21 You referred in your earlier testimony to sign-in
22 rosters. Is the -- I'm looking now at the page that -- page
23 1866 through 1871. Are these the sign-in rosters on which you
24 relied with respect to this Guadalupe saturation patrol?

25 A. Yes, because in addition to identifying the saturation 09:36:27

1 patrol day, I also sought if there was an incident, an
2 officer linked with an incident, I sought to identify on
3 saturation patrol day: Is the officer linked with the incident
4 I'm investigating active in that saturation patrol on that day?

5 So to determine that I used two pieces of information, 09:36:50
6 one of which was the sign-in roster. So you can see here that
7 there are various officers giving their -- their badge numbers,
8 Joe Sousa, Manuel Madrid, Ernest Quintero, and so on, so these
9 are officers signing in for the saturation patrol operation.

10 Q. Dr. Taylor, I'd like to now direct your attention to the 09:37:16
11 portion of Exhibit 87 that begins at page 1872. And in
12 particular, that page and then the next page, 1873.

13 What -- what type of documents are these pages?

14 A. This appears to be a list of individuals arrested on a
15 saturation patrol, the first, and so we've got the individual 09:37:44
16 charged, probable cause, and then the arresting -- the
17 arresting deputy.

18 Q. Did you rely on these arrest lists in arriving at your
19 conclusions with respect to the Guadalupe saturation patrol?

20 A. Yes, I did, because it was my understanding that not all 09:38:03
21 officers active in saturation patrol operations would sign the
22 sign-in roster. So in order to -- in order to pick up
23 additional officers that might be active but hadn't signed in,
24 if an officer made an arrest associated with the saturation
25 patrol, that officer was classified as saturation patrol active 09:38:29

1 on that day.

2 Q. Dr. Taylor, move -- moving aside from this exhibit, what is
3 the CAD database that you referred to earlier?

4 A. The CAD database is a -- an MS -- a Microsoft Access
5 relational database that the MCSO uses, and it provides detail 09:38:49
6 about incidents and comments about -- specific comments about
7 things that took place during incidents. And I was provided
8 with records, all of which were initial all type T, which meant
9 traffic.

10 Q. Okay. Dr. Taylor, I'm handing you Exhibit 387, which is a 09:39:16
11 disk.

12 MR. BYRNES: Your Honor, may I approach the witness?

13 THE COURT: You may.

14 Is Exhibit 387 already in evidence?

15 MR. BYRNES: It is not, Your Honor. 09:39:37

16 I'd like my colleague to put on the witness's screen
17 the main menu that appears.

18 MR. LIDDY: Your Honor, I would object to proceeding
19 in this manner unless defense tables are able to see the
20 exhibit while the witness is being examined from that exhibit. 09:39:59

21 THE COURT: Well, you can show -- you can bring it up
22 on defense table, Kathleen. You can bring it up on parties'
23 tables as well as witnesses'.

24 (Off-the-record discussion between the Court and the
25 clerk.) 09:40:18

1 THE COURT: All right. You can do that, it will come
2 up on the whole gallery, but we'll -- that way you can see it,
3 Mr. Liddy, unless you have any objection.

4 MR. LIDDY: No objection to that, Your Honor, so long
5 as the fact-finder will not be able to view it until such time
6 it's admitted in evidence. 09:40:28

7 THE COURT: That's fine.

8 You want to lay the groundwork to introduce it if you
9 intend to introduce it, and then we'll see if we have any
10 objection? 09:40:51

11 MR. BYRNES: Sure.

12 BY MR. BYRNES:

13 Q. Dr. Taylor, you testified earlier about the CAD database.
14 Did you receive a copy of that database on a disk?

15 A. Yes, I did. 09:40:59

16 Q. And when you placed that disk in -- did you place the disk
17 in the disk drive --

18 A. Yes.

19 Q. -- and review it? When you did that did a menu appear?

20 A. Yes. If you put the disk in and then start Microsoft
21 Access, which is a relational database, a menu comes up of
22 different tables that you can view. 09:41:10

23 Q. And were those tables that come up when you put the disk in
24 the disk drive, were they the tables that you reviewed in
25 performing your analysis of this case? 09:41:32

1 A. Yes, they were. I converted it to a different program and
2 then I viewed them, yes.

3 Q. Did you review the data on the disk and this database
4 yourself?

5 A. Yes, I did.

09:41:47

6 Q. How are the data in the CAD database organized?

7 A. Data in the CAD database are a relational database. And
8 what that means is that there's one table which lists the
9 different incidents, and then there's an identifying number,
10 and then that identifying number links to details or comment
11 lines about each incident, so you've got overall features of
12 the incident linked to specifics associated with the incident.

09:42:08

13 MR. BYRNES: Your Honor?

14 THE COURT: Yes.

15 MR. BYRNES: I have in front of me the main menu
16 screen from that disk. May I inquire of opposing counsel if
17 they can see the same?

09:42:28

18 THE COURT: Do you have it up?

19 MR. LIDDY: Your Honor, I have something up. Yes,
20 Your Honor, it's the same. It's got no title on it, so I can't
21 tell.

09:42:42

22 THE COURT: All right. Please proceed.

23 BY MR. BYRNES:

24 Q. Dr. Taylor, can you see in front of you on the screen a
25 menu titled Main Switchboard?

09:42:55

1 A. Yes, I do.

2 Q. Is this the main menu that you saw when you put the disk
3 provided to you by plaintiffs' counsel into your computer to
4 access the information in performing your analysis?

5 A. Yes, it is.

09:43:09

6 MR. BYRNES: Your Honor, plaintiffs move into evidence
7 Exhibit 387.

8 MR. LIDDY: Your Honor, I object, unless the Exhibit
9 7 [sic] is merely the index you're referring to that's
10 currently on the screen.

09:43:24

11 THE COURT: I'm going to overrule the objection.
12 We'll move on. The exhibit is admitted.

13 MR. BYRNES: Thank you, Your Honor.

14 (Exhibit No. 387 is admitted into evidence.)

15 BY MR. BYRNES:

09:43:32

16 Q. Dr. Taylor, you had testified to the organization of the
17 CAD database. What information -- and I believe you testified
18 about incident histories, is that correct?

19 A. Yes.

20 Q. What information can be determined from the incident
21 histories in the CAD database?

09:43:47

22 A. Well, at the incident level there is an identifying number,
23 there is a date that the incident took place, there's a time.

24 There's an initial call type designation, which is T here for

25 all of these. There's also a final call type designation.

09:44:04

1 There is also an indication of the primary officer.

2 MR. BYRNES: Your Honor, I'm handing Dr. Taylor
3 Exhibit 54. Exhibit 54 is not yet in evidence, Your Honor.

4 May I approach the witness?

5 THE COURT: You may approach.

09:44:27

6 BY MR. BYRNES:

7 Q. Dr. Taylor, does the data from the CAD database on which
8 you rely include the information on Exhibit 54?

9 A. Yes, it does.

10 Q. Does Exhibit 54 show that an MCSO deputy checked a name?

09:44:53

11 A. Yes, it does.

12 Q. And where on Exhibit 54 does it reflect that?

13 A. About five -- five lines from the bottom, there was a
14 remote inquiry made by the unit requesting information in --

15 Can I say the name?

09:45:20

16 Q. Yes.

17 A. Vasquez dot Victor dot D, and that's followed by a date of
18 birth, 10-28-1964.

19 Q. Dr. Taylor, in the upper right-hand corner of the
20 Exhibit 54 there is a -- an area titled Disposition.

09:45:41

21 Do you see that?

22 A. Yes, I do.

23 Q. Did you use disposition information in conducting your
24 analysis?

25 A. Yes, I did.

09:45:52

1 Q. For what purpose did you use disposition information?

2 A. In the incident level analysis of time length, it was
3 necessary to control for whether or not somebody had been
4 arrested or cited. And in addition, I repeated the analysis of
5 stop length focusing on -- just on incidents where there had
6 been a citation.

09:46:16

7 MR. BYRNES: Your Honor, plaintiffs move into evidence
8 Exhibit 54.

9 MR. LIDDY: Without objection.

10 THE COURT: Exhibit 54 is admitted.

09:46:30

11 (Exhibit No. 54 is admitted into evidence.)

12 MR. BYRNES: Your Honor, I'm handing the witness
13 Exhibit 140, which has been admitted into evidence.

14 May I approach the witness?

15 THE COURT: You may.

09:46:41

16 MR. BYRNES: Your Honor, may we publish the exhibit on
17 the courtroom --

18 THE COURT: You may.

19 BY MR. BYRNES:

20 Q. Dr. Taylor, you recognize this document?

09:46:59

21 A. Yes, I do.

22 Q. What does this document show?

23 A. This document lists, for particular fields in the CAD
24 database, codes used by the MCSO.

25 Q. Did you rely on the codes in Exhibit 140 to determine what

09:47:16

1 the codes in the CAD database meant?

2 A. Yes, I did.

3 Q. If you could please turn to the final page of
4 Exhibit 170 -- strike that, 140. At the -- the upper
5 right-hand corner of the material there's a section called
6 Disposition Codes. Do you see that?

09:47:47

7 A. Yes, I do.

8 Q. Did you rely on this portion of Exhibit 140 to determine
9 the meaning of the disposition codes in the attached database?

10 A. Yes.

09:48:01

11 Q. Dr. Taylor, which incident did you include in your analysis
12 of the effect of the saturation patrol operations on the
13 ethnicity of drivers and passengers whose names were checked?

14 A. My analysis included all incidents from January 1, 2007,
15 through October 31st, 2009, that had a final disposition code
16 of either traffic stop or traffic violation.

09:48:20

17 Q. Were there any other characteristics shared by the
18 incidents you included?

19 A. They all had at least one name that was checked.

20 Q. Did you --

09:48:41

21 THE COURT: Hold it. Hold it. One name that was
22 checked meaning one name that was a Hispanic surname?

23 THE WITNESS: They -- they all had at least -- the
24 officer had submitted a request to check at least one name --

25 THE COURT: All right.

09:48:53

1 THE WITNESS: -- Hispanic or non-Hispanic.

2 THE COURT: Okay. So you looked at everything that
3 had one name checked that was either a traffic stop or a
4 traffic violation.

5 THE WITNESS: Yes, Your Honor. 09:49:02

6 THE COURT: Okay. Thank you.

7 BY MR. BYRNES:

8 Q. Dr. Taylor, I would like you to look back at Exhibit 398A.

9 MR. BYRNES: Please don't publish that on the screen.

10 Thank you. 09:49:46

11 Can we publish that to the witness but not to the rest
12 of the courtroom? Thank you.

13 BY MR. BYRNES:

14 Q. Do you see it now, Dr. Taylor?

15 A. Yes. 09:49:56

16 Q. Dr. Taylor, I asked you a number of questions about this
17 document earlier. I just want to -- about these particular
18 saturation patrols. Are these 13 saturation patrols listed in
19 this document beginning with saturation patrol on January 18th
20 and 19th of 2008 and finishing with the saturation patrol on 09:50:20
21 November 16th and 17th of 2009 listed here as county wide, are
22 these the saturation patrols that you reviewed for purposes of
23 your analysis?

24 A. For purposes of the analysis I was only -- I only had
25 complete information for 11 of the 13. That is, from the March 09:50:39

1 21-22nd saturation patrol through October 16-17, 2009. I did
2 not have complete data sources for either the first one or the
3 last one.

4 Q. For clarity in the record, Dr. Taylor, perhaps you can
5 start with the first and last saturation patrol you mentioned. 09:51:07

6 Can you please identify by date and location the names
7 of the saturation patrols that you reviewed for purposes of
8 your analysis.

9 A. Right. So the saturation patrols that I classified as
10 saturation patrols began March 21-22nd, 2008. 09:51:22

11 And you want me to list each one?

12 Q. Well, I would -- I asked you, Can you please identify by
13 date and --

14 A. Right.

15 Q. -- the 13 saturation patrols that you analyzed. 09:51:38

16 A. Okay. So there are 13 -- 13 listed. I had complete
17 information for 11 of them, so March 21st-22nd, 2008,
18 32nd Street and Thomas Road in Phoenix. March 27th-28th, 2008,
19 Cave Creek and Bell Roads in Phoenix. April 3rd and 4th, 2008,
20 Town of Guadalupe, June 26th-27th, 2008, Town of Mesa. July 09:52:06
21 14, 2008, Town of Mesa. August 13-14, 2008, Town of Sun City
22 and Sun City West. January 9 and 10, 2009, MCSO District 2,
23 southwest valley. April 23-24, 2009, Town of Avondale,
24 southwest valley. July 23-24, 2009, Town of Chandler,
25 southeast valley. September 5 and 6, 2009, 35th Avenue and 09:52:41

1 Lower Buckeye Road in Phoenix. October 16-17, 2009, Town of
2 Surprise, a/k/a northwest valley.

3 Q. Dr. Taylor, returning to your analysis of certain incidents
4 in the CAD data, did you exclude any incidents in the CAD data
5 that you received from your analysis?

09:53:06

6 A. Yes, I did.

7 Q. And which incidents do you exclude?

8 A. I excluded incidents if they were not classified as traffic
9 stop or traffic violation.

10 Q. And why did you exclude those?

09:53:18

11 A. Because those incidents had less potential for
12 officer discretion.

13 Q. What percentage of the incidents that you reviewed were
14 described as traffic stops or traffic violations?

15 A. A little over 80 percent each year.

09:53:32

16 Q. In evaluating the data, how did you determine what names
17 were checked during the incident?

18 A. I wrote programs in a statistical software package that
19 allowed me to extract from the comment fields particular names.

20 Q. Did you find any incidents where Maricopa County sheriff's
21 officers ran the same person through the CAD database multiple
22 times?

09:53:58

23 A. Yes.

24 Q. How did you address that circumstance in your analysis?

25 A. I wrote additional programs and organized the data in such

09:54:11

1 a way that I could de-duplicate names within incidents.

2 Q. And how did you de-duplicate the names?

3 A. You arrange the records with an incident so that similar
4 names are near one another, and then you de-duplicate if a
5 preceding or a following name appears to be duplication, or if
6 there's a reversal; there are five or six rules about how to do
7 this that are in the -- in the report.

09:54:34

8 Q. And what are the particular methodologies that you use?

9 A. I wrote programs in a statistical package called Stata.

10 Q. In addition, did you do anything else to address the
11 potential duplication of names in the data?

09:55:01

12 A. Subsequent to Dr. Camarota's criticism about he had been
13 informed that folks would submit aliases, and therefore you
14 would also want to also de-duplicate by date of birth, and so I
15 wrote additional programs that also de-duplicated by date of
16 birth.

09:55:26

17 Q. Did the result of your analysis change after you
18 de-duplicate -- de-duplicated data by date of birth?

19 A. No, all patterns of significance remained the same.

20 Q. Dr. Taylor, you testified earlier concerning a mobile
21 computer terminal data file?

09:55:45

22 A. Yes.

23 Q. What is that file?

24 A. It's a -- I received a 4,096-page PDF file. And I
25 understood that officers could submit separate inquiries

09:56:01

1 through their mobile terminals, and I converted this into a
2 data file.

3 Q. What information is included in the mobile file?

4 A. The mobile file includes much of the information in the CAD
5 file, but not all of it. 09:56:21

6 Q. What information does it not include in the CAD file?

7 A. There were some specific features about incidents that the
8 CAD does not have -- that the mobile file, excuse me, does not
9 have.

10 MR. BYRNES: Your Honor, handing Dr. Taylor 09:56:35
11 Exhibit 193, which is a disk. May I approach the witness?

12 THE COURT: You may.

13 MR. BYRNES: Your Honor, may I show on Dr. Taylor's
14 screen and counsels' screen what appears when you put this disk
15 into a disk drive? 09:57:07

16 THE COURT: You may.

17 BY MR. BYRNES:

18 Q. Dr. Taylor, while that is being done, did you receive --
19 you mentioned receiving a 4,096-page PDF file. Did you receive
20 it on the disk? 09:57:29

21 A. Yes, I did.

22 Q. Can you please look at your -- could we have page 1 of --
23 of page 2.

24 Dr. Taylor, on your screen is the result of my
25 colleague putting this disk in a computer and what comes up, 09:57:56

1 what came up when a PDF file on that disk was opened.

2 Is this PDF file from which you constructed a mobile
3 only database?

4 A. Yes.

5 MR. BYRNES: Your Honor, plaintiffs move into evidence 09:58:16
6 Exhibit 193.

7 THE COURT: Any objection?

8 MR. LIDDY: No objection, Your Honor.

9 THE COURT: Exhibit 193 is admitted.

10 (Exhibit No. 193 is admitted into evidence.) 09:58:22

11 THE COURT: You may publish if you wish.

12 MR. BYRNES: I have no further questions that will
13 pertain to publishing.

14 THE COURT: All right.

15 BY MR. BYRNES: 09:58:35

16 Q. Dr. Taylor, doesn't the Maricopa County Sheriff's Office
17 maintain records of the racial ethnicity of the people stopped
18 during traffic stops?

19 A. Not that I'm aware of.

20 Q. Did the case -- strike that. 09:58:45

21 Did the CAD data that you reviewed include records of
22 the race or ethnicity of the people stopped during traffic
23 stops?

24 A. No.

25 Q. Did the mobile file data contain that information? 09:58:57

1 A. No.

2 Q. Did you attempt to determine the likely race or ethnicity
3 of the people stopped?

4 A. Yes.

5 Q. How did you make that determination?

09:59:05

6 A. I used information from the census about the probabilities
7 that various surnames would be Hispanic, and I linked those
8 probabilities to the names checked.

9 Q. How does the census determine the probability that a name
10 is Hispanic?

09:59:26

11 A. The census has used different methodologies over the years,
12 but for the 2000 list, which I used, they basically had a large
13 set of 270 million census records. They analyzed the names,
14 the people listed on the census records, and then they look to
15 see how that name links with another item on the census, which
16 is asking people whether or not they self-identify as Hispanic.

09:59:47

17 Q. Is there -- how did the census bureau characterize, if at
18 all, particular surnames with regard to the likelihood that
19 some surnames are Hispanic?

20 A. It provides specific percentages or probabilities for each
21 of over a hundred thousand common surnames in terms of the
22 likelihood that each name is -- the likelihood that a person
23 will self-identify as Hispanic.

10:00:12

24 Q. Can you provide an example of a name where over 90 percent
25 of the people, for example, with that surname, identified as

10:00:33

1 Hispanic?

2 A. Sure. Probably Rodriguez or Garcia would be names that are
3 in the United States where 90 percent of the people with that
4 name self-identify as Hispanic.

5 Q. In your analysis did you -- how did you characterize the
6 probability that someone with a surname is Hispanic? 10:00:48

7 A. What I did was I -- because there's no consensus in the
8 field about what percentage of people need to -- who use this
9 name need to self-identify as Hispanic for us to call this
10 Hispanic, I used different thresholds, if you will. 10:01:10

11 So I used -- so, for example, in the research people
12 had said a name that's Hispanic, if 60 percent or more people
13 with this name self-identified -- self-identify as Hispanic,
14 and they have gone all the way up to this name is Hispanic if
15 90 percent of people with that surname self-identify as
16 Hispanic. And in those probabilities you create variables
17 based on those thresholds. 10:01:36

18 Q. Has this technique been used in other analyses related to
19 criminal justice?

20 A. Yes, it has. 10:01:54

21 Q. In which other analyses has it been used?

22 A. There have been analyses on drug arrests in criminal
23 justice journals.

24 Q. Are you aware of techniques that are more commonly used
25 than the census bureau technique to determine ethnicity? 10:02:11

1 A. No. In situations like this, without direct information
2 about self-identification on ethnicity, this appears to be
3 widely used in several different disciplines in social science.

4 Q. Dr. Taylor, using this census technique did you determine
5 how many of those people whose names the MCSO checked were
6 Hispanic?

10:02:32

7 A. Yes, I did.

8 MR. BYRNES: Your Honor, may I show on Dr. Taylor's
9 and counsels' screen Demonstrative Exhibit 399H?

10 THE COURT: 399H?

10:02:48

11 MR. BYRNES: Yes.

12 THE COURT: Yes.

13 BY MR. BYRNES:

14 Q. Dr. Taylor, did you prepare the table in Exhibit 399H?

15 A. Yes.

10:03:04

16 Q. What does this table show?

17 A. This table shows that anywhere from -- it shows that with
18 the reprocessed data there were 123,831 names checked, and the
19 percentage Hispanic for those names ranged anywhere from 30 --
20 a little over 33 percent to 22 percent, depending on the
21 particular threshold used to define a surname as Hispanic.

10:03:33

22 Q. You referred to the reprocessed data. What do you mean by
23 that?

24 A. These were the data that were reprocessed subsequent to
25 criticisms that Dr. Camarota offered in his rebuttal report.

10:03:53

1 So I responded by making an additional de-duplication by date
2 of birth and removing the mobile records.

3 Q. What was the result of the use of reprocessed data instead
4 of the original data you used?

5 A. As shown by this table, the percent Hispanic names checked 10:04:16
6 remained virtually the same. For example, if we use the
7 80 percent threshold with the reprocessed data, the percent
8 Hispanic surnames is 30.2; with the original data it's 31.2.
9 So all of the rates are within 1 percent of what we have the
10 data designated. 10:04:47

11 Q. And how many total names were checked using the reprocessed
12 data and the original data?

13 A. With the original data we have 160,974, and with the
14 original data we have 123,831.

15 Q. Dr. Taylor, in that last response you concluded by saying 10:05:03
16 that in your original data there were 123,831 names checked.

17 A. I'm sorry, in the reprocessed data. Thank you.

18 THE COURT: I'm sorry, I want to ask what the category
19 Proportion Hispanic means. Does that mean the proportion
20 stopped? Proportion checked? 10:05:28

21 THE WITNESS: Yes, Your Honor. Of the names that were
22 checked, what proportion of those names checked were Hispanic,
23 and using different minimum probability thresholds to define a
24 name as Hispanic. So if --

25 THE COURT: I understand the probability thresholds. 10:05:48

1 I just want to know what the category Proportion Hispanic
2 means.

3 THE WITNESS: Of all names that were checked during
4 traffic stops or traffic violation incidents.

5 THE COURT: Okay. Thank you. 10:05:59

6 MR. BYRNES: Your Honor, plaintiff moves this exhibit
7 into evidence as a demonstrative exhibit.

8 MR. LIDDY: Your Honor, I would object. It's been
9 tendered as a demonstrative and it would be duplicative. The
10 witness has testified about it, so I would object. 10:06:14

11 THE COURT: I think it can be -- I don't know that it
12 needs to be admitted into evidence as a demonstrative.
13 Demonstrative, it seems to me, means it's not admitted into
14 evidence, but it can be -- it can be shown, if that's what you
15 want to do. 10:06:31

16 MR. BYRNES: Shown into the --

17 THE COURT: It can be published.

18 MR. BYRNES: Published.

19 Let's move on to another exhibit. Thank you, Your
20 Honor. 10:06:47

21 Your Honor, I'd like to show to Dr. Taylor
22 Demonstrative Exhibit 399I. May I put that on the screen?

23 THE COURT: You may.

24 BY MR. BYRNES:

25 Q. Dr. Taylor, is that exhibit on your screen? 10:06:59

1 A. Yes.

2 Q. Dr. Taylor, did you prepare this table?

3 A. Yes, I did.

4 Q. And does this table reflect your analysis and certain
5 conclusions at which you arrive?

10:07:14

6 A. Yes.

7 MR. BYRNES: Your Honor, plaintiffs move this
8 exhibit -- Your Honor, may we publish this exhibit?

9 MR. LIDDY: Your Honor, it's been tendered as a
10 demonstrative. He has yet to lay the foundation for it. So
11 until he does so... I'm fine with publishing it to the witness
12 but not publishing it to the Court.

10:07:31

13 THE COURT: Well, I don't think there's really any
14 distinction here. I'm not admitting it into evidence, but he
15 can show it to the witness and it can be published.

10:07:44

16 BY MR. BYRNES:

17 Q. Dr. Taylor, what does this table show concerning name
18 checking patterns by the MCSO?

19 A. What this table shows is the relationship between whether
20 or not a name checked on an official saturation patrol day and
21 whether or not the name checked was Hispanic. And we see that
22 on the days we know is an official saturation patrol there were
23 1,312 names that were checked that were Hispanic using a
24 90 percent probability threshold, and there were 1,998 names
25 checked on the official saturation patrol day if we use the

10:08:09

10:08:37

1 60 percent threshold.

2 Q. With regard to total stops, whether or not on saturation
3 patrol days, what did you find concerning the total number of
4 Hispanic stops?

5 A. If you look at the far right-hand column and look at
6 Hispanic names checked, for the 90 percent threshold you will
7 see that 27,217 Hispanic names were checked, and if you use
8 the -- come down to the 60 percent, 60 percent threshold, you
9 will see that 41,560 Hispanic names were checked.

10:08:58

10 Q. And what percentage of the total stops is that?

10:09:32

11 A. Of the names checked, the Hispanic percentage is anywhere
12 from 21.98 percent, if we use the 90 percent probability
13 minimum, and if we use the 60 percent probability minimum, then
14 the number is 33.56 percent of the names checked.

15 Q. Dr. Taylor, how did you conduct your analysis to determine
16 the likelihood that a Hispanic surname would be checked in the
17 context of the Maricopa County sheriff's operations?

10:10:01

18 A. Whether or not the name is Hispanic becomes an outcome
19 variable. And then you try to predict that with various
20 factors that are of interest, like was the name checked on the
21 saturation patrol date or not.

10:10:28

22 Q. To determine whether there are differences in the rate that
23 Hispanic names are checked versus not Hispanic, why not just
24 compare the proportion of total names checked with the
25 proportion of the population of Maricopa County that's

10:10:50

1 Hispanic?

2 A. That approach, according to scholars who study police stops
3 and racial profiling, is not the best scientific approach.

4 Q. And why is it not the best approach, in your view?

5 A. Because the scholars in the field point out that in studies 10:11:12
6 of this type there are three -- three factors in play, and a
7 study should seek to separate out the influence of those three
8 factors, those three factors being, of course, what are the
9 police officers doing? The second issue are potential
10 differences by race or ethnicity in violating behavior, people 10:11:34
11 driving while violating laws. And the third issue is exposure,
12 that is, are there differential exposures between the two
13 groups of interest to police -- to police officers?

14 Q. Is it possible, in your view, that the proportion of
15 Hispanics who were stopped -- strike that. 10:12:00

16 Is it possible that the proportion of Hispanics in the
17 population could match the proportion of Hispanic stops and yet
18 racial profiling could still occur?

19 A. Yes.

20 Q. And how could that be? 10:12:17

21 A. It could be because the other two factors that are in play
22 here could be different. The rate at which Hispanics versus
23 non-Hispanics in vehicles are exposed to officers could vary or
24 their violating rates could vary.

25 Q. Dr. Taylor, I'd like to turn your attention to the 10:12:35

1 demonstrative exhibit on your monitor there. How many names
2 were checked on saturation patrol days?

3 A. On saturation patrol days, if we use the 90 percent
4 probability threshold in the top half of the table, we see that
5 there were 5,086 names checked on official saturation patrol
6 days, as I define them, and if we use the 60 percent -- okay.
7 I'm sorry. Yes. Those are -- right. Those are the names that
8 were checked on the official saturation patrol days is the
9 same, yes.

10:12:56

10 Q. And how many Hispanic names were checked on saturation
11 patrol days?

10:13:19

12 A. On saturation patrol days, if at the top we use the 90
13 percent probability threshold, we see 1,312 Hispanic names
14 checked during a saturation patrol day. And if we use the
15 60 percent probability threshold we'll see that 1,988 Hispanic
16 names were checked on saturation patrol days.

10:13:46

17 Q. Dr. Taylor, did you determine whether a Maricopa County
18 sheriff's officer was more likely to check a Hispanic name on a
19 saturation patrol day?

20 A. Yes, I did.

10:14:06

21 Q. And what did you conclude?

22 A. What I concluded was that if we confined our attention just
23 to names checked on major saturation patrol days, the
24 likelihood of the name checked being Hispanic was significantly
25 higher if the name was checked by an officer active in that

10:14:24

1 operation that day.

2 MR. BYRNES: Your Honor, may I show the Demonstrative
3 Exhibit 399B to Dr. Taylor?

4 THE COURT: Yes.

5 BY MR. BYRNES:

10:14:42

6 Q. Dr. Taylor, did you prepare this table?

7 A. Yes.

8 Q. And is this a table that reflects your analysis and
9 conclusion concerning, at least in part, concerning the
10 likelihood of Hispanic surname checking on saturation patrol
11 days?

10:14:53

12 A. Yes.

13 MR. BYRNES: Your Honor, may we publish this
14 demonstrative?

15 THE COURT: You may.

10:14:59

16 BY MR. BYRNES:

17 Q. Dr. Taylor, what does this table show?

18 A. If saturation patrol days are compared with different
19 comparison days, there is a significantly higher likelihood
20 that the surname checked will be Hispanic.

10:15:17

21 Q. What is the increase in likelihood?

22 A. Depending upon the particular comparison days that are
23 chosen, it's anywhere from 26 to a little over 39 percent more
24 likely that a name checked on a saturation patrol day would be
25 Hispanic rather than non-Hispanic.

10:15:39

1 Q. How did you select which control or comparison dates to
2 use?

3 A. First of all, we did it -- I did it three different ways.
4 First of all, simply said, let's look at all non-saturation
5 patrol days. Second, I said let's -- let's find comparison 10:15:59
6 days that are closely comparable to the saturation patrol days,
7 so I would take days from a week before or a week after. And
8 then finally, I said, Let's take the same day but a year
9 earlier and -- yes.

10 Q. Did you use any other control besides these control dates? 10:16:24

11 A. There -- excuse me. There are additional factors that I
12 had in the model to control for other variations.

13 Q. And which others?

14 A. I control for whether the name was checked on a weekend day
15 or a weekday. I also have, because the data extends over time, 10:16:43
16 I also have variables that control for temporal trends. And I
17 also controlled for the fact of multiple names might be checked
18 within the same incident.

19 Q. You earlier testified about reprocessed data versus
20 original data you used. Was this the conclusion at which -- 10:17:06
21 which is shown in Exhibit 399B, are those reflective of your
22 analysis of reprocessed data?

23 A. Yes.

24 MR. BYRNES: Your Honor, I'd like to show
25 Demonstrative Exhibit 399A to Dr. Taylor. May I do so? 10:17:22

1 THE COURT: Yes.

2 BY MR. BYRNES:

3 Q. Dr. Taylor, did you prepare this table?

4 A. Yes.

5 Q. And does this table reflect your analysis, in part, of
6 predicting the likelihood that a Hispanic name is checked?

10:17:41

7 A. Yes.

8 MR. BYRNES: Your Honor, may we publish this to the
9 gallery?

10 THE COURT: You may.

10:18:00

11 BY MR. BYRNES:

12 Q. Looking at the proportion of the demonstrative that's
13 showing on your screen, Dr. Taylor, what does this -- what does
14 this table show?

15 A. The most important finding is under the column that's
16 called Percent. And what that does is that looks at how much
17 higher were the odds that the name checked was Hispanic
18 compared to -- compared to different -- different control
19 groups. I'm sorry, different comparison days.

10:18:18

20 And if you look at the middle section under that
21 column you will see where the comparison group is a week
22 earlier or a week later. You will see that the odds of the
23 name checked is Hispanic versus not Hispanic were anywhere from
24 28.8 to 34.8 percent higher on the saturation patrol days
25 compared to the comparison days a week earlier or a week later.

10:18:42

10:19:08

1 Just one other feature to point out. Just to the left
2 of that we have the significance of these differences. These
3 are all highly statistically significant, which means these
4 results are extremely unlikely to be due to chance patterns in
5 this data.

10:19:25

6 Q. There's some testimony with regard to the statistical
7 significance of the data. Would you -- looking at the column
8 with the P --

9 A. P less than .001. What that .001 means is that the chances
10 of getting a result like this just due to chance, noise, maybe
11 variation, this would happen less than one in a thousand times.

10:19:44

12 Q. Dr. Taylor, did you consider whether on a saturation patrol
13 day an MCSO officer active in a saturation patrol was more
14 likely to check a Hispanic name than officers not active in a
15 saturation patrol that day?

10:20:13

16 A. Yes.

17 Q. And what did you conclude?

18 A. I concluded that if the name was checked by an
19 officer active in a saturation patrol, it was much more likely
20 that that name would be Hispanic as compared to non-Hispanic.

10:20:25

21 MR. BYRNES: Your Honor, may I show Demonstrative
22 Exhibit 399C to Dr. Taylor?

23 THE COURT: Yes.

24 BY MR. BYRNES:

25 Q. Dr. Taylor, did you prepare this table?

10:20:42

1 A. Yes.

2 Q. Does this table reflect your analysis and conclusion in
3 part concerning the likelihood that a Hispanic name is checked
4 on saturation patrol days?

5 A. Yes.

10:20:57

6 MR. BYRNES: Your Honor, may we publish this exhibit?

7 THE COURT: Yes.

8 BY MR. BYRNES:

9 Q. Dr. Taylor, what does this table show?

10 A. If we look at the column Percent Change, this shows the
11 effect of a name checked -- a name check being done by an
12 officer active in a saturation patrol day on the odds that the
13 name checked is Hispanic versus non-Hispanic.

10:21:06

14 And so, for example, if we look at the number using an
15 80 percent minimum threshold for a name, this is -- this
16 number 53.7 is saying that the odds that a name check on a
17 saturation patrol day would be Hispanic rather than
18 non-Hispanic is 53.7 percent higher if that name was checked by
19 an officer active in the operation rather than an officer on
20 that same day not active in the operation.

10:21:32

10:21:58

21 The column just to the left of that tells us with the
22 P less than, that this result is highly statistically
23 significant and unlikely to occur by chance more than one in a
24 thousand times.

25 Q. There are also on this table other columns, one of which

10:22:19

1 has B as a heading, one of which has Z. What significance, if
2 any, do those have in your analysis and conclusions?

3 A. The B is a B weight, which indicates the size or the impact
4 of this. The Z is a statistic next to it that compares the
5 size of that impact relative to the noise in the data. And
6 that Z number is then associated with a particular probability
7 which you see right next to the Z. 10:22:46

8 Q. What percentage change was there with regard to the
9 likelihood a Hispanic name was checked by an officer actively
10 involved in the saturation patrol compared with one who was not 10:23:11
11 so involved?

12 A. Well, the numbers that we see here suggest that the
13 likelihood of a Hispanic versus non-Hispanic name being checked
14 are anywhere from 46 to 53.7 percent higher, depending on the
15 threshold, minimum threshold used. 10:23:33

16 Q. And make sure I understand. Who are you comparing?

17 A. This is comparing -- this is focusing on saturation patrol
18 days only. It's comparing the names checked by officers active
19 on that operation that day to all the other officers checking
20 names on those same days. 10:23:57

21 Q. Dr. Taylor, did you compare the likelihood of checking a
22 Hispanic name between an MCSO officer active in a saturation
23 patrol on the one hand and an officer who has never been active
24 on any saturation patrol on a non-saturation patrol day?

25 A. Yes. 10:24:16

1 Q. And what did you conclude?

2 A. What I concluded was that the first situation you
3 described, a saturation patrol officer active on a saturation
4 patrol day compared to an officer on a non-saturation patrol
5 day and an officer that is -- and an officer who had never been 10:24:32
6 involved in a saturation patrol operation, the first type --
7 the first type of situation results in a much higher likelihood
8 that a Hispanic name will be chosen.

9 MR. BYRNES: Your Honor, may I display to Dr. Taylor
10 Demonstrative Exhibit 399E? 10:24:50

11 THE COURT: Yes.

12 BY MR. BYRNES:

13 Q. Dr. Taylor, did you prepare this table?

14 A. Yes.

15 Q. This table reflects in part your analysis and conclusions 10:25:00
16 concerning the likelihood of Hispanic surname checking?

17 A. Yes.

18 MR. BYRNES: Your Honor, may we publish?

19 THE COURT: Yes.

20 BY MR. BYRNES: 10:25:13

21 Q. Dr. Taylor, what does this table show?

22 A. This shows that if we look at the name checking patterns of
23 saturation patrol active officers working on saturation patrol
24 days and we compare their name checking to officers never
25 involved in a saturation patrol working on non-saturation 10:25:34

1 patrol days, the odds of a name check being Hispanic is going
2 to be anywhere from 34 to 40 percent higher, depending on the
3 name threshold we used, 34 to 40 percent higher for that first
4 group, the saturation patrol active officers working on
5 saturation patrol days.

10:26:03

6 MR. BYRNES: Your Honor, may I display to Dr. Taylor
7 Demonstrative Exhibit 399J?

8 THE COURT: Do you know what I'm going to do? I'm
9 going to take a break here. And I'm going to ask you to be
10 back in -- at 20 minutes to 11:00.

10:26:15

11 MR. BYRNES: Thank you, Your Honor.

12 THE COURT: And I'll remember you were getting ready
13 to put on 399J.

14 (Recess taken.)

15 THE COURT: Please be seated.

10:45:03

16 Mr. Byrnes, you can resume, please.

17 MR. BYRNES: Your Honor, may I display to Dr. Taylor
18 Exhibit 399J?

19 THE COURT: You may.

20 BY MR. BYRNES:

10:45:16

21 Q. Dr. Taylor, you see a table on your screen?

22 A. Yes.

23 Q. Did you prepare this table?

24 A. Yes.

25 Q. Does this table reflect your analysis and conclusions

10:45:23

1 concerning predicting the likelihood that a Hispanic name is
2 checked using reprocessed data?

3 A. Yes.

4 Q. Dr. Taylor, how are names checked, as you refer to name
5 checking? 10:45:42

6 A. The officers submit an inquiry about a name and that then
7 appears in the CAD database records.

8 Q. How is the inquiry submitted?

9 A. The officers call in to dispatch and request a check on a
10 name. 10:45:58

11 MR. BYRNES: Your Honor, may we publish the exhibit?

12 THE COURT: Yes.

13 BY MR. BYRNES:

14 Q. Dr. Taylor, what did you find concerning the likelihood
15 that a Hispanic name is checked using reprocessed data? 10:46:12

16 A. What I found was that the likelihood that a Hispanic name
17 would be checked is significantly higher under several
18 conditions if a name's checked by a saturation patrol
19 officer active on a saturation patrol day.

20 And you see here under the 80 percent, under the 10:46:36
21 column OR, for Odds Ratio, and for the 80 percent block for an
22 SP officer on an SP day we see a number 39.1. That tells us
23 that the odds that a Hispanic name versus a non-Hispanic name
24 would be checked is that much higher if the name is checked by
25 a saturation patrol officer on a saturation patrol day compared 10:47:04

1 to a name checked by a non-saturation patrol
2 officer involved -- never involved saturation patrol officer on
3 a non-saturation patrol day.

4 Q. How much greater is the likelihood that a Hispanic name is
5 checked by a saturation patrol officer on a saturation patrol
6 day? 10:47:22

7 A. Using the 80 percent threshold, it is 39 percent more
8 likely to be Hispanic than non -- compared to non-Hispanic.

9 Q. Does that percentage increase likelihood change depending
10 on the outcome -- depending on the probability threshold that
11 the name is a Hispanic name? 10:47:42

12 A. No, it does not. This result is consistent across
13 different minimum probability thresholds used to define a name
14 Hispanic, so it goes anywhere from 34.1 percent more likely up
15 to 40 percent more likely, depending upon the minimum
16 probability threshold for the name. 10:48:05

17 Q. What did you find concerning the name checking of officers
18 that had been involved in saturation patrols at some point, but
19 were not at the time they checked the name?

20 A. Yes. In each -- each block here, each block of three, the
21 last row in each block informs us about that. So sticking with
22 the 80 percent block, there's a row there that says SP officer,
23 that last row, and over here we have 15 percent under the odds
24 ratio. 10:48:23

25 That means that if an officer had been involved in 10:48:43

1 saturation patrol but was checking a name not on a saturation
2 patrol day, he or she was 15 percent more likely to check a
3 name that was Hispanic compared to non-Hispanic, and he or she
4 is 15 percent more likely than an officer who's never been
5 involved in a saturation patrol checking a name on a
6 non-saturation patrol day. That result also remained
7 consistently strong across the different thresholds, and all
8 these results are highly unlikely to be due to chance.

10:49:08

9 Q. What is the probability that the result could be the result
10 of chance?

10:49:26

11 A. The result that we're just talking about here, the
12 15 percent more likely, the P less than column is .001. That
13 means that the chances that we could get this result just due
14 to chance, that would happen less than one time in a thousand.

15 Q. How, if at all, does that probability of finding the result
16 by chance differ with regard to the other analyses that you
17 performed concerning Spanish name checks?

10:49:46

18 A. Well, almost all these results here that we're talking
19 about, almost all of them were highly significant, with P less
20 than .01, then less than one time in a thousand would be due to
21 chance. We see that for the SP officer on SP day, and we also
22 see that for the last point we were just discussing, which is
23 SP officer involved.

10:50:07

24 Q. What is the significance of the row labeled SP Day?

25 A. That's looking at the odds that a name check would be

10:50:37

1 Hispanic versus not, comparing a saturation patrol day, a name
2 checked by an officer not active that day, a name checked by an
3 officer who's also never been involved, so un -- it's a non --
4 it's a saturation patrol day, but an officer's checking the
5 name who's never been involved in one of those operations, and 10:51:01
6 his or her likelihood of name checking is being compared to
7 another officer who's never been involved on checking a name on
8 a non-saturation patrol day. So holding the officer type
9 constant and we're just comparing a typical saturation patrol
10 day name check versus the typical non-saturation patrol day 10:51:23
11 name check.

12 Q. And what did you find concerning that comparison?

13 A. Well, there is -- sticking with the 80 percent threshold
14 under Odds Ratio, we have a number 10.7, which means that the
15 name checked was 10 per -- the odds that the name would be 10:51:44
16 Hispanic versus non-Hispanic are 10 percent -- 10.7 percent
17 higher if that name was checked on a saturation patrol day by
18 an officer who'd never been involved in a saturation patrol,
19 compared to that same officer on a non-saturation patrol day.

20 Q. Did you have different results depending upon the 10:52:10
21 probability threshold that a name was Hispanic?

22 A. These results are consistent using all four minimum
23 probability thresholds. They're all statistically significant.

24 Q. Dr. Taylor, did you conduct an analysis to determine
25 whether incidents involving Hispanic people were longer than 10:52:29

1 other incidents?

2 A. Yes.

3 Q. How did you conduct that analysis?

4 A. What I did was I looked at -- excuse me -- I looked at how
5 long the stop lasted from -- there's several fields in the CAD 10:52:44
6 database that tell us when calls began and when calls ended,
7 looked at it different ways, so we basically have stop length
8 in minutes, so that's not the outcome, and now we've switched
9 so our computer analysis now is the incident, not the name.

10 And so what we find, what I find in -- in my analyses 10:53:07
11 is that if one or more Hispanic names were checked during --
12 during an incident, the incident lasted significantly longer,
13 and its impact persisted using different probability
14 thresholds, and after controlling for other factors.

15 Q. You mentioned earlier that the unit for -- a unit of 10:53:33
16 analysis for this particular analysis was the incident not the
17 names --

18 A. Yes.

19 Q. -- being checked. What do you mean by that?

20 A. Well, each incident only has one stop length. It has the 10:53:46
21 time it began and the time it ended. So that's the level at
22 which I have my outcome information.

23 Q. You referred to controls in your analysis. What were they?

24 A. I controlled for -- excuse me. I controlled for how many
25 names were checked, whether or not someone was arrested, and 10:54:07

1 whether or not someone was cited.

2 Q. Did your analysis of the length of stops include incidents
3 that had not occurred during saturation patrols?

4 A. Yes, this is with respect to all -- all incidents of type
5 traffic stop or traffic violation. 10:54:31

6 MR. BYRNES: Your Honor, may I display to Dr. Taylor
7 Exhibit 398B?

8 THE COURT: Yes.

9 BY MR. BYRNES:

10 Q. Dr. Taylor, did you create this table, Exhibit 398B? 10:54:46

11 A. Yes.

12 Q. Does this table reflect your analysis concerning the
13 variables used with regard to the duration of a stop?

14 A. Yes.

15 MR. BYRNES: Your Honor, may we publish this to the
16 gallery? 10:55:04

17 THE COURT: You may.

18 BY MR. BYRNES:

19 Q. Dr. Taylor, did you create variables to perform your
20 analysis? 10:55:17

21 A. Yes.

22 Q. And are -- does this table reflect the variables that you
23 created?

24 A. Yes.

25 Q. Why did you create these variables to your analysis? 10:55:22

1 A. In order to determine in a statistical manner the
2 association between the key variable of interest here was one
3 or more Hispanic names checked with the outcome, the length of
4 the stop.

5 Q. In what ways did the variables achieve that goal?

10:55:40

6 A. They achieved that by -- by you have several factors at
7 play, and this is an attempt to put these factors in so you can
8 isolate the impact on the variable that's of key interest,
9 which is at least one surname being checked that was Hispanic.

10 Q. How many incidents did you review to determine the stop
11 length?

10:56:06

12 A. It appears that we have stop length for 108,018 incidents.

13 Q. What is the significance of the column Mean at the standard
14 deviation, minimum value and maximum value?

15 A. This is just the descriptive information about -- about
16 these variables. The first -- so we can see the whole --the
17 average, what was the variation? What was the minimum? What
18 was the -- what was the maximum?

10:56:34

19 Q. How many names were checked during these stops that you
20 analyzed for purposes of determining their duration?

10:57:00

21 A. It appears there were 126,349.

22 Q. And what does the 1.27 under the Mean column signify next
23 to N of Names Checked During Stop?

24 A. That would indicate for the incidents that I analyzed on
25 average there were 1.27 names checked per incident.

10:57:23

1 MR. BYRNES: Your Honor, may I display to Dr. Taylor
2 Exhibit 399F?

3 THE COURT: Yes.

4 BY MR. BYRNES:

5 Q. Dr. Taylor, did you prepare this table? 10:57:40

6 A. Yes.

7 Q. Does this table reflect your analysis and conclusion with
8 regard to the impact of checking one or more Hispanic names on
9 the length of the stop?

10 A. Yes. 10:57:56

11 MR. BYRNES: Your Honor, may we publish this to the
12 gallery?

13 THE COURT: You may.

14 BY MR. BYRNES:

15 Q. Dr. Taylor, what did you find concerning the impact of
16 checking Hispanic names on the length of the stop? 10:58:02

17 A. What I found about the impact of Hispanic name checking on
18 stop length, if we look at the 80 percent section of the table
19 here, and then within that section concentrate on this little
20 block of things where it says mean(min.mm). You will see there 10:58:30
21 that there are two -- two stop lengths. In other words, if --
22 once you put all the predictor factors in whether or not a name
23 was checked and the other factors, you can come up with a
24 predicted stop length.

25 So if no Hispanic names were checked, the predicted 10:58:51

1 stop length was 11.54 minutes using the 80 percent minimum
2 threshold for declaring the name's Hispanic. If one or more
3 Hispanic names were checked, then the average stop length is
4 now 14.11 minutes. So we have a 2.57-minute difference between
5 these two classes of incidents, and that means that if one or
6 more Hispanic names was checked, the stops on average lasted
7 22 percent longer.

10:59:20

8 Q. Did your finding concerning the length of stop with regard
9 to different probability thresholds for a Hispanic name, were
10 your findings different based on those thresholds?

10:59:44

11 A. No. Regardless of which minimum threshold was used, the
12 results were always statistically significant and the size of
13 difference was about the same.

14 Q. What is the probability that these results could be
15 obtained at random?

11:00:00

16 A. As shown just above the highlighted section is a little
17 column with P less than and a number .01. That's telling us
18 that the chance that this result could just happen randomly,
19 that would occur less than one time in a thousand.

20 Q. Dr. Taylor, on the right-hand side there's a column
21 Citation Issued During Incident. How did the issuance of a
22 citation affect, if at all, your conclusion concerning the
23 length of stops?

11:00:17

24 A. Well, I -- what I found if I concentrated just on incidents
25 where a citation was issued, you still have -- of course, the

11:00:36

1 stops become longer, but the key issue is that under that
2 mean(min.mm), we still have a difference in the average
3 predicted stop length.

4 So if no Hispanic names were checked and a citation
5 was issued, the average stop lasted 16.67 minutes if no 11:01:00
6 Hispanic names were checked, but if at least one Hispanic name
7 was checked, then that stop lasted 18.95 minutes, for about a
8 2.2-minute difference. Or stated differently, if one Hispanic
9 name was checked, the stop lasted about 14 percent longer.

10 Q. Did you find the same result with regard to other 11:01:26
11 probability thresholds for Hispanic names besides the
12 80 percent on which you --

13 A. Yes. The difference was about the same regardless of --
14 the time difference was about the same regardless of the
15 threshold used. 11:02:04

16 Q. Other than ethnicity and whether a citation was issued,
17 were there other factors that predicted a longer stop, in your
18 analysis?

19 A. Yes, if more names were checked and if an arrest was made.

20 Q. Did you account for those factors? 11:02:18

21 A. Yes, I did.

22 MR. BYRNES: Your Honor, may I display to Dr. Taylor
23 Exhibit 399G?

24 THE COURT: Yes.

25 BY MR. BYRNES: 11:02:34

1 Q. Dr. Taylor, did you prepare this table?

2 A. Yes.

3 Q. Does this table reflect your analysis and conclusions
4 concerning the duration of traffic stops where one or more
5 Hispanic surnames are checked?

11:02:48

6 A. Yes.

7 MR. BYRNES: Your Honor, may we publish to the
8 gallery?

9 THE COURT: You may.

10 BY MR. BYRNES:

11:02:56

11 Q. Dr. Taylor, what were your findings concerning the duration
12 of traffic stops where one or more Hispanic surnames are
13 checked?

14 A. My finding was that those stops lasted longer. If we're
15 looking at all stops, they lasted anywhere from 21 to
16 25 percent longer, or 2.5 minutes to 2.9 minutes longer. And
17 if we looked at just citations, incidents where a citation was
18 issued, there was still a difference. The stops were longer if
19 at least one Hispanic name was checked, and these differences
20 are consistent regardless of which minimum threshold is used to
21 label a name, surname Hispanic.

11:03:08

11:03:29

22 Q. And what is the likelihood that the areas you identified
23 would occur by chance?

24 A. Less than one in a thousand.

25 MR. BYRNES: Your Honor, pursuant to Federal Rule of

11:03:48

1 Evidence 1006, plaintiffs move into evidence Exhibit 398A,
2 398B, 399A, 399B, 399C, 399E, 399F, 399G, 399H, 399I, and 399J
3 as a summary of the CAD database and mobile database evidence
4 presented earlier.

5 THE COURT: Objection? 11:04:18

6 MR. LIDDY: Objection, Your Honor. They're
7 demonstratives and they're duplicative to the testimony of the
8 witness.

9 THE COURT: I'm going to take that under advisement.
10 I'll issue my ruling after the noon hour. 11:04:25

11 MR. BYRNES: Thank you, Your Honor.

12 I have no further questions on direct examination.

13 THE COURT: All right.

14 Cross-examination.

15 CROSS-EXAMINATION 11:05:00

16 BY MR. LIDDY:

17 Q. Good morning, Dr. Taylor.

18 A. Good morning, Mr. Liddy.

19 Q. Good to see you again.

20 A. Wish I could say the same. 11:05:07

21 Q. Is it my hair?

22 A. No, hair's great.

23 Q. I apologize beforehand, I'm a -- not a numbers guy. I went
24 to law school, I didn't do the engineering thing or the math
25 thing, so I'm going to have a couple questions for you based 11:05:24

1 upon your testimony this morning, and ask you to clarify a
2 couple things about the numbers. Is that okay?

3 A. Yeah.

4 Q. You testified that there's a -- that you found an
5 association between the likelihood of a driver in Maricopa
6 County being stopped and whether or not the sheriff's deputy
7 making that stop was working during a saturation patrol, is
8 that correct?

11:05:58

9 A. Are you referring to my testimony today?

10 Q. I am.

11:06:21

11 A. I was testifying about names checked and about stop
12 lengths.

13 Q. Okay. So if I understand the importance of your
14 distinction, you're not talking about actual stops, you're
15 talking about examination of data that was provided to you.

11:06:35

16 A. Data about stops.

17 Q. Data about some stops, is that correct, but not all stops?

18 A. Data about more than 80 percent of the stops.

19 Q. Let's talk about that.

20 Where did you get the figure 80 percent?

11:06:49

21 A. The percent of cases per year that were traffic violations
22 or traffic stops I recall as being, for 2007-2008-2009, being
23 about or slightly more than 80 percent.

24 Q. But my question's about all stops in Maricopa County. I
25 thought I heard you hedging there a little bit, qualifications

11:07:18

1 and narrowing the field of the actual stops that you studied,
2 is that correct?

3 A. The data that I received were initial call type T, which
4 MCSO calls traffic stops. And within that I focused on final
5 call type traffic stop or traffic violation, and I'm speaking
6 to those traffic stops or traffic violations being about
7 80 percent per year of all the incidents that I received.

11:07:36

8 Q. Of all the incidents that you received, but not of all the
9 incidents of traffic stops by Maricopa County deputies during
10 the years that cover the data that you received, is that
11 correct?

11:07:59

12 A. I'm not sure I understand the question.

13 Q. Okay. The question is: Of the data you received, is that
14 reflective of all the stops made by Maricopa County sheriff's
15 deputies in the years covered by the data, or just of all stops
16 that were reflected in the data that were presented to you by
17 plaintiff?

11:08:15

18 A. It's reflective of the data presented to me, which were
19 stops of call type -- initial call type T.

20 Q. What is an initial call type T?

11:08:29

21 A. Traffic.

22 Q. So you're telling me that every single traffic stop that
23 was made in Maricopa County from the years 2007 to 2009 are
24 call type T in the CAD data and you looked at all those?

25 A. No.

11:08:45

1 Q. Well, what are you telling me?

2 A. I'm telling you that I received data that were classified
3 by MCSO as initial call type T, and I understood these to be
4 the category generally traffic stops. And then within that
5 there were two categories, traffic stop and traffic violation,
6 that represented over 80 percent of the cases per year.

11:09:03

7 Q. The initial call type T --

8 A. Um-hum.

9 Q. -- but not all call types T, is that correct? Is that your
10 testimony?

11:09:21

11 A. They were initial call type T, yes, that's my testimony.

12 Q. And what if at the end of the dispatch it was recoded to
13 something other than call type T? Is that inclusive of your
14 universe that you studied, or exclusive?

15 A. My understanding is that initial call type T include --
16 what happened is that there was a final call type designation
17 which has many different categories in it. Nobody had told me
18 that the final call type designation then supersedes that
19 initial call classification.

11:09:42

20 Q. Did you make an inquiry as to whether an initial call type
21 T in any of the calls for data you received might, under the
22 normal practice of the Maricopa County Sheriff's Office, be
23 later reported in the CAD data as something other than T?

11:10:17

24 A. I did not make that inquiry, because at the time that I was
25 retained, I understood that the discovery was closed.

11:10:36

1 Q. Okay. So for the benefit of those of us here, it's
2 possible that there are a significant number of traffic stops
3 made by Maricopa County deputies between the years 2007-2009,
4 data for which you have not reviewed?

5 A. Yes. 11:10:56

6 Q. So explain to me your 80 percent figure again; I don't
7 understand that.

8 A. Of the incidents that I received, they all had an initial
9 call type T, which I understood to be traffic stop. Within
10 that set of records there was also a final call type 11:11:17
11 designation, and several different categories were in those
12 different -- were in those final call type designations. And I
13 selected incidents that were -- also had a final call type
14 designation traffic stop or traffic violation, because those
15 represented type -- really represented types of incidents where 11:11:50
16 there is potential for officer discretion.

17 Q. Okay. So let's say that a deputy rolls up behind a vehicle
18 that he sees has made a lane change in a reckless manner
19 without a signal, lights them up, pulls them over, goes to the
20 window -- before he goes anywhere, he gets on the computer and 11:12:12
21 he runs the license plate, and the name pops up and the
22 registration of the vehicle.

23 And he walks up to the individual and he asks: May I
24 see your driver's license, your proof of insurance, and
25 registration for the vehicle? And it's presented to him, he 11:12:28

1 goes back, he looks that up, everything checks out, goes back
2 to the driver and says: From here on out, you need to signal
3 when you make a lane change. You're creating a hazard on these
4 roads. Have a nice day.

5 Does that stop reflect the universe that you studied? 11:12:48

6 A. Yes, if he ran a name, which I think you implied he did
7 when you examined the driver's license.

8 Q. No, Doctor, I did not. He ran a plate. Then he got the
9 driver's license and he ran the number, the identification
10 number on the driver's license. 11:13:10

11 Now, the name came up. The plate's registered to a
12 specific name. And the name came up that goes with the
13 driver's license number that he ran, and they matched, so he
14 never went on dispatch and called in and checked the name.

15 So would that not be a situation where there's a 11:13:28
16 traffic stop in Maricopa County for which you did not include
17 in your universe?

18 A. That would depend on whether the specific comment lines
19 also included what came back from dispatch in this situation.

20 MR. LIDDY: Your Honor, I would like to place upon the 11:14:03
21 courtroom document camera Plaintiffs' Trial Exhibit PX 050 and
22 publish it to the witness.

23 THE COURT: You may do so.

24 BY MR. LIDDY:

25 Q. Dr. Taylor, can you see this exhibit? 11:14:21

1 A. It's a little bit fuzzy, but okay.

2 Q. Let me see if I can do anything about that. I doubt I can.
3 As I have said, I'm not a techie.

4 That help?

5 A. Sure. Thank you.

11:14:37

6 MR. LIDDY: Counsel, can you see that?

7 MR. BYRNES: Yes.

8 BY MR. LIDDY:

9 Q. You just referred to MCSO CAD incident history reports, did
10 you not?

11:15:07

11 A. Yes.

12 Q. Now, the document that I just displayed there, would you
13 describe that document for me.

14 A. This appears to be a report based on one incident, with
15 several -- an incident and then with detail, detail lines.

11:15:21

16 Q. And would you agree with me that that's a document that
17 reflects information reported from MCSO CAD data?

18 A. Yes.

19 Q. And would you agree with me that that CAD data is records
20 that are kept and recorded during radio traffic in traffic
21 stops?

11:15:41

22 A. Yes, they are.

23 Q. So if there was a traffic stop that did not involve the use
24 of the radio, such a report would not be generated, is that
25 your understanding?

11:15:56

1 A. If you're asking about the difference between the mobile
2 data and the central dispatch data, I believe that's the point
3 that's in question right now, so is this from a mobile terminal
4 inquiry or radio inquiry? Or do we know?

5 Q. Well, I know. 11:16:16

6 A. Oh, okay.

7 Q. It says MCSO CAD incident history.

8 A. Okay. This is radio.

9 Q. That's right, so this is radio. So my question posed,
10 Dr. Taylor, if a deputy had pulled somebody over and run the 11:16:30
11 license plate without using the radio, looked at the driver's
12 license identification number, and never ran a name check on
13 the radio, no such CAD data report would be reflected, is that
14 correct?

15 A. In my analysis, no, it would not. 11:16:47

16 Q. Thank you.

17 Do you have any idea how many traffic stops were made
18 by deputies of the MCSO between the years 2007-2009 in which
19 they did not use a radio?

20 A. No, I do not, but that issue is not necessarily relevant. 11:17:04

21 Q. To whom?

22 A. To my findings.

23 Q. Is it relevant to those of us that reside here in Maricopa
24 County?

25 A. Could be. 11:17:22

1 Q. Is it relevant to anyone who wants to determine how much
2 weight to give to your testimony?

3 A. Not necessarily.

4 Q. Now, are there two different sections to this document?

5 A. Yes.

11:17:46

6 Q. And is one of them the upper third of the document and the
7 remainder on the bottom third?

8 A. Yes.

9 Q. And how would you categorize, or what nomenclature would
10 you use to describe the top third?

11:17:56

11 A. The top third describes the incident itself, and the bottom
12 third recalling the comment portion or the details.

13 Q. Okay. So would it be fair to refer to the comment portion
14 as the C portion, C for "comment"?

15 A. Are you asking me if there's a designation here on --

11:18:20

16 Q. No, I'm asking you what nomenclature you use when you
17 describe --

18 A. I call them detail, detail lines.

19 Q. So the detail lines are in the comment section?

20 A. Yes.

11:18:34

21 Q. And how do you refer to the section up above?

22 A. I refer to that as the incident -- incident features.

23 Q. Incident features. Okay. Now, there's a number in the
24 uppermost left portion of the incident feature that reads Mike

25 Alpha 07222192. You see that?

11:18:54

1 A. Yes.

2 Q. What is that?

3 A. That is the identifying number for the incident.

4 Q. Okay. And it's an alphanumeric identification number?

5 A. Yes.

11:19:08

6 Q. And the Alpha portion, Mike Alpha, what does that stand
7 for?

8 A. I'm not sure.

9 Q. And how about the numbers in the alphanumeric feature, what
10 do they stand for? What do they tell us about this report?

11:19:22

11 A. The 07 tells us that this occurred during 2007.

12 Q. Okay. And the remaining numbers?

13 A. I'm not sure.

14 Q. If you'll follow along to the uppermost right, you see
15 where it says Disposition 7?

11:19:46

16 A. Yes.

17 Q. What does that number 7 stand for?

18 A. According to the codes that I received, that stands for
19 citation written slash warning issued.

20 Q. What does that mean?

11:20:06

21 A. That would suggest the officer either issued a citation or
22 a warning.

23 Q. And how does that affect your use of a document such as
24 this in your study?

25 A. I'm not sure I understand the question.

11:20:21

1 Q. Well, when you looked at the CAD data, were there any
2 pieces of data with Disposition 7, and if so, did that mean
3 anything to you in how you treated that piece of data?

4 A. Yes, it would, depending on my analysis.

5 Q. Okay. Would you describe that for me, please. 11:20:48

6 A. Yes. For example, if we're talking about the analysis of
7 names checked, and this is the only page for this incident,
8 then I would not have used this for the analysis of names

9 checked. But I would have used it for the analysis of -- I
10 wouldn't -- I couldn't have used it for the analysis of stop 11:21:11
11 length because also there were no names checked.

12 Q. Okay. So anything that's coded Disposition 7 you're saying
13 would have no names checked?

14 A. No, that's not what I'm saying.

15 Q. Okay. Well, then, explain it to me again, 'cause I didn't 11:21:26
16 get it.

17 A. What I'm saying -- what I'm saying is that because in the
18 comment portion there was no name that was checked --

19 Q. Okay.

20 A. -- I then do not have my outcome variable for my analysis 11:21:37
21 that looks at the probability of a name check being Hispanic or
22 non-Hispanic.

23 Q. How would you know whether there's a name checked or inside
24 the comment portion by just looking at Disposition 7?

25 A. These are two separate issues. 11:21:56

1 Q. Okay. Well, I'm only asking about one issue, and that's
2 whether or not the code 7 disposition field has any bearing on
3 how you treat this piece of data in your study.

4 A. This particular incident would not be included.

5 Q. Okay. But I'm not asking you about this particular 11:22:17
6 incident, and I apologize, I can understand how you'd see that.
7 I'm only asking you for MCSO CAD incident history data with
8 Disposition 7.

9 A. Yes. I would take that into account in my stop length
10 analysis. 11:22:37

11 Q. Okay. And when you're doing the stop length analysis, I
12 would assume, and would I be correct, if you look at time call
13 received and time closed, also in the uppermost portion of this
14 document, is that correct?

15 A. Yes. 11:22:58

16 Q. Okay. And when you look at time call received, you see
17 that? Says 53.47 p.m.?

18 A. Yes.

19 Q. It appears to me that there is a digit that is missing.

20 Do you see, does it appear that way to you? 11:23:20

21 A. I'm not sure.

22 Q. Okay.

23 A. I'm not sure. Again, the key -- the key issue with the --
24 the key distinction to make here is that I do understand that
25 my analysis was not based on the fields that are displayed in 11:23:35

1 a -- in a PDF like this; my analysis is based on fields as
2 they're coded in the data file --

3 Q. Okay. So --

4 A. -- which might not correspond to what gets displayed.

5 Q. So that if in fact there's a digit missing in that, it 11:23:53
6 would not necessarily be missing in the data field that you
7 were observing when you were doing your study, is that correct?

8 A. Yes.

9 Q. All right.

10 THE COURT: I want to go back just a second, make sure 11:24:06
11 I understand something.

12 When Mr. Liddy was talking to you about disposition
13 code 7 --

14 THE WITNESS: Yes.

15 THE COURT: -- you indicated that would not be in your 11:24:15
16 study because you don't have a Hispanic name on this incident
17 history?

18 THE WITNESS: That is correct.

19 THE COURT: Would it be on -- would it have made its
20 way in your analysis of stop length for non-Hispanic names? 11:24:30

21 THE WITNESS: It wouldn't have been used to create a
22 model about predicting stop differences. But once that
23 model --

24 THE COURT: Well, hold it. Does the model about
25 predicting stop -- stop differences have anything to do with 11:24:46

1 the testimony you've offered today?

2 THE WITNESS: I was describing that earlier.

3 THE COURT: Well, I understood the results of your
4 analysis and conclusion, and I want to know if you can answer
5 the question and I realize that maybe you can't.

11:24:59

6 If I understand correctly, this incident would not
7 calculate into any calculation of how long it took for anybody
8 who was stopped who had a Hispanic name, there is no Hispanic
9 name here.

10 THE WITNESS: Correct.

11:25:16

11 THE COURT: I want to know if this incident would
12 calculate into the comparison figure, which is stops for
13 non-Hispanic names.

14 THE WITNESS: No, it would not.

15 THE COURT: Okay. Thank you.

11:25:26

16 MR. LIDDY: Thank you, Your Honor.

17 BY MR. LIDDY:

18 Q. Let's drop down below the bolded line.

19 You see where it says caller name --

20 A. Yes.

11:25:39

21 Q. -- on the left? Right below there it says Initial Call
22 Type capital T. You see that?

23 A. Yes.

24 Q. What does that mean?

25 A. That would suggest that this was a traffic stop.

11:25:53

1 Q. Okay. What's a traffic stop?

2 A. The events that they code initial call type T.

3 Q. That sounds like a professor's answer to me.

4 If a cop was driving down the street and he sees
5 somebody that was either acting suspicious or has a piece of
6 equipment that's outside the -- the code, the state law, or is
7 speeding, turns on the lights, pulls him over, is that a
8 traffic stop?

11:26:12

9 A. It sounds like it as you're representing it, yeah.

10 Q. That's what I was getting at. Would all such stops be
11 initially coded as a call type T?

11:26:31

12 A. I would presume so, given my understanding.

13 Q. So it's possible that the conduct of the Maricopa County
14 Sheriff's Office would be such that they would conduct a
15 traffic stop that would not have an initial call type T?

11:26:51

16 A. It's possible, because it appeared from Dr. Camarota's
17 testimony in reporting on conversations with Mr. Jefferys that
18 there were some issues about the designation of initial call
19 type T.

20 Q. Okay. Well, I don't want to question you about something
21 that Mr. Camarota or Mr. Jefferys might have said. We can
22 bring them in and I'm sure the Court would be happy to hear
23 from Mr. Jefferys or Mr. Camarota. But I specifically want to
24 question you about your knowledge, and specifically knowledge
25 that you had while you were conducting your study.

11:27:10

11:27:29

1 So while you were conducting the study, were you aware
2 of any Maricopa County Sheriff's Office deputy traffic stops
3 that would be coded as something other than a T in the MCSO CAD
4 incident history, if such a history was created?

5 A. I'm not aware, because I was not provided with those data. 11:27:49

6 Q. Fair enough, Doctor.

7 Let's let our eyes scan over slightly to the right,
8 where it says Final Call Type. You see that?

9 Is it on your screen?

10 A. Yes, sir. 11:28:10

11 Q. And you see that?

12 A. Yes, I do.

13 Q. And would you read for me the numeric code to the right of
14 Final Call Type?

15 A. 910. 11:28:18

16 Q. What does 910 designate?

17 A. According to the documentation that I received, it stands
18 for traffic violation.

19 Q. Okay. And you're referring to a document that's previously
20 been provided to you? 11:28:32

21 A. Yes.

22 Q. And has been admitted into evidence?

23 A. Yes, the CAD codes.

24 Q. You see the exhibit number on that? If you don't, that's
25 okay. Might be on -- 11:28:42

1 A. 140.

2 Q. 140? Okay. So by looking at that, you can see what 910
3 stands for?

4 A. Yes.

5 Q. And would it be your testimony that you had that, I'll call 11:28:51
6 it a cheat sheet, available for you when you were doing the
7 study?

8 A. It was provided to me.

9 Q. Okay. Now, what does the designation 910 mean for the
10 purposes of inclusion or exclusion in your study? 11:29:09

11 A. It means that the incidents would be included.

12 Q. Included, okay.

13 And what numeric designations might you find there
14 that would mean excluded?

15 A. I'm not sure I understand the question. 11:29:28

16 Q. Well, I think if I understand your testimony, your
17 testimony is that if the final call type is designated as a
18 910, you're going to include it in your study.

19 A. My testimony is that if the final call type description is
20 either traffic violation or traffic stop, I will include it in 11:29:45
21 my study.

22 Q. Okay, but I didn't ask you about that; I asked you about
23 910. Is it your testimony that a final call type 910 would be
24 included in your study. You already testified that, yes, it
25 would be, is that correct? 11:30:01

1 A. I'm not sure. I mean, the --

2 Q. I don't want to put words in your mouth. If you're not
3 sure, you're not sure, that's fine.

4 THE COURT: Mr. Liddy?

5 MR. LIDDY: Yes, Your Honor. 11:30:16

6 THE COURT: Can I keep you close to the microphones,
7 please?

8 MR. LIDDY: Yes, Your Honor.

9 THE COURT: Thank you.

10 MR. LIDDY: Going to be a challenge. One I am 11:30:26
11 confident we can meet.

12 BY MR. LIDDY:

13 Q. My question to you is: What other final -- final call type
14 numeric designations have you found in the course of your study
15 that caused you to exclude data from your study? 11:30:46

16 A. To exclude, I didn't rely on the final call type, I relied
17 on call type description.

18 Q. Which would be the field directly to the right?

19 A. Yes, sir.

20 Q. So it's your testimony that throughout your study of this 11:31:08
21 CAD data you never used final call type descriptors to
22 determine whether you were going to include or exclude the data
23 in your study?

24 A. My testimony is that I select -- I analyzed incidents that
25 had call type description traffic violation or traffic stop. 11:31:34

1 Q. That wasn't the question. The question was: Is it your
2 testimony that there's not a single incident during your study
3 of the CAD data that you used final call type numeric
4 designations to either include or exclude the data in your
5 study?

11:31:58

6 MR. BYRNES: Objection, compound.

7 THE COURT: Overruled.

8 THE WITNESS: Could I have the question read back?

9 THE COURT: Go ahead, Gary.

10 (The record was read as requested.)

11:32:53

11 THE WITNESS: I did not rely on the numeric code.

12 BY MR. LIDDY:

13 Q. In the Final Call Type field.

14 A. Correct.

15 Q. Thank you.

11:33:08

16 But you did rely on Initial Call Type field, is that
17 correct?

18 A. Yes.

19 Q. And I think you previously testified that you also relied
20 on a call type description, traffic violation or -- is that
21 correct?

11:33:13

22 A. Yes.

23 Q. And would there be other call type descriptions other than
24 traffic violation that you would include?

25 A. I only -- no, I only included final call type description

11:33:25

1 traffic violation or traffic stop.

2 Q. Or traffic stop.

3 A. Yes.

4 Q. So if there was any other call type description other than
5 traffic violation or traffic stop, you automatically excluded
6 it?

11:33:39

7 A. Yes.

8 Q. Why?

9 A. Because the class of incidents in which I was most
10 interested and which offer potential for officer discretion are
11 the kind of incidents that we would call traffic stops or
12 traffic violations.

11:33:51

13 Q. Potential for officer discretion, did I hear that
14 correctly?

15 A. Yes, you did.

11:34:06

16 Q. So it's your -- it's your understanding that there's no
17 potential for officer discretion in any traffic stop except
18 those that would be designated in this CAD incident history
19 under call type description field as traffic violation?

20 A. No.

11:34:28

21 Q. Well, then, what is your testimony?

22 A. My testimony is that the potential for discretion, when we
23 consider classes of incidents, is going to be greater if we're
24 focusing on incidents, final call type description traffic
25 violation or traffic stop.

11:34:45

1 Q. Greater than what?

2 A. Greater than as a class of incidents, the other types of
3 designations that appeared.

4 Q. Well, what class of incident would it be if an MCSO deputy
5 spotted somebody speeding down Interstate 10, pulled up behind 11:35:01
6 them, lit them up, pulled them over, called in his license
7 plate, approached the vehicle, asked for driver's license,
8 proof of insurance and registration, and then saw about a pound
9 of marijuana in the back seat? What would the call type
10 description for that be? 11:35:39

11 A. The final call type description probably would not be
12 traffic violation or traffic stop.

13 Q. Fair enough.

14 Would you include that and therefore you would exclude
15 it in your study. 11:35:54

16 A. Correct.

17 Q. Why?

18 A. Because when we consider classes of incidents, so let's say
19 it's not clear that for a particular class of incident that
20 ends up in, let's say, you didn't give me the exact final call 11:36:07
21 type designation in your instance, but let's presume it was --

22 Q. Something other than traffic violation or traffic stop.

23 A. Like drug arrest or something.

24 Q. Sure.

25 A. That those as a class of incidents have less potential for 11:36:22

1 officer discretion than do the ones that end up final call type
2 description traffic violation or traffic stop.

3 Q. Okay, I understand -- were you finished with your answer?

4 A. Yes.

5 Q. I understand that part. The question was: Why? 11:36:37

6 A. Because as a class of incidents, those are less relevant.

7 Q. And they're less relevant because there is no potential for
8 a police officer to use discretion in determining whether to
9 pull that person over or not?

10 A. I didn't say that there was no discretion. 11:36:58

11 Q. Okay.

12 A. I said that if you consider it as a class of incidents, the
13 potential for discretion is less in that entire group than it
14 would be in the group that in the final call type description
15 traffic violation and traffic stop, and in making this 11:37:14
16 limitation, this also happens to be in line with scholarship in
17 the field.

18 Q. So you're telling me that every time a cop identifies a
19 speeder, pulls them over, and his license plate checks out, his
20 registration checks out, he's got a valid driver's license, but 11:37:31
21 he's got pot in the back seat, that those cases go into a
22 separate group of police officers that have less potential to
23 use discretion as to whether they pull the guy over or not?

24 A. I'm not clear how many incidents of that type there are.

25 Q. But that wasn't the question. I'm not asking you how many 11:37:48

1 there are. If there's only one, does that cop have discretion
2 as to whether to pull over that car that's speeding or not?

3 A. Officers have discretion, yes, in that situation.

4 Q. Then why don't you include it in your study?

5 A. Because we don't know what's in the entire class of
6 incidents.

11:38:07

7 Q. Oh. All right. Let me ask you to continue gazing upon the
8 exhibit we have here on the camera, and let's go down to the
9 bottom two-thirds, which is descriptive and contains comments.

10 Is that a fair description?

11:38:34

11 A. Yes.

12 Q. Okay. Let's look at the very first piece of data in the
13 field there.

14 I only get three shots at this then I'm out, right?

15 No, it's not going to work.

11:39:02

16 I can see the first one listed in that descriptive
17 field 12/2/2000. That appears to me to be a date, would you
18 agree?

19 A. Yes, it's just missing a digit at the end.

20 Q. Okay. So in theory it could be 2001, 2002, is that --

11:39:18

21 A. We know from information on top that it's 2007.

22 Q. Okay. So we've got a digit missing and so we go to another
23 field and we can fill in the information for that digit, is
24 that correct?

25 A. Yes.

11:39:36

1 Q. Okay. And you move over to the right one column, 53:47.

2 What does that mean to you?

3 A. It would suggest that the first transaction took place at

4 1:53.

5 Q. Okay. And by transaction you mean what? 11:39:55

6 A. I mean communication between the officer and dispatch.

7 Q. Via the radio?

8 A. You have indicated before that this was via radio, I

9 believe.

10 Q. I'm asking you your understanding at the time you did the 11:40:09

11 study.

12 A. This is CAD incident history, so yes, it would be on the

13 radio.

14 Q. Okay. And slide over, if you would, to the right, and you

15 see DP14, David Papa 14. You see that? 11:40:19

16 A. Yes.

17 Q. What does that mean?

18 A. I don't know.

19 Q. Slide over one more to the right, Bravo 0735.

20 Can you tell me what that means? 11:40:33

21 A. No.

22 Q. And we slide over more, OUTONS, all caps, under the field

23 designated Type.

24 Can you tell me what that means?

25 A. No. 11:40:45

1 Q. If we move over a little bit more we will see Unit, Tango
2 533. Would you agree with me that's what it says?

3 A. Yes.

4 Q. What does that mean?

5 A. I don't know.

11:41:01

6 Q. Moving further to the right, comments, ampersand, what is
7 that? 390 November Delta Romeo.

8 You see that?

9 A. Yes.

10 Q. What is that?

11:41:14

11 A. I'm not sure. And following after that we have the
12 officer's badge number and the officer's name.

13 Q. Okay. That's where I was going if I could work out the
14 technology. And you're talking about pound sign 01553?

15 A. Yes.

11:41:35

16 Q. What do you understand that to be?

17 A. That is the officer's badge number.

18 Q. And just to the right of that, Ratcliffe, do you believe
19 that to be his surname?

20 A. Yes.

11:41:47

21 Q. Matthew L., first name and middle initial?

22 A. Yes.

23 Q. Is there any more information there?

24 A. It says no more information.

25 Q. That's a trick question. You passed.

11:41:55

1 Okay. Let's move down to the third column. See that?

2 A. The third row, yes.

3 Q. All right, third row. And let's move all the way down to
4 Unit. Foxtrot Delta 110.

5 What does that mean to you?

11:42:18

6 A. I'm not sure.

7 Q. Okay. Let's move one to the left, Type: Alpha Sierra
8 Sierra Tango Oscar Sierra. What does that mean?

9 A. I'm not sure, but it looks like there's an existing
10 officer.

11:42:35

11 Q. Okay. Did it look like that to you when you did the study?

12 A. I wasn't looking at this little -- this column that you're
13 pointing out here right now.

14 Q. Okay. So for purposes of examining your model, your study,
15 the fact that you understand what that means now is not
16 relevant, is that correct?

11:42:55

17 A. No.

18 Q. Okay. Let's go a little bit further to the right: [Bravo
19 Tango Lima DAM #EOF Cave Creek Wash].

20 What does that mean?

11:43:15

21 A. I'm not sure, but it looks like some kind of address.

22 Q. Could be Bartlett Dam?

23 A. Could be.

24 Q. You know what area of Maricopa County Bartlett Dam's in?

25 A. No, I don't.

11:43:28

1 Q. Do you know which Maricopa County Sheriff's Office unit
2 regularly patrols the Bartlett Dam area?

3 A. It's been represented to me that that's the Lake Patrol.

4 Q. Okay. Let's go down to the fifth line there. See where
5 I've designated that, the green mark?

11:43:56

6 A. Yes.

7 Q. And we scroll all the way over to where it says Dispatch.

8 You see that?

9 A. Yes.

10 Q. And it says Alpha 8549. You see that?

11:44:07

11 A. Yes.

12 Q. What does that mean?

13 A. Don't know.

14 Q. I want our eyes to travel up to the beginning of the
15 Comments section under this it says Bravo 0735. You see that?

11:44:18

16 A. Yes.

17 Q. You previously testified you don't know what that means.

18 A. Correct.

19 Q. But you recognize there's been a change there?

20 A. Yes, this -- this number here, this alphanumeric string
21 under Dispatch is different from the alphanumeric string that
22 appeared in the first line under Dispatch.

11:44:29

23 Q. So under Dispatch the code designating dispatch is no
24 longer Bravo 0735, it's now Alpha 8549, is that correct?

25 A. Yes.

11:44:49

1 Q. Do you know why that change would occur?

2 A. No.

3 Q. Do you know -- okay. Never mind.

4 Let's slide over a little bit more to the right under
5 comment. All caps, Tango Yankee Papa colon T, capital T. 11:44:59

6 Do you know what that means?

7 A. It looks to me like what's happening here is the T stands
8 for the initial -- looks to me like this is an initial call
9 type, and then with that little arrow they're saying it then
10 becomes a 910. 11:45:23

11 Q. And were you able to figure that out by looking at the data
12 up front we looked at earlier, that the initial call type was
13 capital T and the final call type was 910, and it coincides
14 with that?

15 A. Well, in this instance, yes, it does. 11:45:36

16 Q. Okay. Thank you.

17 And then farther to the right, RSP:P, an arrow,
18 another P, and DSP:7.

19 A. Well, DSP:7 corresponds to Disposition 7 at the very top
20 right of the record. 11:46:02

21 Q. Right.

22 A. And Disposition 7 stands for citation written slash warning
23 issued.

24 Q. Okay. Thank you.

25 I'm going to go all the way down to the end of this 11:46:14

1 document. So I'm moving this up. You see that?

2 A. Yes.

3 Q. I'm going to bring on the zoom here, see if this works out.

4 You see that?

5 A. Yes, I do.

11:46:38

6 Q. Okay. Would you read that last sentence for me.

7 A. "If there are any questions or comments regarding the
8 information presented, please contact the CAD Coordinator at
9 602-876-1033."

10 Q. I think you've got a future in radio. Thank you.

11:47:10

11 Was that number available to you when you did your
12 study?

13 A. This was on a file that I received, but I did not look at
14 this section of the PDF reports because these were not data.
15 These in fact were footers that were a huge problem that had to
16 be removed.

11:47:28

17 Q. Okay. So would it be fair for me to ascertain from that
18 response that you never called that phone number, 602-876-1033?

19 A. Absolutely correct.

20 Q. Thank you.

11:47:43

21 I want to direct your attention back up to the top of
22 this document. And we discussed this area before about the
23 call type, initial call type and final call type. Do you
24 recall that?

25 A. Yes.

11:48:25

1 Q. And you testified that you never used the final call type
2 numeric designation to determine whether to include or exclude?
3 Do you recall that testimony?

4 A. Right, I -- what I said was when I selected -- when I
5 decided which incidents to examine, I relied on final call type 11:48:42
6 description traffic violation or traffic stop. At some point I
7 learned that that also corresponded with the numeric codes that
8 you've been discussing.

9 Q. Okay. And you have your exhibit in front of you that tells
10 us what some of those numeric codes are, is that correct? 11:48:58

11 A. Yes.

12 Q. And had you ever encountered the numeric code for final
13 call type as 692?

14 A. 692 is indicated as DWI.

15 Q. Yes, that's correct. 11:49:18

16 A. And these were included in the initial file that I
17 received.

18 Q. So you do recall seeing some of those?

19 A. I do recall seeing final call type description DWI, yes.

20 Q. Okay. And did you include or exclude those in your study? 11:49:28

21 A. They were excluded.

22 Q. Why?

23 A. Because as a class of incidents, the potential for
24 discretion is less than in the class of incidents traffic stops
25 or traffic violations. 11:49:44

1 Q. Does that mean that when a deputy pulls behind somebody and
2 pulls them over and then smells alcohol on his breath that
3 somehow he should be put in a group where he has less
4 discretion to determine whether to pull that person over or
5 not?

11:50:02

6 A. No, it does not mean that.

7 Q. What does it mean?

8 A. What it means is that if we're looking at DWI as a class of
9 incidents, that on average in those incidents there will be
10 less potential for discretion than -- by the officer, than
11 there will be in the class of incidents traffic stop or traffic
12 violation.

11:50:16

13 Q. Well, how is the cop going to know that when he determines
14 to pull him over?

15 A. You're switching back to -- I can't answer that question.
16 My answer was about a category, so --

11:50:31

17 Q. Well, my question's not about a category. My question's
18 about the amount of discretion that a cop has when he decides
19 to pull somebody over and later in time smells beer. Explain
20 to me why that police officer has less discretion at the time
21 he decides to turn on the lights and pull the guy over than he
22 would if later in time he did not smell beer?

11:50:54

23 A. I could answer that if you could also indicate to me how
24 the vehicle was being operated prior to being pulled over.

25 Q. Show me on the CAD data how you can determine that.

11:51:15

1 A. It does not appear that you can.

2 Q. Well, then why would you need that information to make a
3 determination whether you're going to include it or exclude it
4 in your study of the CAD data?

5 A. Because as a group of incidents, the group of incidents 11:51:30
6 DWI, there are probably -- in fact, it's probably quite likely
7 that there was a significant fraction of them where they were
8 significantly impaired driver behavior.

9 Q. So you just drop them out of the study?

10 A. If I could finish. 11:51:55

11 Q. Oh, I'm sorry. I thought you were finished.

12 A. In the class of DWI there were probably a significant
13 fraction of cases where there is minimal officer discretion
14 because the vehicle is being operated in a markedly impaired
15 fashion. So as a class of incidents, the potential for 11:52:14
16 discretion is less in the class DWI than the potential in the
17 class of incidents traffic stop or traffic violation.

18 Q. Doctor, let's say that you come across some CAD data in
19 which it meets the criteria in the incident history traffic
20 violation, initial call type T, but there's no name anywhere in 11:52:54
21 the comment section.

22 You include that or exclude that in your universe of
23 study?

24 A. That's excluded, because that incident provided no
25 information on the outcome of incident. 11:53:11

1 Q. What was the outcome?

2 A. Whether or not the name check was Hispanic, and then also
3 stop length.

4 Q. Well, what if the driver of the car did have a surname that
5 was Hispanic, but the name just wasn't put in the CAD data?
6 How do you account for that?

11:53:28

7 A. I'm not -- don't need to account for it, unless it's the
8 case that all of the incidents of the type in which I'm
9 interested that include no name have a significantly different
10 fraction of Hispanic -- Hispanic persons.

11:53:49

11 Q. Did they?

12 A. Don't know, and it's not been proved to me that those
13 fractions are different.

14 Q. So you just excluded them.

15 A. Because there was no information to analyze.

11:54:02

16 Q. Don't you have to make certain assumptions about the data
17 that you're going to exclude?

18 A. No, because it's a different class of data. The focus here
19 is defining the content area that's of interest, and the
20 content area of interest in alignment with studies in this area
21 are traffic stops and traffic violations, because of the
22 potential for officer discretion in those type of incidents.

11:54:21

23 Q. Okay. Well, let's say that it's 2008, and a young woman in
24 her twenties, Blanca Esparza, is driving her car, and she's
25 speeding and she's pulled over. A sheriff's deputy pulls her

11:54:45

1 over, looks at her license plate, checks it through his
2 on-board computer, approaches the car, asks her for her
3 driver's license, gets it, the driver's license number checks
4 out with the same number as the registration to the car, and so
5 there's no radio stop at all, he tickets her for speeding and 11:55:01
6 then moves on his way, but never does the name check?

7 Let's say he does use his radio, but never does a name
8 check on the radio. You get a CAD data, no name, you're going
9 to exclude that, is that correct?

10 A. That is correct. 11:55:20

11 Q. And because you are not interested in that piece of data,
12 is that your testimony?

13 A. My testimony is that I'm not interested in incidents that
14 do not generate a name to be checked.

15 Q. But if we're looking for whether or not the sheriff's 11:55:35
16 deputies are using their discretion to pull over Hispanics,
17 wouldn't that piece of information be valuable?

18 A. Not necessarily.

19 Q. To whom?

20 A. To anybody. 11:55:50

21 Q. To me?

22 A. Yes.

23 Q. Who resides here in Maricopa County?

24 A. Yes.

25 Q. Who has an elected sheriff? Whose police powers are vested 11:55:57

1 in the local government, not the federal government?

2 MR. BYRNES: Objection, Your Honor, argumentative.

3 BY MR. LIDDY:

4 Q. He would not be interested in me?

5 THE COURT: When there's an objection, please wait
6 till I rule.

11:56:09

7 MR. LIDDY: I apologize, Your Honor.

8 THE COURT: I'm going to ask you to rephrase your
9 question.

10 BY MR. LIDDY:

11:56:20

11 Q. Could that piece of information be relevant to anyone,
12 Doctor?

13 A. Yes, it could.

14 Q. Thank you.

15 Is it true that you dropped data without names in the
16 CAD data file, despite not knowing whether they're randomly
17 distributed across the data or not.

11:56:40

18 A. I dropped a different class of incidents because of how I
19 define my content domain.

20 Q. But my question was about your knowledge of random
21 distribution.

11:56:59

22 A. The issue is not about random distribution.

23 Q. It is to me. That's the question.

24 A. May I explain?

25 Q. Sure, please.

11:57:10

1 A. When we're discussing the concept, there will be areas
2 where we agree that yes, this is of central relevance. Given
3 the questions at interest in this case, the questions of
4 central relevance are where officers have discretion in traffic
5 stop situations. So there might be -- so that's our core -- 11:57:29
6 our core issue of interest. And there are other classes of
7 incidents that are potentially different.

8 So this is not a matter of dropping out cases randomly
9 or non-randomly from one class of incident; this is a matter of
10 defining what is a -- the range of the topic of interest that 11:57:50
11 aligns with the scholarship in the field and aligns with the
12 idea of officer discretion.

13 Q. Okay. The total number of T incidents provides and the
14 gross universe provides was 198,194 incidents, is that correct?

15 A. I do not recall the specific number. 11:58:11

16 Q. Do you recall that you examined only 139,696?

17 A. In the original or the reprocessed?

18 Q. In the original.

19 A. That sounds about right, yes.

20 Q. Would you agree with me that the number that you include in 11:58:26
21 your study is a smaller number than the number that you -- that
22 was the gross?

23 A. If we're talking about the years 2007 to 2009, I included
24 the majority.

25 Q. The majority. But the majority is, as you recall, less 11:58:43

1 than the total.

2 A. Yes, it's about 80 percent.

3 And it's important to also understand, if I may, that
4 even though 18 percent or so incidents might be dropped per
5 year, the number of names checked that are dropped might be
6 much, much, much, much smaller.

11:59:00

7 Q. But might not that be because there were no names in the
8 CAD data file?

9 A. There are records with no names, yes.

10 Q. That were dropped?

11:59:18

11 A. There are records with no names that were dropped. Let's
12 be clear about two separate issues. There were incidents of
13 final call type designation traffic stop or traffic violation
14 with no name in the Comments field. Those were dropped.

15 There are also incidents with a different final call
16 type designation, name or not. Those were dropped because
17 that's a different class of incident.

11:59:35

18 Q. But my question is just about those that do not have names
19 in the CAD data file.

20 A. A final call type traffic stop or traffic violation?

11:59:50

21 Q. No, in the total universe. You told me, your testimony you
22 dropped some that had no names.

23 A. I dropped all the ones that had no names.

24 Q. But the driver of those vehicles and the passengers of
25 those vehicles had names, is that correct?

12:00:04

1 A. Yes.

2 Q. Okay. So they were stopped by an officer using discretion,
3 and they had names, but you excluded them in your study,
4 correct?

5 A. Correct, because there were no data and --

12:00:18

6 Q. Okay.

7 A. -- and it's not necessarily the case that if we had some
8 magical way of getting those names, that it would in any way
9 alter the pattern of findings that I found.

10 Q. Well, what if we had a magical way of determining whether
11 the incidents of Hispanic surnames or non-Hispanic surnames was
12 randomly distributed across the field of the 18 percent of the
13 gross universe you excluded; would that be helpful?

12:00:33

14 A. If they were randomly distributed, then that would suggest
15 that my excluding them was completely appropriate.

12:00:53

16 Q. So wouldn't it be valuable for those of us trying to
17 determine how much weight to give to your study to know whether
18 or not there was random distribution of that universe that you
19 excluded?

20 A. No. Because my study is very clear that the outcome of
21 interest is name checking patterns, and stop length when we
22 have names.

12:01:06

23 THE COURT: Mr. Liddy?

24 MR. LIDDY: Yes, Your Honor.

25 THE COURT: I'm looking for a good time to break for

12:01:27

1 lunch. I don't want to -- I don't want to interrupt you if
2 you're close to the end, but if you're not, why don't we break
3 for lunch?

4 MR. LIDDY: Looks like a good time to break for lunch,
5 Your Honor. 12:01:37

6 THE COURT: All right. We will see you back here at
7 1:15.

8 (Lunch recess taken.)

9 THE COURT: Please be seated.

10 Okay. The motion that was made to admit various 13:19:21
11 exhibits into evidence pursuant to Federal Rule of Evidence
12 1006 is denied. Those documents are not summaries, and all of
13 the items they contained were not testified to. Nevertheless,
14 the testimony that was introduced will stand. I think it
15 fairly describes the -- the gist of the expert's testimony. 13:19:43

16 Further, as I discussed with the parties at the end
17 of -- or at the beginning of the lunch break, we will convene
18 court in this courtroom on Tuesday, but then on Wednesday we're
19 going to return back up to my original courtroom.

20 Any question about that? 13:20:02

21 MR. CASEY: Not from the defense, Your Honor.

22 MR. BYRNES: None from the plaintiffs, Your Honor.

23 THE COURT: Mr. Liddy, are you ready to resume
24 cross-examination?

25 MR. LIDDY: I am, Your Honor. 13:20:12

1 THE COURT: Please do so.

2 BY MR. LIDDY:

3 Q. Doctor, earlier this morning you gave testimony pertaining
4 to document 3991I.

5 Do you recall that?

13:21:17

6 A. Yes.

7 Q. Is the document that's on the courtroom document camera
8 familiar to you?

9 A. Yes.

10 Q. Can you tell me, for the relevant period of time, what was
11 the Hispanic population of Maricopa County?

13:21:23

12 A. I don't have that number.

13 Q. You don't have that number on a document or you don't have
14 that number at all?

15 A. I don't have that -- I don't know that number.

13:21:49

16 Q. How about the Hispanic population for the state of Arizona?

17 A. I do not have that number.

18 Q. When you conducted your examination of these materials, did
19 you have United States Census data available to you from the
20 2000 census?

13:22:10

21 A. Yes.

22 Q. And did that data indicate -- was it sufficient to draw
23 a -- to draw an evaluation on your part whether the population
24 of the state of Arizona was Hispanic?

25 A. Yes, if I wanted to do that.

13:22:31

1 Q. And did you do that as part of your study?

2 A. No, I did not, because that's a type of study that's called
3 external benchmarking, which is not the preferred type of
4 study.

5 Q. Well, explain to me, please, what external benchmarking is. 13:22:45

6 A. This has to do with what's called a denominator problem in
7 studies on police stops or police traffic studies, and the
8 question is: What should the appropriate denominator be
9 against which officer actions are benchmarked? And as
10 explained in my testimony earlier today, the use of an external 13:23:09
11 benchmarking approach relying on -- relying on census
12 population data to compare that to police activity is not the
13 preferred approach.

14 Q. Is it a -- an approach that would have any value?

15 A. It might have some value but for the fact that it would not 13:23:28
16 have as much value as a study based on internal benchmarking,
17 which was the type of study that I conducted.

18 Q. Would you expect traffic stops in a known community to
19 correlate to the percentage of population of a subgroup of that
20 community by ethnicity? 13:23:53

21 A. I might expect that, but that would not be relevant to the
22 issues under discussion here today.

23 Q. Why might you expect that?

24 A. I might expect it; I might not.

25 Q. So let's say the population of the state of Arizona was a 13:24:14

1 third Hispanic, 33 percent. Would you expect the law
2 enforcement traffic stops to be -- to come in around 33 percent
3 in Spanish surnames?

4 A. They might; they might not.

5 Q. And that would be based upon what?

13:24:31

6 A. The traffic stop percent Hispanic represents a result
7 that's obtained after three different factors are taken into
8 account.

9 One factor would be the relevant population, one
10 factor would be -- I'm sorry. The first factor would be police
11 officer behavior.

13:24:55

12 The second factor would be if there's a differential
13 rate at which Hispanics, compared to non-Hispanics, violate
14 rules.

15 And the third question would be the exposure question,
16 which is to what extent are Hispanics versus non-Hispanics
17 differentially exposed to law enforcement officers engaged in
18 these types of activities.

13:25:12

19 Q. What do you mean when we say the factor of whether or not
20 the subcommunity of Hispanics violates rules?

13:25:30

21 A. It would -- it's possible that there is a difference, there
22 might be or might not be, in extent to which Hispanics driving
23 vehicles versus non-Hispanics driving vehicles violate
24 particular laws.

25 Q. And might one of those laws be obeying traffic laws that

13:25:57

1 are taught in traffic school when one obtains a state driver's
2 license?

3 A. That would be one.

4 Q. Might another be equipment, the laws pertaining to the
5 status of equipment on a vehicle?

13:26:24

6 A. That might be relevant, but in my study it appears not to
7 be.

8 Q. How about this factor? In your opinion, might it be a
9 factor of whether one did or did not observe vehicle code
10 requirements based upon not ethnicity, but poverty?

13:26:45

11 A. That's possible.

12 Q. Would it make sense for one to theorize that an individual
13 who is living at the poverty level, let's say one-and-a-half
14 times poverty level, might have less disposable income than
15 individuals living in the same area at three, four, or five
16 times the poverty level for annual income?

13:27:10

17 A. In general that's true, but given the way I designed my
18 study, that's not relevant.

19 Q. But I'm not asking you about your study right now; I'm
20 asking about the population of Maricopa County.

13:27:25

21 Would it be reasonable for one to theorize that
22 individuals living at the poverty level have less ability to
23 use disposable income to make repairs to vehicles such that
24 they meet the code in the state of Arizona?

25 A. Yes. However, it would also be plausible that they would

13:27:52

1 have less money for gas and, therefore, would be less able to
2 drive as frequently.

3 Q. Do you have any data that you've observed that would shed
4 any light on whether Hispanics in Maricopa County are more or
5 less likely to drive to and from work each day than individuals 13:28:12
6 with non-Hispanic surnames?

7 A. The question you just asked me is specific to commuting
8 patterns, and Dr. Camarota in his report did provide
9 information about Hispanic and non-Hispanic commuting matters.

10 Q. Was that information from the American community survey? 13:28:38

11 A. I believe that's where he said he got it, yes.

12 Q. And do you recall what that data was?

13 A. Not specifically, no.

14 Q. Would it surprise you to learn that according to that
15 survey, Hispanics self-report that they commute in an 13:28:53
16 automobile, a truck, or a van at rates higher than
17 non-Hispanics in Maricopa County?

18 A. That would not surprise me.

19 Q. And if that fact were true, would it not affect results of
20 the study of Hispanic drivers' traffic patterns versus 13:29:11
21 non-Hispanic in Maricopa County?

22 A. Not necessarily.

23 Q. And why is that?

24 A. Because you've spoken to commuting patterns between
25 Hispanics and non-Hispanics. You haven't spoken to total 13:29:27

1 vehicle miles traveled; you haven't spoken to non-commuter
2 travel; you haven't spoken to the other two issues that I also
3 mentioned about differential violating rates and differential
4 exposure to officers involved in these enforcement activities.

5 Q. So if I understand your response correctly, you're saying 13:29:44
6 it's not enough to know whether Hispanics drive -- commute to
7 and from work in Maricopa County more than non-Hispanics, what
8 one would need to know how long they're on the roads?

9 A. To determine total exposure, you would want vehicle --
10 total vehicle miles, and you also want to know about the times 13:30:03
11 that they're traveling.

12 Q. Can I direct your attention to 399I, please. I see it's --
13 it's titled Relevant Numbers: Name Checking Patterns By Key
14 Variables With Reprocessed Data.

15 What is reprocessed data? 13:30:25

16 A. The original data on which I based my analysis was
17 criticized by Dr. Camarota in his report as having overloaded
18 for two factors: the submission of multiple names with
19 different aliases but same dates of birth, which I took care of
20 in the reprocessed data; and also he indicated in his report 13:30:44
21 that the mobile data completely overlaps with the canned
22 [phonetic) data file, and therefore that I should have removed
23 it, so that was the second change that I made. And when I did
24 the analysis with the reprocessed data responding to those
25 criticisms, the pattern of results was essentially identical. 13:31:05

1 Q. I see the top half of this table here says the all day
2 saturation patrol day versus others. (Numbers and Columns
3 Percentages). Using 90 Percent Probability Threshold For
4 Hispanic Name.

5 Did I read that correctly?

13:31:27

6 A. Yes, sir.

7 Q. And when you use the term "90 percent probability
8 threshold," are you referring to the surname analysis of the
9 2000 U.S. Census data?

10 A. Yes, I am.

13:31:37

11 Q. Tell me what that 90 percent number represents.

12 A. What that represents is that a name was classified as
13 Hispanic if based on that 2000 census data research and
14 analysis and resulting tables in the U.S. at least 90 percent
15 of people with that surname also in the census self-identified
16 as Hispanic.

13:31:59

17 Q. So would that give me any confidence in, say, predicted
18 value, if I were looking at one of the names at the 90 percent
19 threshold, that I could determine, with 90 percent confidence,
20 that that person might self-identify him- or herself as
21 Hispanic?

13:32:21

22 A. If I may, the answer is no, because you've switched from a
23 class of individuals to an individual instance. So the point
24 is if we're looking at a large group of people, then in general
25 folks with a surname, there are small

13:32:39

1 undercounting/overcounting issues which are discussed in my
2 report, but in general with a large sample of people, if
3 they're named -- if they have a surname that the U.S. Census
4 data indicates 90 percent or more people self-identify as
5 Hispanic, there's a good chance that in a large sample,
6 90 percent of the people with those names will self-identify.

13:32:59

7 Q. So you're saying it's not useful in determining whether an
8 individual named Rodriguez is likely to -- to self-identify
9 herself as Hispanic, but it is only useful when looking at
10 groups, large groups of people with the surname Rodriguez?

13:33:20

11 A. Well, Mr. Rodriguez or Mrs. Rodriguez is a -- is a
12 member --

13 Q. Or Ms.

14 A. -- or Ms. Rodriguez is a member of a group, and if we have
15 lots of Rodriguezes, yes, it could be useful.

13:33:35

16 Q. But it's not useful to Ms. Rodriguez herself personal.

17 A. If you're asking me -- be sure I understand the question --
18 if you're asking me can you, with certainty, that is, can you
19 guess that nine times out of 10 am I -- do I have a 90 percent
20 chance or better of being right if I walk up to Mr., Ms., or
21 Miss Rodriguez, and knowing their surname, estimating that they
22 are Hispanic, the answer is -- in one particular one instance
23 the answer is no. But if you were to go up to a thousand
24 persons with the surname Rodriguez and guess that they are
25 going to self-identify as Hispanic, you in general, doing

13:33:55

13:34:17

1 random sampling, would be right 90 percent of the time.

2 Q. Were you asked to prepare a report based upon your
3 examination of the CAD data?

4 A. Yes, I was.

5 Q. And you've prepared two reports, is that correct: an
6 initial report, and one in response to Mr. Camarota's
7 criticism?

13:34:38

8 A. Yes.

9 Q. In your initial report did you provide any information as
10 to an estimate of the Hispanic population in Maricopa County?

13:34:52

11 A. I don't recall specifically that I did.

12 If that's a page of my report, apparent -- what's this
13 page from? This is -- this is a page from my report.

14 Q. Do you recognize it?

15 A. Yeah, it looks like it, because there's -- there are the
16 variables I was using.

13:35:29

17 Q. I'm going to zoom in just for a little bit here. Would you
18 read for me the line that I have underlined in red ink?

19 A. Should I start at the beginning of the paragraph?

20 Q. Sure.

13:35:46

21 A. Looking at all the names checked in the combined mobile and
22 CAD incident file for the entire period 1/1/2007 through

23 10/31/2009, 35 percent of names appeared as Hispanic using the
24 lower threshold of 60 percent, whereas 22.7 percent of surnames

25 were treated as Hispanic using the highest threshold of

13:36:11

1 90 percent. By way of comparison, approximately 31.8 percent
2 of the population of Maricopa County identifies as Hispanic,
3 according to the most recent data from the United States
4 Census.

5 Q. And do you recall when you wrote this report? 13:36:28

6 A. This would have been in early -- late 2010; very, very
7 early 2011.

8 Q. Do you recall whether you used the 2000 United States
9 Census report data or the 2010?

10 A. I don't recall specifically. 13:36:56

11 Q. But do these refresh your recollection at the time that you
12 conducted this study and wrote this report you had available to
13 you United States Census data enough to estimate that
14 approximately 31.8 percent of the population of Maricopa County
15 self-identified as Hispanic? 13:37:13

16 A. Indeed.

17 Q. Back to 399I. The upper half of this table here you have
18 over on the left a column that says Name. Do you see that?

19 A. Yes.

20 Q. Okay. And then if we drop down it says Not Hispanic. See 13:37:38
21 that?

22 A. Yes.

23 Q. Soon as I get my -- my marker, I'll be able to see it even
24 better, right?

25 Now, let's look at the bold writing on the column, 13:37:55

1 second column to the right. "No." You see that?

2 A. Yes.

3 Q. And what does that indicate, "no"? What's that mean?

4 A. This is, if I may just provide a -- just a brief bit of
5 background --

13:38:14

6 Q. Sure.

7 A. -- this is a -- these are two cross tabulation tables that
8 describe the relationship between two variables. The column
9 variable is whether or not the name was checked on an official
10 saturation patrol day, "no" versus "yes"; the row variable is
11 whether or not the name checked was Hispanic, not Hispanic or
12 Hispanic. And the percent in each column indicates the percent
13 in that group that belong in that row.

13:38:27

14 Q. Okay. So the "no," what does that mean?

15 A. That means that the name was checked on a day when there
16 was no official saturation patrol as I defined it, which meant
17 11 out of the 13 saturation patrols.

13:38:45

18 Q. But zero out of the dozen or so saturation patrols that
19 were conducted prior to the 13 that you looked at, is that
20 correct?

13:39:04

21 A. Yeah, that is correct.

22 Q. And why didn't you look at any of those saturation patrols?

23 A. First of all, let me -- if I can respond with two points.

24 Q. Sure.

25 A. The first point is that they thought it was best to allow

13:39:20

1 the MCSO to define official major saturation patrol days. And
2 the fact as you're suggesting with your question, if I
3 understand it properly, that there were also days when -- that
4 I said here, no, for official saturation patrol meaning no, you
5 know, none -- no major operations that I had actual data for,
6 you're suggesting there were saturation patrols of a more minor
7 nature operating in that minor -- in that no column.

13:39:47

8 And if I can just make one more point --

9 Q. Please do.

10 A. -- if I could, what this means is that any contrast that I
11 find between the days of interest, which are in the yes column
12 official saturation patrol days, and the no column, that is the
13 comparison group, any comparison that I find would have been --
14 any differences I find, for example, in the Hispanic, if you
15 look at the Hispanic row and you look at official saturation
16 patrol day, no versus yes, we have a higher percentage on
17 official saturation patrol days, 25.8 percent versus 21.8, and
18 if I had from these no days separated out the days which you're
19 discussing with these minor saturation patrols, my contrast
20 would have been even stronger.

13:40:03

13:40:24

13:40:52

21 Q. Okay. And when you -- and I apologize. My question did
22 not imply that the many saturation patrols conducted prior to
23 the date of those that you chose to study were not official
24 major saturation patrol, I never heard that term before, I
25 don't know anything about it, official major saturation patrol

13:41:14

1 is the focal point of your study, is that correct?

2 A. Yes, sir.

3 Q. Okay. And you just mentioned the percentages here, I'll
4 see if I can draw up here, you mentioned 28.2 percent and
5 25.8 percent, is that correct?

13:41:37

6 A. That is correct.

7 Q. And one falls under the no column, the other falls under
8 the yes column.

9 A. That is correct.

10 Q. And I apologize for my math. I told you I wasn't a math
11 major type of guy, but to me that looks like a difference of a
12 little less than 4 percent. You can see how a layman such as
13 me would see it that way?

13:41:45

14 A. Yes, I can, but if I could make two mentions.

15 First of all, if we have a broader threshold
16 categorization for Hispanics looking at the 60 percent table,
17 we've got a difference of 6 percent, and it's 6 percent
18 compared to 33, so that's about a 1/6th different. And these
19 data are before controlling for other factors operating in the
20 data whose impact needs to be isolated out so we can discover
21 the net impact of a major -- of an official saturation patrol
22 day on the name checking pattern.

13:42:04

13:42:27

23 Q. Okay. But you would agree with me the difference between
24 25.8 and 21.82 is less than 4 percent.

25 A. Yes, it's 3.98 percent.

13:42:45

1 Q. Thank you. And would you also agree with me that
2 21.82 percent is less than 31.8 percent?

3 A. Yes, I would, but I would also add that's not informative.

4 Q. To whom?

5 A. To an analyst trying to interpret these data patterns. 13:43:10

6 Q. Okay. And what about 25.8 percent, you would agree with me
7 that that also is less than 31.8 percent, which is the figure
8 that you found in the United States Census data for the
9 Hispanic population of Maricopa County.

10 A. Yes, but I'd again add that's not informative. 13:43:32

11 Q. To who?

12 A. To the analyst trying to understand these data patterns.

13 Q. Well, would you agree with me it might be informative to
14 someone else?

15 A. Yes, sir. 13:43:47

16 Q. Thank you. Now, let's travel over to the right here where
17 it says Total, you see that?

18 A. Yes.

19 Q. 21.98 percent, what does that represent?

20 A. What you see over on the right-hand side adds up the total 13:44:13
21 numbers going across for Hispanics, so if you add up 25,905 and
22 1312, that comes out to 27,217. And of the total in this
23 table, 123,831, those 27,217 make up 21.98.

24 Using the extremely stringent definition of a Hispanic
25 surname and if we used a number that's closer to what's used in 13:44:44

1 the research down on the bottom right, you will see that the
2 same corresponding number is 33.56 percent.

3 Q. 33.56 percent?

4 A. Yes.

5 Q. So as our confidence in whether or not the names
6 self-reported as Hispanic drops from 90 percent to 60 percent,
7 this ratio climbs up from 21.98 percent to 33.56 percent, am I
8 correct?

13:45:00

9 A. Not exactly. You've mischaracterized a little bit the
10 distinction between the 90 percent and the 60 percent --

13:45:31

11 Q. Well, am I -- am I incorrect that we would have less
12 confidence in the 60 percent surname figure than we would in
13 the 90 percent surname figure to self-identify as Hispanic?

14 A. One would have equal confidence in both numbers, depending
15 on one's purposes.

13:45:49

16 Q. What if my purpose is to know whether or not the individual
17 who actually has the name is going to self-identify as
18 Hispanic?

19 A. The issue is not so much whether the individual
20 self-identifies Hispanic; the question is what correlates with
21 surnames that are Hispanic or not and examining that, using
22 different thresholds for saying a name must meet this minimum
23 probability to be classified as Hispanic.

13:46:02

24 Q. So we can be just as confident that an individual who's
25 pulled over by a deputy in Maricopa County who has the name

13:46:20

1 Rodriguez --

2 Which is a 90 percent name, you testified earlier
3 today, is that correct?

4 A. Yes, sir.

5 Q. Is -- self-identifies as Hispanic, as a person who had a
6 name that, according to U.S. Census data analysis, is only
7 60 percent. Exact same amount of confidence?

13:46:31

8 A. It's not a question of confidence.

9 Q. But that's -- but that's the question. So it is a question
10 of confidence for the purpose of responding to this question.

13:46:53

11 A. I could have equal confidence in both results.

12 Q. Could you understand why someone else might have less
13 confidence in the 60 percent figure, than the 90 percent
14 figure?

15 A. Yes, I could.

13:47:10

16 Q. Thank you.

17 You mentioned in an early response of this data that
18 there were certain controls that you looked at.

19 A. Yes, I did.

20 Q. And what were those controls?

13:47:34

21 A. Could you specify which analysis is under discussion?

22 Q. Well, the analysis of whether or not -- or the likelihood
23 of an individual who's Hispanic to be pulled over in Maricopa
24 County by a deputy sheriff in a traffic stop, or as you define
25 traffic stop.

13:47:59

1 A. I have -- I have two outcomes I investigate in my report:
2 whether or not a name check, the odds of being Hispanic or not,
3 and stop length.

4 Q. All right. I'm not referring to stop length in this
5 question, whether or not the person stopped is likely to be -- 13:48:13
6 the name check would be Hispanic.

7 A. Okay. And the control variables that I applied in that
8 situation included the following: First of all, there were
9 multiple names within an incident, so the analysis controls for
10 that. 13:48:32

11 Secondly, because these data are collected over a
12 significant period of time, one wants to control for the
13 natural variation in the data because things might be naturally
14 changing from one month to the next, so you control for those
15 long-term temporal trends in three different ways. 13:48:46

16 And in addition, control for whether the name was
17 checked on a weekday or a weekend, and then an additional
18 control is built in by selecting specific comparison days.

19 Q. What about a control for socioeconomic factors, did you
20 have any of those controls? 13:49:10

21 A. Those data were not available.

22 Q. Were they obtainable?

23 A. If you're asking me -- if I may be sure I understand the
24 question? If you're asking me, Could I have obtained
25 socioeconomic data based on the location of the stop? Is that 13:49:29

1 the question?

2 Q. No.

3 A. Okay, I'm sorry. I don't understand.

4 Q. When you said the data was not available, do you mean it
5 was not available in the CAD data universe that you were
6 provided? 13:49:41

7 A. That's correct.

8 Q. But with that data available outside the CAD data universe
9 provided, such as the U.S. Census data that you obtained, could
10 you not have obtained information about socioeconomic factors 13:49:54
11 that might have been a factor in determining the likelihood of
12 a name searched by a Maricopa County sheriff being Hispanic or
13 non-Hispanic?

14 A. If you could tell me -- I'm sorry, I just want to be sure
15 I'm clear on this. Are you -- so this socioeconomic data would 13:50:15
16 be describing what particular feature?

17 Q. On the likelihood of one being pulled over on the roads of
18 Maricopa County by a Maricopa County sheriff's deputy.

19 A. I'm sorry, I still don't understand the question, because I
20 have a name, I don't have any socioeconomic data associated 13:50:35
21 with that.

22 Q. That's correct, but the question is: Can you go and get
23 socioeconomic data?

24 You looked at a study of individuals who were pulled
25 over in Maricopa County by a deputy, some of whom have surnames 13:50:47

1 that are self-identified as Hispanic and some self-identified
2 as not Hispanic, is that correct?

3 A. Yes.

4 Q. Is there socioeconomic data available for individuals who
5 live in the state of Arizona, Maricopa County, that are either
6 Hispanic or non-Hispanic in surname?

13:51:07

7 A. Not for these particular individuals whose names were
8 checked.

9 Q. Well, we're not looking at the individuals whose names are
10 checked; we're looking at the surnames, correct?

13:51:23

11 A. Yes.

12 Q. Okay. Did you use any socioeconomic data to search for the
13 reasons why the disparity that you identify in your study
14 occurred?

15 A. No, I did not.

13:51:56

16 Q. Why?

17 A. Because given the type of internal benchmarking study I
18 conducted, that would not be relevant to changing the pattern
19 of results. And if I may give one example.

20 Q. Well, before you give an example, let me ask this question:

13:52:11

21 If a deputy on the Beeline Highway sees an automobile that's in
22 such a state of disrepair that it falls beneath the code
23 required by law in Arizona, might one factor be the disposable
24 income available to the person responsible for the maintenance
25 of that vehicle?

13:52:41

1 A. Yes, that's possible.

2 Q. So did you look at any socioeconomic data to determine
3 whether there was a higher incidence of poverty among Hispanics
4 in Maricopa County versus people with non-Hispanic names?

5 A. No, I did not. And again, if I can explain, that would not 13:53:02
6 be specifically relevant.

7 Q. If an individual's being pulled over because his
8 automobile's in disrepair and it's going to cost X dollars to
9 repair it, and X dollars is in excess of the disposable income
10 of the individual who's driving the car or is otherwise 13:53:21
11 responsible for the car, how could that be not relevant to our
12 inquiry as to whether or not there's racial profiling by the
13 Maricopa County Sheriff's Office by pulling over people for
14 having broken taillights and broken windshields?

15 A. Because your comment assumes an identity between the 13:53:36
16 Hispanic population of Maricopa County and those individuals
17 pulled over by the Maricopa County Sheriff's Office.

18 Q. If the name, according to your analysis, is a 90 percent
19 likelihood of self-identification as Hispanic.

20 A. The average for the county doesn't necessarily describe the 13:54:02
21 individual -- the specific individuals who were stopped. And,
22 if I could just add one amplification here --

23 Q. Okay.

24 A. -- in the reprocessed report with the reprocessed data
25 where your analys -- where your comment is the question of 13:54:17

1 poverty would seem to suggest that if an officer checked a name
2 for a vehicle and a name check was Hispanic, the poverty
3 argument would suggest that the officer should be more likely
4 to issue a citation because the vehicle is in violation of
5 current vehicular codes. 13:54:44

6 The analysis that I conducted suggested exactly the
7 opposite was true; that is, if the officers did pull over -- do
8 pull over a Hispanic and check a Hispanic rather than
9 non-Hispanic name, they were less likely to issue a citation,
10 which would suggest that poverty and linking through poverty to 13:55:02
11 vehicle maintenance was not an issue here.

12 Q. Why would it suggest it's not an issue?

13 A. Because they were less likely to issue -- issue a citation
14 if name checked was Hispanic.

15 Q. How is the variable, whether or not a citation is issued or 13:55:18
16 not, relevant to determining why an individual who was pulled
17 over was operating a vehicle that was out of compliance with
18 the code?

19 A. It would seem, given the purpose of the saturation patrols,
20 that the purpose is to -- one of the purposes is to cite folks 13:55:34
21 whose vehicles are in violation.

22 Q. And who made that determination? Did you make that
23 determination?

24 A. I'm saying when I -- when I read the saturation patrol
25 documents and read the background on what the purpose was of 13:55:48

1 those operations, and you read some of the depositions of the
2 officers, that appeared to be part of what the major saturation
3 patrols were about.

4 Q. Based on your interpretation?

5 A. Based on the documents that I read. 13:56:02

6 Q. After you read them did you interpret them?

7 Sounds to me like you're introducing bias into the
8 study. Can you understand why it looks that way to me?

9 A. No.

10 Q. You have just testified that you used as a factor whether 13:56:19
11 or not an officer used his discretion to write a citation or to
12 give someone a warning. And you've determined that poverty is
13 not a factor, because you've got in the head of that deputy and
14 you've decided that deputy doesn't care about whether that
15 individual's automobile is out of compliance, because you think 13:56:41
16 that deputy only cares about what? You know, it's not a code
17 violation.

18 MR. BYRNES: Objection, Your Honor, argumentative.

19 THE COURT: I'm going to sustain the objection. I
20 don't even understand. I think you lost me on the question. 13:56:57

21 BY MR. LIDDY:

22 Q. Why did you determine that after reading the document that
23 the variable as to whether or not the deputy used his
24 discretion to write a citation or not write a citation was such
25 that you would not make inquiries as to socioeconomic variables 13:57:17

1 that would affect the outcome of whether or not the driver of
2 the car was Hispanic or not?

3 A. That's not what I did. The argument about the
4 socioeconomic variables was raised in Dr. Camarota's report.
5 And the argument in his report clearly suggested that one of 13:57:36
6 the reasons that MCSO officers might be stopping vehicles more
7 often if they are -- if they are driven by Hispanics or have
8 Hispanics passengers is because these are lower socioeconomic
9 population; therefore, the vehicles are more likely to be out
10 of compliance. 13:58:00

11 And then by implication from his reasoning, by
12 implication from his reasoning, then officers give citations
13 for many reasons, but one might be because the vehicle is not
14 in compliance. So that's why I then tested that relationship.

15 Q. By implication from his reasoning? 13:58:16

16 A. Um-hum.

17 Q. So because Dr. Camarota told you to, you determined that
18 the discretion as to whether or not a driver issued a citation
19 or a warning was a relevant factor in determining that you were
20 not going to look at socioeconomic factors? 13:58:35

21 A. I'm not looking at socioeconomic factors, but the earlier
22 fact -- the earlier point that I discussed about separating
23 external benchmarking studies versus internal benchmarking
24 studies, but what I was doing was taking an implication of his
25 line of argument and testing it. 13:58:53

1 Q. Okay. Let me direct your attention to 399, Table 3 on 399.

2 You see that?

3 A. Yes, sir.

4 Q. Increased duration of traffic stops where one or more
5 Hispanic surnames are checked. 13:59:09

6 So this table is an effort to illustrate your findings
7 on the second issue which you were inquiring about, is that
8 correct?

9 A. Yes.

10 Q. And that issue was the length of stop and whether there's 13:59:19
11 an association with an Hispanic surname or not?

12 A. Yes.

13 Q. Okay. So percentage cutoff for Hispanic surname
14 determination, first column, top left. And we drop down there,
15 we see the 90 percent, 80 percent, 70 and 60 percent threshold, 13:59:36
16 all of which refers to the surname analysis of the U.S. Census
17 data, self-reported, correct?

18 A. Yes.

19 Q. Okay. Look at the 90 percent threshold and slide over to
20 right there, and you see percentage increased in length of 13:59:48
21 stops where a Hispanic surname was checked, 25 percent. That's
22 2.9 minutes longer, is that correct?

23 A. Yes.

24 Q. Does that mean that there's an association into the length
25 of the stop as to whether or not a person's surname was 14:00:05

1 90 percent likely to be Hispanic, according to the analysis?

2 A. More specifically, if I may.

3 Q. Okay.

4 A. It refers to if we have an incident, and one or more of the
5 names checked during that incident was a Hispanic surname,
6 using the 90 percent threshold minimum probability, that stop
7 lasted about 2.9 minutes longer after controlling for several
8 factors, and that was about 25 percent longer.

14:00:20

9 Q. And did you study other variables that may potentially have
10 impacted the length of the -- the differential between the 2 --
11 the 2.9 minutes longer?

14:00:46

12 A. This analysis controls for other factors such as the
13 number of names that were checked --

14 Q. Okay.

15 A. -- whether or not somebody was arrested, and I'm not sure
16 right now what other variables were in there.

14:01:00

17 Q. Did you check for the length of time based on a hyphenated
18 name, say Jose Maria Olazabal, one of my favorite golfers.
19 With a hyphenated name would the duration of the stop be
20 longer?

14:01:23

21 A. I'm not sure I understand the question. I'm sorry.

22 Q. Well, let's say that Jose Maria Olazabal in Scottsdale teed
23 it up breaking some records, but he's so happy about the 62
24 he's driving down, let's say the 101, and he's going 90 miles
25 an hour and he gets lit up by a sheriff's deputy, and they pull

14:01:40

1 him over and they ask him for his driver's license and ID, and
2 he gives them one, they say Jose Maria Olazabal, but he's from
3 Spain so he doesn't have an Arizona driver's license or another
4 driver's license from the state here, so they do the name check
5 on him. They're going to check Jose Maria Olazabal, they're
6 going to check Jose Olazabal, and they're going to check Jose
7 Maria, correct?

14:01:58

8 A. Yes, that -- that is correct, but because I -- I
9 de-duplicated within the analysis, that helps control for that.

10 Q. So the fact that that stop would take longer, you've
11 already accounted for.

14:02:15

12 A. The three variations you just gave me on that name would
13 count as just one name check.

14 Q. But it would still take longer.

15 A. I guess depending on the deputy's typing skills or radio
16 skills.

14:02:32

17 Q. Well, it would be on the radio. He'd be calling each name
18 in under separate databases, maybe two or three national
19 databases for each name. Would it make sense for that to take
20 longer than if there was only one name?

14:02:46

21 A. In that particular instance, yes.

22 Q. Okay. What if the individual who were pulled over had no
23 driver's license and no ID? Would that stop take longer?

24 A. It could.

25 Q. Did you account for that?

14:03:07

1 A. I don't think so.

2 Q. What if the individual driving the vehicle was a
3 non-English speaker, was a Spanish-speaker, let's say, and the
4 deputy, who's a native English speaker but speaks Spanish had
5 to translate, speak Spanish. Would that stop take longer?

14:03:41

6 A. I'm sorry, could we go back to the previous question?

7 Q. Let's stay on this one.

8 A. If I could have the question again, please.

9 Q. Would a traffic stop be longer if the driver of the vehicle
10 stopped spoke Spanish and not English, and the deputy spoke
11 Spanish, but not as a native speaker, and had to translate from
12 English to Spanish while communicating with the driver of the
13 vehicle stopped?

14:03:58

14 A. And we're comparing that to a stop where...

15 Q. Where the driver was a native English speaker stopped by an
16 officer who was a native English speaker.

14:04:17

17 A. Yes, the first could take longer.

18 Q. Did you account for that?

19 A. No, I did not.

20 Q. Let's say that a Spanish speaking deputy pulled over a
21 Spanish speaking driver and had -- had -- gave him a citation,
22 and with the citation gave him a court document, and the court
23 document was in English. And the Spanish speaking deputy was
24 employing policing techniques and translating the document and
25 explaining what it meant in Spanish. Would that take longer?

14:04:31

14:05:01

1 A. It could, but let me -- let me add, if I may, one -- one
2 additional point here. We know nothing about, in all these
3 scenarios that you've given me, we know nothing about the
4 English speaking capabilities of other people in the vehicle.
5 Maybe the stops included multiple names being checked, and
6 therefore multiple names in the vehicle.

14:05:19

7 Q. But you controlled for multiple names?

8 A. Yes, I did.

9 Q. But I didn't ask you about controlling for multiple names,
10 I asked you about controlling for the additional time it would
11 take for a Spanish speaking officer to translate an English
12 court document that he's required by law to hand to the driver
13 when given a citation. Did you control for that?

14:05:32

14 A. No, nor did I control for the fact he might have given it
15 to somebody sitting in the passenger seat, and the other person
16 said: I'll translate it. You can go now, officer.

14:05:50

17 Q. Okay. Thank you.

18 What is quasi-experimental methodology?

19 A. It refers to a type of evaluation study.

20 Q. And what type might that be?

14:06:23

21 A. It's a type where you have a program, and you seek to
22 compare it to situations outside the program. And -- stop
23 there.

24 Q. Earlier in your testimony I heard you testify that there
25 was a 000.1 percent chance that the variation you identified in

14:06:51

1 some of your tables was caused by chance or noise.

2 Do you recall that?

3 A. I spoke to the association.

4 Q. Would you explain to me what that means.

5 A. What it means is that the size of the impact that's
6 observed is of such strength that -- on the various
7 assumptions, that result would not occur by chance any more
8 than about one time out of a thousand.

14:07:11

9 Q. So that means it didn't occur by chance.

10 A. That's the way we usually discuss it, yes, sir.

14:07:34

11 Q. And when you referred to statistical noise, you meant by
12 chance, or perhaps something else that was not relevant to the
13 inquiry?

14 A. What I meant was that the impact of a particular factor is
15 compared to an error, it's compared to other features of the
16 factor, and you test to see the size of the effect compared to
17 the background noise for that specific effect.

14:07:50

18 Q. So if the variation and association wasn't caused by chance
19 or statistical noise, what was it caused by?

20 A. I'm sorry, I don't --

14:08:16

21 Q. If the statistical variation in the association you
22 identified in your study, your table, was not caused by
23 statistical noise or by chance, do you have an opinion as to
24 what was the cause?

25 A. I'm confused, because there are two words in your question,

14:08:32

1 variation and association, and those are two -- two different
2 things.

3 I'm looking at the association of a particular factor
4 like the name being checked on saturation patrol day and now
5 that associates with another variable, the outcome, the
6 likelihood that the name checked as being Hispanic or
7 non-Hispanic, so I've got an association.

14:08:46

8 Q. Okay. And you said that the differential --

9 A. Um-hum.

10 Q. -- was not caused by chance.

14:09:02

11 A. Correct.

12 Q. Or highly unlikely to be caused by chance.

13 A. Correct.

14 Q. Do you have an opinion as to what the cause was?

15 A. Well, the cause would appear to be the behaviors of the
16 officers involved.

14:09:10

17 Q. The behavior of the officers?

18 A. Um-hum.

19 Q. Not the conduct of the drivers?

20 A. That's certainly also possible. But again, the issue about
21 as soon as -- it could be the officers, and -- but again, we're
22 back to the key question here. The key question here is any
23 other factor that gets mentioned, such as the conduct of --
24 I'll stop. Go ahead.

14:09:22

25 Q. Did you finish your response?

14:09:47

1 A. Yes.

2 THE COURT: Well, do you want to repeat it for me?
3 Because I'm not sure I got the gist of it.

4 THE WITNESS: What I'm saying is that if we have
5 variation in the name checking patterns, those name checks are 14:10:04
6 submitted by officers in terms of Hispanic versus non-Hispanic.
7 So one plausible explanation would be that the officers are
8 doing something different on these days versus other days.

9 Are there certain -- are there other possible factors
10 that could be happening? Certainly they could. But any other 14:10:24
11 possible factors, one would also have to make the case that
12 that -- those other factors applied -- play out differently if
13 Hispanic names are checked versus non-Hispanic names are
14 checked.

15 In other words, any other factors could be randomly 14:10:39
16 distributed but for us, Hispanic versus non-Hispanic names
17 checked. And I don't have those other factors, and those --
18 I'm being asked to consider those other factors.

19 THE COURT: All right. Thank you.

20 BY MR. LIDDY: 14:10:58

21 Q. One of those factors could be poverty?

22 A. Could be.

23 Q. Could be a hyphenated name?

24 A. Could be.

25 Q. Could be non-native Spanish speaking officer translating to 14:11:04

1 a Spanish speaking driver?

2 A. Could be.

3 Q. Could be community policing, translating a court document
4 from English to Spanish to ensure that the driver comprehends
5 it?

14:11:24

6 A. Interesting idea, um-hum.

7 Q. But could be?

8 A. Yeah.

9 Q. You didn't control for that?

10 A. I had no data on that.

14:11:30

11 Q. I understand.

12 I direct your attention to another document here.
13 This is a table from page 38 of the original report. Does it
14 look familiar to you?

15 A. Yes.

14:11:49

16 Q. Can you tell us what that is.

17 A. This is a table of descriptive statistics, variables that
18 got used in my model to -- to predict whether or not the name
19 check was Hispanic.

20 Q. Okay. And if you look at the left-most column under
21 variable, and if you read along with me, capital S, capital P,
22 SP day. That's saturation patrol day?

14:12:32

23 A. Yes.

24 Q. Those days are defined by you as large saturation patrols,
25 that's the term of art you used?

14:12:49

1 A. The term was these are the saturation patrols for which the
2 MCSO generated operation documents.

3 Q. Okay.

4 A. And I would have had 11 of those 13 that were in the time
5 period I examined.

14:13:03

6 Q. I recall that testimony.

7 Right below that column, SP officer, saturation patrol
8 officer?

9 A. Yes.

10 Q. And below that, saturation patrol officer on a saturation
11 patrol day.

14:13:09

12 A. Yes.

13 Q. So how do you define a saturation patrol officer?

14 A. A saturation patrol officer has been involved in one or
15 more saturation patrols during the period I examined for the
16 patrols I defined.

14:13:25

17 Q. And then for the date of this column that -- one of those
18 officers is actually working on a saturation patrol day?

19 A. Correct, that's SP officer on SP day.

20 Q. Thank you.

14:13:40

21 And if you scroll over one to the right variable, you
22 have SP underscore OFDAY, and what is that?

23 A. That means you have a saturation patrol officer on a
24 saturation patrol day. There's the variable I used.

25 Q. Okay. And below that's column N, capital N, the number

14:13:56

1 of -- the number of units studied, and it says 160,974, and
2 I've underscored that in red. Do you see that?

3 A. Yes.

4 Q. And what does that number represent?

5 A. As is explained in a note at the bottom of the table, this
6 unit of analysis here are individual names checks, and since
7 this is from the original report this was before the data were
8 reprocessed.

14:14:10

9 Q. Okay. And the next column over mean(average value) 0.013.

10 And what does that represent?

14:14:37

11 A. What that represents is that of all the names checked that
12 are -- that are listed there, the 160,974, that 1.3 percent of
13 them were checked by saturation patrol officers on a saturation
14 patrol day, as I've defined it.

15 Q. 1.3 percent of the 160,974?

14:15:02

16 A. Um-hum.

17 Q. That looks like a pretty small share of the total universe.
18 Would you agree with me on that?

19 A. It's certainly smaller than 1.4. But bigger than 1.2.

20 Q. But when we're looking for associations in data, we'd like
21 to slice that salami a little thicker, wouldn't we?

14:15:25

22 A. The issue is not the number of cases; the issue is the
23 patterning across the outcome.

24 Q. Well, how much confidence can we have in a sample size that
25 is 0.013, or 1.3 percent of the total universe?

14:15:41

1 A. A lot. And that's --

2 Q. Okay. Go ahead.

3 A. That's what the tests of statistical significance are for.

4 Q. How many is that? 160,974, 1.3 percent of that? How many
5 are we actually talking about here? 14:16:07

6 A. Well, if we've got 1 percent of 160,000, then that's going
7 to be about 1,600. And this was bigger than that, so...

8 Q. You're telling us that the number of sat -- the number of
9 incidents you're examining that occur when a saturation patrol
10 officer is working on a saturation patrol day that shows this 14:16:31
11 larger association, shows this association, is a very, very
12 small fraction of the total number of the data that you had
13 available to you, that you chose to study, when in reality you
14 had more than 160,000, is that correct?

15 A. Yes, what's correct, is that of these 160,974 names 14:16:58
16 checked, 1.3 percent of them were checked by officers who were
17 active on a saturation patrol day, but I also examined the
18 impacts of saturation patrol day itself, which accounted for
19 4.3 percent of the names, and that was, I believe -- I think
20 that's more than the share of day -- the share of days that 14:17:26
21 were saturation patrol days, and the variable SP officer for
22 officers who are ever involved in a saturation patrol day,
23 27 percent of the names were checked by them.

24 Q. What percentage of those stops were by Lake Patrol?

25 A. Again, the unit of analysis here is name checks. I do not 14:17:53

1 know the specific number of names checked by Lake Patrol.

2 Q. Do you know the normal area of operation of Lake Patrol?

3 A. I believe that it was indicated earlier today that part of
4 it might be Bartlett Lake.

5 Q. And do you know what the United States Census estimate of
6 Hispanic population inside of the operational area of Lake
7 Patrol is? 14:18:10

8 A. No.

9 Q. Would it be useful for you to know that if you're going to
10 compare their non-saturation patrol stops with their saturation 14:18:30
11 patrol stops?

12 A. Not necessarily.

13 Q. So on a daily basis they're working in an area where
14 there's a lower percentage of Hispanic population, and on a
15 saturation patrol area, say they're moved to Mesa where there's 14:18:44
16 a 32, 33 percent, you don't think that information is relevant
17 to an increase to whether or not it is the conduct of the
18 officer that's causing the higher increase in Hispanic
19 pullovers?

20 A. Can I have the question again? 14:19:06

21 Q. You don't think it's relevant for the purpose of this
22 inquiry to know what the Hispanic population is of the normal
23 area of the Lake Patrol's area of operations versus the
24 Hispanic population in the area where a particular saturation
25 patrol has been cited? 14:19:26

1 A. It would be relevant if I had that information for all the
2 officers assigned to saturation patrol, and I could contrast
3 their normal non-saturation patrol beats with their saturation
4 patrol beats, so I could see how the officers were moved in
5 from areas where -- from areas where their usual duties give
6 them a less heavily Spanish community. Some officers might
7 have been moved in from areas that had a more heavily Hispanic
8 community.

14:19:44

9 And again, the key issue here is not so much the
10 residential makeup of the community, but we've got the two
11 intervening variables that are important in studies of this
12 nature.

14:20:01

13 Q. We have more than just those two intervening variables;
14 that's the point I'm asking you about. There are other
15 intervening variables that you chose not to examine. I'm
16 asking you why you chose -- you -- you told me it's not
17 relevant to know what the Hispanic population is, the normal
18 operation area of the sat -- of the Lake Patrol on a
19 non-saturation patrol day versus it is. Who's to say it's not
20 relevant? You say it's not relevant, but why? Why is it not
21 relevant to know that information?

14:20:12

14:20:32

22 MR. BYRNES: Objection, Your Honor, argumentative.

23 BY MR. LIDDY:

24 Q. Why is it not relevant?

25 I'll withdraw the question.

14:20:56

1 Why did you only choose to examine -- to discern that
2 two variables were relevant and all the other ones that's been
3 exposed to you today are not relevant?

4 A. I had no information on the regular assignments of officers
5 who became active in saturation patrols which would have
6 allowed me to contrast them with a regular beat. 14:21:07

7 And even more importantly, I had no information about
8 the driving population to which they were exposed in their
9 regular beat as compared to the driving population to which
10 they were exposed on saturation patrol days. And so we're back 14:21:26
11 to the denominator problem, and studies of racial profiling
12 have considered this very carefully.

13 Q. So you've just told me that the other variables were not
14 available to you. You did not tell me why they're not relevant
15 to this inquiry. 14:21:43

16 A. The models that I have tested show associations; they show
17 good fit; they show significant impacts. Is it possible there
18 could be other factors? Yes. But those other factors, unless
19 they're distributed in such a way that they create problems for
20 my analysis, which I can't know -- 14:22:09

21 Q. That they show a good fit?

22 A. Yes.

23 Q. What is your statistics to show goodness of fit in your
24 report?

25 A. It's not in the report. 14:22:20

1 MR. LIDDY: I have no further questions, Your Honor.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. BYRNES:

5 Q. Dr. Taylor, can you please return to Exhibit 50. 14:22:50

6 MR. BYRNES: Could we please publish that exhibit?

7 THE COURT: You may.

8 MR. BYRNES: Thank you.

9 THE WITNESS: Okay.

10 BY MR. BYRNES: 14:23:11

11 Q. Mr. Liddy asked you a number of questions concerning the
12 call type fields of this exhibit. Do you recall that?

13 A. Yes.

14 Q. And some of them related to final call type and call type
15 description. Do you recall that? 14:23:27

16 A. Yes.

17 Q. And the records that you reviewed in the CAD database, did
18 you ever see a final call type of key?

19 A. No.

20 Q. What final call types, in addition to 910 which is in
21 Exhibit 50, do you recall? 14:23:37

22 A. Other call types were things like welfare check, abandoned
23 vehicle, there were a range of -- a range of -- a range of
24 codes.

25 Q. Now, I want to be sure I understand. Are the welfare check 14:24:01

1 and abandoned vehicle that you just mentioned, did those
2 incident records also have an initial call type of T?

3 A. Yes.

4 Q. And would those words you just mentioned, welfare check and
5 abandoned vehicle, where -- in what field did those -- that
6 information was -- was it located?

14:24:19

7 A. That would be located right here where you see traffic
8 violations. It would be under the -- right after call type
9 description.

10 Q. Did you exclude incidents with a call type description of
11 welfare check from your analysis?

14:24:33

12 A. Yes.

13 Q. Why did you do that?

14 A. Because that did not represent the type of situation with
15 potential for officer discretion.

14:24:49

16 Q. Did you exclude incidents with a call type description of
17 abandoned vehicle from your analysis?

18 A. Yes.

19 Q. And why did you do that?

20 A. Because there was no way to have a name generated for a
21 name check if the officer's just accounting -- encountering an
22 abandoned vehicle.

14:25:00

23 Q. Do you recall any other call type descriptions
24 corresponding to incidents for which you excluded from your
25 analysis?

14:25:18

1 A. I don't have the complete list, but it included some animal
2 control issues, might have been a boating issue, welfare check,
3 checking on a vacation home, a variety of things.

4 Q. And just to be clear, did you exclude those from your --

5 A. Those were all excluded, yes. The only -- the only ones
6 that I included in my analysis had final call type description
7 traffic violation or traffic stop. 14:25:39

8 Q. Mr. Liddy asked you about how you would handle an incident
9 where there was no driver's license and no identification
10 checked, and you had asked if you could go back to your answer 14:26:01
11 and he did not offer you that opportunity.

12 Why did you not include in your analysis incidents
13 where there was no driver's license and no identification
14 checks?

15 A. If it did not include a name, then I don't have any 14:26:22
16 information on the outcome of interest.

17 Q. Do you have any way to obtain names of the individuals
18 stopped if the names were not in the CAD database or the mobile
19 file you were provided?

20 A. Not that I was aware of. 14:26:40

21 Q. Other than through the name in the census analysis you
22 testified about earlier, did you have any other way to
23 determine the race or ethnicity of the individuals stopped by
24 the MCSO?

25 A. No. 14:26:55

1 Q. Are you aware of another expert in this case who similarly
2 did not consider incidents with no names in the data?

3 A. Yes.

4 Q. Who is that?

5 A. Dr. Camarota.

14:27:08

6 Q. Why did you not include the incident whose incident history
7 is at Exhibit 50 in your analysis?

8 A. Because there's no -- no name in the comment section.

9 Q. Does the notation that the disposition is 7 have any
10 bearing on whether you included -- decided to include the
11 incident in your analysis or not?

14:27:30

12 A. No.

13 Q. Dr. Taylor, do you have an understanding of from where the
14 plaintiffs obtained the CAD data?

15 A. Yes, I understood it was provided by the Maricopa County
16 Sheriff's Office.

14:27:49

17 Q. Do you have any understanding regarding whether you
18 received from plaintiffs' attorneys all of the data that the
19 plaintiff itself had received from the Sheriff's Office?

20 A. I'm sorry, I don't get the question.

14:28:07

21 Q. I'll rephrase it. Do you have any understanding of whether
22 you received everything that the plaintiffs had been provided
23 by defendants?

24 A. Yes, my -- my understanding is that the data that I
25 received was the data that counsel for plaintiffs had received.

14:28:22

1 Q. I'd like to ask you to turn to Exhibit 399. Actually,
2 before you -- before you turn there, let me ask a question.

3 I believe you testified under cross-examination about
4 analyses concerning the likelihood that Hispanics would be
5 cited after having been stopped in a traffic stop or traffic
6 violation, is that correct? 14:28:56

7 A. Yes.

8 Q. What analysis did you conduct to make that determination?

9 A. I conducted a correlation analysis for linking those two
10 variables, and then assessed the statistical -- the direction
11 and statistical significance of that correlation. 14:29:14

12 Q. Do you recall specifically how -- how the mag -- strike
13 that. Do you recall how large the differential was in terms of
14 probability receiving a citation for a Hispanic -- an incident
15 where a Hispanic name was checked versus one where it hadn't? 14:29:42

16 A. I don't recall that specifically.

17 Q. You were asked about the impact of the socioeconomic status
18 with regard to your analysis.

19 Are you aware of any empirical basis for the
20 proposition that because Hispanics are, on average, of lower
21 socioeconomic status, they're more likely to drive vehicles
22 that are out of compliance with vehicle codes? 14:30:03

23 A. I am not aware of any data supporting that.

24 Q. In your testimony concerning the probability threshold that
25 a surname is Hispanic, you identify a number of probability 14:30:27

1 thresholds. Why did you determine that looking at data as a
2 90 percent probability threshold was sufficient?

3 A. Well, generally when one's doing research, one wants to
4 sort of check the robustness of one's results and be sure that
5 one's results are not due to just one particular way of coding 14:30:56
6 the outcome. So you explore alternate approaches, and in the
7 research in this area the threshold mentioned ranged from
8 60 percent to 90 percent. So that's why I used thresholds in
9 that range.

10 THE COURT: Can I stop you? 14:31:18

11 Gary, would you read back Mr. Byrnes' question again,
12 please.

13 THE COURT: All right. I don't think you answered the
14 question. You provided me why you looked at a range. But I
15 understood Mr. Byrnes to be asking specifically about the 14:31:56
16 90 percent threshold.

17 THE WITNESS: Right. The 90 percent threshold was
18 specifically mentioned by census researchers as an example of
19 the heavily Hispanic threshold.

20 BY MR. BYRNES: 14:32:15

21 Q. Now the question I intended to ask next: Why did you stop
22 there? Why didn't you look at other probability thresholds
23 besides the 90 percent?

24 A. To be sure that -- the field has also used cutoffs. You
25 have to have a minimum probability of 60 percent or 70 or 75. 14:32:34

1 Most of the research appears to use minimum thresholds between
2 about 70 to 80 percent. So I chose 90 because it's
3 specifically mentioned by census researchers as an example of
4 heavily Hispanic, I go down to 80 and 70 percent because that's
5 what's widely used in the research, and then I did also
6 probably mention a 60 percent threshold, so I included that.
7 It's a type of robustness analysis.

14:32:53

8 Q. Could using a 90 percent probability threshold mean that
9 the name of someone who has self-identified as Hispanic would
10 in fact be counted as non-Hispanic?

14:33:09

11 THE COURT: Would you restate that question? I'm not
12 sure I followed it.

13 MR. BYRNES: Sure.

14 BY MR. BYRNES:

15 Q. In the context where you're using the 90 percent threshold,
16 is it possible that someone who self-identifies as Hispanic
17 would be counted as non-Hispanic?

14:33:18

18 A. So somebody is self-identifying as Hispanic in the census,
19 and then -- because there are -- you know, if it's a 90 percent
20 threshold it means that 10 percent of the people don't, you
21 know, aren't -- aren't Hispanic in the U.S. population with
22 that surname.

14:33:46

23 Q. I believe I'm talking about the converse. So could using
24 that threshold mean that someone who self-identifies as
25 Hispanic would be counted as non-Hispanic in your analysis

14:34:11

1 under the 90 percent probability threshold?

2 A. So they've got a name that the census data tells us
3 90 percent or more of the people with this name self-identify
4 as Hispanic, and so we know somebody self-identifies as
5 Hispanic, and you're saying --

14:34:30

6 Q. Are there circumstances -- let me rephrase it.

7 Are there circumstances under which someone who
8 identifies as Hispanic would be counted as non-Hispanic, in
9 your analysis?

10 A. Yes, it's possible.

14:34:45

11 Q. And under what circumstances would that be?

12 A. Well, there are issues of undercounting and over counting
13 with this methodology. So somebody, for example, might
14 self-identify -- might not self-identify as Hispanic, but has
15 that name because, for example, they might have married someone
16 and taken their -- taken their surname.

14:35:04

17 THE COURT: Well, let me -- let me follow up on this
18 because I want to make sure I understand it.

19 You identified, I think, Rodriguez as a name in the
20 90 percent threshold.

14:35:17

21 THE WITNESS: Yes.

22 THE COURT: Is that correct?

23 THE WITNESS: Yes.

24 THE COURT: In your study, all of the Rodriguezes are
25 going to appear in the category that you've designated as the

14:35:23

1 90 percent threshold, right?

2 THE WITNESS: Yes.

3 THE COURT: They're not going to be not counted as
4 Hispanics because they're going to be in the 90 percent
5 threshold, isn't that correct?

14:35:34

6 THE WITNESS: Yes.

7 THE COURT: So I think the answer to question that
8 Mr. Byrnes just asked you is, they're going to appear in the
9 90 percent threshold. That is not going to either count them
10 as Hispanic or non-Hispanic, but it is going to include them in
11 the 90 percent threshold which presumes that there is a high
12 Hispanic correlation, does it not?

14:35:48

13 THE WITNESS: Yes.

14 THE COURT: All right. So have I under -- have I
15 stated correctly your testimony?

14:36:00

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 THE WITNESS: Thank you.

19 BY MR. BYRNES:

20 Q. Dr. Taylor, I'd like to have you turn your attention to
21 page 36 of Exhibit 398. That's your initial report. And
22 Mr. Liddy directed your attention -- if you could.

14:36:06

23 Mr. Liddy directed your attention to a sentence that
24 reads, by way of comparison, approximately 31.8 percent of the
25 population of Maricopa County identifies as Hispanic according

14:36:37

1 to the most reason data from the United States Census.

2 Do you recall that --

3 A. Yes.

4 Q. -- discussion?

5 And you read the preceding sentence -- preceding
6 sentence, the first of the two sentences in that -- in that
7 paragraph. Why did you state in your initial report by way
8 of -- why did you include the percentage of the population of
9 Maricopa County that identified itself as Hispanic in your
10 report?

14:36:48

14:37:19

11 A. Just to provide a little bit of descriptive context.

12 Q. Is there information in your report besides the sentence
13 that you read earlier that would be required to fully
14 understand the extent, if any, of your reliance on the
15 statement concerning the percentage of Hispanics in the
16 Maricopa County population?

14:37:38

17 A. No.

18 Q. Did you rely in any way on the percentage of the population
19 in Maricopa County that identifies itself as Hispanic?

20 A. No.

14:37:55

21 MR. BYRNES: I have no further questions.

22 THE COURT: All right. Next witness.

23 You can step down, Dr. Taylor. Thank you.

24 THE WITNESS: Thank you, Your Honor.

25 (Pause in proceedings.)

14:38:42

1 THE COURT: Do you want to tell us who the next
2 witness is?

3 MS. RAMIREZ: Your Honor, the plaintiff calls David
4 Vasquez as its next witness.

5 THE COURT: Thank you. 14:38:51

6 THE CLERK: Can you please state and spell your full
7 name.

8 MR. VASQUEZ: Victor, V-i-c-t-o-r; David, D-a-v-i-d;
9 Vasquez, V a-s-q-u-e-z.

10 THE CLERK: Thank you. Please raise your right hand. 14:39:05

11 (David Victor Vasquez was duly sworn as a witness.)

12 THE CLERK: Thank you. Can you please take our
13 witness stand.

14 VICTOR DAVID VASQUEZ,

15 called as a witness herein, having been duly sworn, was 14:39:17

16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. RAMIREZ:

19 Q. Good afternoon, Mr. Vasquez.

20 A. Good afternoon. 14:39:40

21 Q. Would you tell us where you live.

22 A. I live in Mesa, Arizona.

23 Q. How long have you lived there?

24 A. Seven years.

25 Q. How old are you? 14:39:46

1 A. I'm 47 years old.

2 Q. What is your occupation?

3 A. I'm an information technology specialist.

4 Q. And who is your employer?

5 A. Medicis Pharmaceuticals.

14:39:55

6 Q. What is your educational background?

7 A. I have about two years of college, two years more to go
8 before I get my bachelor's.

9 Q. Are you married?

10 A. Yes, I am.

14:40:05

11 Q. For how long?

12 A. Seven years.

13 Q. Any children?

14 A. Yes, we have two.

15 Q. I'd like to turn now -- oh, one more question: What is
16 your ethnicity?

14:40:11

17 A. I am Mexican American.

18 Q. I'd like to turn now to the events of June 26th, 2008?

19 A. All right.

20 Q. Were you stopped by the Maricopa County Sheriff's Office on
21 June 26th, 2008?

14:40:23

22 A. Yes, I was.

23 Q. Where did your trip begin?

24 A. From our apartment in Mesa.

25 Q. Were you alone?

14:40:34

1 A. No, I was with my wife at the time.

2 Q. And what race or ethnicity is your wife?

3 A. She is Native American and Spanish.

4 Q. What kind of car were you driving?

5 A. I was driving a Mitsubishi Lancer, the year is 2003.

14:40:44

6 Q. Where were you heading?

7 A. We were going to dinner at a local restaurant.

8 Q. Approximately what time was it?

9 A. Probably say maybe seven, seven-thirtyish.

10 Q. Was it dark?

14:41:02

11 A. No, it was still light outside.

12 Q. Were you driving with your windows up or down?

13 A. They were down at the time.

14 Q. Were you aware that the Sheriff's Office was conducting

15 immigration patrols in the area that day?

14:41:13

16 A. Yes, I was. I read about it in the newspaper.

17 Q. When did you first notice the MCSO's patrol car?

18 A. We were traveling, I believe southbound on Gilbert towards

19 Broadway, and we were turning left to go west -- east on

20 Broadway, sorry. And they were in the inner left-hand turn

14:41:33

21 lane and I was in the outer left-hand turn lane.

22 Q. And where was the patrol car in relation to where you were?

23 A. I'd probably say about half a car length in back of me.

24 Q. And was it in the lane next to you?

25 A. Yes.

14:41:53

1 Q. What kind of car was the sheriff's car?

2 A. An SUV type vehicle.

3 Q. Was it marked?

4 A. Yes.

5 Q. Did you notice anything else about it?

14:42:02

6 A. It had very dark-tinted windows.

7 Q. How far did you travel from the intersection before you
8 were stopped?

9 A. When we turned left, I'd probably say we were going east on
10 Broadway, probably say maybe a mile.

14:42:17

11 Q. Had you been driving the speed limit?

12 A. Yes.

13 Q. Had you obeyed all the traffic signals?

14 A. Yes.

15 Q. What happened after you were pulled over?

14:42:24

16 A. Two deputies approached my car, one from the driver's side
17 and one from the passenger side, and the deputy that approached
18 my side asked, the first question that he asked was: Do I
19 speak English?

20 Q. And what happened after that?

14:42:42

21 A. They then asked -- I replied yes, and he asked for my
22 driver's license, registration, and proof of insurance.

23 Q. Did you provide that?

24 A. Yes, I did.

25 Q. What happened next?

14:42:53

1 A. They went back to their vehicle, and I'd say maybe five or
2 ten minutes later he came back and handed me my paperwork and
3 stated the reason he pulled me over was a crack in my
4 windshield.

5 Q. Were you cited?

14:43:11

6 A. No.

7 Q. I have what's been entered into evidence as Exhibit 54.

8 MS. RAMIREZ: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 BY MS. RAMIREZ:

14:43:34

11 Q. This is the CAD incident history for MA 08115843. This is
12 a document generated by MCSO's computer dispatch system.

13 Do you see the second line in the comment section
14 about halfway down the page where it says @217VPC?

15 A. Yes, I do.

14:43:57

16 Q. Is that the license plate number of the vehicle you were
17 driving the evening you were stopped?

18 A. Yes, it is.

19 Q. And then a couple of lines down from that it says Vasquez
20 dot Victor dot V. Is that your name?

14:44:10

21 A. Yes, it is.

22 Q. Next to that it says 10281964. Is that your date of birth?

23 A. Yes, it is.

24 Q. I'd like you to go back to the line that contains your
25 vehicle license number. What is the name that appears next to

14:44:23

1 it?

2 A. Ratcliffe, Matthew L.

3 Q. Aside from the deputy asking you if you spoke English, was
4 there anything unusual about the stop?

5 A. I just found it kind of funny that he asked me that
6 question, 'cause I felt like I was being singled out. I've
7 never had that question asked me before in any traffic stop.

14:44:36

8 Q. What did you do after the deputy let you go?

9 A. We proceeded to go to dinner. And as we were driving to
10 dinner I proceeded to tell my wife: I believe I was pulled
11 over for driving while brown.

14:45:10

12 Q. And what did the deputy do to make you believe that?

13 A. It's not so much what he did; it's he said he pulled me
14 over for a cracked windshield, when the crack in the windshield
15 doesn't impair my visibility. And I -- I just found it -- at
16 the angle that the car he was in and the angle we were at the
17 traffic stop, how did he see it?

14:45:27

18 MS. RAMIREZ: Thank you very much.

19 THE WITNESS: You're welcome.

20 THE COURT: Cross-examination.

14:45:49

21 CROSS-EXAMINATION

22 BY MR. LIDDY:

23 Q. Good afternoon, sir.

24 A. Good afternoon.

25 Q. Thank you for joining us this afternoon.

14:46:02

1 A. You're welcome.

2 Q. Was this experience on June 26, 2008, an upsetting
3 experience for you?

4 A. I would say so, upsetting as just being like profiled.

5 Q. Did you feel at the time that you realized you were being
6 pulled over that you were being profiled, or did that thought
7 occur to you later on in the day?

8 A. It occurred to me as we were leaving the traffic stop.

14:46:23

9 Q. And was -- was it more upsetting after it occurred to you
10 that you may have been racially profiled than it was to be
11 initially stopped?

14:46:41

12 A. Yes.

13 Q. And did you discuss the idea that you thought you were
14 racially profiled with your wife?

15 A. Yes, I did.

14:46:54

16 Q. Did you write a letter to the Maricopa County Sheriff's
17 Office complaining because you felt that you were racially
18 profiled?

19 A. No, I did not.

20 Q. This incident occurred in Gilbert, Arizona?

14:47:12

21 A. No, it occurred in Mesa, Arizona.

22 Q. Did you write the Mesa Police Department complaining about
23 the way you were treated?

24 A. No, I did not.

25 Q. Did you write the FBI complaining about racial profiling?

14:47:23

1 A. No, I did not.

2 Q. Did you write to the Department of Justice?

3 A. No.

4 Q. Are you aware that the Department of Justice has -- has a
5 Civil Rights Division?

14:47:39

6 A. No, I did not know that.

7 Q. You did not know that at the time, or you do not know that
8 now?

9 A. I did not know that now.

10 Q. Have you had any contact since June 26, 2008, and your
11 appearance today with the Department of Justice, Civil Rights
12 Division?

14:47:50

13 A. No.

14 Q. Did you write a letter to the American Civil Liberties
15 Union?

14:48:05

16 A. No, I did not.

17 Q. How did the ACLU learn that you believed you were racially
18 profiled?

19 A. I believe they filmed the traffic stop.

20 Q. And then they contacted you?

14:48:16

21 A. Yes.

22 Q. How long after the traffic stop were you contacted by the
23 ACLU?

24 A. My best guesstimate was probably two to three months.

25 Q. How did you learn that the Maricopa County Sheriff's Office

14:48:32

1 was conducting a crime saturation patrol in Mesa on June 26th,
2 2008?

3 A. I read about it in the newspaper.

4 Q. How long after you were pulled over did you read it in the
5 newspaper?

14:48:53

6 A. As a matter of fact, it was that week.

7 Q. Did you file a notice of claim with Maricopa County
8 complaining about --

9 A. I'm sorry, can you repeat? What kind of claim?

10 Q. Yeah.

14:49:12

11 A. Okay.

12 Q. Did you file a notice of claim to Maricopa County to warn
13 them that you might file a suit against Maricopa County because
14 you believed you were racially profiled?

15 A. No, I did not.

14:49:25

16 Q. Did you ask the name of the officer during the traffic
17 stop?

18 A. No.

19 Q. Did you ask for the officer's badge number?

20 A. No.

14:49:41

21 Q. Do you recall now whether the officer was a man or a woman?

22 A. It was a male.

23 Q. And there were two deputies during that stop: one on your
24 side and one on the other side. Did I remember that correctly?

25 A. Yes.

14:50:02

1 Q. Were they both males?

2 A. Yes.

3 Q. Do you recall approximately how tall that male who was on
4 your side was?

5 A. No.

14:50:11

6 Q. Would you feel confident to estimate his weight?

7 A. I'd probably say average weight, 150, 160.

8 Q. How many other times have you been pulled over by Maricopa
9 County Sheriff's Office deputies --

10 A. None.

14:50:34

11 Q. -- since June 26th, 2008?

12 A. Never.

13 Q. How long did the traffic stop take?

14 A. My es -- my estimate is about 10 minutes.

15 Q. Counsel just asked you --

14:50:50

16 MR. LIDDY: Excuse me, Your Honor?

17 THE COURT: Would you restate the name of this
18 exhibit, please, just for the record?

19 MR. LIDDY: Exhibit --

20 MS. RAMIREZ: It's Plaintiffs' Exhibit 54.

14:51:18

21 MR. LIDDY: Plaintiffs' Exhibit 54, Your Honor.

22 BY MR. LIDDY:

23 Q. Sir, can you see this exhibit on your monitor?

24 A. No, I can't.

25 MR. LIDDY: Your Honor, may I ask it be published to

14:51:33

1 the witness?

2 THE COURT: Yes.

3 BY MR. LIDDY:

4 Q. May I ask you to look on the left-hand side about halfway
5 down below the bold line. I'm going to go ahead and mark it
6 here. Right here. Do you see that line?

14:51:54

7 A. Yes.

8 Q. And above that line would you read with me, it says
9 6/26/200. Do you see that?

10 A. Yes, I do.

14:52:12

11 Q. And to the right of that it says 6:40:17.

12 Do you see that?

13 A. Yes.

14 Q. Do you recall the time of the day that you were pulled
15 over?

14:52:23

16 A. I believe I stated it was around 7:00 or 7:30.

17 Q. Definitely late in the afternoon or early evening?

18 A. Yes.

19 Q. Could it have been at 6:40 in the afternoon?

20 A. That's more evening, but yes.

14:52:39

21 Q. Okay. And if you would, excuse me, go all the way down to
22 the bottom of the exhibit, right here. Do you see that?

23 A. Yes.

24 Q. Appears to be a time stamp there, a time entry, and that
25 second field, 6:44 and 31 seconds?

14:53:00

1 A. Yes.

2 Q. Would you agree with me that that's approximately four
3 minutes and 20 seconds?

4 A. Yes.

5 Q. It would be your recollection that the traffic stop took a 14:53:14
6 little bit longer than that?

7 A. My best guesstimate was 10 minutes.

8 MR. LIDDY: I have no further questions, Your Honor.

9 THE COURT: Thank you.

10 Redirect? 14:53:28

11 MS. RAMIREZ: I have nothing further, Your Honor.

12 THE COURT: All right. Next witness.

13 Thank you, Mr. Vasquez, you can step down.

14 MR. BYRNES: Your Honor, we are locating our witness,
15 who was waiting outside the courtroom. 14:54:12

16 THE COURT: Okay. Do you want to take an afternoon
17 break now?

18 MR. BYRNES: Sure, Your Honor. Thank you very much.

19 THE COURT: All right. We'll take the afternoon
20 break. We will resume at 10 minutes after 3:00. 14:54:20

21 (Recess taken.)

22 THE COURT: Thank you. Please be seated.

23 I promised the parties that I would keep them apprised
24 of my time allocations, and I'm sure you've got somebody else
25 tracking this to check me. Defendants have taken two hours and 15:11:46

1 23 minutes of their time. Plaintiffs have taken one hour and
2 56 minutes. If you've got any major gripes with that, think
3 I've made a substantial error, let me know.

4 Call your next witness, please.

5 MS. GALLAGHER: Plaintiffs call David Rodriguez. 15:12:10

6 THE COURT: Mr. Rodriguez, please come forward to be
7 sworn in.

8 MR. CASEY: Your Honor, we've invoked Rule 615,
9 exclusion of witnesses. If I remember correctly, I recognize
10 his wife is still in the courtroom, who is a witness. 15:12:23

11 THE COURT: Ms. Rodriguez and any other witnesses who
12 may be called to testify in this matter must leave the
13 courtroom.

14 MS. GALLAGHER: Your Honor, Ms. Rodriguez is a named
15 plaintiff in the case as well, and I believe named parties -- 15:12:34

16 MR. CASEY: I apologize.

17 MS. GALLAGHER: -- are an exception to the rule.

18 THE COURT: That's correct.

19 Ms. Rodriguez, you may stay.

20 MR. CASEY: I apologize. 15:12:45

21 THE COURT: That's all right.

22 THE CLERK: Can you please state and spell your full
23 name.

24 THE WITNESS: David Rodriguez. D-a-v-d-i-d;
25 R-o-d-r-i-g-u-e-z. 09:12:28

1 THE CLERK: Please raise your right hand.

2 (David Rodriguez was duly sworn as a witness.)

3 THE CLERK: Thank you. Please take our witness stand
4 stand.

5 THE COURT: Please.

15:13:30

6 DAVID RODRIGUEZ,
7 called as a witness herein, having been duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. GALLAGHER:

11 Q. Good afternoon, David. Where do you live?

12 A. In west Phoenix.

13 Q. And how long have you lived in west Phoenix?

14 A. I've been here since 1994.

15 Q. And who do you live with?

16 A. My wife and my two kids.

17 Q. And what is your occupation?

18 A. I'm a heavy equipment mechanic.

19 Q. Do you currently have any plans to leave Maricopa County or
20 west Phoenix?

21 A. No.

22 Q. And David, what is your ethnicity?

23 A. Hispanic.

24 Q. I want to talk about December 2nd, 2007. Did you have an
25 encounter with Maricopa County Sheriff's Office deputies on

15:13:47

15:13:59

15:14:10

1 December 2nd, 2007?

2 A. Yes, I did.

3 Q. Can you tell me what you were doing that day?

4 A. We went out four-wheel driving on my truck.

5 Q. When you say "we," can you tell me who you're referring to? 15:14:22

6 A. My wife and my two kids.

7 Q. And where was it that you were four-wheel driving?

8 A. Towards Bartlett Lake.

9 Q. And you mentioned you were in a truck. What kind of
10 vehicle was that? 15:14:35

11 A. A Chevy crew cab, four-wheel drive.

12 Q. Can you tell me what route you had taken into the area that
13 day?

14 A. When we first got up there, that road you have to take, it
15 T's off and you go down towards the lake. And as soon as I got 15:14:51
16 on that road you can take off through the desert, and I
17 started -- I took off, I started driving through the desert.

18 We were going down the trail for a few -- it was
19 probably about good maybe quarter mile down the trail, and we
20 came across a Yamaha expo that had some demonstrations with 15:15:13
21 some Rhinos that they were -- had some people riding. We
22 stayed there for a bit, watched that, and we got back in my
23 truck and started going down the trail. And we ended up on the
24 road.

25 Q. When you say that road, do you know what road that was? Do 15:15:32

1 you recall the name of it?

2 A. It's Bartlett, Bartlett Lake, Bartlett Lake Road, something
3 like that.

4 Q. The road that leads into Bartlett Lake?

5 A. Yes. 15:15:45

6 Q. Were there any other vehicles with you?

7 A. Not -- not -- there was vehicles everywhere out there;
8 there was a lot of them.

9 Q. Was there a point in time when you reentered the road that
10 you had entered the area on? 15:15:59

11 A. Yes, I did.

12 Q. And can you explain to me the circumstances of that?

13 A. Once I got onto the road I just saw -- started going down
14 towards the lake, and just went the -- went down the road for a
15 while, and I came across a -- a Road Damaged sign that was on 15:16:13
16 the right-hand side of the road, and maybe about a quarter mile
17 after that there was a long wash.

18 And when I -- when we hit the wash there was debris on
19 the road, and at the other end of the wash I noticed there was
20 a -- a sheriff -- a sheriff truck. There was two vehicles, one 15:16:33
21 was marked and the other one wasn't marked.

22 Q. Let me step back and ask you a couple questions about when
23 you entered the road. Do you recall where that was that you
24 reentered the road in relation to where you had exited the road
25 earlier that day? 15:16:48

1 A. It's -- it was further down the road.

2 Q. And when you reentered the road, what was the condition of
3 the road?

4 A. It was fine at that time.

5 Q. So at some point you entered a wash area, and what happened 15:16:58
6 at that point?

7 A. That's when I seen -- seen the MCSO, and I went ahead and
8 started turning around. And that's when I also noticed there
9 was a motorcycle behind me, and he also turned around. When
10 we -- I turned around and started getting out, that's when we 15:17:19
11 got stopped.

12 Q. When you say we got stopped you're referring to --

13 A. I -- both I and the motorcycle got stopped.

14 Q. And were you stopped by the same vehicle?

15 A. No, two different vehicles. 15:17:32

16 Q. And what happened after you were stopped?

17 A. Once we were stopped, the officer came to me and he asked
18 me if I seen the Road Closed sign, and I replied to him no, I
19 didn't. I seen the Road Damaged sign that was up on the road a
20 bit. 15:17:51

21 And then he asked me for my -- my -- my driver's
22 license, registration, proof of insurance, and my Social
23 Security card. And I gave him what I had, which was my
24 driver's license, registration, Social Security card, which --
25 not my Social Security card, my proof of insurance. I told him 15:18:07

1 I don't carry my Social Security card with me.

2 Q. Do you recall the name of the officer that stopped you that
3 day?

4 A. His name is Ratcliffe.

5 Q. And so once he collected the items you mentioned, your
6 license, registration and insurance from you, what happened
7 after that?

15:18:20

8 A. He went back to his -- to his truck. And just sitting in
9 there watching, and seen the other officer in front of us with
10 the motorcycle, they were exchanging words. And at that time
11 four more other vehicles came down the road, and the
12 officer also flagged them down, stopped them, flagged them
13 down, so they pulled over to the side.

15:18:40

14 Q. The officer that had stopped you or the officer that had
15 stopped the motorcycle?

15:18:57

16 A. That stopped the motorcycle.

17 And then at that time the other -- the other
18 officer that I was talking to, he came back to my truck and he
19 asked me for my Social Security number, and I -- I replied
20 back, What do you need it for? I have my -- all my
21 information's on my driver's license. That should be more than
22 enough. You have all my info on my driver's license.

15:19:16

23 Q. And did he respond to your question?

24 A. After that he did, he said he needed it, and I told him you
25 have all my information off my driver's license, that should be

15:19:35

1 more than enough. He said you need a Social Security number to
2 get a driver's license here.

3 And I had also asked him if I could get a warning,
4 'cause I had already seen the motorcycle leave. And at that
5 time he kind of -- he replied to me, he replied to me if -- if
6 he -- let me take a step back. 15:19:55

7 When he -- when I asked him to take -- if I can get
8 a -- a warning like the other one, he -- he said, Why? I don't
9 know what the other officer's doing. You know, that's not my
10 concern. You're my concern. 15:20:24

11 And I said, Well, how do I know if I -- if they're not
12 going to be cited. I said, well, I can see in front of me the
13 other officer doesn't have a citation book. So then he went
14 about -- at that time, too, the red car had already gone by.

15 Q. When you say the red car, can you explain to me what --
16 what vehicle that was and what occurred? 15:20:47

17 A. The other four vehicles that were stopped, the first one
18 was a red one. It drove off. And I had also told him, Look,
19 the other vehicle left. I said, Can I get a warning? And
20 he -- he pretty much -- he, you know, told me, Do you think the
21 law doesn't pertain to you? Do you think you're above the law?
22 I said: No. I would like to see if I could get a warning like
23 these other people. 15:21:05

24 And at that time my wife had mentioned seems like
25 selective enforcement, and he looked around -- he looked at her 15:21:28

1 and said, What did you say, ma'am? And she repeated again what
2 she said. And at that time my daughter that was sitting in the
3 back, she even said, dad, what's going on? What's going to
4 happen?

5 And I -- I myself just made a decision. I gave him my
6 Social Security number and I asked him if I could sign the
7 citation for I can leave, because I knew I wasn't gonna get out
8 of it, and after that I signed it and he said we can go.

15:21:46

9 Q. Okay. And after he said you could go, did you immediately
10 leave the area?

15:22:06

11 A. No, we -- I stayed there for a bit and I kind of soaked
12 everything that had just happened, and he got on his loud -- on
13 his loudspeaker and told us to leave the area, to go ahead and
14 go, so --

15 Q. Did you leave at that point?

15:22:23

16 A. Yes. We started going, I started going and driving out.
17 And he followed me pretty much really close to my truck all the
18 way out, which was about two and a half miles to three miles
19 out. And on the way back, that's when I came across the -- the
20 Road Closed sign. Once I passed that I pulled over to the --
21 to the right and I waited there for a minute, and he passed me
22 up and stopped.

15:22:44

23 Q. Had you seen that Road Closed sign that you stopped at
24 prior to that point in the day?

25 A. No, I did not.

15:22:59

1 Q. And why did you stop after he pulled around the Road Closed
2 sign?

3 A. I wanted to see if I could get ahold of the other people,
4 see if they were cited, too.

5 Q. And when you're referring to the other people, who are you 15:23:11
6 referring to?

7 A. The other vehicles that were -- that were stopped.

8 Q. So just so we're clear on the record, at the time that you
9 were being stopped, you also saw a motorcycle being stopped and
10 four other vehicles stopped, correct? 15:23:26

11 A. Yes.

12 Q. And at the time that you left after receiving your
13 citation, were any of those vehicles still in the area?

14 A. Yeah, there were cars that were -- that the other
15 officer had. 15:23:40

16 Q. So you stopped at the outside to see if you could speak
17 with them?

18 A. Yes.

19 Q. And were you able to speak with those other drivers?

20 A. Yes, we were. 15:23:48

21 Q. Are you aware if any of the other drivers were cited?

22 A. Yes. None of them were cited. I was the only one that was
23 cited.

24 Q. And are you aware if any of other drivers or any of the
25 other individuals were Hispanic? 15:24:02

1 A. No, they were all Caucasian.

2 MS. GALLAGHER: Hand the witness what has been marked
3 as Plaintiffs' Exhibit 51.

4 BY MS. GALLAGHER:

5 Q. David, are you aware of the names of any of the
6 individuals, the other individuals that were stopped that day?

15:24:27

7 A. I recognize Blaine, I talked to him. The last name.

8 Q. When you say you recognize Blaine, you're referring to
9 Exhibit 51 that I handed you?

10 A. Yes.

15:24:48

11 Q. So the name Blaine Woodruff that appears on that exhibit is
12 one of the individuals you spoke with that day?

13 A. Yes.

14 Q. Do you recognize the other names?

15 A. Yes. Well, my wife had talked -- talked with those two
16 other people.

15:24:58

17 MS. GALLAGHER: Your Honor, at this time plaintiff
18 moves to enter Exhibit 51 into evidence.

19 MR. CASEY: No objection, Your Honor.

20 THE COURT: Exhibit 51's admitted.

15:25:10

21 (Exhibit No. 51 is admitted into evidence.)

22 BY MS. GALLAGHER:

23 Q. David, do you believe you were treated different than the
24 other individuals that you saw stopped on December 2nd, 2007?

25 A. Yes, I do.

15:25:28

1 Q. And why is that?

2 A. Because I'm Hispanic.

3 MS. GALLAGHER: No further questions, Your Honor.

4 THE COURT: Cross-examination?

5 MR. CASEY: Yes, Your Honor. Thank you. 15:25:35

6 CROSS-EXAMINATION

7 BY MR. CASEY:

8 Q. Good afternoon, Mr. Rodriguez. How are you?

9 A. Good.

10 Q. I don't know if you will remember me, but you and I met 15:25:41
11 almost three years ago when I took your deposition in October
12 of 2009. Do you happen to remember that by any chance?

13 A. Yes.

14 Q. All right.

15 A. It has been some time. 15:25:55

16 Q. It has been. So sorry to meet you here under these
17 circumstances. I have a few questions I want to talk to you
18 about. They're going to be very similar to what your lawyer
19 has asked you about, but perhaps I need to cover some areas a
20 little differently, so if you would bear with me, be patient, I 15:26:10
21 would appreciate it. Okay?

22 A. Okay.

23 Q. Just like at your deposition, you see we have a court
24 reporter here. See that?

25 A. Yes. 15:26:20

1 Q. Okay. And every now and then if I say, Was that a yes or
2 was that a no? I want you to understand I'm not doing that to
3 badger you or be difficult, I'm -- or to harass you; it's so we
4 have a clear oral verbal word response. Okay?

5 A. Okay.

15:26:33

6 Q. All right. At your deposition there was also a court
7 reporter. You remember that that person took down your
8 testimony, question, answer, question, answer; do you remember
9 that?

10 A. Yes.

15:26:45

11 Q. And before you started to testify, you swore to tell the
12 truth, and you did tell the truth, didn't you?

13 A. Yes.

14 Q. Okay.

15 MR. CASEY: Your Honor, I have the original that your
16 clerk has provided me. I'd like permission to provide the
17 transcript to the witness, please.

15:26:54

18 THE COURT: Yes.

19 MR. CASEY: Thank you.

20 BY MR. CASEY:

15:27:14

21 Q. Mr. Rodriguez, what I've put in front of you is your
22 deposition. Have you seen that before today, that transcript?

23 A. Yes.

24 Q. Okay. And you have actually, after your deposition, had
25 time to review it and make sure that it was taken down

15:27:25

1 accurately, did you not?

2 A. Yes.

3 Q. And that you conveyed the information that you wanted to
4 convey, right?

5 A. Yes.

15:27:35

6 Q. Now, I'd like to now talk to you about the event. This
7 event you've already told us occurred on a Sunday, didn't it?

8 A. Yes.

9 Q. It occurred on December 2nd, 2007, true?

10 A. Yes.

15:27:45

11 Q. And you were driving a Chevy Tahoe, correct?

12 A. Truck.

13 Q. Excuse me, I misspoke. You drove a Chevy truck, right?

14 A. Yes.

15 Q. That Chevy truck was a crew cab, wasn't it?

15:27:54

16 A. Yes.

17 Q. It was a four-by-four?

18 A. Yes.

19 Q. And it had factory windows tinted, didn't it?

20 A. Yes.

15:28:06

21 Q. Your windows were up because it was cold that morning,
22 wasn't it?

23 A. Yes, it was.

24 Q. And sitting shotgun, or passenger right front seat, was
25 your wife, wasn't she?

15:28:13

1 A. Yes.

2 Q. And by the way, at the time your wife was a political
3 assistant, an assistant for Phoenix Mayor Phil Gordon, wasn't
4 she?

5 A. Yes. 15:28:25

6 Q. And you understand working with your wife, being married to
7 her, that over the course of years, two elected officials,
8 Sheriff Joe Arpaio and Mayor Gordon, have had conflicts,
9 haven't they?

10 A. That I don't know. 15:28:38

11 Q. You're aware of it from talking to your wife they've had
12 disagreements, haven't they?

13 A. No.

14 Q. You're not aware of that at all.

15 A. Now I am, after this -- what's been going on. 15:28:44

16 Q. Okay.

17 A. But back then it didn't really matter to me.

18 Q. And you're aware that her boss actually wrote federal
19 representatives using you and your wife as examples of what
20 supposedly is wrong with Sheriff Arpaio and his practices,
21 right? 15:28:58

22 A. Yes.

23 Q. Okay. Now, let's go back to the setting. You have a crew
24 cab.

25 A. Yes. 15:29:07

1 Q. And you have two children in the back, right?

2 A. Yes.

3 Q. And you decided that you were going to go four-wheeling
4 that day?

5 A. Yes.

15:29:14

6 Q. And you actually pulled up into a street on Bartlett Dam
7 Road, and you saw a sign that said "road damaged," didn't you?

8 A. No, it was when I was driving down the road is when I seen
9 the Road Damaged sign.

10 Q. Okay. And thank you for correcting me. You saw the Road
11 Damaged sign?

15:29:25

12 A. Yes, I did.

13 Q. And you chose -- and you drove around it, did you not?

14 A. I did not drive around it; it was on the side of the road.

15 Q. Your intention to go was off-roading, wasn't it?

15:29:36

16 A. Yes, which we did.

17 Q. And you just kept driving, true?

18 A. Yes.

19 Q. Later in the day, you've already told the judge, the
20 honorable court up there, that later in the day when you were
21 going out, you saw a Road Closed sign, didn't you?

15:29:48

22 A. Yes.

23 Q. All right. Now, I'd like to focus you on something a
24 little bit different with the background that we've just gone
25 over, and that's the stop. You ended up being pulled over by

15:29:59

1 an MCSO deputy, did you not?

2 A. Yes.

3 Q. And that deputy was someone that you described as Matthew
4 Ratcliffe, true?

5 A. Yes. 15:30:10

6 Q. At the time of your deposition did you remember the name of
7 the deputy that pulled you over?

8 A. Yes, it's on the citation.

9 Q. Okay. Then you know that -- let me ask you this: Did you
10 know that he was assigned to the MCSO's Lake Patrol Division? 15:30:22

11 A. No.

12 Q. Are you aware that your lawyers and I have stipulated that
13 on that day, December 2nd, 2007, there was no MCSO saturation
14 patrol, large or small, conducted anywhere in Maricopa County
15 that day? 15:30:42

16 A. No, I don't know that.

17 Q. I'm sorry?

18 A. I don't know that.

19 Q. Okay. Thank you.

20 When you were pulled over you were asked for your
21 driver's license, right? 15:30:50

22 A. Yes.

23 Q. You had no problem with that?

24 A. Yeah.

25 Q. You were asked -- also asked for your vehicle registration 15:30:56

1 and you had no problem with that?

2 A. Yes.

3 Q. You were also asked for your proof of insurance, and you
4 had no problem with that, true?

5 A. Yes.

15:31:07

6 Q. And what you told the court here today is that
7 Deputy Ratcliffe asked you for your Social Security card. Is
8 that what your testimony is?

9 A. Yes.

10 Q. Are you certain he asked you for your Social Security card
11 versus Social Security number?

15:31:18

12 A. Pretty sure it was card.

13 Q. Now, I don't know if it's me as a lawyer or me as a human
14 being, but when I hear someone saying "pretty sure," that tells
15 me there might be a chance that you're mistaken.

15:31:35

16 Am I reading that correctly?

17 A. I remember Social Security card.

18 Q. You remember Social Security card. Is it possible that
19 Matthew Ratcliffe, Deputy Ratcliffe, simply asked you for your
20 Social Security number? Is that possible, sir?

15:31:57

21 A. No, 'cause when -- when -- when he stopped, I even asked my
22 wife when he went back, What did he want my card for? I never
23 carried it.

24 Q. Sir, would you turn to page 13 of your transcript, and let
25 me know when you get there.

15:32:29

1 Are you there, sir?

2 A. Yes.

3 Q. Okay. I'm going to look down at the bottom. I'm going to
4 begin reading at line 18, and there was a -- there was a
5 question earlier, and I want to read this. This is your answer 15:32:42
6 beginning at line 18:

7 "And so after that, he -- he just got kind of a little
8 bit going back and forth of conversation, you know, because he
9 wanted, you know -- he had asked me again, because I guess on
10 the form there's a place where you have to put in the Social 15:33:01
11 Security number, and he -- he asked me again for the Social
12 Security number..."

13 Did I read that correctly so far?

14 A. Yeah.

15 Q. And those were your words, were they not? 15:33:16

16 A. Yeah.

17 Q. Now I'm going to continue where you say: "... and I had
18 told him, I said, 'Well, my driver's license should be more
19 than enough,' because you need a Social Security to get a
20 driver's license." Did I read that correctly? 15:33:33

21 A. Yes.

22 Q. Okay. All right. Now, Deputy Ratcliffe in fact told you
23 at the time, in the presence of your wife, that the Social
24 Security number that he wanted was for the use with a citation,
25 wasn't it? 15:33:50

1 A. After -- after he kept asking me for it, and I told him all
2 my -- my driver's license has all the information.

3 Q. Sir, he -- and I appreciate it, and I'm probably not being
4 precise enough. You knew from Deputy Ratcliffe that he wanted
5 your Social Security number in order to fill out the citation
6 form, true? 15:34:12

7 A. At the time I didn't know.

8 Q. You did not know.

9 A. No.

10 Q. All right. Would you turn to -- again, this is the same
11 part that we were reading here, and then I'm going to show
12 another page. Okay? 15:34:22

13 Page 13. And again, just we look at lines 20 through
14 23: "... he had asked me again, because I guess on the form
15 there's a place where you have to put in the Social Security
16 number, and he -- he asked me again for the Social Security
17 number, and I told him ..." It goes on. 15:34:42

18 I've read that correctly, right?

19 A. Yes.

20 Q. Now, let's go to page 27 real quick. 15:34:53

21 And I'm sorry, sir, I didn't write down the specific
22 line, so I'm going to move on here.

23 Sir, what I'm going to show you is Plaintiffs'
24 Exhibit 65, a particular page out of it.

25 MR. CASEY: And if I could ask Madam Clerk, please, if 15:35:33

1 I can use the ELMO.

2 BY MR. CASEY:

3 Q. You've seen this form before, this type of form, have you
4 not?

5 A. That's the citation. 15:35:52

6 Q. Yes. In fact, that's how you remembered Deputy Ratcliffe's
7 name because the -- his name was on this type form, wasn't it?

8 A. Yes.

9 Q. And you see here where it says Complaint?

10 A. Yes. 15:36:07

11 Q. And then do you see where it says License Number?

12 A. Yes.

13 Q. And then you see here where it says SSN? You see that?

14 A. Yes.

15 Q. What do you understand SSN to mean? 15:36:16

16 A. Social Security number.

17 Q. Okay. And I want to come back to see if that's refreshed
18 your recollection.

19 Isn't it true, sir, that Deputy Ratcliffe told you
20 that the only reason he wanted your Social Security number was 15:36:29
21 for a form of identification to put in the citation? Is that
22 true or false?

23 A. No. It wasn't until the end when I told him, What do you
24 need it for, and he -- he showed the clipboard and I seen it,
25 so that's when I gave it to him. 15:36:47

1 Q. Okay. And I appreciate, I hear what you're saying.
2 Eventually, you learned that's what it was for, wasn't it?

3 A. Yes.

4 Q. Okay. Sir -- excuse me. That was -- that was a false
5 start.

15:37:08

6 You asked Deputy Ratcliffe if you could get -- when
7 he -- when you learned -- let me strike that.

8 When you learned he was going to issue you a citation,
9 you asked Deputy Ratcliffe if you could, instead of getting a
10 citation, simply get a warning, did you not?

15:37:26

11 A. Yes.

12 Q. And one of the reasons why you asked him if you could have
13 a warning was you were very concerned that there might be some
14 possible effect of that -- that citation on your commercial
15 driver's license, your CDL, right?

15:37:41

16 A. Yes.

17 Q. And that's when you talked to and asked questions of
18 Deputy Ratcliffe about that, didn't you?

19 A. No.

20 Q. You -- you didn't ask him anything about the effect of a
21 citation on your CDL?

15:37:50

22 A. No, I don't remember having a conversation with him about
23 that.

24 Q. All right. Now, again as a lawyer, as a human being, which
25 one I'm not sure, let me ask you, I hear someone say, "I don't

15:38:02

1 remember," is it possible that you asked him questions about
2 the CDL?

3 A. No.

4 Q. Okay. All right. Thank you, sir.

5 Now, at about the time you were asking him for a -- a 15:38:14
6 warning instead of a citation, your wife, who is sitting
7 shotgun next to you, yelled, did she not, at dep -- at the
8 deputy?

9 A. She didn't yell.

10 Q. She did accuse him of racial profiling, didn't she? 15:38:29

11 A. She said, It -- it sounds to me like you're doing selective
12 enforcement.

13 Q. And you know what that meant from your wife, did you not?

14 A. Yes, I know what it means.

15 Q. That that meant, You are doing this because we are 15:38:47
16 Hispanic. Isn't that what she meant?

17 A. Yes.

18 Q. Okay. And that's exactly what you understood the deputy
19 took your wife's comment to mean, true?

20 A. I can't speak for him. 15:39:00

21 Q. No, I understand that. I'm not asking you to speak for
22 anybody but yourself.

23 Your impression, I mean, you heard your wife say that
24 to the deputy and you saw his reaction, and he said, Excuse me,
25 ma'am? You knew message received by him, wasn't it? 15:39:13

1 A. No.

2 Q. No. Nothing? Okay.

3 Now, you agree with me that you believe the citation
4 was wrong.

5 A. Yes. 15:39:29

6 Q. You believe you were cited only because you were a Latino.

7 A. Yes.

8 Q. You believe you were cited, even though you were driving on
9 a closed road.

10 A. Yes. 15:39:39

11 Q. You believe you were cited even though Maricopa County
12 Department of Transportation had posted publicly closed road
13 signs, true?

14 A. True.

15 Q. You believe the traffic stop itself was done because you
16 were Latino. 15:39:50

17 A. True.

18 Q. Okay. So not only are you complaining about getting a
19 citation instead of a warning, you're complaining about the
20 stop itself, right? 15:40:10

21 A. What I'm complaining about is out of six vehicles, I was
22 the only one being cited. I was the only one cited.

23 Q. And you do not know, sir -- strike that.

24 Did Deputy Ratcliffe in your presence stop any of
25 those other vehicles that you claim to have spoken to? 15:40:29

1 A. No.

2 Q. Did you ever ask him what he was doing with other vehicles
3 he was stopping?

4 A. No.

5 Q. And you understand, and I -- and I'm going to put words in 15:40:40
6 your mouth, and you tell me if I'm wrong, or I'm sure your
7 lawyer will object, but my understanding is there was a
8 motorcycle that was near you at the time of the stop, and when
9 you folks did a U-turn, Deputy Ratcliffe was the one that
10 stopped you, and another MCSO deputy stopped the motorcycle, 15:41:00
11 right?

12 A. True.

13 Q. And that motorcyclist is one of the drivers that you
14 tell -- you're telling the judge you talked to, right?

15 A. Not the motorcycle. He already left before any -- before 15:41:13
16 they let me go.

17 Q. Do you -- did you -- and I'm going to -- I'm going to take
18 your word for it. You talked to other people and they all said
19 they weren't cited. Did they tell you why they weren't cited?

20 A. No. 15:41:31

21 Q. Do you have any idea why they weren't cited?

22 A. Because they're Caucasian.

23 Q. 'Cause they're white?

24 A. Most likely.

25 Q. Now, did they tell you that that was their -- that's what 15:41:37

1 they believed?

2 A. No, they didn't tell me.

3 Q. Did they tell you whether or not they had property at the
4 lake that had been damaged in the storm?

5 A. No. 15:41:50

6 Q. Did they tell you whether or not they had boats or anything
7 like that that had been damage in the storm?

8 A. No.

9 Q. Do you know whether they were allowed ingress to go in and
10 egress to go out by the sheriff's deputies in order to attend
11 to recently damaged property? 15:42:01

12 A. No.

13 Q. All right. One final area, then I'm going to let you --
14 let you go, sir. I appreciate your patience on this.

15 Since December 2nd, 2007, have you been pulled over
16 again by the Maricopa County Sheriff's Office? 15:42:22

17 A. No.

18 Q. And let me know if you don't know the answer to this, but
19 since that date has your wife, Jessika, been pulled over by the
20 MCSO? 15:42:38

21 A. No.

22 Q. Now, you told me when we talked in your deposition on
23 October 2nd, 2009, that you personally drive probably between
24 fifteen to twenty thousand miles a year just within Maricopa
25 County alone. 15:42:55

1 Do you remember telling me that?

2 A. Yes.

3 Q. Okay. And over the period of the four years and seven
4 months, if my math is right, you've driven between 60,000 to
5 80,000 miles in Maricopa County, and have never again been
6 stopped by the MCSO for a traffic violation, right?

15:43:07

7 A. Yes.

8 Q. And you understand that on your behalf these lawyers are
9 claiming that Sheriff Arpaio has a policy or a pattern or a
10 practice of stopping Latinos because of their skin color.

15:43:27

11 You're aware of it, are you not?

12 A. Yes.

13 Q. Do you have any explanation for the Court as to why you
14 have driven anywhere from sixty to eighty thousand miles in the
15 county in four years and seven months and you have never again
16 been stopped because of supposedly your skin color?

15:43:40

17 A. Because I obey the law.

18 Q. So what you're telling me is that if you are a driver and
19 you obey the law, you have nothing to worry about from the
20 MCSO, correct?

15:43:59

21 A. True.

22 Q. All right. If you are a law abider, you are not going to
23 be pulled over, are you? True?

24 A. True.

25 Q. And you're not going to be pulled over just because of your

15:44:10

1 skin color, right?

2 A. That, I don't know.

3 Q. Okay. And I'll take that as just what it is: you don't
4 know one way or the other, do you?

5 A. I can't speak for nobody else. 15:44:22

6 Q. For almost five years and no problems on your part, right?

7 A. No problems on our part.

8 MR. CASEY: Thank you for your time and patience. I
9 very much appreciate it.

10 THE COURT: Redirect? 15:44:32

11 MS. GALLAGHER: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. GALLAGHER:

14 Q. Just a few questions, David, to clarify a few things that
15 Mr. Casey told you about. 15:44:50

16 The first thing, you still have the deposition
17 transcript that you read from in front of you?

18 A. Yes.

19 Q. Can you please turn to page 11 of that transcript.

20 Okay. For completeness, I'm going to start reading at 15:45:08
21 the end of page 11, starting at about line 20. And if you
22 could just follow along, and then I'll ask you if I've read it
23 correctly.

24 "And when we got stopped, he came -- the officer came
25 up and asked us -- he asked us if -- if -- what we were doing, 15:45:22

1 and then I -- I told him that we were out four-wheeling and we
2 were -- you know, we had brought out the kids to, you know, be
3 out there to enjoy the time for the day, and he had -- then he
4 asked me for my driver's license, my proof of insurance, my
5 registration, and my Social Security card. Well, I gave him -- 15:45:39
6 I don't have -- I didn't have my Social Security card. I gave
7 him my registration, my driver's license, and he went back."

8 Did I read that correctly?

9 A. Yes.

10 Q. And is that a correct account of how you recall the events 15:45:55
11 of that day?

12 A. Yes.

13 Q. And is it true that later he asked you for your Social
14 Security number?

15 A. Yes. 15:46:02

16 Q. Okay. At what point did you -- so you testified earlier
17 that you had seen a Road Damaged sign. At what point did you
18 see that sign?

19 A. When I was driving down -- down the road, after I had gone
20 back on the road from being off off-roading. 15:46:16

21 Q. You also testified that there were other vehicles that you
22 saw that were stopped at the -- around the same time that you
23 were. Did you happen to notice which direction those vehicles
24 were traveling when they were pulled over?

25 A. Towards the lake. 15:46:35

1 Q. And how long after you had left the area did you wait
2 before they came back out and you were able to speak to them?

3 A. I would say maybe about 10 to 15 minutes afterwards they
4 drove by.

5 Q. After this incident happened, has it affected your -- your 15:46:51
6 driving, particularly when you see a police vehicle, in any
7 way?

8 A. Yes.

9 Q. And how is that?

10 A. Just gotta obey the law and stay -- and stay the way you're 15:47:02
11 supposed to be, just obey the law.

12 Q. Have you been particularly careful about your driving when
13 you notice a vehicle now?

14 A. Yes.

15 Q. Police vehicle? 15:47:17

16 A. Yes.

17 MS. GALLAGHER: Thank you. No further questions.

18 THE COURT: Next witness.

19 MR. SEGURA: Thank you, Your Honor. Plaintiff calls
20 Deputy Louis DiPietro. 15:47:54

21 THE COURT: Please come forward, sir, and be sworn in.

22 THE CLERK: Come right up here, sir.

23 Hi.

24 MR. DiPIETRO: Hi.

25 THE CLERK: Can you please state and spell your full 15:48:35

1 name.

2 MR. DiPIETRO: Louis DiPietro. L-o-u-i-s,
3 D-i, capital P-i-e-t-r-o.

4 THE CLERK: Thank you. Please raise your right hand.

5 (Louis DiPietro was duly sworn as a witness.)

15:48:49

6 THE CLERK: Thank you. Please take our witness stand.

7 MR. SEGURA: May I proceed, Your Honor?

8 THE COURT: You may.

9 LOUIS DiPIETRO

10 called as a witness herein, having been duly sworn, was

15:49:23

11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SEGURA:

14 Q. Good afternoon, Deputy DiPietro. My name is Andre Segura.

15 I'm an attorney for the plaintiff in this case.

15:49:29

16 A. Good afternoon.

17 Q. Thank you for your patience today. It looks like we'll
18 probably be able to get you out of here and not have you come
19 back on Tuesday. Thank you.

20 A. Okay.

15:49:37

21 Q. Deputy, you joined the Sheriff's Office in 1988, is that
22 right?

23 A. Correct.

24 Q. And you were -- you started as a detention officer?

25 A. Correct.

15:49:46

1 Q. And then in around 2001 you became a deputy sheriff?

2 A. Yes.

3 Q. And at some point after that you were transferred to the
4 K-9 unit, correct?

5 A. Yes.

15:49:59

6 Q. And are you still a deputy with the K-9 unit?

7 A. No longer in K-9.

8 Q. And what is your position now?

9 A. I'm a patrol deputy.

10 Q. You're familiar with the 287(g) program?

15:50:07

11 A. Yes.

12 Q. And you were once certified as a 287(g) officer, is that
13 correct?

14 A. Can you repeat the question?

15 Q. You were once certified as a 287(g)?

15:50:21

16 A. Yes.

17 Q. And you participated in the past in saturation patrols with
18 the Sheriff's Office?

19 A. Yes.

20 Q. And you participated in one in September of 2007, is that
21 right?

15:50:32

22 A. That wasn't a saturation patrol.

23 Q. What was that operation?

24 A. That was an investigation by the Human Smuggling Unit.

25 Q. Okay. And this was in Cave Creek?

15:51:02

1 A. That's the one you're referring to, right?

2 Q. Yes.

3 A. Correct.

4 Q. And this operation involved individuals who were
5 congregating in a church parking lot, is that right?

15:51:17

6 A. Yes.

7 Q. And it appeared that day laborers had been congregating
8 there to seek work, is that right?

9 A. That was part of it, yes.

10 Q. And you were assisting with other deputies that day?

15:51:37

11 A. I was assisting the Human Smuggling Unit on an
12 investigation of activity stemming from that parking lot, along
13 with another K-9 deputy.

14 Q. And so at -- at that time you were still with the K-9 unit,
15 right?

15:51:57

16 A. Yes.

17 Q. And as part of your duties with the K-9 unit, you would
18 lend assistance to patrol officers?

19 A. Yes.

20 Q. Okay. And prior to this operation you were -- you were
21 given instructions, right?

15:52:02

22 A. They had a debriefing of some sort.

23 Q. Okay. And during the debriefing you were told that there
24 was going to be an undercover officer surveilling the property,
25 is that right?

15:52:21

1 A. There were going to be -- I believe there was going to be
2 several undercover officers surveilling -- doing surveillance.

3 Q. And these officers were surveilling in -- in vehicles, is
4 that correct?

5 A. I don't -- I don't recall.

15:52:43

6 Q. Would you assume they were in unmarked vehicles?

7 MR. CASEY: Objection, calls -- excuse me, Your Honor.
8 There's no foundation, speculation.

9 THE COURT: Sustained.

10 BY MR. SEGURA:

15:52:56

11 Q. And so these -- these officers who were -- and you were
12 told during debriefing that the undercover officers were
13 observed in the parking lot for individuals who were picked up
14 by vehicles, is that right?

15 A. Correct.

15:53:12

16 Q. And so this -- these undercover officers would see men who
17 appeared to be day laborers get into vehicles, correct?

18 A. I'm not sure of their gender, but they would see people get
19 into the vehicles and -- and -- yes.

20 Q. And so they would -- they would visually observe these
21 individuals getting into cars from the parking lot, right?

15:53:35

22 A. Yes.

23 Q. And if -- if a vehicle would pick up individuals at the
24 parking lot, was the undercover officer to radio a description
25 of that vehicle to the officers like yourself who were on

15:53:56

1 patrol?

2 A. To the two K-9 officers that were assisting the Human
3 Smuggling Unit, yes.

4 Q. And you said you were -- you were driving a patrol vehicle,
5 is that right? 15:54:08

6 A. A fully marked K-9 patrol vehicle, yes.

7 Q. And so after the description of the vehicle went out on the
8 radio, your job was to follow the vehicle, right?

9 A. Yes.

10 Q. And it was to -- to follow it and see if you could develop 15:54:27
11 probable cause to make a stop, is that right?

12 A. Correct.

13 Q. Okay. And so on each of these occasions you were given a
14 description of the vehicle first so you knew which vehicle to
15 follow, right? 15:54:44

16 A. Correct.

17 Q. And then after making the stop, you would call someone with
18 the Human Smuggling Unit to come and conduct an immigration
19 check, is that right?

20 A. You know, I don't know if they actually were just 15:55:00
21 monitoring those radios and knew that we were on the stop or
22 the -- I was instructed to call in. I know it wasn't like call
23 in on a cellphone or anything.

24 Q. Okay. But were you to communicate to the Human Smuggling
25 Unit that you had made a stop so they could come and conduct an 15:55:18

1 immigration check?

2 A. Like I said, I'm not sure if it was -- I'm sure that we
3 were all on the same frequency for radio traffic, so if they
4 heard me, my call sign on a traffic stop, after they heard --
5 after they called out a vehicle description, they probably knew
6 I was on a traffic stop with a vehicle they wanted me to
7 follow.

15:55:41

8 MR. SEGURA: Your Honor, may I hand the witness a
9 document to attempt to refresh his recollection?

10 THE COURT: You may.

15:55:53

11 BY MR. SEGURA:

12 Q. Deputy, could you take a look at page 65 of the document
13 that I handed you.

14 Do you have that page in front of you?

15 A. Yes, I do.

15:56:26

16 Q. And could you just read to yourself starting at line -- at
17 line 19, and continue on until the next page, line 6.

18 A. Line 6?

19 Q. Yes, on the next page.

20 A. Okay.

15:57:20

21 Q. Do you recall now if Sergeant Madrid was involved in this
22 operation?

23 A. Yes, I knew that prior to the question.

24 Q. Sorry, I should have asked that before. And he's part of
25 the Human Smuggling Unit, right?

15:57:36

1 A. Yes, he is.

2 Q. And so you -- you were instructed to call the Human
3 Smuggling Unit after making a stop in order for them to conduct
4 an immigration check, is that right?

5 A. At the time of this deposition, that was my understanding. 15:57:57
6 They were to be notified.

7 Q. Okay.

8 A. I don't know if it was a physical phone call, a radio, a
9 transmission, or if they were just listening to radio traffic
10 to know that I was out on a traffic stop with the vehicle. 15:58:14

11 Q. Do you recall stopping a vehicle in which an individual by
12 the name of Manuel Ortega Melendres was in the car?

13 A. I stopped a white pickup truck that the Human Smuggling
14 Unit had called out for me to find probable cause to stop.

15 Q. Okay. And it was your understanding that the driver of 15:58:42
16 this vehicle had picked up individuals from this church parking
17 lot?

18 A. Yes.

19 Q. Okay. And you received this information over dispatch,
20 right? 15:58:54

21 A. Yes.

22 Q. Given a description of the vehicle?

23 A. Yes.

24 Q. And so you followed this vehicle until developing probable
25 cause to make a stop, is that right? 15:59:06

1 A. Correct.

2 Q. And you stopped -- you -- you've stated that you stopped
3 the vehicle for speeding, is that right?

4 A. Yes.

5 Q. And you followed the vehicle for a while before making the 15:59:17
6 stop, right?

7 A. Yes, I did.

8 Q. For about a mile and a half, you say?

9 A. I believe I said two to three miles, then I remember
10 reading somewhere else I said a mile and a half. 15:59:36

11 Q. Good amount of time, correct?

12 A. Yes.

13 Q. Did you see the race of the passengers in the vehicle
14 before you made the stop?

15 A. No, I didn't. 15:59:44

16 Q. But you saw what they looked like once you made the stop,
17 right?

18 A. Yes.

19 Q. Okay. So you did make an evaluation of their appearance
20 and of their race once you made the stop? 15:59:58

21 A. Yes.

22 Q. Did you in this situation give the driver a citation for
23 speeding?

24 A. No, I didn't.

25 Q. You didn't give him a speeding ticket? 16:00:11

1 A. I didn't.

2 Q. Did you give the driver a warning?

3 A. A verbal warning.

4 Q. But not a written warning, right?

5 A. Correct.

16:00:20

6 Q. And did you let the driver go?

7 A. After the investigation was over, the driver was allowed to
8 leave, yes.

9 Q. After checking the driver's license and registration and
10 giving him a verbal warning, he was free to leave, correct?

16:00:38

11 A. No. Actually, after the investigation at the point that
12 the Human Smuggling Unit had also arrived and did their
13 investigation, and they told me they -- they gave me the
14 information that they didn't have any charges on the driver, it
15 was up to me whether I wanted to cite him or not, and that's
16 when I gave him the warning on the speeding.

16:01:02

17 Q. So you had the driver wait until the Human Smuggling Unit
18 arrived?

19 A. Yes, I did.

20 Q. And did the Human Smuggling Unit -- or the officers from
21 the Human Smuggling Unit, did they question the driver?

16:01:20

22 A. I didn't see -- I don't recall them -- they were -- there
23 was -- I think there was four passengers and the driver. I was
24 back at my truck running the driver, trying to run a plate and
25 that sort of thing.

16:01:47

1 I'm not sure what that they told me at the conclusion
2 of their investigation, that was done on the side of the road
3 during the time of the traffic stop that they had no charges on
4 the driver, it was up to me if I wanted to give him a citation
5 or a warning.

16:02:08

6 Q. Okay. You were -- you were deposed with respect to this
7 case, right?

8 A. Yes.

9 Q. Okay. And that was on October 21st, 2009?

10 A. I don't remember.

16:02:24

11 Q. Okay. But you were -- you swore to tell the truth that
12 day, is that right?

13 A. Yes.

14 Q. Okay. And could you turn to page 59 of your deposition
15 testimony?

16:03:04

16 A. 59?

17 Q. Yes. Okay. And do you see on line 14 you were asked the
18 question: "Tell me as best as you can what happened after you
19 called in for Sergeant Madrid." You see that?

20 A. Yes, I do.

16:03:36

21 Q. And you answered: "Unmarked vehicle arrives. Sergeant
22 Madrid and another deputy was in the vehicle. Came out and
23 they dealt with the four passengers. I -- as I remember, I
24 dealt with the driver. Gave him his verbal warning, his
25 driver's license, registration and insurance back. And told

16:03:48

1 him to slow down. And I'm not sure at what point he drove off,
2 but he was free to leave the traffic stop at that time. I
3 believe the occupants of the vehicle were out of the vehicle at
4 that time. And shortly after that, I left the scene myself."

5 Do you see that?

16:04:02

6 A. Yes, I do.

7 Q. So did that refresh your recollection as to whether
8 Sergeant Madrid or any other agency officer questioned the
9 driver?

10 A. No.

16:04:16

11 Q. So it's still your testimony that you waited until the HSU
12 officer told you that the driver was free to leave?

13 A. No, they told me they didn't have any charges, there's no
14 charges on him, and whether -- it was up to me whether to give
15 him a -- a citation or not.

16:04:39

16 Q. And you called -- who -- was there another officer there
17 with Sergeant Madrid?

18 A. Yes, there was.

19 Q. And who was that?

20 A. You know, at the time I didn't know who all by name was
21 there, but I've, you know, from who all's listed as -- listed,
22 it was Carlos Rangel.

16:05:01

23 Q. Okay. And you called officers from the Human Smuggling
24 Unit in order to question the passengers about their
25 immigration status?

16:05:31

1 A. Yes, but there's more to that. And from what I remember
2 from the -- the briefing prior to this was it was their, Human
3 Smuggling Unit's investigation, and they were going to come and
4 take over that portion of the investigation.

5 Q. Okay. Turn to page 55 of your deposition, please.

16:06:09

6 You see on line 4, it starts mid answer, but the
7 beginning it's just you describing the stop, it says: "And I
8 also asked him for his driver's license, registration and
9 insurance, and when all that came back -- well, I went back to
10 my truck and got on the radio and talked to our dispatchers,
11 gave them the information. Everything came back good on him.
12 They do a records check. And I went back up to him and --
13 well, I had already made a call for Sergeant Madrid to come and
14 check the status of these workers." You see that?

16:06:38

15 A. Yes.

16:06:55

16 Q. So you called Sergeant Madrid to come and check the
17 immigration status of these workers, correct?

18 A. That's still -- that's still unclear to me. Keep in mind
19 that this was almost five years ago, and at the time of the
20 deposition it was, like, 25 months after the fact. But from --
21 they were notified either by listening to the radio or by me
22 giving them a call via radio that I was on the traffic stop.

16:07:10

23 Q. Okay. By the time you made -- at the time of this
24 deposition you were -- you were certain that the reason you
25 called was because Sergeant Madrid and the officers called to

16:07:38

1 check their status, correct?

2 A. They were going to take over the investigation from there.

3 Q. Okay. Can you turn to page 49 of your deposition, please.

4 On line 21 -- starting on line 21, you were asked,

5 question: Did you have -- excuse me.

16:08:08

6 Starting on line 17 you were asked: "Why did you call

7 Sergeant Madrid?"

8 And your answer during your deposition was: "The

9 driver told me that he had picked them up to work. And I had

10 reasonable suspicion from that that they were day laborers and

16:08:20

11 here illegally."

12 Did you testify to that during your deposition?

13 A. Yes, I did.

14 Q. You mentioned earlier something about officers possibly

15 investigating human smuggling, is that right?

16:08:37

16 A. It was the Human Smuggling Unit.

17 Q. But you had no reason to believe that the trucks or the

18 individuals in the car were involved in human smuggling, right?

19 A. I had reasonable suspicion could have been, yes.

20 Q. You had reasonable suspicion that they were involved in

16:09:05

21 human smuggling?

22 A. Yes.

23 Q. Did you ask the driver any questions relating to human

24 smuggling during the stop?

25 A. I just asked him if he -- if he knew who the pass -- who

16:09:19

1 are the passengers in the vehicle.

2 Q. You didn't ask any questions relating to human smuggling
3 specifically, right?

4 A. No, they were going to take over the investigation after
5 the traffic stop. 16:09:35

6 Q. Okay.

7 A. "They" being the Human Smuggling Unit.

8 Q. And can I have you turn to page 127 of your deposition
9 transcript, please.

10 On line 16 of page 127, the question you were asked: 16:10:05
11 "You didn't have specific information that it was involved in
12 human smuggling?"

13 And your answer was: "No, I had specific information
14 that it was speeding in a 25-mile-an-hour zone."

15 Does that refresh your recollection as to whether you 16:10:20
16 had any reason to believe that the truck or any passengers were
17 involved in human smuggling?

18 MR. CASEY: Excuse me, Your Honor. For completeness
19 purposes, the actual questions begin at line 2. It's taken out
20 of context with this witness. 16:10:35

21 THE COURT: Do you want to show me your transcript?

22 MR. CASEY: Yes, Your Honor.

23 MR. SEGURA: I have an extra copy, Your Honor, if
24 you'd like.

25 THE COURT: I want to see it. You say line 2? 16:10:46

1 MR. CASEY: I believe it should start at line 2, Your
2 Honor.

3 THE COURT: All right. I am going to ask you to start
4 at line 2, please.

5 MR. SEGURA: Sure, Your Honor. 16:11:13

6 BY MR. SEGURA:

7 Q. Starting at page 127, line 2, you were asked: "You didn't
8 have specific reason to believe that that truck was involved in
9 human smuggling?"

10 And you answered: "At the time that I made the stop? 16:11:22

11 "Question: Correct."

12 You answered: "At the time I was making the stop, I
13 was looking for probable cause. Now, whether that truck could
14 have been involved in human smuggling, it very well could have
15 been." 16:11:36

16 And then you were asked: "Did you have specific
17 reason to believe that that truck was involved in human
18 smuggling when you pulled it over?"

19 You answered: "I pulled the truck over for speeding."

20 "Question: So you did not pull it over for human 16:11:45
21 smuggling?"

22 "Answer: No, I didn't.

23 "Question: You didn't have specific information that
24 it was involved in human smuggling?"

25 "Answer: No, I had specific information that it was 16:11:54

1 speeding in a 25-mile-an-hour zone."

2 And then: "Question: Now, when you spoke with the
3 driver of the truck, you didn't ask the driver if he was
4 involved in human smuggling; correct?

5 "Answer: No, I didn't. 16:12:13

6 "Question: You didn't conduct a human smuggling
7 investigation into the driver; correct?

8 "Answer: No, I didn't."

9 So going back to the stop that we were just talking
10 about, you said that you had reasonable suspicion to believe 16:12:37
11 that they were undocumented, is that right?

12 MR. CASEY: Objection to form, Your Honor. I think
13 we're going to need to it clear up. There's a lot of
14 phraseology here, Your Honor, whether it's illegal immigrant,
15 illegal alien, undocumented migrant. I just want to make sure 16:13:08
16 that the witness is answering the question.

17 THE COURT: Well, let's go back and take it from the
18 deposition. I've got it as page 49, deposition line 17. Why
19 don't we use the exact language he used in the deposition, if
20 you would, please. I may have that wrong, but that's the 16:13:23
21 citation I've written down.

22 MR. SEGURA: That's fine.

23 BY MR. SEGURA:

24 Q. So previously we had read the portion of your deposition
25 transcript where you answered that the driver told you that he 16:13:35

1 had picked up these individuals, and that you had reasonable
2 suspicion from that that they were day laborers and were here
3 illegally, right?

4 A. Can you repeat that question?

5 Q. Sure. Previously we had looked at your deposition
6 transcript where you were asked, "Why did you call Sergeant
7 Madrid?" and you answered: The driver told me that he had
8 picked them up to work, and I had reasonable suspicion from
9 that that they were day laborers in here illegally.

16:13:55

10 You see that?

16:14:14

11 A. Yes, I do.

12 Q. And you believe most day laborers are undocumented, right?

13 From -- from your experience, you believe that most
14 day laborers are undocumented?

15 A. Can you repeat the question?

16:14:33

16 Q. Sure. From -- in your experience, you -- through your
17 experience, you believe that most day laborers are
18 undocumented, right?

19 A. Yes.

20 Q. And so being a day laborer would give you reasonable
21 suspicion that the person is undocumented, right?

16:15:10

22 A. I think it's more the totality of the -- of the
23 circumstances. And I'm --

24 Q. During your -- on -- if you could turn to page 50 of your
25 deposition transcript. On line 21 you were asked: "In other

16:15:40

1 words, they are -- you think that most people who seek these
2 day laborer jobs are undocumented individuals?"

3 And you answered: "I would have reason to, reasonable
4 suspicion to think so, yes."

5 That was your answer, right?

16:15:59

6 A. Correct.

7 THE COURT: Can I get that transcript and page number,
8 please?

9 MR. SEGURA: Sorry, Your Honor. That's page 50,
10 starting at line 21 going to line 25.

16:16:08

11 THE COURT: Thank you.

12 BY MR. SEGURA:

13 Q. And you believe most day laborers are from Mexico or
14 Central or South America, right?

15 A. Talking about here locally?

16:16:22

16 Q. Sure. In Maricopa County.

17 A. The ones I've seen, yes.

18 Q. Okay. So the ones that you've seen, most of them appear to
19 be Latino or Hispanic, right?

20 A. Yes.

16:16:40

21 Q. Going back to this stop we were just talking about, you
22 didn't have any probable cause to believe that the passengers
23 had engaged in any state crime, did you?

24 A. Can you repeat the question?

25 Q. Sure. During the stop, you didn't have any probable cause

16:17:05

1 to believe that the passengers had engaged in any state crimes?

2 MR. CASEY: We object, Your Honor, as to vague, as to
3 what point in the time of the stop, Your Honor.

4 THE COURT: I'm going to overrule the objection, allow
5 him to answer. 16:17:22

6 THE WITNESS: Can you repeat it again, then?

7 MR. SEGURA: Sure. Sure.

8 BY MR. SEGURA:

9 Q. You didn't have any probable cause to believe that the
10 passengers had engaged in any state crimes, did you? 16:17:30

11 A. No, I didn't.

12 Q. Okay. But you held them until officers from the HSU could
13 arrive, right?

14 A. Yes, I believe that was like one minute from the time I
15 stopped -- stopped -- stopped the truck. 16:17:50

16 Q. Okay. So they weren't free to leave until HSU arrived,
17 right?

18 A. Until they finished their investigation.

19 Q. Okay. So at the time you called HSU, or communicated the
20 information that you had made the stop, the only information 16:18:10
21 that you had about the passengers were that they were day
22 laborers who had just been picked up, is that right?

23 A. Can you repeat -- repeat the question?

24 Q. Sure. At the time you called Sergeant Madrid and HSU, the
25 only information you had about these passengers was that they 16:18:32

1 appeared to be day laborers who had just been picked up in the
2 church parking lot?

3 A. No.

4 Q. What other information did you have?

5 A. The driver didn't know who they were.

16:18:42

6 Q. Okay. The driver during the stop was a white male, right?

7 A. Yes.

8 Q. You stopped another car that same day?

9 A. Yes, I did.

10 Q. Okay. And just like the first time, you were given a
11 description of the vehicle and then followed it to develop
12 probable cause?

16:19:04

13 A. Yes.

14 Q. Okay. And you stopped the vehicle for a broken taillight,
15 right?

16:19:15

16 A. Yes.

17 Q. Okay. And as with the first stop, you didn't give the
18 driver a citation for this broken taillight, right?

19 A. Correct.

20 Q. And with the first stop you just gave the driver a verbal
21 warning, right?

16:19:24

22 A. Yes.

23 Q. Okay. So you let the driver go after giving this warning,
24 right?

25 A. After the investigation from the Human Smuggling Unit was

16:19:56

1 conducted.

2 Q. So the Human Smuggling Unit investigated the driver?

3 A. They investigated -- I guess you'd have to ask them what
4 all they investigated.

5 Q. But you called Sergeant Madrid to question the passengers 16:20:17
6 of this vehicle, right?

7 A. Excuse me. I'm not sure if I specifically asked Sergeant
8 Madrid to interview the passengers of the vehicle.

9 Q. And -- but you communicated that you had made a stop to
10 HSU, officers from HSU arrived and then questioned the 16:20:57
11 passengers, right?

12 A. Correct.

13 Q. And the driver in this stop was also a white male, is that
14 right?

15 A. You're talking about the first stop? 16:21:09

16 Q. The second stop.

17 A. The second stop? Yes.

18 Q. Okay. And all the passengers were Latino or appeared to be
19 Latino?

20 A. Appeared to be. 16:21:22

21 MR. SEGURA: That's all the questions I have.

22 THE COURT: Cross-examination.

23 MR. CASEY: Thank you, Your Honor.

24 Your Honor, are we going till 5:00 or 4:45, so I can
25 try to plan my time accordingly? 16:21:55

1 THE COURT: Well, I may have questions for
2 Mr. DiPietro, so...

3 MR. CASEY: I thought you may, Your Honor.

4 THE COURT: I'm not sure that in light of the
5 questions -- I mean, I can't really judge how many questions
6 I'll have until I hear your cross. 16:22:07

7 MR. CASEY: Sure.

8 THE COURT: You may cover it. But I had intended to
9 go till 4:45.

10 MR. CASEY: Okay. 16:22:16

11 THE COURT: Officer DiPietro, that may mean that you
12 need to return on Tuesday, I'm sorry.

13 THE WITNESS: That's fine.

14 CROSS-EXAMINATION

15 BY MR. CASEY: 16:22:23

16 Q. I make no promises to you, sir, about how long we're going
17 to go on this.

18 I want to take this in the following order. I want to
19 stop -- start with talking to you about what I call the
20 Melendres stop. That was one of the passengers in the vehicle
21 the lawyer was asking about. Okay? 16:22:38

22 A. Okay.

23 Q. And then I want to then talk to you a little about your
24 background, and in that I'm going to talk to you about some
25 things that -- about training. So I want to first focus you on 16:22:52

1 the Melendres vehicle.

2 I'd like to use your words. I'm allowed to lead you
3 at this point, but I want to hear a little bit -- I want to
4 hear from you. On the date --

5 MR. SEGURA: Objection, Your Honor, as to leading
6 questions. 16:23:10

7 THE COURT: Well, if and when we have a leading
8 question I can determine whether I'm going to allow Mr. Casey
9 to lead or not. And, in fact, whatever statements he says
10 about what the law permits or will not permit, he doesn't get
11 to decide, I do. So we'll just wait until the question is
12 presented. 16:23:20

13 BY MR. CASEY:

14 Q. Your Honor -- sir, at the time, September 27, 2007, you
15 were obviously an MCSO deputy, were you not? 16:23:40

16 A. Yes.

17 Q. Had you gone through, at that time, ICE training?

18 A. Yes, I did.

19 Q. At that time were you certified by the federal government
20 to be a local immigration law enforcement officer? 16:23:56

21 A. Yes, I was.

22 Q. Where did you undergo that training?

23 A. The training was at our training academy off of roughly
24 35th Avenue and Lower Buckeye.

25 Q. And who taught that ICE training? 16:24:15

1 A. ICE agents.

2 Q. How long was the academy?

3 A. I don't remember.

4 Q. Let's now focus on the stop. You told us that you were
5 told that people had gotten into a car, into a truck, and then
6 began driving, and that you were to look for probable cause.

16:24:35

7 A. Yes.

8 Q. You told us that you paced the car or the truck for some
9 distance, and determined that in your judgment it was violating
10 Title 28, speeding?

16:24:53

11 A. Correct.

12 THE COURT: I'm sorry, Mr. Casey, I do apologize. I
13 didn't get to hear the tail end of your question, and that's
14 because you're standing a little far away from the microphone
15 and the acoustics in here are terrible.

16:25:06

16 MR. CASEY: I'm sorry.

17 THE COURT: Can I get you to hold that mike, and can I
18 get you to repeat the end of your question again.

19 MR. CASEY: Yes, Your Honor.

20 BY MR. CASEY:

16:25:14

21 Q. You made the traffic stop, did you not, sir, because you
22 determined they were in violation of Title 28 and speeding?

23 A. Yes, I did.

24 Q. Did you at any time before you made the determination that
25 they were speeding ever see the race of anyone in that vehicle?

16:25:29

1 A. No, I didn't.

2 Q. Were you able to make any determination of the ethnicity of
3 anyone in that vehicle?

4 A. No.

5 Q. Did you know the race or ethnicity of the driver? 16:25:40

6 A. No.

7 Q. Once you pulled over the vehicle, you told the plaintiffs'
8 lawyer that you began questioning the driver. And I realize
9 you said it's been nearly five years. And we have your
10 deposition. If you'd tell me to the best of your recollection, 16:25:58
11 what is it that you remember asking him and learning from the
12 driver?

13 A. Well, I -- I went up to his vehicle and said something to
14 the effect that I'm a deputy sheriff, and can I see your
15 driver's license, registration, and insurance? He provided 16:26:19
16 that.

17 I said: Who do you have in your vehicle with you?
18 And he says -- something to the effect of: Who's in the
19 vehicle with you?

20 And he said: I just picked these guys up for work. 16:26:33

21 Q. Now, did you try to speak with the passengers at any time,
22 at that time?

23 A. I really don't remember if I did, it's been so long ago.

24 But normally on a -- normally on a routine traffic stop I would
25 try, yes. 16:27:00

1 Q. Let's -- and I recognize your memory's not accurate, but
2 assuming you were unable to communicate in the English language
3 with a passenger who you tried to speak to, what is your custom
4 and practice, or at least back in December of 2007 what was
5 your custom and practice if you thought you needed to
6 communicate with passengers?

16:27:23

7 A. I'd call for backup, a Spanish-speaker.

8 Q. At some -- you testified that -- to the plaintiffs' counsel
9 that at some point you called for backup. Do you remember
10 that?

16:27:40

11 A. Yes.

12 Q. Do you remember whether you called for a particular person
13 or whether you called for a generic Spanish-speaker?

14 A. I don't recall.

15 Q. Fair enough, sir.

16:27:49

16 Between the point -- I'm trying to understand this.
17 From the point you talked to the driver and maybe tried to talk
18 to the passengers, did you go back to your car and run a
19 license plate check? I'm trying to get a feel for when you
20 called for backup.

16:28:08

21 A. Normally on a traffic stop you -- you would call out the
22 license plate and your location. Then you contact the driver,
23 and they're getting you the information on the license plate.

24 A lot of times you're doing that maybe as you're approaching or
25 before you even get out of your vehicle. But yeah, go back to

16:28:34

1 my truck, pretty standard practice, and get on the radio there
2 to run the driver and/or occupants.

3 Q. Now, you've told the plaintiffs' lawyer in answer to his
4 question that you believe, based on whatever your interaction
5 was with the driver, maybe the passengers, you said you had -- 16:28:56
6 you had reasonable suspicion that they were day laborers and in
7 the country unlawfully, or something to that effect.

8 What was -- what were the facts that you had as a law
9 enforcement officer that allowed you to come to that
10 conclusion? 16:29:18

11 A. Can you repeat the question?

12 Q. Sure. You -- you told a conclusion to the plaintiffs'
13 lawyers and said: I had reasonable suspicion that these folks
14 were day laborers and were here unlawfully or here illegally or
15 something to that effect. 16:29:41

16 Do you remember that?

17 A. Yes, I do.

18 Q. Okay. And what I'm asking you is if you could tell the
19 Court, what information did you have that allowed you to form
20 that conclusion that you had reasonable suspicion? What was 16:29:53
21 the information you had?

22 A. Well, if I could just back up for a moment.

23 Q. Please.

24 A. Because two K-9 units were there to assist the Human
25 Smuggling Unit, and they investigate crimes regarding human 16:30:12

1 smuggling. So that was in my mind prior to making the stop.

2 And then once I made the stop and I contacted the
3 driver, and he didn't know -- you know, I asked him who's in --
4 who do you have in the vehicle? Oh, just some workers I picked
5 up. That kind of -- in my mind he doesn't know them by name,
6 it gives me reasonable suspicion that something was going on.

16:30:44

7 Q. Now, you mentioned two things in your direct examination
8 with the plaintiffs' lawyer. You thought these people in the
9 back may have been in the country unlawfully. Do you remember
10 saying that?

16:31:07

11 A. Yes.

12 Q. And then you also told us that you had some suspicion that
13 maybe the crime, the state crime of human smuggling was
14 involved. Did I understand that correctly?

15 A. Is that in my deposition? Can you --

16:31:26

16 Q. I'm -- I'm asking you. Did you believe that human
17 smuggling, the crime of human smuggling, did you believe that
18 may exist?

19 A. Yes, I did.

20 Q. And what was the factual basis that you had to believe that
21 that crime may exist?

16:31:38

22 A. Well, the driver was in a means of transportation, he
23 didn't know the occupants, and they were coming from a parking
24 lot the Human Smuggling Unit was investigating for some type of
25 crime, or possible crimes.

16:32:04

1 Q. Now, you mentioned earlier in answers that the driver told
2 you he had just picked up the passengers for work.

3 You remember that?

4 A. Yes.

5 Q. Did that information play any role in forming your
6 reasonable -- what you described as reasonable suspicion?

16:32:15

7 A. It could have, yes.

8 Q. Okay. Do you remember as you sit here today whether or not
9 it did?

10 A. Can you just back up --

16:32:42

11 Q. Sure. Sure. And I understand. And I'm probably not being
12 very clear.

13 You told us that you thought the people in the
14 passenger -- the passengers were here illegally. You thought
15 there might have been a human smuggling involved. And you just
16 told me, as I understand it, that the driver told you he's
17 transporting someone, and he was transporting him for work, and
18 that they didn't -- and that they didn't know each other.

16:32:57

19 And my question was: What, if any, significance did
20 you give to the information the driver gave you that he was
21 taking these guys to work? Was that of any significance?

16:33:19

22 And if it's not, if you don't remember, please just
23 tell us. We're not asking you to speculate or guess. If you
24 don't remember you don't --

25 A. I really don't recall.

16:33:38

1 Q. Now, I'd like to clear something up that came up in your --
2 in this testimony, and that is: Did you release the driver of
3 the truck -- and I'm going to -- let me back up for a minute.
4 I apologize to the court reporter and Your Honor.

5 The evidence is going to show the Spanish speaking 16:34:03
6 287(g) deputy named Carlos Rangel arrived. Are you generally
7 aware of that?

8 A. Yes.

9 Q. Now, assuming that that proves true, the question I have
10 for you is: Did you release the driver of the truck before 16:34:17
11 Deputy Carlos Rangel finished his questioning of the occupants?

12 A. No.

13 Q. Okay. Did you release the driver and then call Rangel?

14 A. No.

15 Q. Did you release the driver and detain the passengers while 16:34:40
16 waiting for Carlos Rangel or another 287(g) officer who spoke
17 Spanish to arrive?

18 A. No.

19 Q. Did you detain those passengers in the car because of the
20 color of their skin? 16:35:03

21 A. No.

22 Q. Why did you detain them?

23 A. I detained them because the Human Smuggling Unit was doing
24 an investigation and there was a possibility that it could be
25 involved in some -- some type of crime. 16:35:22

1 Q. Now, let's go back for a minute.

2 Why did you not -- one of the questions that I
3 looked -- there is -- if -- if you were investigating or
4 expecting Carlos Rangel, through his Spanish skills, to
5 investigate whether human smuggling was going on, how did you
6 ever make a decision to let go of the driver, to let him go
7 with no citation or anything, if you really thought human
8 smuggling was involved? 16:35:50

9 A. Can you repeat that?

10 Q. Sure. At some point you said that you thought these people
11 were here unlawfully, right? 16:36:11

12 A. Yes.

13 Q. That you thought that they may have -- there may be some
14 sort of human smuggling involved and you had reasonable
15 suspicion, right? 16:36:27

16 A. Yes.

17 Q. Okay. And then what you told us is that -- you told,
18 actually, the plaintiff, the plaintiffs' counsel that while a
19 Spanish speaking person was talking to the passengers, you were
20 talking to the driver. Do I understand that correctly? 16:36:41

21 A. I was dealing with the driver primarily, as I recall,
22 reference the traffic violation.

23 Q. Now, my question is on this, I'm sorry if I haven't made it
24 very clear, is if you really thought human smuggling was
25 involved, why did you let the driver go? Even without a 16:37:08

1 citation for speeding.

2 A. At the point that I let him go with no citation?

3 Q. Yes, sir.

4 A. There was no probable cause, or there -- I was told by the
5 Human Smuggling Unit they didn't have anything on the driver.

16:37:31

6 Q. So that's what you meant when you were answering the
7 question to the plaintiffs' counsel and you said we don't have
8 anything on him, you could decide whether to cite him for
9 speeding or not, is that correct?

10 A. That's correct.

16:37:50

11 Q. All right. All right. Please forgive me because I did not
12 understand. All right.

13 So an investigation with the passengers was going on
14 to also try to clear the driver of whether he was transporting
15 people for money.

16:38:04

16 A. Correct.

17 Q. Okay. All right. Now, let's -- you testified at the
18 beginning of your deposition that this particular event was not
19 a saturation patrol. Did I understand that correctly?

20 A. That's correct.

16:38:43

21 Q. Do you need some water?

22 A. No, I'm fine, thank you.

23 Q. This was some type of special HSU-only operation?

24 A. Along with the two K-9s.

25 Q. Now, when you were there and trying to identify what was

16:39:03

1 going on with these passengers, when you said you had
2 reasonable suspicion that these folks may have been in the
3 country unlawfully, did you rely in any form on any of your
4 training from ICE to become a 287(g) certified officer in
5 making that decision?

16:39:30

6 That's a bad question. Let me start over.

7 You told us that you had reasonable suspicion that
8 they may have been in the country unlawfully, there may have
9 been human smuggling. My question for you is: In making that
10 decision -- and I know you don't remember the detail, the fact
11 that led you to that conclusion, but do you remember whether
12 you relied on the ICE factors, the indicators, what you were
13 taught how to determine whether someone is here unlawfully or
14 not?

16:39:48

15 A. Yes, I use -- I used some of the indicators. Without being
16 able to communicate, not speaking Spanish, I wasn't able to
17 investigate it much more than that.

16:40:05

18 Q. Now, there was a -- excuse me, Your Honor. I want to make
19 sure it's clear, because sometimes on the record it's not, but
20 you've mentioned something about noticing after you made the
21 traffic stop when you went up to the vehicle and noticed the
22 driver was Caucasian and you noticed the skin color, the
23 appearance of the occupants, did you at all rely on skin color
24 in making a decision to detain anyone?

16:40:26

25 A. No.

16:40:52

1 Q. Did you use skin color, that these people looked Hispanic,
2 darker, lighter, in coming to a reasonable suspicion that these
3 people may be in the country unlawfully?

4 A. No.

5 Q. Now, have you undergone -- strike that. 16:41:20

6 When you went through your ICE training was there any
7 information that you remember about racial sensitivity,
8 cultural sensitivity, and prohibition on racial profiling?

9 A. Yes.

10 Q. And do you remember specifically what -- generally what you 16:41:47
11 were taught by ICE about whether or not racial profiling was
12 permitted in the law enforcement community?

13 A. We're not allowed -- we don't racial -- racially profile.

14 Q. Had you known that before you had gone to ICE training for
15 287(g)? 16:42:07

16 A. Yes.

17 Q. Had you -- did you go through -- when you first started as
18 a detention officer, did you transition over to the deputy side
19 later?

20 A. Yes, I could -- yes, I did. 16:42:17

21 Q. Did you have to go through the academy then?

22 A. Yes.

23 Q. Did you have a component at the academy about the
24 prohibition on the use of race in making law enforcement
25 decisions? 16:42:31

1 A. Yes.

2 Q. Were you taught during the course of your career at
3 Maricopa County that -- whether or not using race or ethnicity
4 in any shape or form is permissible outside something called a
5 BOLO, specific be on the lookout for this person with this
6 description with this race who just robbed a bank?

16:42:50

7 A. Yes.

8 MR. SEGURA: Objection, Your Honor, leading.

9 THE COURT: Sustained.

10 MR. CASEY: I think, Your Honor, I will -- I don't
11 need to lead, but I did just want to make a record that this is
12 cross-examination, I think --

16:43:11

13 THE COURT: It is cross-examination.

14 MR. CASEY: Yes.

15 THE COURT: This is a member of the Maricopa County
16 Sheriff's Office, and you represent the Maricopa County
17 Sheriff's Office. And I think the Federal Rules of Evidence
18 give me plenty of leeway to tell you that even though it's
19 cross-examination, you cannot lead your own client.

16:43:20

20 MR. CASEY: All right. Thank you very much, Your
21 Honor.

16:43:35

22 BY MR. CASEY:

23 Q. Sir, at -- and let me break down that.

24 MR. CASEY: Can I have Mr. Moll start reading that
25 last question again to refresh my memory?

16:43:48

1 (The record was read as requested.)

2 BY MR. CASEY:

3 Q. Were you taught during the course of your academy training
4 about the prohibition on racial profiling?

5 A. Yes. 16:44:18

6 Q. You have been involved, you told the plaintiffs' counsel,
7 in some large-scale saturation patrols with the MCSO through
8 the years?

9 A. Yes.

10 Q. Was there ever any notice given to you folks about whether 16:44:27
11 or not you could use race and ethnicity in any aspect of your
12 patrol duties?

13 A. Sorry, can you repeat it?

14 Q. Was any warning, instruction, anything ever given about the
15 use of race? 16:44:46

16 A. Yes, kind of. The instruction was that we don't racially
17 profile.

18 Q. Now, sir, one final area, and then I'm done, sir.

19 In October, around mid-October of 2009, the federal
20 authorities revoked, suspended, removed the field authority of 16:45:10
21 287(g) officers in Maricopa County. After that -- just with
22 that as a frame of reference, are you aware of any new training
23 that MCSO adopted after that date for its patrol deputies about
24 the use of race in law enforcement?

25 A. Yes, we had some online training on that. 16:45:33

1 Q. Do you know who prepared, created that online training?

2 A. I believe it was Arizona POST.

3 Q. Final question, or at least final area. Since December
4 23rd, 2011, have you personally participated in any saturation
5 patrol conducted by MCSO, whether large or small scale?

16:46:07

6 THE COURT: Could you repeat that date? I want to
7 make sure I got it straight.

8 MR. CASEY: I may have misspoken, Your Honor. Let me
9 rephrase.

10 BY MR. CASEY:

16:46:18

11 Q. Since December 23rd, 2011, have you personally participated
12 in a saturation patrol of any size in Maricopa County?

13 A. No.

14 Q. Are you -- and again, if you don't know, you tell me,
15 because I know you're, you know, patrol. But are you aware at
16 any time the MCSO, since December 23rd, 2011, there being a
17 saturation patrol, large scale, small scale? Are you aware of
18 that having happened since that date?

16:46:47

19 If you don't know, just tell the Court you don't know.

20 A. Well, there -- no.

16:47:21

21 MR. CASEY: Okay. Those are the questions I have for
22 you, sir. Thank you very much for your time and patience.

23 THE COURT: Again, Deputy DiPietro, I'm going to ask
24 you to come back on Tuesday. We're going to end for today.

25 But I have -- I'm going to decide whether I'm going to ask any

16:47:42

1 follow-up questions, and then the plaintiff has the right to
2 ask any follow-up questions, so we'll ask you to come back on
3 Tuesday.

4 We are going to recess for the evening. We will
5 resume trial on Tuesday. We will have trial in here on
6 Tuesday, and then we will move up to my regular courtroom on
7 Wednesday.

16:47:55

8 Is there anything else that either party has that they
9 wish to raise at this time?

10 You can step down, Deputy. Thank you.

16:48:05

11 THE WITNESS: Thank you.

12 MR. SEGURA: No, Your Honor.

13 MR. CASEY: Your Honor, sorry, I was just looking at
14 Rule 611.

15 THE COURT: Yeah.

16:48:15

16 MR. CASEY: Refreshing my memory on that. I don't
17 have anything in addition, Your Honor. Thank you.

18 THE COURT: All right. Have I convinced you that
19 Rule 611 gives me authority to do what I just did?

20 MR. CASEY: Your Honor, you certainly do. I will
21 add -- I will admit I see it says ordinary leading questions
22 should be permitted on cross-examination, but you're absolutely
23 right, you have discretion.

16:48:25

24 THE COURT: All right.

25 MR. CASEY: Thank you, Your Honor.

16:48:40

1 THE COURT: I'll see you all Tuesday morning at 8:30.

2 (Proceedings recessed at 4:48 p.m.)

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 20th day of July, 2012.

s/Gary Moll

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)	
Melendres, et al.,)	
)	
Plaintiffs,)	CV 07-2513-PHX-GMS
)	
vs.)	Phoenix, Arizona
)	July 24, 2012
Joseph M. Arpaio, et al.,)	8:31 a.m.
)	
Defendants.)	
)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(BENCH TRIAL DAY 2 - Pages 278-537)

22
23
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25

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Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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I N D E X

<u>Witness:</u>	<u>Page</u>
LOUIS DiPIETRO	
Examination by the Court	286
Cross-Examination Continued by Mr. Casey	310
Redirect Examination by Mr. Segura	319
JOSEPH M. ARPAIO	
Direct Examination by Mr. Young	324
Cross-Examination by Mr. Casey	479
Redirect Examination by Mr. Young	531

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
185	Letter dated July 26, 2007 from Carole V. B. to Joe (Melendres MCSO 068791-92 / Exhibit 42 to the deposition of Joseph Arpaio, taken on November 16, 2010)	376
187	Letter dated June 19, 2008 from Gina M to Sheriff Joe (Melendres MCSO 069086-88 / Exhibit 18 to the deposition of Joseph Arpaio, taken on November 16, 2010)	442
202	Email chain dated November 19, 2007 re "Pictures from Sat. Protests" (Melendres MCSO 071945)	395

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
206	Email dated October 27, 2009 re "Why Sheriff Arpaio, Secretary Napolitano?" (Melendres MCSO 072425 / Exhibit 13 to the deposition of Joseph Arpaio, taken on November 16, 2010)	368
216	Letter dated May 26, 2009 from Stella to Sheriff Arpaio re Mexicans Loitering at 36th Street" (Melendres MCSO 074346 / Exhibit 19 to the deposition of Joseph Arpaio, taken on November 16, 2010)	444
223	Letter dated May 8, 2008 from Mike S to Sheriff Arpaio (Melendres MCSO 075403-04 / Exhibit 23 to the deposition of Joseph Arpaio, taken on November 16, 2010 / Exhibit 15 to the deposition of Brian L. Sands, taken on November 15, 2010)	411
228	Comments/Support Log for July 16, 2008 (Melendres MCSO 075622-24 / Exhibit 25 to the Deposition of Joseph Arpaio, taken on November 16,2010)	423
230	West Valley View article, dated September 30, 2008, "Family ties make a difference" (Melendres MCSO 075852 / Exhibit 11 to the deposition of Joseph Arpaio, taken on November 16, 2010)	459
235	Letter dated August 8, 2008 from Bob & Lynnette W to Sheriff Arpaio (Melendres MCSO 076087-88 / Exhibit 21 to the deposition of Joseph Arpaio, taken on November 16, 2010)	434
237	Letter dated August 1, 2008 from Gail V to Sheriff Joe re "Want to check out Sun City?" (Melendres MCSO 076091 / Exhibit 20 to the deposition of Joseph Arpaio, taken on November 16, 2010)	428

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
241	Letter dated July 14, 2008 re illegal immigration and cc'ing Arpaio (Melendres MCSO 076155)	382
249	"Illegal Alien 'Contributions' to the U.S." (Melendres MCSO 076783 / Exhibit 10 to the deposition of Joseph Arpaio, taken on November 16, 2010)	454
256	Letter dated February 14, 2009 from John B to Congressman Conyers re Illegal Immigration (Melendres MCSO 077958 / Exhibit 3 to the Deposition of Brian L. Sands, taken on November 15, 2010)	456
262	Letter dated June 30, 2009 from Sarah M to Sheriff Joe (Melendres MCSO 078209 / Exhibit 17 to the deposition of Joseph Arpaio, taken on November 16, 2010)	383
264	Article from Daily News-Sun dated April 7, 2009 "Profiling is sheriff's best tool" (Melendres MCSO 078287 / Exhibit 43 to the deposition of Joseph Arpaio, taken on November 16, 2010)	460
357	Footage from the October 22, 2009 MCSO News Conference (Disc) (ORT 001235)	360
375	Comments/Support Log dated September 20, 2007 (OSLS 001245-46)	406
381	Letter dated February 1, 2008 to Sheriff Joe from Garry and Kay R. (OSLS 003259-60)	437
385	Letter dated November 20, 2005 to Sheriff Joe from Stacey O re "Minuteman Project / Illegal Immigration Maricopa Co." (OSLS 005516-18)	327

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
410	Multimedia files - News Conferences and interviews (Exhibit 20 to the December 16, 2009 Deposition of Sheriff Arpaio (Disc))	477
410A	Multimedia files - News Conferences and interviews (Exhibit 20 to the December 16, 2009 Deposition of Sheriff Arpaio (Disc))	363
410B	Multimedia files - News Conferences and interviews (Exhibit 20 to the December 16, 2009 Deposition of Sheriff Arpaio (Disc))	365
410C	Multimedia files - News Conferences and interviews (Exhibit 20 to the December 16, 2009 Deposition of Sheriff Arpaio (Disc))	366
410D	Multimedia files - News Conferences and interviews (Exhibit 20 to the December 16, 2009 Deposition of Sheriff Arpaio (Disc))	333
451	Impeachment exhibit	

P R O C E E D I N G S

1

2

3

THE COURT: Thank you. Please be seated.

4

5

THE CLERK: This is 07-2513, Melendres v. Arpaio, on
for continuation of bench trial.

08:32:06

6

THE COURT: Good morning, Counsel.

7

COUNSEL IN UNISON: Good morning, Your Honor.

8

9

THE COURT: By my count, plaintiffs have used two
hours and 47 minutes of their time, defendants have used three
hours and nine minutes.

08:32:20

10

11

Are there matters that the parties wish to address
this morning?

12

13

MR. YOUNG: No, Your Honor.

14

MR. CASEY: Not from the defense, Your Honor.

15

THE COURT: All right. Is Deputy DiPietro still here?

16

MR. CASEY: Yes, Your Honor, he is.

17

THE COURT: Would you have him retake the stand?

18

Deputy, please retake the stand.

19

(Pause in proceedings.)

20

THE COURT: Deputy, I do want to remind you that

21

you're still under oath. Even though you took that oath last
Thursday, it's still effective today.

22

23

As I indicated to the parties, I might ask a few
questions of the witnesses, and if I was going to ask them, I
was going to ask them now, then return to Mr. Casey the

24

25

08:33:01

08:33:12

1 opportunity to answer -- or ask any follow-up that come from my
2 questions, and then I'll allow normal redirect.

3 Any questions about that procedure?

4 MR. SEGURA: No, Your Honor.

5 MR. CASEY: Not from the defense, Your Honor. Thank
6 you.

7 THE COURT: All right.

8 LOUIS DiPIETRO,
9 recalled as a witness herein, having been previously duly
10 sworn, was examined and testified further as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q. Deputy DiPietro, I just have -- I have a few questions,
14 several questions about your testimony that I just want to ask
15 to make sure that I can clarify my understanding of your best
16 recollection of events that you've testified to. Okay?

17 A. Okay.

18 Q. You said you started as a Sheriff's Office employee as a
19 corrections officer in 1988?

20 A. Detention officer, yes.

21 Q. A detention officer, I'm sorry.

22 And how long were you a detention officer?

23 A. I'm sorry, what was the question?

24 Q. How long were you a detention officer with the Sheriff's
25 Office?

08:33:26

08:33:38

08:33:57

08:34:11

1 A. Approximately 12 years.

2 Q. Okay. Until about 2000, then?

3 A. Correct.

4 Q. And what did you become in 2000? What happened to you in
5 2000 that you were no longer a detention --

08:34:24

6 A. I went to the academy to become a deputy sheriff.

7 Q. Okay. And what was your assignment as a deputy sheriff?

8 A. I was assigned to District 2 patrol after I got out of the
9 academy, and then I went to the K-9 unit.

10 Q. When did you go to the K-9 unit?

08:34:45

11 A. I think it was in August.

12 Q. Of?

13 A. Of -- it's -- 2001, I believe.

14 Q. So pretty quickly you became a K-9 officer?

15 A. Correct.

08:35:13

16 Q. I think that you testified that you did help out the Human
17 Smuggling Unit in some of its operations, and you also
18 participated in saturation patrols.

19 A. Yes.

20 Q. How many times did you help -- and when you were helping
21 out the Human Smuggling Unit, were you still a K-9 officer?

08:35:27

22 A. Yes.

23 Q. How many times did you help out the Human Smuggling Unit?

24 A. I don't recall.

25 Q. Did you do it often?

08:35:52

1 A. Sometimes -- sometimes we assisted them in, like, a drop
2 house situation; sometimes I assisted them with -- with my K-9,
3 searching for subjects that fled from vehicles; and then the
4 one -- the one time that we're -- I'm here for today.

5 Q. What I'll call the Ortega Melendres stop. 08:36:19

6 Do you understand what I'm saying when I say the
7 Ortega Melendres stop?

8 A. I do now. At -- at the time, I didn't even know he was a
9 passenger of the vehicle.

10 Q. Sure. I just want to ask a question in a way so that 08:36:32
11 you -- we're communicating and you understand what I'm asking.

12 A. Okay.

13 Q. Did you ever do any other operations like the
14 Ortega Melendres operation with Human Smuggling?

15 A. No. 08:36:47

16 Q. That was the only one?

17 A. Yes.

18 Q. And did you meet with Human Smuggling that day prior to
19 conducting the operation?

20 A. Yes. 08:36:55

21 Q. And did you have sort of an operational plan?

22 A. There was a short briefing prior to doing it.

23 Q. And what -- what did they tell you in that briefing?

24 A. I don't remember exactly what all was said there, but I
25 remember that it was -- that there was some type of 08:37:11

1 investigation that they were doing reference to possible day
2 laborers working out of the church parking lot, and they
3 wanted -- there was two K-9 units there to assist them, and
4 they wanted -- they were going to have eyes on the parking lot.
5 The HSU, the Human Smuggling Unit detectives were going to be
6 watching the parking lot. And they wanted -- they would call
7 out a vehicle as it left, after it picked up subjects, and they
8 wanted the -- the K-9 units to follow the vehicle, and if they
9 could establish probable cause, to pull it over then to stop
10 it.

08:37:38

08:38:05

11 Q. And the probable cause that you were to establish would be
12 traffic violation?

13 A. Correct.

14 Q. At the time that you helped out the Human Smuggling -- I
15 think it was in September of 2007; does that sound correct to
16 you?

08:38:17

17 A. Yes.

18 Q. In September of 2007, were you at that time 287(g)
19 certified?

20 A. Yes, I was.

08:38:32

21 Q. Do you remember when it was that you received your 287(g)
22 certification?

23 A. It was sometime that -- that summer.

24 Q. And this may sound like a stupid question, but I'm going to
25 ask it as well as I can: Do you remember who your teacher was?

08:38:47

1 A. No, we had multiple instructors.

2 Q. Were you aware of whether they were instructors from the
3 MCSO or from ICE, or do you know who your instructors were
4 employed by?

5 A. I don't believe any of the instructors were from MCSO. 08:39:06
6 They were all from ICE or -- I believe ICE.

7 Q. How many were in your class?

8 A. I don't know exactly, but I guess maybe 25 or 30.

9 Q. How was it, if you know, that you were asked to assist HSU
10 in this operation? 08:39:41

11 A. I'm sorry, what was the question?

12 Q. Well, HSU was going to conduct this operation in September
13 2007. Do you know how it was that you became selected to
14 assist in that operation?

15 A. My K-9 sergeant at the time, Shawn Braaten, he -- he 08:39:56
16 informed myself and the -- the other K-9 officer prior to doing
17 it.

18 Q. All right. He just said, This is your assignment for
19 today?

20 A. Correct. 08:40:14

21 Q. Had you ever, prior to participating in that operation,
22 received any training in Arizona law pertaining to human
23 smuggling?

24 A. I don't recall, unless it was during the ICE -- I don't
25 recall. 08:40:50

1 Q. Okay. So you don't remember receiving any training
2 pertaining to the Arizona human smuggling statute.

3 A. Prior to that -- to that operation?

4 Q. Correct.

5 A. I don't recall at this time.

08:41:05

6 Q. Have you ever received any training in the Arizona human
7 smuggling statute?

8 A. Yes.

9 Q. When did you receive that training?

10 A. There was some online training within the last year, I
11 believe.

08:41:22

12 Q. So the training that you received was online?

13 A. Yes.

14 Q. And was it specific to the Arizona human smuggling statute?

15 A. Yes.

08:41:40

16 Q. And who offered that training?

17 A. It was through the Maricopa County Sheriff's Office
18 training division, but I believe POST helped come up with it.

19 Q. What do you remember about that training?

20 A. I remember that racial profiling is -- is not to be a
21 factor, and there's indicators in human smuggling. And I
22 believe at the time that that came out was that we were to call
23 ICE, because we didn't have our 287(g) any longer.

08:41:59

24 Q. All right. Let me go back, take you back now to September
25 of 2007. I don't -- if in my summary of your testimony I

08:42:43

1 misstate anything, please feel free to correct me, but I think
2 you said you had a briefing, you were told that ICE would have
3 eyes -- not ICE, but the HSU would have eyes on the parking
4 lot, and they would call out -- identify cars that they wanted
5 you to follow, and it was your job to find probable cause to
6 stop those cars for a traffic violation.

08:43:05

7 A. Yes, but if there was no probable cause, to let it go.

8 Q. Okay. So if you couldn't develop probable cause, you
9 couldn't make a stop?

10 A. Correct.

08:43:23

11 Q. All right. Do you remember how many cars they called out
12 to you that day?

13 A. Two.

14 Q. So were you able to develop probable cause as to both of
15 those cars?

08:43:35

16 A. Yes, I was.

17 Q. Did you cite either of those drivers for traffic
18 violations?

19 A. No, I didn't.

20 Q. Now, do you remember whether the car in which
21 Mr. Ortega Melendres was a passenger was the first car you
22 stopped or the second?

08:43:42

23 A. It was the first.

24 Q. Where were you positioned?

25 A. Somewhere -- in a parking lot somewhere east of -- of the

08:43:55

1 church off of Cave Creek Road.

2 Q. All right. And I think -- and again, I don't want to put
3 words in your mouth, but I think you testified earlier you
4 couldn't see the people in the parking lot.

5 A. Correct, I didn't.

08:44:13

6 Q. You just got the call, you followed, you developed probable
7 cause, you pulled over the car in which Mr. Ortega Melendres
8 was a passenger after developing probable cause that it was
9 speeding, I think was your testimony.

10 A. Yes.

08:44:26

11 Q. What did you do next?

12 A. I contacted the driver.

13 Q. Okay. I want to take this -- I want to take it in order.

14 So you would have pulled over the car, and when you
15 pulled over the car you would have radioed in that you stopped
16 the car, is that correct?

08:44:40

17 A. Yes.

18 Q. And you would have given the license plate or whatever you
19 did?

20 A. Yes.

08:44:51

21 Q. Do you recall whether you radioed at that time other off --
22 HSU officers that were on the scene?

23 A. I don't recall.

24 Q. If you would have placed a radio call to them at any time,
25 would it have been right after you stopped the car?

08:45:11

1 A. Yes.

2 Q. Then what did you do next?

3 A. After I pulled the car over?

4 Q. Yes.

5 A. Then I -- it was -- it was a truck. I approached the
6 truck, contacted the driver, asked him for his driver's
7 license, registration, and insurance, identified myself as a
8 deputy sheriff, and I told him why I was -- why I stopped him.

08:45:24

9 Q. Which was?

10 A. He was going nine miles over the speed limit.

08:45:49

11 Q. And what did you do next?

12 A. I asked him who was in the vehicle, and he said he just
13 picked these guys up to work.

14 Q. And what did you do next? I'm trying to get a very
15 specific chronology, to the extent you can remember.

08:46:08

16 A. I don't remember if I had talked to the passengers at all,
17 I don't -- I don't speak Spanish, so... There was four
18 passengers in the vehicle. It was a four-door truck. Three
19 were in the back seat; one was in the front passenger seat.

20 And I went -- after I got his information that I asked from the
21 driver, I went back to my truck and I got on the radio and
22 ran -- ran his information.

08:46:32

23 Q. All right. So again I'm going to try and summarize, and
24 please correct me if I say anything that's not correct. You
25 approached the driver, you asked the driver for his driver's

08:46:56

1 license, registration, and insurance.

2 A. Yes.

3 Q. You asked him if he knew his passengers.

4 A. Yes.

5 Q. You don't recall whether you spoke with the passengers?

08:47:05

6 A. No, not at -- I would have -- no, I don't.

7 Q. You don't recall whether or not you made any particular
8 observations as to the passengers -- well, except for where
9 they were seated.

10 A. Any other observations?

08:47:31

11 Q. Well, did you make any other observations as to the
12 passengers?

13 A. Well, they were Hispanic males, and they were dressed like
14 they were possibly -- the guy's truck had a wheelbarrow and
15 possibly some masonry tools in the back. Looked like they were
16 going -- they looked like they were dressed to work.

08:47:49

17 Q. Did you make any other observations?

18 A. I don't remember.

19 Q. Okay. And then if I understand the chronology, you went
20 back to your vehicle and you provided the information over the
21 radio concerning the driver.

08:48:11

22 A. Yes, to our dispatchers.

23 Q. What did you do next?

24 A. If my memory serves me correct, I think an HSU officer,
25 detective arrived.

08:48:33

1 Q. All right. And did you have -- did you speak with the HSU
2 officer?

3 A. I imagine I did.

4 Q. Okay. Do you have any recollection as to what you would
5 have told him?

08:48:42

6 A. Driver -- I don't -- I don't recall, but --

7 Q. If you don't recall, that's fine, just say so. I'm just
8 asking 'cause -- 'cause I need to be clear about what your best
9 recollection and testimony of the events were.

10 A. Okay.

08:48:58

11 Q. Okay. So do you recall whether or not you spoke to any of
12 the HSU officers when they arrived?

13 A. I had to have spoke to them, yes.

14 Q. Do you recall what you -- what your conversation was with
15 them?

08:49:18

16 A. No.

17 Q. What happened next?

18 A. They investigated the alienage of the passengers, I
19 imagine.

20 Q. Okay. What did you do while they were investigating the
21 alienage of the passengers?

08:49:28

22 A. I stood by.

23 Q. You just stood back from the scene.

24 A. Or -- yeah, by the truck, or maybe in my truck.

25 Q. Okay. So you think you may have even been in your truck?

08:49:42

1 A. Possibly. Probably not, though. For officer safety, I
2 think I'd probably be out.

3 Q. What, if anything, did you observe while the HSU officers
4 were talking to -- or determining the alienage of the
5 passengers in the vehicle?

08:50:01

6 A. I don't -- I don't recall, but I would imagine they were
7 looking for some type of ID.

8 Q. From the passengers?

9 A. From the passengers, yeah.

10 Q. What next do you recall? What happened next? That you
11 were able to observe.

08:50:25

12 A. At some point I remember they -- they said they were going
13 to take the four passengers, and they were patting them down,
14 searching them prior to putting them in the vehicle, and they
15 said something to the effect, Oh, we don't have anything on the
16 driver. It's up to you whether you want to give him a citation
17 or -- or not.

08:51:08

18 Q. And how long a period did that take?

19 A. I think -- I don't recall. There's probably some record of
20 it somewhere. You know, I would imagine the course of a
21 routine traffic stop, 20 -- 20 -- 20 minutes, possibly more, I
22 don't know.

08:51:35

23 Q. And after you spoke to the driver and returned to your
24 vehicle the first time, how long did that take?

25 A. I would imagine just a few minutes.

08:51:56

1 Q. What happened next?

2 A. I gave the driver a verbal warning. They were getting
3 ready to transport the four passengers. Driver was released
4 with a verbal warning, he drove off, and I left also.

5 Q. What was your understanding of the purpose of this
6 operation by HSU?

08:52:29

7 A. Some type of investigation regarding possible illegal
8 aliens.

9 Q. And what did you consider your role to be in that
10 operation?

08:52:54

11 A. My role was just to find probable cause, stop the vehicle,
12 and they were going to take over the investigation from there.

13 Q. Okay. It wasn't your role, necessarily, to cite or to not
14 cite anyone?

15 A. No. That's the -- it's officer's discretion.

08:53:10

16 Q. So you had the discretion to cite them or not to cite them?

17 A. Yes.

18 Q. At what point had you determined whether or not you were
19 going to cite the officer for a traffic -- the driver --

20 A. The driver?

08:53:27

21 Q. -- for a traffic violation?

22 A. I'm not -- I'm not really sure, but generally I don't cite
23 for under 10 miles under the speed limit.

24 Q. All right. Thank you.

25 A. Or over the speed limit.

08:53:58

1 Q. All right. I have two other areas I just want to talk to
2 you about now. And again, I want to be careful not to put
3 words in your mouth, but I don't to prolong this, so I'm going
4 to try to summarize what I understood your testimony to be on
5 Thursday. And if I misstate that in any way, please correct
6 me, because I do not want to try to dictate to you what you're
7 saying.

08:54:14

8 A. Okay.

9 Q. I think you said something on Thursday about having an
10 opinion about day laborers, and whether or not day laborers
11 were authorized to be in this country.

08:54:27

12 Do you have such an opinion?

13 A. On whether they're authorized to be in this country?

14 Q. Yes, on whether day laborers on the whole are authorized to
15 be in this country.

08:54:54

16 A. My opinion was based on just slightly over 50 per -- I
17 believe the question was whether I thought they -- day laborers
18 were, a majority of the day -- or most day laborers are here
19 illegally.

20 Q. Do you have an opinion as to that?

08:55:20

21 A. I do.

22 Q. What is your opinion?

23 A. I believe that there's probably reasonable suspicion to
24 think that they might be, and I -- and whether 50 percent of
25 them or just slightly over 50 percent of them that are working

08:55:42

1 as day laborers are, I said most of the -- yes, and most of the
2 ones that I come across.

3 Q. How many times have you been involved in operations
4 relating to day laborers?

5 A. That was the only one.

08:56:06

6 Q. So if I ask you what -- can I ask you: What is the basis
7 for your opinion that most day laborers are illegal?

8 A. It was most that I've come across, and I was basing it on
9 that day.

10 Q. All right. So during the course of that day, you formed an
11 opinion that day labor -- most day laborers are illegal.

08:56:30

12 A. That did have -- that did have some bearing on my -- my
13 opinion, yes.

14 Q. What other bases for that opinion do you have, and did you
15 have on that day?

08:57:06

16 A. I don't -- that I had on that day? I don't -- don't
17 recall.

18 Q. Is there any other bases other -- basis other than that day
19 on which you have now formed that opinion?

20 A. Yes.

08:57:31

21 Q. And what are they?

22 A. The fact that that type of work doesn't require any type
23 of -- you don't have to show an ID. It would be easier, that
24 type of work would be easier for a person in this country

25 illegally to -- to get, because they wouldn't have the proper

08:57:57

1 paperwork for other types of employment.

2 Q. Any other bases?

3 A. That's all I can think of now.

4 Q. I just want to ask about one other area.

5 In addition to assisting HSU in its operations, and I 08:58:16
6 think you said this was the only operation of its type, but you
7 have helped, for example, track folks with your K-9 unit,
8 you've done other things for HSU over the course of your time
9 as a deputy?

10 A. Yes. 08:58:33

11 Q. But this was the only operation of its kind?

12 A. Yes.

13 Q. Have you -- well, let me ask now, I think you indicated
14 you've also participated in saturation patrols.

15 A. Yes. 08:58:46

16 Q. How many saturation patrols have you participated in?

17 A. I don't -- I don't recall. Probably five or so.

18 Q. Do you recall the locations of the saturation patrols in
19 which you participated?

20 A. I believe -- I'm not sure exactly which -- because some of 08:59:06
21 the saturation patrols were broken to like east side and west
22 side, and sometimes they encompassed different -- different
23 cities. But I think several on the east side and at least one
24 on the -- on the west side.

25 Q. What was the one on the west side that you participated in 08:59:53

1 that you can recall?

2 A. I think it was Surprise -- it was around the Surprise area.
3 They have -- they had real -- some of them have pretty broad
4 boundaries.

5 Q. What were the ones on the east side that you participated
6 in that you can recall? 09:00:08

7 A. Like Mesa, I believe, was -- I know I was in, like, the
8 Chandler area one time. I don't -- I don't remember -- I don't
9 remember specifically any -- any others.

10 Q. All right. So you have a specific -- 09:00:40

11 A. There -- there could have been multiple ones like in the
12 Mesa and Gilbert-Chandler area.

13 Q. Do you have -- did you have an understanding at the time as
14 to what the purpose of saturation patrols was?

15 A. Yes. 09:00:56

16 Q. And what was the purpose of saturation patrols?

17 A. Just go out there, make a lot of contacts.

18 Q. When you say "make a lot of contacts," what do you mean?

19 A. You would just, if you saw something that looked
20 suspicious, you'd go either talk with the person, or if you saw 09:01:13
21 traffic violations you'd stop the vehicle. And as you're -- as
22 you're doing that you're -- you're running their information.

23 Q. But there wasn't any particular purpose or motivation or
24 goal in running the saturation patrols other than making --
25 making law enforcement contacts? 09:01:35

1 A. I don't -- I don't recall.

2 Q. How was it that you were selected, if you know, to be
3 involved in saturation patrols?

4 A. I think the K-9 unit, they assist patrol, and -- and we did
5 quite a few special details. 09:02:02

6 Q. It was -- you were just assigned to be part of a saturation
7 patrol? In other words, you didn't volunteer; you were just
8 told, You're going to be on saturation patrol?

9 A. Yeah. Yes.

10 Q. What particularly did you do in these saturation patrols? 09:02:14

11 A. I primarily would look for traffic violations, stop
12 vehicles, talk to people, run their information, and I assisted
13 the other units by doing narcotics sniffs on vehicles, narcotic
14 K-9 sniffs.

15 Q. As in dog sniffs, I think, is that correct? 09:02:46

16 A. Yes.

17 Q. All right. So you were in a motor vehicle doing traffic
18 stops and also doing dog sniffs with your dog?

19 A. Yes.

20 Q. During the time that you were participating in saturation
21 patrols was there ever any instruction given you about who to
22 pull over or who not to pull over? 09:02:58

23 A. No.

24 Q. That was again completely within your discretion?

25 A. Yes. 09:03:12

1 Q. How would you make that decision?

2 A. On whether to pull a vehicle over or not?

3 Q. Yes.

4 A. You'd look for a traffic violation and -- and stop it.

5 Q. And if you stopped the vehicle and you pulled it over, what 09:03:27
6 would you do next?

7 A. You'd contact the driver, ask him for driver's license,
8 registration, insurance. You'd be looking to see if there's

9 any indicators in the car of anything else going on. Then

10 you'd go back, run their information. Sometimes, you know, 09:03:51

11 they have warrants, or driving on suspended license, or things

12 such like that -- like that.

13 Q. What would be some of the other things that you would be
14 looking for, as you say, indicators of other things going on?

15 Would among them be immigration violations, or violations of 09:04:14

16 the human smuggling -- or the Arizona human smuggling statute?

17 A. Yes, if -- if you thought you had a vehicle that had -- had
18 indicators that led you to believe to that, yes.

19 Q. Did you ever make any follow-up inquiries with respect to a
20 violation of the immigration laws or the Arizona human 09:04:51

21 smuggling statute during a saturation patrol?

22 You didn't understand my question?

23 A. No, I didn't.

24 Q. All right. You participated in saturation patrols,

25 correct? 09:05:03

1 A. Yes.

2 Q. You made stops during those patrols?

3 A. Yes.

4 Q. During the course of any stop on any saturation patrol in
5 which you participated that you recall, did you ever, after
6 having stopped somebody, form -- or decide that you needed to
7 determine whether or not there was a violation of immigration
8 laws or the Arizona human smuggling statute?

09:05:12

9 A. I believe so, yes.

10 Q. And on what basis did you make that determination?

09:05:41

11 A. It didn't really pertain to human smuggling, but whether a
12 driver was here legally in the United States.

13 Q. Okay. And how would you make a determination that a driver
14 may not be here legally in the United States?

15 A. Well, I'd ask him for his driver's license, registration,
16 and insurance, and there's been times where they didn't have a
17 driver's license. I'm not a Spanish-speaker. There's times
18 I've had to call for Spanish-speakers, but sometimes I can just
19 work my way through it, and sometimes the driver would just
20 say, I'm not a citizen of the United States. Can't get one.

09:06:13

09:06:42

21 Q. Did you ever make a similar determination with respect to
22 passengers in a vehicle that you stopped?

23 A. Yes.

24 Q. And on what would you make that determination?

25 A. As far as whether they were citizens of the United States,

09:06:59

1 or why would I ask them?

2 Q. Whether there was reasonable suspicion that they might not
3 be citizens of the United States.

4 A. Sometimes I -- sometimes the passenger would not have an ID
5 card or anything, and there's been occasions that they'd tell
6 me or later learn that they weren't here legally either. They
7 weren't citizens of the United States.

09:07:28

8 Q. So would you ask passengers for their ID card when you
9 stopped a driver?

10 A. Generally, if -- if they weren't wearing a seat belt or
11 something I would, yes.

09:07:50

12 Q. And if -- and would you ask them for an ID card regardless
13 of what their race was?

14 A. Yes.

15 Q. So is it your habit to just ask passengers, all passengers,
16 for ID cards when you make a traffic stop?

09:08:02

17 A. No.

18 Q. Is it ever your habit to ask passengers for ID cards when
19 you make a traffic stop?

20 A. Is it ever?

09:08:22

21 Q. Yeah. I mean, is there ever a course of events, when you
22 make just a regular traffic stop, that you're going to ask
23 passengers in the car to give you their ID card?

24 A. Yes, sometimes there's reasonable suspicion and I -- and I
25 have asked them, yes.

09:08:41

1 Q. Okay. And in the case of, now, the saturation patrols,
2 when you would ask for -- a passenger for an ID card, what
3 would be the basis on which you asked for that ID card?

4 A. I don't recall doing that on a -- on a saturation patrol.

5 Q. Okay. You don't think you ever asked a passenger for their 09:09:04
6 ID card on a saturation patrol?

7 A. I probably have, but I don't -- I don't recall.

8 Q. Okay. And if you don't recall, you don't recall why you
9 would have asked them for an ID card?

10 If you don't understand my question, please tell me. 09:09:24

11 I don't mean to --

12 A. Well, no, if they -- if they weren't wearing a seat belt,
13 which is a traffic violation, I would -- I could ask them. But
14 if I was suspicious of -- if I had reasonable suspicion of
15 other occupants in the vehicle, or if I came across -- if 09:09:40
16 there's something in plain view in the vehicle, drugs or a gun
17 or something, I might ask -- go and investigate a little deeper
18 and ask them for their IDs.

19 Q. You don't have any specific recollection of asking any
20 passenger for their ID during a saturation patrol? 09:10:07

21 A. No, I don't.

22 Q. You believe you may have done that?

23 A. Possibly, yes.

24 Q. Do you have any recollection of any arrests that you made
25 during a saturation patrol that were related either to the 09:10:21

1 Arizona human smuggling statute or to immigration charges?

2 A. None.

3 Q. Did you ever receive any training on how to run -- how to
4 operate during a saturation patrol from the MCSO? Any
5 directions? That were specifically related to saturation
6 patrols. 09:10:45

7 A. Well, they -- they usually had a -- a briefing prior to
8 the -- prior to the saturation patrol, and they would give you,
9 generally, like a map of the boundaries. They'd give you
10 specifics on, you know, a transport vehicle that would pick
11 up -- excuse me -- any arrests that you had. 09:11:14

12 Q. Where would the briefing --

13 I'm sorry. Go ahead.

14 A. And they would -- they would just generally give you the
15 guidelines of -- of the detail. 09:11:39

16 And I remember specifically that -- instances where --
17 different details where they were -- they would say, you know,
18 Racial profiling, we don't do it, and go out there and just
19 make stops.

20 Q. All right. Where would these briefings occur? 09:12:00

21 A. I remember one at -- on the west side at the District 3
22 substation. I remember one at the -- out in Mesa by District 1
23 by the -- it's off of the 60, and I believe it's Mesa Drive.

24 Q. Who would give these briefings?

25 A. The operations commander, I believe. 09:12:40

1 Q. Do you have any recollection of any specific operations
2 commander that gave one of these briefings?

3 A. I remember Lieutenant Sousa.

4 Q. Lieutenant Sousa gave a briefing before a saturation
5 patrol?

09:13:17

6 A. Yes.

7 Q. And it's a specific saturation patrol that you recall?

8 A. Which one specifically did he give, or --

9 Q. Yes.

10 A. I don't recall. I think he -- he gave several of them.

09:13:29

11 Q. Do you have a specific recollection that he gave several?

12 A. Yes.

13 Q. Which ones?

14 A. Well, as I was just thinking of that answer, there was
15 another operation that we did that we were out of, like,
16 35th Avenue and Durango area was where the command post was.

09:13:47

17 Q. Okay. And was that one that Lieutenant Sousa gave?

18 A. Yes.

19 Q. Do you have any recollection of anyone else other than
20 Lieutenant Sousa giving these briefings?

09:14:11

21 A. It's possible. I don't -- I don't recall. And there's
22 been times where -- where the sheriff was there, but I'm not
23 sure if he gave the briefing.

24 Q. And would the briefing differ from operation to operation?

25 A. Yes.

09:14:45

1 Q. After any of the saturation patrols in which you
2 participated did your supervisors or anyone else from MCSO ever
3 debrief you about the stops you conducted?

4 A. No.

5 THE COURT: Thank you. Those are all my questions. 09:15:14

6 Mr. Casey, I wasn't running anybody's time, but I'm
7 going to start running yours now, okay?

8 MR. CASEY: Thank you, Your Honor.

9 Your Honor, with permission --

10 THE COURT: Mr. Casey? 09:15:55

11 MR. CASEY: Yes.

12 THE COURT: I'm sorry, I can barely hear you.

13 Could you make sure you're close to a microphone?

14 MR. CASEY: Yes, Your Honor.

15 THE COURT: Thank you. 09:16:02

16 MR. CASEY: With permission, I'd like to publish on
17 all screens Exhibit 102, which is admitted into evidence.

18 THE COURT: All right.

19 CROSS-EXAMINATION CONTINUED

20 BY MR. CASEY: 09:16:12

21 Q. Deputy, what I'd like to do is go back real quick. The
22 judge just asked you a question about briefings beforehand, and
23 you indicated that you recall Lieutenant Joe Sousa giving
24 briefings. Do you remember that?

25 A. Yes. 09:16:26

1 Q. Okay. I pulled up Exhibit 102, which the parties have
2 stipulated into evidence is an operations plan before an
3 operation in Sun City.

4 Just looking through that document briefly, although
5 you don't remember ever -- you didn't testify going to
6 Sun City, do you remember seeing operations plans like this
7 during briefings?

09:16:44

8 A. Yes.

9 Q. Okay. Now, what I'd like to do is deal -- turn to the next
10 page, and I'm going to blow this up so it's clear, or hopefully
11 clear. Do you remember reading any instructions such as we see
12 here conducting traffic stops on saturation patrols?

09:17:00

13 Do you see where it says: At no time will MCSO
14 personnel stop a vehicle based on the race of the subjects in
15 the vehicle?

09:17:34

16 And it's -- I didn't do a very good job blowing it up.

17 You see where it says race is prohibited?

18 A. Yes.

19 Q. Race -- okay. Now, do you remember --

20 MR. SEGURA: Excuse me, Your Honor, objection.

09:17:44

21 There's no foundation that the deputy was actually on this --

22 THE COURT: Overruled.

23 MR. SEGURA: -- saturation patrol.

24 BY MR. CASEY:

25 Q. In addition, is this the type of written warning you recall

09:17:52

1 receiving in a presaturation patrol briefing?

2 A. Can you ask that question again?

3 Q. We see this from the Sun City.

4 A. Yes.

5 Q. Is that the type of written warning you recall receiving in 09:18:14
6 the saturation patrols that you participated on?

7 A. Yes.

8 Q. In addition to the written warning, did Lieutenant Sousa,
9 to your recollection, also orally tell everyone that was
10 participating that racial profiling was prohibited? 09:18:39

11 A. Yes.

12 Q. Okay. Now, do you see there where it also talks about
13 conducting interviews? Do you remember reading that type of
14 information where deputies that were not 287(g) were only to
15 call 287(g) deputies based on certain indicators other than 09:18:59
16 race? You see at the end there?

17 Let me rephrase the question. Do you see at the last
18 sentence it says: At no time will a deputy call for a 287(g)
19 deputy based just on race?

20 Do you see that? 09:19:25

21 A. Yes.

22 Q. Was that the type of information that you recall reading
23 about before you participated in a saturation patrol?

24 A. Yes.

25 Q. Was that the type of information that you recall in the 09:19:36

1 saturation patrols you participated in that Lieutenant Sousa or
2 others would orally tell anyone participating?

3 MR. SEGURA: Objection, Your Honor, compound question.

4 THE COURT: Overruled.

5 BY MR. CASEY:

09:19:54

6 Q. You may answer, sir.

7 A. Yes.

8 Q. Okay. Now, I'd like to turn to something different, and --

9 Thank you. I no longer need the screen. Thank you,
10 ma'am.

09:20:05

11 You testified in answer to one of the judge's
12 questions, the Court's question, and I'm going back to
13 September of 2007, what we call the Ortega Melendres stop, you
14 told the judge that the other officers said, We don't have
15 anything on the driver.

09:20:27

16 Do you remember telling the Court that?

17 A. Yes.

18 Q. What did you understand those other officers to mean when
19 they told you, after they got done talking to the passengers,
20 We don't have anything on the driver?

09:20:40

21 A. I thought that meant they didn't have any probable cause
22 for arrest on him for any type of criminal charges.

23 Q. Was one of the criminal charges that you -- and -- you --
24 and I'm going to -- with that framework, Your Honor, with that
25 foundation, you mentioned earlier that you understood that you

09:21:09

1 were there looking for day laborers and illegal aliens.

2 My question to you is: Was there any other discussion
3 about any criminal activity that was being looked at at that
4 day, either that area or that church?

5 A. During the briefing --

09:21:30

6 Q. Yes, sir.

7 A. I don't recall.

8 Q. Now, the question I have for you a little bit more
9 specifically is: Do you know, as part of the investigation,
10 whether there was looking for any human smuggling?

09:21:44

11 MR. SEGURA: Objection, Your Honor, leading.

12 THE COURT: Overruled.

13 THE WITNESS: I don't recall.

14 BY MR. CASEY:

15 Q. Okay. Do you know whether there was any mention that there
16 was any investigation about human drop houses?

09:22:00

17 A. I don't -- I don't recall.

18 Q. All right. And thank you, sir. All we're asking for is
19 your best memory. I realize it's been nearly five years.

20 Next question: Do you remember whether there was any
21 information given that there was any information about traffic
22 hazards posed by people congregating an area and jumping into
23 traffic? Title 28 violations.

09:22:25

24 A. I don't remember.

25 Q. You would defer to the people that planned, initiated this

09:22:54

1 operation, wouldn't you?

2 MR. SEGURA: Objection, leading, Your Honor.

3 MR. CASEY: It's a preliminary matter, Your Honor.

4 THE COURT: Even if it's leading, it's not so bad that
5 I'm going to sustain the objection. 09:23:08

6 You may answer the question.

7 MR. CASEY: I'm going to withdraw the question.

8 BY MR. CASEY:

9 Q. Did you plan the operation?

10 A. No, I didn't. 09:23:17

11 Q. Did you -- did you do anything about the investigation that
12 led to this operation?

13 A. Not that I recall.

14 Q. All right. The people that might be in a better position
15 to answer these questions, or the judge's, would be those who
16 planned and initiated the operation; do you agree with that? 09:23:32

17 A. Yes, I do.

18 MR. SEGURA: Objection, Your Honor, as to which
19 questions he's referring to.

20 THE COURT: I'm going to overrule the objection. 09:23:45

21 MR. CASEY: All right. Would the court reporter,
22 Mr. Moll, read my question back to the witness, please, after
23 the interruption?

24 (The record was read by the court reporter.)

25 THE WITNESS: Yes, I do. 09:24:13

1 BY MR. CASEY:

2 Q. Okay. Let me turn -- and I only have a few more areas.

3 When you got out of the detention side at MCSO and you
4 went to the academy, at the academy did you receive any
5 training about the prohibition on the use of race or ethnicity
6 to make law enforcement decisions?

09:24:28

7 A. Yes, I did.

8 Q. Was that something that you were trained on at the MCSO?

9 A. Yes.

10 Q. Now, when you became -- later, when you went to the 287(g)
11 academy, your testimony, as I understand it, was that you
12 believed that the instructors there, although you don't
13 remember their name, were federal officials, ICE officials.

09:24:43

14 A. Yes.

15 Q. Did they conduct training with you about the use of race or
16 ethnicity in making law enforcement decisions?

09:25:03

17 A. Yes.

18 Q. Okay. What did ICE tell you about whether or not you could
19 use race?

20 A. It's prohibited.

09:25:28

21 Q. Did they -- do you remember why they told you it was
22 prohibited?

23 A. That there's different nationalities that are coming into
24 the United States illegally, there's not just one.

25 Q. Now, let me turn to a -- another factor. I want to go back

09:25:51

1 to 2007, September. And this is sort of a hypothetical because
2 of your -- your memory.

3 If you had spoken to the passengers in that vehicle
4 you had stopped and they had only spoken Spanish, could you
5 tell us what your custom and practice would have been under
6 those circumstances? 09:26:21

7 A. I would probably call for somebody who speaks -- excuse
8 me -- for a deputy that spoke Spanish for translation.

9 Q. All right. Now, the final area is the judge asked you
10 about your opinion about day laborers, and where they may be
11 from, and the testimony last week you were asked a question by
12 Mr. Segura about your experience. 09:26:47

13 Based on this traffic stop that you made in September
14 of 2007, that was your experience, that people that were
15 working as day laborers were also here in the country
16 unlawfully? Is that what your testimony was? 09:27:08

17 A. Can you repeat the question?

18 Q. Sure. I'm trying to follow up with the judge's question,
19 find out what was your experience that led you to the
20 conclusion that 51 percent or more of day laborers were in the
21 country unlawfully? 09:27:32

22 MR. SEGURA: Objection, Your Honor. I don't believe
23 that was the witness's testimony.

24 THE COURT: I'm going to overrule it on the basis that
25 the objection stated. 09:27:49

1 BY MR. CASEY:

2 Q. Would you answer my question, please? Do you need it read
3 back after the interruption?

4 A. Yes, I do.

5 MR. CASEY: All right. Mr. Moll, would you please -- 09:28:00
6 please read that back.

7 (The record was read by the court reporter.)

8 THE WITNESS: What was my experience prior to that?

9 BY MR. CASEY:

10 Q. I'm just trying to figure out -- I heard you say to the 09:28:38
11 judge that it was based on that day. I'm trying to figure out
12 if there was any other experience that you had other than that
13 day that led you to base -- to form that opinion based on your
14 experience.

15 A. Not in law enforcement, no. 09:28:54

16 Q. Okay. Now, that opinion is based on your experience within
17 Maricopa County, is --

18 A. Yes.

19 MR. CASEY: Okay. Those are all the questions I have
20 for the witness, Your Honor. Thank you. 09:29:10

21 THE COURT: All right.

22 Redirect?

23 MR. SEGURA: Good morning, Your Honor.

24 THE COURT: Good morning.

25 09:29:29

REDIRECT EXAMINATION

1
2 BY MR. SEGURA:

3 Q. Good morning, Deputy. I just have a few questions.

4 You testified on -- on Thursday, I believe, when asked
5 by Mr. Casey, that you remember receiving racial profiling
6 training at some point after MCSO lost its 287(g)
7 certification?

09:29:39

8 A. Yes.

9 Q. Do you remember that? And when did you receive that
10 training?

09:29:50

11 A. I don't recall. It was after we lost the 287(g) status.

12 Q. Do you remember the year?

13 A. No.

14 Q. Was it in the past year?

15 A. I did have some online training.

09:30:15

16 Q. And when was that training?

17 A. Within the last year or so, year and -- maybe year, year
18 and a half.

19 Q. Do you remember what -- what month that was in?

20 A. No.

09:30:32

21 Q. You said that was online training?

22 A. Yes.

23 Q. So you weren't able to ask any questions during that
24 training, were you?

25 A. No.

09:30:43

1 Q. Okay. It was conducted over the Internet, right?

2 A. Correct.

3 Q. And how was the term "racial profiling" defined in that
4 training?

5 A. I don't recall. 09:30:53

6 Q. And so we've been discussing this operation that occurred
7 in September of 2007, right?

8 A. Yes.

9 Q. And that operation was consistent with what you learned in
10 this most recent online training? 09:31:10

11 A. Can you repeat that?

12 Q. That operation of September 2007, that was consistent with
13 what you learned in this most recent training?

14 A. As far as racial profiling?

15 Q. Yes. 09:31:30

16 A. Yes.

17 Q. You testified on Thursday, and I believe in response to the
18 judge's question, that you -- you didn't let the driver go
19 until HSU -- the HSU deputies had completed their investigation
20 and told you it was up to you whether to give him a citation? 09:31:52

21 A. Correct.

22 Q. And that's -- that's still your testimony today?

23 A. Yes.

24 Q. Okay. I'm going to hand you -- you were looking at your
25 deposition transcript last Thursday. I'm going to hand you it 09:32:05

1 again.

2 MR. SEGURA: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. SEGURA:

5 Q. Can you turn to page 59 of your deposition transcript and
6 look at line 10.

09:32:20

7 Are you there?

8 You were asked on line 10 -- starting on line 10:

9 "Approximately how long after you stopped the truck was the
10 driver there on the scene?"

09:32:47

11 And you answered on line 12: I don't -- excuse me.

12 "I don't -- I don't remember."

13 Then you were asked on line 14: "Tell me as best as
14 you can what happened after you called in for Sergeant Madrid."

15 And you answered: "Unmarked vehicle arrives.

09:33:02

16 Sergeant Madrid and another deputy was in the vehicle. Came
17 out and they dealt with the four passengers.

18 "I -- as I remember, I dealt with the driver. Gave
19 him his verbal warning, his driver's license, registration and
20 insurance back. And told him to slow down. And I'm not sure
21 at what point he drove off, but he was free to leave the
22 traffic stop at that time. I believe the occupants of the
23 vehicle were out of the vehicle at that time. And shortly
24 after that, I left the scene."

09:33:17

25 Do you see that?

09:33:31

1 A. Yes.

2 Q. And that was your deposition testimony, right?

3 A. Yes.

4 Q. And you swore to tell the truth --

5 A. Yes.

09:33:41

6 Q. -- during your deposition?

7 I just have --

8 A. Can I elaborate on that?

9 Q. We can move on to another area.

10 The purpose of saturation patrols is to make contacts
11 with vehicles, right?

09:34:00

12 A. No. With vehicles?

13 Q. Yes.

14 A. No, with persons.

15 Q. Okay. And that includes passengers?

09:34:14

16 A. Yes.

17 MR. SEGURA: I have no further questions, Your Honor.

18 THE COURT: Deputy DiPietro, thank you for your
19 testimony. You may step down.

20 THE WITNESS: Thank you.

09:34:31

21 MR. YOUNG: Your Honor -- Your Honor, plaintiffs call
22 Sheriff Joe Arpaio.

23 THE COURT: All right. If you'll gather him and have
24 him come forward in order to be sworn.

25 (Pause in proceedings.)

09:35:19

1 THE COURT: Sheriff Arpaio, if you'll please come
2 right here and be sworn by our deputy.

3 THE CLERK: Can you please state and spell your full
4 name.

5 THE WITNESS: Joseph M. Arpaio, A-r-p-a-i-o, Sheriff. 09:35:32

6 THE CLERK: Thank you. Please raise your right hand.

7 (Joseph M. Arpaio was duly sworn as a witness.)

8 THE CLERK: Thank you. Please take our witness stand.

9 (Pause in proceedings.)

10 MR. YOUNG: Your Honor, we have a couple of binders 09:36:05
11 for you and for counsel, and I'll have our assistant,

12 Ms. Mandujano, distribute those. One of those is a witness

13 binder that contains numerous exhibits that I plan to ask the

14 sheriff about. The other contains four deposition transcripts

15 that we may also look at. 09:36:26

16 So I think we'll supply them to the sheriff as well as
17 to the Court, as well as to counsel.

18 THE COURT: All right. Are they all identical?

19 MR. YOUNG: Yes.

20 THE COURT: Do they contain exhibits that have not yet 09:36:41
21 been admitted?

22 MR. YOUNG: They do, and I'll note that because I'll
23 seek admission of some of them.

24 THE COURT: All right.

25 MR. YOUNG: But we'll need to ask the sheriff about 09:36:46

1 them first.

2 THE COURT: I understand.

3 (Pause in proceedings.)

4 JOSEPH M. ARPAIO,

5 called as a witness herein, having been duly sworn, was

09:37:02

6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. YOUNG:

9 Q. Good morning, Sheriff.

10 A. Good morning.

09:37:15

11 Q. How are you?

12 A. A little flu, but I'm okay.

13 Q. Sorry to hear that. Are you able to testify today?

14 A. Yes.

15 Q. You have not always viewed illegal immigration as a serious

09:37:24

16 crime, correct?

17 A. One of the serious crimes, yes.

18 Q. Okay. But you didn't always look at illegal immigration as

19 a serious crime, is that right?

20 A. That's right.

09:37:37

21 Q. Before 2005 you did not view illegal immigration as a top

22 issue, correct?

23 A. Correct.

24 Q. In fact, in 1996 you wrote a whole book that did not even

25 mention illegal immigration, correct?

09:37:49

1 A. Possibly.

2 Q. I'll ask you to take a look at your deposition testimony
3 from September 7, 2010, in the Mora case, page 229. This will
4 give you a chance to look at that big binder there. And you'll
5 see that there are four deposition transcripts there. Two of
6 them in this case, which are Ortega, and then one in the Mora
7 case and one in the Lopez Valenzuela case.

09:38:15

8 If you look at the one from September 7, 2010, in the
9 Mora case, at page 229, you'll see at line 20 -- actually, line
10 22 you say: "Things have changed since 1996. We didn't have
11 a -- at least outwardly, a controversial illegal immigration.
12 I don't think I even mentioned that in the first book."

09:38:39

13 Do you see that?

14 A. 229?

15 Q. Correct.

09:38:58

16 MR. CASEY: Your Honor, for completeness purposes, can
17 we have the line 20 actually read regarding the date?

18 MR. YOUNG: Sure. Line 20 is:

19 "ANSWER: Well, the first book was in 1996.

20 "QUESTION: Okay."

09:39:12

21 And then what I read earlier follows.

22 THE WITNESS: That's correct.

23 BY MR. YOUNG:

24 Q. Okay. So your first book didn't mention illegal

25 immigration at all, correct?

09:39:23

1 A. If that's what I said, yes.

2 Q. Now, I'd like you to take a look at the other binder, which
3 is witness binder. It has a lot of number tabs, and hopefully
4 those tabs will help you find various exhibits that we're going
5 to talk about and look at today.

09:39:42

6 I'd ask you to look at PX 385.

7 Now, there's a cover page on each exhibit, and then
8 actually I think you're looking at the wrong one.

9 Do you have 385 there?

10 A. Trying to get the page here. 385.

09:40:19

11 Q. Well, look at -- go look at the tabs. Look at the tabs
12 first, and then you can find the document.

13 Ms. Mandujano is handing you a copy separately of
14 Exhibit 385 in case that will help.

15 THE COURT: All right. I'm going to ask before anyone
16 approaches the witness, you ask first.

09:40:37

17 MR. YOUNG: My apologies, Your Honor.

18 BY MR. YOUNG:

19 Q. So Sheriff, you've been handed a copy of Exhibit 385, which
20 is a November 20, 2005 letter to you.

09:40:52

21 Do you see that?

22 A. Yes, sir.

23 Q. Is that your handwriting on the upper part of the first
24 page?

25 A. Yes, it is.

09:41:01

1 Q. And you forwarded this to Dave Hendershott, your chief
2 deputy at the time?

3 A. I made cop -- I indicated that that should go to him, yes.

4 Q. All right.

5 MR. YOUNG: Your Honor, we move to admit Exhibit
6 PX 385.

09:41:15

7 MR. CASEY: Your Honor, no foundation has been
8 offered, other than he made marginalia on it, for the
9 underlying hearsay in the letter.

10 THE COURT: Are you offering the underlying content of
11 the letter for the truth of the matter asserted in it,
12 Mr. Young?

09:41:27

13 MR. YOUNG: No, Your Honor.

14 THE COURT: Okay. The objection is overruled. The
15 exhibit is admitted.

09:41:40

16 (Exhibit No. 385 is admitted into evidence.)

17 MR. YOUNG: We can publish Exhibit 385.

18 THE COURT: You may do so.

19 BY MR. YOUNG:

20 Q. This is a letter to you from someone saying he or she is
21 from the Minuteman Project, correct?

09:41:47

22 A. Yes.

23 Q. And it talks about in the first page, in the paragraph at
24 the bottom, about rallies that that group had held at Bell Road
25 and Cave Creek, and then again at Thomas and 36th Streets.

09:42:05

1 Do you see that?

2 A. Yes.

3 Q. Those are places where you later did saturation patrols,
4 correct?

5 A. Yes.

09:42:15

6 Q. And on the second page in the second-to-last paragraph in
7 the middle of the page, it says: Is it unreasonable to ask our
8 police to question day laborers about their immigration status?

9 You see that sentence?

10 A. What -- what paragraph on page --

09:42:40

11 Q. On the second page, it's 517, second paragraph from the
12 bottom. In the middle of that paragraph there's a sentence
13 that says: Is it unreasonable to ask our police to question
14 day laborers about their immigration status?

15 Do you see that sentence?

09:42:58

16 A. Yes.

17 Q. Now, there's a little mark in pen on the right side of that
18 letter. Is that yours?

19 A. It may be.

20 Q. You marked that paragraph to bring it to the attention of
21 Chief Hendershott, correct?

09:43:09

22 A. I believe I did.

23 Q. Then in the next paragraph down at the bottom there's a
24 sentence that says: MMP -- which is Minuteman Project -- wants
25 to work with an organization that is willing to investigate and

09:43:38

1 deport illegal immigrants when they are spotted in our cities.

2 Do you see that sentence?

3 A. Yes.

4 Q. You also put a mark next to that paragraph to direct Chief
5 Hendershott's attention to that, correct?

09:43:52

6 A. Yes.

7 Q. In your note to Chief Hendershott on the first page of
8 page -- PX 385 you told him: We should have a meeting
9 internally and decide how to respond. And then your initials
10 under that dated November 25, 2005, correct?

09:44:11

11 A. Yes.

12 Q. And then you made a cc to yourself so that you would get a
13 copy of this letter, is that right?

14 A. Yes.

15 Q. You started to become more concerned about illegal
16 immigration sometime around 2006, correct?

09:44:21

17 A. Yes.

18 Q. And it became one of your top priorities?

19 A. One of, yes.

20 Q. Around that time you started to adopt your office's
21 policies and procedures to address the illegal immigration
22 issue, is that right?

09:44:37

23 A. Yes.

24 Q. You entered into a 287(g) agreement with the federal
25 government to enforce the illegal immigration laws.

09:44:51

1 A. In conjunction with two state laws that were passed.

2 Q. You also created the Triple I Unit, which later became the
3 Human Smuggling Unit?

4 A. Yes.

5 Q. You set up a hotline so that people could call in with
6 information about illegal immigrants that they thought they'd
7 found?

09:45:07

8 A. Yes.

9 Q. And you started doing saturation patrols in order to
10 apprehend illegal aliens, correct?

09:45:18

11 A. We started to do employer sanction and human smuggling
12 enforcement.

13 Q. And part of that was using saturation patrols.

14 A. On occasion, yes.

15 Q. Well, up until December 2009 you'd done about 13 of these
16 saturation patrols, correct?

09:45:37

17 A. Crime suppression, yes.

18 Q. Do you use, or does your department use saturation patrol
19 and crime suppression patrols interchangeably?

20 A. Yes.

09:45:57

21 Q. You've done more of them since then, correct?

22 A. More --

23 Q. More saturation patrols since December 2009, is that
24 correct?

25 A. Yes.

09:46:05

1 Q. Your program or your policy is to go after illegal
2 immigrants, but not the crime first, is that right?

3 A. That's not right. That is not correct.

4 Q. You had a press conference in 2007 to announce your illegal
5 immigration efforts, correct? 09:46:29

6 A. I may have.

7 Q. And you said at that time that your program was a pure
8 program to go after the illegals and not the crime first,
9 correct?

10 A. The context of that was that we had the 287(g) agreement 09:46:45
11 along with our enforcement of state crimes, and we had the
12 authority under the federal policy to arrest those that are in
13 this country illegally.

14 MR. YOUNG: Your Honor, I would request that we play
15 Exhibit 410D, which is a portion of the sheriff's statements 09:47:08
16 during that press conference.

17 THE COURT: Any objection?

18 MR. CASEY: Your Honor, my understanding -- yes, I --
19 I object that there has not -- it's improper impeachment. As I
20 understand what he's using it for, the witness has just 09:47:29
21 answered his question.

22 THE COURT: Well, I'm going to overrule the objection.
23 I'm not sure whether it's entered for impeachment only. It
24 seems to me that it's not hearsay. So I'm going to allow it to
25 be played. 09:47:38

1 MR. CASEY: Thank you, Your Honor.

2 (Exhibit 410D played as follows.)

3 "SHERIFF ARPAIO: Actually, when you look at this
4 whole situation, the Phoenix Police situation, ours --"

5 MR. CASEY: Your Honor, this has not been identified
6 as an exhibit yet. It's not been identified whether it's in
7 evidence, I don't believe, and whether it's --

09:47:53

8 THE COURT: So your objection is?

9 MR. CASEY: Objection, it's not in evidence.

10 THE COURT: Is this exhibit in evidence?

09:48:06

11 MR. YOUNG: It's been marked. I'm going to ask him
12 whether this is him, and then I'm going to move it into
13 evidence, Your Honor.

14 THE COURT: All right. Then why don't -- all right.
15 Play it.

09:48:14

16 MR. YOUNG: Could we start from the beginning and
17 maybe the sound level can come down a little bit.

18 (Exhibit 410D played as follows.)

19 "SHERIFF ARPAIO: Actually, when you look at this
20 whole situation, the Phoenix Police situation, ours is a --
21 a -- a operation, whether it's the state law or the federal, to
22 go after illegals, not the crime first, that they happen to be
23 illegals. My program, my philosophy is a pure program. You go
24 after illegals. I'm not afraid to say that. And you go after
25 them and you lock them up."

09:48:30

09:48:55

1 BY MR. YOUNG:

2 Q. Sheriff, that's you, isn't it?

3 A. Next to the agent in charge of ICE.

4 Q. Well, you're the one who's talking in that video, correct?

5 A. With the agent in charge of ICE. I don't have the whole
6 video.

09:49:08

7 Q. Okay. Well, in what we just saw, you're the only person
8 talking, correct?

9 A. Yes.

10 Q. This press conference took place in February 2007 and you
11 made those statements there?

09:49:20

12 A. According to the video.

13 MR. YOUNG: Your Honor, I move for admission of
14 Exhibit 410D.

15 THE COURT: Objection?

09:49:31

16 MR. CASEY: No objection, Your Honor.

17 THE COURT: Exhibit 410D is admitted.

18 (Exhibit No. 410D is admitted into evidence.)

19 BY MR. YOUNG:

20 Q. And you have no problems having a pure program where you go
21 after the illegals and not the crime first, correct?

09:49:38

22 A. I'm going to state again, under the 287(g) agreement when
23 we enforce the laws and stop someone for violating the laws,
24 we -- under that agreement we have the authority to enforce the
25 federal immigration laws, even though they were not connected

09:50:04

1 with any state crime.

2 Q. Your practice for press releases for major investigations
3 is for them, the press releases, to be passed by you before
4 they are sent out, is that right?

5 A. I have a public relations director that usually writes the
6 press releases, and on occasion I will review the basics of
7 that press release. 09:50:33

8 Q. Well, back at your deposition on September 7, 2010, in the
9 Mora case, at page 131, you were asked this question and you
10 gave these an -- this answer, at line 6 of page 131: 09:51:02

11 "And I wanted to get at your protocol in your
12 department. Is it routine and customary for any press release
13 to be passed by you before it's sent out?

14 "ANSWER: It -- if it's a major investigation, the
15 answer is yes, normally. 09:51:23

16 "QUESTION: And then when it's given to you, you may
17 edit it, but ultimately you have to approve what's sent out.
18 Is that fair to say?

19 "ANSWER: I look at it."

20 A. Yeah, I do look at certain press releases. 09:51:38

21 Q. Please, let's look at PX 328. Sheriff, can you find that
22 in your binder?

23 MR. CASEY: I'm sorry, what was the exhibit,
24 Mr. Young?

25 MR. YOUNG: PX 328. 09:51:55

1 MR. CASEY: Thank you, sir.

2 BY MR. YOUNG:

3 Q. Each tab has a number on the side starting with PX. And
4 then there's a cover sheet with a little number on it and then
5 you can flip to the next page.

09:52:24

6 Are you looking at your office's July 20, 2007, press
7 release, sheriff?

8 A. You're talking about 328?

9 Q. Yes.

10 A. That's the July 20.

09:52:40

11 Q. Correct. It's the one that has the headline: Sheriff's
12 Crackdown on Illegal Immigration Heats Up.

13 Do you see that?

14 A. Yes.

15 Q. And underneath that it says: Hundreds of
16 deputies/volunteer posse targeting profile vehicles. You see
17 that?

09:52:53

18 A. Yes.

19 Q. The purpose of that press release was to let the public and
20 your constituents know your position and actions relating to
21 the issue of illegal immigration, correct?

09:53:06

22 A. Yes.

23 Q. The quoted statements reflect your views, is that right?

24 A. There are some quotes and some that are not quoted, and as
25 I said before, I have public information officers that prepare

09:53:35

1 press releases.

2 Q. On the second page, the third bullet point, it says you
3 announced a dedicated hotline for citizens to call in with
4 information or evidence about illegal aliens. You did that at
5 that time, right?

09:53:55

6 A. Yes.

7 Q. Then at the bottom it says, and this is in quotations
8 attributed to you, quote: "We are quickly becoming a
9 full-fledged anti-illegal immigration agency," end quote.

10 Those are your words?

09:54:12

11 A. Yes, as re -- as reference to two state laws, and the
12 authority from the federal government to enforce illegal
13 immigrant laws, so we did have a unit to perform those duties.
14 It wasn't the whole agency working on immigration.

15 Q. Is that statement still true, that is, is your office still
16 a full-fledged anti-illegal immigration agency?

09:54:40

17 A. We are not a full-fledged agency. We have units to perform
18 those duties along with homicide and many other duties.

19 Q. But you had the tools, and by July 2007 you developed the
20 tools, the money, and the training to concentrate on the
21 specific problem of illegal immigration, is that right?

09:55:04

22 A. Yes. Yes.

23 Q. And in discussing -- in discussing all those changes that
24 we've been talking about in the 2006-2007 time frame, you said
25 the following at the bottom of the press release on the second

09:55:22

1 page: We have heard the people speak, we understand their
2 frustration, and will continue to do all that we can do to
3 reduce the number of illegal aliens making their way into the
4 United States and Maricopa County.

5 Was that your feeling at the time?

09:55:40

6 A. Yes.

7 Q. Is it still your feeling today?

8 A. Yes.

9 Q. Were you here in the courtroom -- were you here in the
10 courtroom on Thursday, when David Vasquez testified about what
11 he thought was being stopped for driving while brown in Mesa
12 during one of your operations there?

09:55:57

13 A. Was I in this courtroom? No.

14 Q. That's my question. Did you hear about his testimony?

15 A. No.

09:56:14

16 Q. So you don't have any basis to comment on his testimony one
17 way or the other?

18 A. That's correct.

19 Q. Even assuming that the officer sees the cracked windshield,
20 a violation for one is a highly discretionary decision by your
21 officers, correct?

09:56:27

22 A. That's up to the individual officer.

23 MR. YOUNG: Let's put PX 183. Before you can find
24 that, it's been admitted into evidence so we can publish it.

25 THE COURT: Would you repeat that exhibit again,

09:56:46

1 please?

2 MR. YOUNG: 183, PX 183.

3 THE COURT: Thank you.

4 Has that been admitted into evidence? I'm sorry.

5 MR. YOUNG: Yes, it has, Your Honor.

09:56:59

6 BY MR. YOUNG:

7 Q. PX 183 is another press release from your office dated
8 April 5, 2008. Do you see that?

9 A. Yes.

10 Q. And it announces a Guadalupe crime suppression operation
11 being complete?

09:57:11

12 A. Yes.

13 Q. And you say in that press release that Mayor Gordon -- and
14 I refer you to the fourth paragraph about in the middle of the
15 page -- Mayor Gordon says that you arrest brown-skinned people
16 for driving with cracked windshields.

09:57:27

17 Do you see that?

18 A. Yes.

19 Q. Now, you disagreed with that statement at the time, right?

20 A. Yes.

09:57:42

21 Q. And your statement at the time, if you go toward the
22 bottom, third paragraph from the bottom, was that Gordon's --
23 and you also mention Mayor Jimenez's -- pro-illegal alien
24 comments and actions to prevent this sheriff from enforcing
25 state and immigration laws within their cities will not deter

09:58:04

1 me from enforcing the law.

2 Was that your feeling at the time?

3 A. Yes.

4 Q. Is that your feeling today?

5 Notice, I know they're --

09:58:16

6 A. They're no longer there, so I can't answer that.

7 Q. All right. But you feel today that their comments then
8 were pro-illegal alien comments, is that right?

9 A. It's a matter of conjecture.

10 Q. Well, you made this statement, or at least your office put
11 this statement out that's attributed to you. You said that
12 Mayors Gordon and Jimenez were making pro-illegal alien
13 comments, is that correct?

09:58:34

14 A. Yes.

15 Q. Now, when Mayor Gordon accused you of going after
16 brown-skinned people for driving with cracked windshields, you
17 thought he was talking about illegal immigrants, is that right?

09:58:49

18 A. I'm not sure what he was talking about. He's made many,
19 many comments that were not accurate.

20 However, you will see that we arrested 50 people for
21 warrants and no connections, many of those with illegal
22 immigration. So this was a crime suppression operation in
23 Guadalupe that I'm responsible for as the law enforcement
24 agency in that area.

09:59:15

25 Q. I'm looking at what your press release describes Mayor

09:59:37

1 Gordon as saying, and what your press release says in that
2 fourth paragraph is: Mayor Gordon and other critics have
3 accused the sheriff's volunteer posse and deputies of arresting
4 brown-skinned people for driving with cracked windshields.

5 Do you see that sentence?

09:59:56

6 A. That's his allegations.

7 Q. There's nothing in here about illegal aliens, correct?

8 A. This is what the former mayor is saying.

9 Q. Okay. The former mayor is saying that you should not
10 arrest brown-skinned people for driving with cracked
11 windshields, right? That's what your press release --

10:00:15

12 A. That's what he is saying.

13 Q. Okay. And your press release is reporting what he was
14 saying, right?

15 A. Yes.

10:00:27

16 Q. And then your reaction was that that's a pro-illegal alien
17 comment.

18 MR. CASEY: Your Honor, for completeness purposes I
19 request that the witness be shown paragraph number 4, where
20 there's a reference to --

10:00:37

21 THE COURT: You know what?

22 MR. YOUNG: Your Honor --

23 MR. CASEY: Your Honor --

24 THE COURT: I'm going to overrule your objection. I
25 will look at paragraph 4.

10:00:43

1 MR. CASEY: Thank you, Your Honor.

2 The second sentence of paragraph 4, Your Honor.

3 THE COURT: I think that you can ask him that on
4 cross-examination --

5 MR. CASEY: Thank you, Your Honor. 10:00:53

6 THE COURT: -- if you wish to do so.

7 MR. YOUNG: And I think that would be the proper way
8 to do it, Your Honor.

9 MR. CASEY: And I move to strike counsel's comment
10 about -- 10:00:58

11 THE COURT: All right. We're not going to enter into
12 this kind of bickering back and forth. Please, if you have
13 objections and comments about objections, you make them in one
14 or two words and I'll make the ruling.

15 MR. YOUNG: Thank you, Your Honor. 10:01:09

16 BY MR. YOUNG:

17 Q. Sheriff, you have the whole press release in front of you.
18 You're free to read whatever you want to in it.

19 My question is: Your response to Mayor Gordon's
20 criticism that you were arresting brown-skinned people for
21 driving with cracked windshields was that that was a
22 pro-illegal alien comment, correct? 10:01:25

23 A. If you look at my quotes, I'm stating that we enforce all
24 the laws, including illegal immigration, and many arrests were
25 made of criminals with outstanding warrants. 10:01:49

1 Q. And a lot of them with brown skin, correct?

2 A. I don't really know what color their skin was.

3 Q. Okay. Well, for purposes of this press release, you were
4 treating brown-skinned people to be the same as illegal aliens.

5 Do you agree with that?

10:02:11

6 A. No, I don't.

7 Q. Did you deny in your press release, anywhere in your press
8 release did you deny Mayor Gordon's accusation that you and
9 your department were arresting brown-skinned people for driving
10 with cracked windshields?

10:02:31

11 A. I'm not sure if I denied it in this press release. It
12 could have been denied in other media venues.

13 Q. I took your deposition on November 16, 2010, Sheriff, and
14 I'm going to read to you a part of it from page 248, lines 10
15 through 20.

10:02:56

16 "QUESTION: Well, your press release says that it's
17 clear he doesn't like --"

18 That's referring to Mayor Gordon.

19 "-- doesn't like what he says is your 'arresting
20 brown-skinned people for driving with cracked windshields.' Do
21 you disagree with him about that?"

10:03:10

22 And you answered: "Of course I do. That's a very
23 strong, slanderous-type remark.

24 "QUESTION: Is there anything in this press release
25 where you deny the accusation that your volunteer posse and

10:03:22

1 deputies arrest brown-skinned people for driving with cracked
2 windshields?

3 "ANSWER: No."

4 Then there's an objection, and then you go on:

5 "This is just a press release regarding an operation, 10:03:38
6 and it was prepared by my public relations staff. And I looked
7 at it."

8 A. I'm trying to -- was that 248?

9 Q. I was reading from your November 16, 2010, deposition,
10 which is in the other binder if you want to look at it. 10:03:55

11 Sheriff, I actually don't have any further questions
12 on this issue. We can move on unless --

13 A. Okay.

14 Q. -- you want to look at it.

15 You thought that because Mayor Gordon was advocating 10:04:24
16 the rights of brown-skinned people that he was being
17 pro-illegal alien, is that right?

18 A. Could you repeat that question, please?

19 Q. Let me break it up.

20 Your understanding as reflected in this press release 10:04:40
21 was that Mayor Gordon was advocating the rights of
22 brown-skinned people, right?

23 A. No.

24 Q. You didn't think that he was advocating the rights of
25 brown-skinned people? 10:04:52

1 A. You know, I can't read his mind what he was advocating, and
2 once again, I didn't prepare this complete press release.

3 Q. All right. But you -- you agreed with the press release
4 and probably read it and approved it at the time it went out,
5 correct?

10:05:16

6 A. Sometimes I read every line; sometimes I just breeze over
7 it.

8 Q. Well, you said in your press release that Mayor Gordon was
9 accusing you of arresting brown-skinned people for driving with
10 cracked windshields. That's right.

10:05:31

11 A. Yes.

12 Q. And you thought that because of that criticism, he was
13 making pro-illegal alien comments, is that right?

14 A. At the time that could be possible.

15 Q. Let's go to Exhibit PX 353.

10:05:53

16 Actually, before we go there -- before we go there,
17 you thought that Mayor Gordon, in making the statements that he
18 was making, was encouraging civil unrest against the sheriff
19 and his deputies, is that right?

20 A. That was possible.

10:06:16

21 Q. Okay. Isn't that what you thought at the time, that his
22 saying that you should not be arresting brown-skinned people
23 for driving with cracked windshields would encourage civil
24 unrest against your department?

25 A. You know, I don't arrest people on these operations; my

10:06:29

1 deputies and my staff that runs the operations. I don't get
2 involved in these operations. I'm not there on the street
3 patrolling and making arrests.

4 Q. All right. I'm -- I'm going to ask you to take a look at
5 your November 16, 2010, deposition in this case, and why don't
6 we put this on the screen. It's page 247, line 8, and going
7 down to line 20.

10:06:52

8 Sheriff, you were asked at that time:

9 "QUESTION: So you think that when Mayor Gordon
10 criticizes you for arresting brown-skinned people for driving
11 with cracked windshields, that he's making a pro-illegal alien
12 comment?"

10:07:18

13 Actually, we went over that already.

14 Page 251.

15 Question at line 5, page 251: "Do you think that when
16 Mayor Gordon and other critics accuse your department of
17 arresting brown-skinned people for driving with cracked
18 windshields, that they are, as you say in your press release,
19 'encouraging civil unrest against the sheriff and his
20 deputies'?"

10:07:36

10:07:53

21 "ANSWER: Yes."

22 That was your feeling at the time, correct?

23 A. Yes, because we do not arrest people because of the color
24 of their skin. And he's making those allegations, the way I
25 read it.

10:08:09

1 Q. Now, let's go to PX 353, which has been admitted.

2 Exhibit 353 is another press release from your office,
3 Sheriff, about the issue of swine flu.

4 You see that on your screen?

5 A. Yes. 10:08:30

6 Q. And the first sentence of that press release is a statement
7 attributed to you that says that: It is estimated that over
8 90 percent of all illegal aliens arrested by the anti-human
9 smuggling unit come from areas south of Mexico City where the
10 swine flu has already killed nearly 150 people. 10:08:50

11 You see that?

12 A. Yes.

13 Q. You authorized your office to issue that statement?

14 A. Yes. Yes.

15 Q. Do you have any proof of that claim? 10:09:03

16 A. Well, we were concerned with the people incarcerated in our
17 jails because of this epidemic in Mexico, and I believe we show
18 that a high percentage of the people that are in our jails came
19 from south of Mexico City.

20 Q. You have no proof for the statement that's made in your
21 press release, is that correct? 10:09:34

22 A. Yes, we'd talked to all the inmates from Mexico that were
23 incarcerated, and the majority said they did come from south of
24 Mexico City.

25 Q. Did any of them have swine flu? 10:09:54

1 A. Not that I know of, but we were concerned.

2 Q. You were trying to associate people from Mexico with
3 disease. Isn't that what you were doing?

4 A. No, I was just being concerned about illegal immigrants
5 coming across the border that may be carrying the swine flu,
6 since they're not going through the checkpoints. 10:10:14

7 Q. You've called illegal immigrants dirty in the past, is that
8 right?

9 A. I think on the context that I said that was when you cross
10 the border illegally and cross the desert, sometimes for days,
11 that you are heated, you could be dirty after four days in the
12 desert, and that was the context how I used that word. 10:10:32

13 Q. Let's go to PX 396. That's been admitted, so we can
14 publish it.

15 Sheriff, in 2008 you published this book, Joe's Law,
16 America's Toughest Sheriff Takes on Illegal Immigration, Drugs,
17 and Everything Else That Threatens America? 10:11:05

18 A. That was with my co-editor.

19 Q. You dictated it into a tape-recorder, is that right?

20 A. Much of it. 10:11:28

21 Q. And then your co-author gave you background and you
22 repeated it, is that right?

23 A. He may have made some of his own comments.

24 Q. Well, you wrote the book, correct?

25 A. In conjunction with the co-author. 10:11:45

1 Q. In your deposition in the Mora case on September 7, 2010,
2 at page 232, lines 15 to 21, you testified as follows, starting
3 at line 15:

4 "It is to ask now, have you read it?

5 "ANSWER: No. I dictated the subject matter working 10:12:20
6 with my co-author. So I already knew about the book. Why do I
7 have to read it again? I mean, I wrote the book. So I don't
8 have to read it again. So when I say I didn't read the book, I
9 don't have to read the book."

10 Was that testimony truthful at that time? 10:12:41

11 A. Which is very confusing. I don't understand your question.
12 But are you saying that I didn't read the book again?

13 Q. No, I'm saying that you wrote the book, so at the time you
14 said you didn't have to read it again, that's what you
15 testified to in September 2010, is that right? 10:12:59

16 A. Yes.

17 Q. And now let's look at the book. On page 48 -- and again,
18 we're looking at PX 396 -- you wrote, quote: All other
19 immigrants, exclusive of those from Mexico, hold to certain
20 hopes and truths. 10:13:27

21 Do you see that?

22 A. What paragraph are you referring to?

23 Q. Yeah, let me apologize here. It's the -- the third
24 paragraph from the top, and it's the paragraph that begins:
25 There were other differences as well. 10:13:46

1 You see that sentence?

2 A. Yes.

3 Q. And you're referring to your parents there, right?

4 A. Yes.

5 Q. And you said that they, like all other immigrants exclusive 10:14:00
6 of those from Mexico, held to certain hopes and truths, is that
7 right?

8 A. Once again I will say that my co-author wrote much of the
9 items you're reading.

10 Q. Now, you're saying in that paragraph -- or your book, 10:14:22
11 anyway, is saying in that paragraph -- that immigrants from all
12 over the world, except those from Mexico, hold to the hopes and
13 truths that your own parents came to this country with.

14 Is that a fair reading of what that paragraph says?

15 A. What paragraph are you talking about? 10:14:43

16 Q. The paragraph that's on your screen that says, quote, My
17 parents, like all other immigrants exclusive of those from
18 Mexico, held to certain hopes and truths.

19 A fair reading of that is that immigrants from
20 everywhere else in the world -- Italy, China, anywhere else 10:15:04
21 other than Mexico -- hold to the same hopes and truths that
22 your parents held when they came here.

23 Is that a fair reading of that paragraph?

24 A. I believe that the co-author was talking about the
25 proximity of Mexico and the United States, where many that came 10:15:26

1 over went back to Mexico versus Italy, where my parents came
2 from.

3 Q. Sheriff, can you give me a yes or no answer to that
4 question?

5 A. I'm trying to explain it. 10:15:41

6 Q. Well, do you have a yes or no answer to my question?

7 A. Can you repeat the question again?

8 Q. My question is: Is it a fair reading of that sentence in
9 your book that says, My parents, like all other immigrants
10 exclusive of those from Mexico, held to certain hopes and 10:15:54
11 truths, that it's saying that immigrants from other places in
12 the world have the same hopes and truths that your parents had,
13 but the people who came here from Mexico do not?

14 A. Well, that's not fair. The people from Mexico had the same
15 hopes and enthusiasm for coming into the United States. 10:16:17

16 Q. You think that people who come here from Mexico, and who
17 have come here from Mexico, come here in search of the same
18 freedoms and opportunities in America that other people have
19 come to America for during its long history?

20 A. Yes, I do. 10:16:41

21 Q. Would you agree with me that the American dream is for
22 everyone?

23 A. Yes.

24 Q. But on that same page -- again, looking down in the
25 paragraph that starts number 2 -- you say in your book that 10:16:59

1 there's a growing -- quote, growing movement among not only
2 Mexican nationals but also some Mexican Americans -- and I'm
3 paraphrasing here a little bit -- who contend that the United
4 States stole the territory that is now California, Arizona, and
5 Texas, for a start, and that massive immigration over the
6 border will speed and guaranty the reconquista of those lands
7 returning them to Mexico.

10:17:21

8 Do you see that?

9 A. Yes.

10 Q. You put that into your book, right?

10:17:35

11 A. Once again, my co-author wrote them.

12 Q. Okay. Is that your view?

13 A. No, it isn't.

14 Q. Then on the next page, page 49 of your book, the paragraph
15 at the top, you talk about how second and third generations of
16 Mexican immigrants have maintained identities from language to
17 customs to beliefs separate from the American mainstream.

10:17:54

18 Do you see that language?

19 A. Yes.

20 Q. That's -- that's in your book, right?

10:18:16

21 A. Yes.

22 Q. You think that those whose ancestors came from Mexico,
23 second- and third-generation Mexican Americans, are not part of
24 the American mainstream?

25 A. No. They are. I think we're referring to Italian

10:18:40

1 neighborhoods, Irish neighborhoods seem to congregate sometimes
2 in one area. That may be what my co-author was talking about.

3 Q. Well, do you believe that people who lived in Italian
4 neighborhoods of certain cities in the United States are not
5 part of the American mainstream?

10:19:01

6 A. No, they are part of -- of our country.

7 Q. You say that second and third generations of Mexican
8 immigrants, with respect to language and customs and beliefs,
9 are, quote, separate from the American mainstream, end quote.

10 Is that a fair reading of this section of your book?

10:19:21

11 A. Once again, I didn't write this; my co-author wrote it.

12 Q. In this book you talk about a lot of things that you do in
13 your official capacity as sheriff, correct?

14 A. Yes.

15 Q. And in fact, there isn't really a very firm line between
16 what's in your book and what you do in your official capacity,
17 is that right?

10:19:36

18 A. I don't understand the question.

19 Q. Well, there are things --

20 THE COURT: Do you know what, Mr. Young? It's about
21 time for morning break. For some reason your microphone's not
22 working. I'm going to get our -- I'm going to take a morning
23 break and get our --

10:19:53

24 MR. YOUNG: Oh, okay. I think I've been pressing the
25 button here, but I'll try not to do that in the future.

10:20:03

1 THE COURT: All right. Well, if that's the problem
2 that's a relief, but it's about time for morning break, anyway.

3 Mr. Casey, did you have a matter?

4 MR. CASEY: I was just going to say that's the problem
5 I've had, is pressing the button inadvertently. 10:20:14

6 THE COURT: All right. Well, thanks for pointing that
7 out.

8 We are, nonetheless, going to take the morning break.
9 I'm going to ask everybody to be back in the courtroom ready to
10 proceed at 25 minutes to 11:00. We're now in recess. 10:20:24

11 (Recess taken.)

12 THE COURT: Thank you. Please be seated.

13 Mr. Young, you ready to resume?

14 MR. YOUNG: Yes, Your Honor.

15 THE COURT: Please do so. 10:37:18

16 BY MR. YOUNG:

17 Q. Sheriff, before the publication of your book you briefly
18 looked at the whole manuscript, correct?

19 A. I don't know if it was the whole manuscript, but I did look
20 at some of it. 10:37:34

21 Q. Well, in your deposition on December 4, 2009, in the Lopez
22 Valenzuela case, at page 34, line 24, you were asked this
23 question: "Did you review the whole manuscript before the book
24 was published?"

25 And on page 35 at line 1 you answered: "I briefly 10:37:55

1 looked at it, yes."

2 Is that right?

3 A. It may not have been every line of the manuscript, but in
4 general terms I looked at it.

5 Q. You signed off on the publication of the book, correct?

10:38:20

6 A. Yes.

7 Q. And you have no interest in changing the book in, say, a
8 second edition, to edit any of the things that are in it that
9 we just looked at, is that right?

10 A. I'm not looking towards another book.

10:38:34

11 Q. When you looked at those sections in 2009 and since that
12 time, you haven't changed anything in that book, is that right?

13 A. That's correct.

14 Q. You've done book signings for your book?

15 A. I believe when it first came out I did some book signings.

10:38:49

16 Q. You did one at Barnes & Noble in Happy Valley on May 20,
17 2008?

18 A. I may have.

19 Q. And another one at Barnes & Noble in Palm Valley on May 31,
20 2008?

10:39:04

21 A. I don't know the exact time, but I may have.

22 Q. Then another one at -- in Arrowhead at another Barnes &
23 Noble on June 18, 2008?

24 A. May have.

25 Q. Then at Borders on July 26, 2008?

10:39:14

1 A. May have.

2 Q. And you've done four or five national media interviews
3 about your book, Joe's Law, correct?

4 A. Yes, when it first came out.

5 Q. You went on night talk with Mike Schneider, New York
6 Bloomberg TV, and Neil Cavuto on Fox TV, is that right?

10:39:29

7 A. The best of my recollection.

8 Q. And you did a book interview on June 4, 2008, with Fox
9 News, on June 4, 2008, is that right?

10 A. I may have.

10:39:48

11 Q. You did one with Mike Savage on his radio show on June 13,
12 2008?

13 A. May have.

14 Q. At any of those book signings or interviews you've never
15 told anyone that the opinions in your book were not your
16 opinions, is that right?

10:40:03

17 A. I don't think I said it either way. They didn't -- write
18 on our front cover that I had a co-author.

19 Q. Right, but at the signings and at the interviews you never
20 told the people that you were talking to that there were
21 opinions in the book that were not yours, is that right?

10:40:22

22 A. I don't recall.

23 Q. Your November 16, 2010, deposition, at page 240 you were
24 asked this question. And we can pull that up on the screen,
25 page 240, line 25:

10:40:46

1 "At any of your interviews or at book signings, did
2 you ever tell any of the people you talked to about your book
3 that there are opinions in the book that are not yours?

4 "ANSWER: I don't recall saying that to any groups
5 that I talked to, unless they asked." 10:41:07

6 Now, it would be fair to assume, Sheriff, that the
7 people who buy and read your book believe that the opinions in
8 it about illegal immigration are your opinions, is that right?

9 A. No, that's up to -- that's their -- would be their opinion.
10 Once again, it's in front page, back page, about my co-author. 10:41:29

11 MR. YOUNG: All right. We're going to play something
12 from your deposition. It's at November 16, 2010, page 243,
13 lines 4 through 12.

14 Can we play JA4.

15 (Video clip played as follows:) 10:41:45

16 "QUESTION: I'm asking what you think, Sheriff. Do
17 you think that the people who bought and read your book believe
18 that the opinions in it on illegal immigration are your
19 opinions?

20 "ANSWER: I have no idea, but I would surmise that 10:42:08
21 they do as I'm very outspoken on the subject, book or no book.
22 I average two speeches a day for 18 years. I don't prepare
23 speeches. So I think everybody knows where I stand, book or no
24 book."

25 BY MR. YOUNG: 10:42:29

1 Q. Sheriff, some people have compared you to the Klu Klux
2 Klan, is that right?

3 A. I guess among other nasty claims, too.

4 Q. The Klu Klux Klan, or the KKK, is a racist organization
5 that's lynched people who belong to minority groups, is that
6 right? 10:42:47

7 A. Yes.

8 Q. You think it's an honor to be called KK, don't you?

9 A. No, I do not.

10 Q. Let's run an interview that you did with Lou Dobbs. It's
11 impeachment Exhibit PX 451. And I'm going to ask you to look
12 at this video, Sheriff, and tell me whether that's you saying
13 what's on it. 10:43:00

14 MR. CASEY: I'm sorry, Your Honor, what was the
15 exhibit? 10:43:21

16 THE COURT: Impeachment Exhibit 451.

17 (Video clip played as follows:)

18 "LOU DOBBS: The idea that you're criticized in some
19 quarter -- in some quarters for enforcing the law, I mean,
20 what -- how do you react to that? 10:43:33

21 "SHERIFF ARPAIO: Well, you know, they call you KKK,
22 they did me. I think it's a honor, right?

23 "LOU DOBBS: Right (unintelligible).

24 "SHERIFF ARPAIO: Means we're doing something."

25 BY MR. YOUNG: 10:43:44

1 Q. That's you talking to Lou Dobbs, Sheriff, is that right?

2 A. Just before that live interview I was asked about the KKK,
3 and I was very adamant that I have no use for the KKK. And
4 then they did the live. And the only thing I was saying to Lou
5 Dobbs, that he's taken a lot of heat, and that they're using
6 the KKK, and I was referring to the fact, well, with all the
7 heat you're taking, Lou, look what they're doing to you.

10:44:06

8 So prior to that I had a taped interview in front of
9 the jail denouncing the KKK but they never showed that; they
10 just showed this part.

10:44:30

11 MR. YOUNG: Your Honor, I'm going to move to strike
12 that answer as nonresponsive.

13 BY MR. YOUNG:

14 Q. My question, Sheriff, was: Is that you in the video?

15 MR. YOUNG: Your Honor, may I --

10:44:40

16 THE COURT: You've made your motion. I'm going to
17 take a look. Just a second.

18 (Pause in proceedings.)

19 THE COURT: Okay. I'm going to strike the response
20 and ask the witness to answer the question.

10:44:50

21 THE WITNESS: That is me.

22 MR. YOUNG: Your Honor, I move to admit PX 451.

23 THE COURT: Objection?

24 MR. CASEY: No objection, Your Honor.

25 THE COURT: PX 451 is admitted.

10:45:00

1 (Exhibit No. PX 451 is admitted into evidence.)

2 BY MR. YOUNG:

3 Q. Now, you told Lou Dobbs that being called KKK means you're
4 doing something. What you were referring to includes your
5 saturation patrol activities, correct?

10:45:16

6 A. No.

7 Q. Includes your creation of the HSU?

8 A. No.

9 Q. Your call-in line?

10 A. No.

10:45:22

11 Q. You think it's proper to consider the fact, in devising
12 your policies, that illegal immigrants in the overwhelming
13 majority in Maricopa County come from Mexico, is that right?

14 A. Yes.

15 Q. You think that 99 percent of them come from Mexico, is that
16 right?

10:45:44

17 A. I don't have the statistics.

18 MR. YOUNG: Let's play another video, PX 357, from
19 October 22, 2009, an NBC 12 story about you.

20 (Video clip played as follows:)

10:45:58

21 "SHERIFF ARPAIO: It's not politically correct to say
22 this. Where do you think 99 percent of the people come from?
23 We happen to be next to the border. I mean, I would love -- we
24 did catch four Chinese people."

25 BY MR. YOUNG:

10:46:22

1 Q. Sheriff, that's you talking at a press conference, correct?

2 A. Yes. I don't know if it was a press conference, but that's
3 me talking.

4 Q. That's you talking.

5 A. Yes.

10:46:31

6 MR. YOUNG: Judge, can we admit PX 357?

7 MR. CASEY: No objection, Your Honor.

8 THE COURT: PX 357's admitted.

9 (Exhibit No. PX 357 is admitted into evidence.)

10 BY MR. YOUNG:

10:46:44

11 Q. You believe that the illegal immigrants coming into
12 Maricopa County have certain appearances, is that right?

13 A. Certain appearances?

14 Q. That was my question.

15 A. No.

10:46:55

16 Q. You don't believe they have certain appearances?

17 A. No.

18 Q. Do you believe that the appearances of the illegal
19 immigrants coming into Maricopa County are readily observable?

20 A. No.

10:47:07

21 Q. Do you believe that the appearances of illegal immigrants
22 coming into Maricopa County include brown skin color?

23 A. No.

24 MR. YOUNG: You were deposed on December 6 -- November

25 16 -- no, December 16, 2009, on page 11, lines 1 through 9, and

10:47:23

1 I'm going to ask that that video be played, JA2.

2 (Video clip played as follows:)

3 "QUESTION: In your experience, by and large, do the
4 Mexicans, the illegal immigrants who come into Arizona have
5 brown skin? 10:47:50

6 "ANSWER: Well, if you are talking about the
7 Hispanics, as a rule how they get here, yes, they do have
8 certain appearances.

9 "QUESTION: And those appearances are readily
10 observable, skin color? 10:48:04

11 "ANSWER: Yeah."

12 BY MR. YOUNG:

13 Q. In fact, your office believes that you can figure out who
14 an illegal immigrant is by their speech and the clothes they
15 wear, is that right? 10:48:20

16 A. There's other criteria. If you're talking about the people
17 being smuggled into the -- Maricopa County from Mexico, they're
18 illegally crossing the border.

19 Q. But you can tell, at least in part, from their appearance,
20 their speech, and the clothes they wear, that they're illegal
21 immigrants, in your view, is that right? 10:48:43

22 A. These are criteria that the ICE, federal government, has.

23 Q. You were interviewed by John Sanchez on CNN back in 2009,
24 is that right?

25 A. Yes. 10:49:04

1 MR. YOUNG: I'm going to play PX 410A for you. Please
2 take a look.

3 (Video clip played as follows:)

4 "JOHN SANCHEZ: But you just said you detain people
5 who haven't committed a crime. How do you prove that they're
6 not illegal? 10:49:18

7 "SHERIFF ARPAIO: It has to do with their conduct,
8 what type of clothes they're wearing, their speech. They admit
9 it. They -- they have phony ID's. A lot of variables
10 involved. 10:49:33

11 "JOHN SANCHEZ: You judge people and arrest them based
12 on their speech and the clothes that they're wearing, sir?

13 "SHERIFF ARPAIO: Well, when they're in a vehicle with
14 someone that has committed a crime, we have the right to talk
15 to those people. When they admit they are here illegally, we
16 take action. 10:49:43

17 "JOHN SANCHEZ: But you just told me -- let's go back
18 here. You just told me that you arrest a people and turn them
19 over to the feds even if they haven't committed a crime.

20 "SHERIFF ARPAIO: The federal -- no, they did commit a
21 crime. They are here illegally. 10:49:58

22 "JOHN SANCHEZ: But how did you know they were here
23 illegally? And then you went on to tell me it's because of the
24 clothes they wore.

25 "SHERIFF ARPAIO: Well, you look at the federal law. 10:50:07

1 The federal law specifies it's the speech, the clothes, the
2 environment, the erratic behavior. It's right in the law."

3 BY MR. YOUNG:

4 Q. That's you talking --

5 A. Yes. 10:50:19

6 Q. -- in that video, correct?

7 A. Yes.

8 MR. YOUNG: Your Honor, I move the admission of

9 PX 410A.

10 MR. CASEY: No objection, Your Honor. 10:50:28

11 THE COURT: Exhibit 410A is admitted.

12 (Exhibit No. PX 410A is admitted into evidence.)

13 BY MR. YOUNG:

14 Q. Sheriff, you also believe that you can tell who an illegal
15 immigrants is by the way they look if they look like they came
16 from another country, is that right? 10:50:37

17 A. That's not right.

18 Q. You did another interview in 2009 with Glenn Beck on Fox
19 News, correct?

20 A. May have. 10:50:52

21 MR. YOUNG: Let's play PX 410B.

22 (Video clip played as follows:)

23 "GLENN BECK: I'm trying to understand this. They
24 said that you can't enforce the federal law, so how are you
25 going to enforce it and still be a man of your word? 10:51:06

1 "SHERIFF ARPAIO: Because I'm going to enforce the
2 state laws, and there is a federal law that they don't seem to
3 understand is there --

4 "GLENN BECK: Which is?

5 "SHERIFF ARPAIO: -- that I will enforce also. 10:51:19

6 "GLENN BECK: Which is what?

7 "SHERIFF ARPAIO: Which is if local law enforcement
8 comes across some people that have a erratic or scared or
9 whatever --

10 "GLENN BECK: Demeanor? 10:51:32

11 "SHERIFF ARPAIO: They're worried --

12 "GLENN BECK: Yeah.

13 "SHERIFF ARPAIO: -- and that they have their speech,
14 what they look like, if they just look like they came from
15 another country, we can take care of that situation. But I 10:51:40
16 don't need that anyway, Glenn.

17 "GLENN BECK: Wait. Wait. Wait. Hang on. Hang on.

18 "SHERIFF ARPAIO: I can still do the job.

19 "GLENN BECK: When was that -- when was that law
20 written? Because all I hear about is that sounds like 10:51:54
21 profiling, and the government is saying --

22 "SHERIFF ARPAIO: Well --

23 "GLENN BECK: -- you can't profile anybody.

24 "SHERIFF ARPAIO: Well, that law in 1996, part of
25 the -- the comprehensive law that was passed, it's in there." 10:52:04

1 BY MR. YOUNG:

2 Q. That's you, Sheriff --

3 A. Yes.

4 Q. -- correct?

5 A. Yes.

10:52:12

6 Q. You don't have any reason to believe that your words in
7 that interview were altered, is that right?

8 A. I don't know.

9 MR. YOUNG: Your Honor, I move to admit 410B.

10 MR. CASEY: No objection, Your Honor.

10:52:27

11 THE COURT: 410B is admitted.

12 (Exhibit No. 410B is admitted into evidence.)

13 BY MR. YOUNG:

14 Q. You think that someone without identification who looks
15 like they just came from Mexico is an illegal alien, is that
16 right, Sheriff?

10:52:35

17 A. No.

18 MR. YOUNG: Let's play PX 410C, which is a KPHO News
19 item.

20 (Video clip played as follows:)

10:52:48

21 "SHERIFF ARPAIO: And certain criteria, there's no
22 identification, look like just came from Mexico, and they admit
23 it, so that's enough."

24 BY MR. YOUNG:

25 Q. Sheriff, that's also you, correct?

10:53:00

1 A. Yes.

2 MR. YOUNG: Your Honor, I move the admission of
3 PX 410C.

4 MR. CASEY: No objection, Your Honor.

5 THE COURT: 410C is admitted.

10:53:09

6 (Exhibit No. 410C is admitted into evidence.)

7 BY MR. YOUNG:

8 Q. If someone tells one of your officers that he or she is
9 a U.S. citizen, they tell one of your officers, "I'm a
10 citizen," in your view, that's not enough to avoid the need for
11 your officer to do more to investigate the citizenship of that
12 person, is that right?

10:53:25

13 A. You know, I delegate these operations to my staff and my
14 officers. I don't get involved in their activities. They make
15 the decision on how to pursue and enforce these and other laws.

10:53:48

16 Q. Well, your view is that even if someone says they're a
17 citizen, your officer should check them out, right, that you
18 think that's good law enforcement?

19 A. That's not my view. Once again, I said that I delegate
20 these operations to my well-trained, professional staff and
21 deputies, and they make the decision.

10:54:11

22 Q. All right. Well, let's take a look at your deposition from
23 the Mora case on September 7, 2010, page 184. And I'm going to
24 read this section, and you can follow along on the screen if
25 you'd like.

10:54:34

1 "I'm asking you to please assume that we already know
2 they're not suspects. Assume that's true. Also assume we know
3 that the person is a U.S. citizen or legally in the country.

4 "As to those people, if you assume you've got a group
5 of people like that, do you have any concern with your deputies
6 running records checks and completing FI cards on those
7 people?"

10:54:53

8 FI card's a field investigation card, is that right?

9 A. Yes.

10 Q. Now, you gave this answer starting on line 21:

10:55:10

11 "Well, I don't know how they can prove that fact
12 because we are dealing with illegal identification. So even if
13 someone says they're a U.S. citizen, I would imagine that you
14 would check them out. That's just good law enforcement."

15 You gave that testimony in September 2010?

10:55:33

16 A. Yes.

17 Q. Now, let's look at -- and again, we won't publish this,
18 since it's not yet admitted -- PX 206.

19 Your Honor, may --

20 Sheriff, actually, Exhibit 206, if you want to look at
21 the whole thing, is in your binder, or if you would prefer, we
22 can have Ms. Mandujano give you a copy of it.

10:56:01

23 THE COURT: We can just put it up on the sheriff's
24 screen, if you want.

25 MR. YOUNG: Okay. Let's put up 206.

10:56:13

1 BY MR. YOUNG:

2 Q. That's your handwriting in the upper right-hand corner,
3 correct?

4 A. Yes.

5 Q. And those are your initials there? 10:56:20

6 A. Yes.

7 Q. You wrote cc Brian S?

8 A. Yes.

9 Q. Now we're going to see a lot of those today.

10 When you cc Brian S, that's a note to your assistant 10:56:33
11 to send a copy of that document to Chief Brian Sands, who runs
12 your enforcement activities, correct?

13 A. That's right.

14 Q. So this particular document, you did send a copy of it to
15 Chief Sands, is that right? 10:56:52

16 A. I'm sure. I hope he receives it, but it was cc'd to him.

17 MR. YOUNG: Your Honor, I move the admission of
18 PX 206.

19 MR. CASEY: No objection, Your Honor.

20 THE COURT: Exhibit 206 is admitted. 10:57:07

21 (Exhibit No. 206 is admitted into evidence.)

22 BY MR. YOUNG:

23 Q. Okay. Now, you'll see that we've blacked certain things
24 out on this, and we've done that with various letters that
25 people have sent to you. You understand the reason we've done 10:57:18

1 that, correct?

2 A. Yes.

3 Q. Okay. But there are versions that your office has given to
4 us it has which do have the names there, so if at any time it
5 would help you to look at that original version, just let us
6 know. 10:57:32

7 But the version that we're looking at on the screens
8 in the courtroom, we'll publish this at this point, we can --

9 THE COURT: That's okay.

10 MR. YOUNG: -- we'll have the redacted versions. 10:57:43

11 BY MR. YOUNG:

12 Q. Now, this letter is in your immigration file because it has
13 to do with illegal immigration, is that right?

14 A. Yes.

15 Q. And you thought that this letter would be relevant to
16 Chief Sands' activities relating to illegal immigration, that's
17 why you sent it to him, right? 10:57:54

18 A. Yes.

19 Q. The first paragraph mentions Secretary Napolitano taking
20 away your 287(g) authority. 10:58:10

21 Do you see that?

22 A. Yes.

23 Q. You put a checkmark over Secretary Napolitano's name, is
24 that right?

25 A. Yes. 10:58:22

1 Q. The federal government did take away your 287(g) field
2 authority in late 2009, is that right?

3 A. Yes.

4 Q. In the second paragraph of this e-mail that you forwarded
5 to your chief -- to Chief Sands, there's some language about 10:58:34
6 her reasons for taking away that authority. And it says in the
7 second line there that her reasons include making our Latino
8 population fear to go out in public.

9 Do you see that?

10 A. Yes. 10:58:55

11 Q. Now, you wanted to send this e-mail to Chief Sands so he
12 could see that information, among other things?

13 A. The reason I marked out Secretary Napolitano's, you missed
14 the first where both Senators McCain and Kyle have requested
15 that Secretary Napolitano explain why she took away my 287(g). 10:59:17
16 So I thought that was important to pinpoint her name that you
17 got two senators talking about it.

18 When I send this -- these letters, doesn't mean that I
19 agree with them or have anybody take action. I just send this
20 information to my subordinates so they can look at it. So I 10:59:38
21 don't agree with every letter that I receive.

22 Q. Let's look at the sixth paragraph, the one that starts,
23 What our open border crowd. And what it says is: What our
24 open border crowd calls racial profiling is what I call
25 reasonable suspicion and probable cause, both of which are 11:00:02

1 legal grounds for further action. If it looks like a duck --
2 no, I'm sorry, if it walks like a duck and quacks like a duck.

3 Do you see that?

4 A. Yes.

5 Q. Now, that's saying if someone looks like an illegal
6 immigrant, he must be an illegal immigrant, correct? 11:00:15

7 A. Once again, I don't know where this fellow was getting his
8 information. I just took this letter, like I do all the
9 letters that I receive, whether it's animal cruelty, any
10 subject matter, and I give it to the appropriate chiefs that
11 run those divisions. 11:00:36

12 Q. You can't tell me that you disagree with the sentiments
13 expressed in that paragraph, is that correct?

14 A. This is just his opinion.

15 Q. Well, but you can't tell me that you disagree with it, is
16 that correct? 11:01:00

17 A. Can you repeat what I'm allegedly disagreeing with?

18 Q. Yeah, it's the paragraph that says, quote: What our open
19 border crowd calls racial profiling is what I call reasonable
20 suspicion and probable cause, both of which are legal grounds
21 for further action. If it walks like a duck and quacks like a
22 duck. 11:01:16

23 A. I don't know about the duck comment, I don't agree with
24 that. But I presume he's saying when you have probable cause
25 and you make an arrest, you can develop that to see if the
11:01:31

1 person is here illegally.

2 Q. And you can do that through what the open border crowd
3 calls racial profiling, in your view? Is that your view?

4 A. That's not my view.

5 MR. YOUNG: Okay. I'm going to play a portion of your 11:01:50
6 deposition from November 16, 2010. It's JA5. It's line --
7 page 85, line 24.

8 (Video clip played as follows:)

9 "'What our open border crowd calls racial profiling is
10 what I call reasonable suspicion and probable cause, both of 11:02:10
11 which are legal grounds for further reaction. If it walks like
12 a duck and quacks like a duck,' and then he's got three dots
13 after that.

14 "ANSWER: Yes.

15 "QUESTION: You see that? 11:02:22

16 "ANSWER: Yes.

17 "QUESTION: Do you agree with that statement?

18 "ANSWER: Once again, that's his statement, and I
19 don't know what context he's talking about, about ducks or
20 whatever he's mentioning. 11:02:34

21 "QUESTION: Do you think he's talking about ducks?

22 "ANSWER: Well, he says 'if it walks like a duck and
23 quacks like a duck,' he must be talking about ducks.

24 "QUESTION: Do you seriously think he's talking about
25 ducks? 11:02:50

1 "ANSWER: I'm just saying what he's reporting in his
2 report.

3 "QUESTION: You don't think he's talking about illegal
4 immigration?

5 "ANSWER: He may, but once again, I can't read his
6 mind. This is his opinion, not mine. 11:03:03

7 "QUESTION: Okay, well, you passed this on to
8 Mr. Sands. I'm asking about your understanding. As you
9 understand that statement, do you agree with it or disagree
10 with it? 11:03:16

11 "ANSWER: I -- once again, I don't know where he's
12 going with this.

13 "QUESTION: So you don't -- you can't tell me one way
14 or the other whether you agree or disagree?

15 "ANSWER: No. I don't know what he means by his
16 comments. 11:03:25

17 "QUESTION: Is that a --

18 "ANSWER: I can't read his mind. This is his -- his
19 statements, not mine.

20 "QUESTION: Since you can't read his mind, are you
21 telling me you can't tell me one way or another whether you
22 agree or disagree with his statement? 11:03:35

23 "ANSWER: I have no comment on the statement.

24 "QUESTION: Okay. Well, I'm entitled to know whether
25 you agree or disagree with it. You can tell me you can't 11:03:50

1 answer the question.

2 "ANSWER: Okay, then I'm going to tell you I can't
3 answer. I can't read his mind."

4 BY MR. YOUNG:

5 Q. Sheriff, you receive letters of support from members of the 11:04:00
6 public who praise your illegal immigration policies, correct?

7 A. Yes.

8 Q. You keep a file with those items, is that right?

9 A. I keep a file on items pertaining to immigration.

10 Q. In addition to letters of support, that file also includes 11:04:20
11 press articles?

12 A. I may keep some press articles. I'm not saying I keep all
13 of them.

14 Q. And this is done for your own interests so at any time you
15 can go back and look at things to refresh your memory? 11:04:35

16 A. Yes.

17 Q. You decide what goes into that immigration file, correct?

18 A. Yes.

19 Q. Nobody else decides what goes into that immigration file,
20 is that right? 11:04:44

21 A. Yes, that's correct.

22 Q. So if it's in your file, you're the person who put it
23 there.

24 A. Yes.

25 Q. Now, PX 185 is something that has not yet been admitted, 11:04:56

1 but I want you to take a look at it. Let's put it up on the
2 witness stand screen. It's a letter dated July 26, 2007, from
3 Carole V.B. to yourself, is that right?

4 Actually, we need the sheriff to take a look at the
5 whole letter, so if we can just put the whole letter on the
6 screen. 11:05:25

7 Are you able to read that, Sheriff?

8 A. Yes.

9 Q. This letter was faxed to you on July 26, 2007, at
10 10:33 a.m., is that right? 11:06:04

11 A. I'm not sure. I don't see any initials on this letter.

12 Q. Well, you put this document, this letter, in your
13 immigration file, is that right?

14 A. I may have.

15 MR. YOUNG: Your Honor, I move for the admission of
16 PX 185. 11:06:25

17 MR. CASEY: Your Honor, I have no objection to this
18 document's admissibility. However, in the documents the
19 plaintiffs gave me there is a second letter of identical date
20 that is different in substance. 11:06:39

21 THE COURT: Is it also identified as Exhibit 185?

22 MR. CASEY: It is in the file folder that the
23 plaintiffs gave me.

24 MR. YOUNG: Yes, I think that's correct, and that is
25 an error. The Exhibit 185 should include only the first letter 11:06:51

1 from that person. It's from the same person, but they are
2 different letters.

3 THE COURT: All right. Well, the copy you have in the
4 notebook in front of you is not the exhibit. I'm going to
5 admit Exhibit 185, which is the letter that is now on the
6 screen -- 11:07:03

7 MR. YOUNG: Yes.

8 THE COURT: -- and I'm not going to admit any other
9 sheet other than that.

10 (Exhibit No. 185 is admitted into evidence.) 11:07:14

11 MR. CASEY: Thank you, Your Honor. No objection.

12 MR. YOUNG: Thank you, Your Honor.

13 BY MR. YOUNG:

14 Q. Now, you've spoken to the author of this letter, whose name
15 is Carole, is that right? 11:07:22

16 A. I believe in the past, yes.

17 Q. So you actually know her.

18 A. Yes.

19 Q. Now, let's look at the first paragraph of her letter to you
20 of July 26, 2007, and she tells you: As to this statement:
21 "What right does he have to investigate people based on the
22 color of their skin, or the accent or the way they look," said
23 Phoenix attorney Antonio Bustamante.

24 You see that?

25 A. Yes. 11:07:55

1 Q. Then in the second paragraph Carole tells you: The right
2 you have as an elected law enforcement official, elected by
3 legal residents of the county and state that you represent.
4 That is, that she's saying that you have that right to
5 investigate people based on the color of their skin or their
6 accent or the way they look because you're an elected law
7 enforcement official.

11:08:11

8 Do you see that?

9 A. Yes.

10 Q. Then later on in the big paragraph, about in the middle
11 there's some language that she writes to you, quote:

11:08:20

12 Profiling? Give me a break. During World War II my little
13 Italian mother was en route to Tucson by train to marry my
14 father. There was rumor about an Italian Mata Hari on the
15 train. Mommy, Vye Del Duca, was pulled off the train and
16 interrogated along with all the other Italian women on board.
17 While she said it was frightening, she believed it was the
18 right thing to do.

11:08:43

19 Do you see that language?

20 A. Yes.

11:08:59

21 MR. YOUNG: Okay. Actually, we should publish
22 Exhibit 185.

23 THE COURT: You may do so.

24 MR. YOUNG: Thank you, Your Honor.

25 BY MR. YOUNG:

11:09:22

1 Q. You read this letter before putting it into your file,
2 correct?

3 A. I believe I did.

4 Q. You also wrote Carole a thank you letter, correct?

5 A. I answer all the letters I get whether I agree with them or 11:09:31
6 not.

7 MR. YOUNG: Let's look at PX 370, which has been
8 admitted, so please publish it.

9 THE COURT: You may publish it.

10 BY MR. YOUNG: 11:09:46

11 Q. Let's zero in on the date and the body of the letter.

12 Now, this letter was dated July 26, 2007. This is
13 your response to her, is that right?

14 A. Yes.

15 Q. You actually dated this letter the same day as the letter 11:10:05
16 that came in to you by fax, correct? July 26, 2007.

17 A. The letter you're talking about came in by fax?

18 Q. That's -- that's true. Why don't we go back to 185. Let's
19 put them both side by side, actually.

20 And you see the letter that I read to you earlier? It 11:10:31
21 has a fax line dated July 26, 2007, at 10:33 a.m., you see
22 that?

23 A. Yes.

24 Q. So you got this -- her letter by fax, and then you
25 responded with a letter the same day, is that right? 11:10:45

1 A. Could be. If the dates are correct, I guess I did.

2 Q. That's your handwriting where you struck out her name and
3 you wrote -- her last name and you wrote "Carole," is that
4 right?

5 A. I believe it is. 11:11:08

6 Q. So let's look at what you told Carole in response to
7 your -- to her letter. Let's go back to the Exhibit 370. You
8 told her that you received her letter regarding your illegal
9 immigration policies?

10 A. Yes. 11:11:29

11 Q. And then you told her that you appreciated that you had her
12 support, is that right?

13 A. Yes.

14 Q. And then you said, quote, I especially enjoyed reading the
15 story about your Italian grandmother and her experiences after
16 coming into the country legally, end quote. 11:11:40

17 You wrote that to her, right?

18 A. Yes.

19 Q. This is a letter specifically tailored to respond to
20 Carole B's letter to you, is that right? 11:11:57

21 A. Most of the responses are the same, but I did talk about
22 the Italian grandmother.

23 Q. Okay. Who had been ethnically profiled, is that right,
24 according to Carole's letter?

25 A. That's her opinion. 11:12:14

1 Q. You don't have an opinion one way or is the other on
2 whether that are ethnic profiling was correct or right or
3 proper or not, is that right?

4 A. The only opinion I have is we should never racial profile.
5 That's immoral, illegal. So whatever people write to me, even 11:12:30
6 though I don't agree fully, I do respond and write back.
7 That's my philosophy of management. So I do answer letters
8 regardless whether I agree with the people or not.

9 Q. You answered her letter by telling her you enjoyed her
10 story? 11:12:51

11 A. I was talking about the Italian -- her grandmother.

12 Q. I think your letter said grandmother, but her letter says
13 mother, so may believe you got a little bit confused, right?

14 A. Probably.

15 Q. Okay. So on page 278 of your deposition of November 16,
16 2010, at line 20, you're asked: 11:13:04

17 "You have no opinion today as to whether, if that
18 happened today, that would be proper or improper? "

19 And then your answer is: "Once again, I have no
20 opinion. This is her statement, her opinion." 11:13:30

21 So as far as that what she calls, what Carole calls
22 ethnic profiling, you don't have an opinion as to whether that
23 would be proper or not today, is that right?

24 A. I'm going to say again that I'm against anyone racial
25 profiling. That's today, that's been my whole 50 years in law 11:13:51

1 enforcement.

2 Q. Well, I appreciate your saying that in court today, but you
3 gave that testimony that I just read, is that right?

4 A. I don't think I said I agree with -- that I condone racial
5 profiling. 11:14:11

6 Q. No, you said you had no opinion on whether that profiling
7 was proper or not.

8 A. I'm not -- I don't have the opinion on what she is saying,
9 that this is her opinion. I don't have all the facts.

10 Q. Let's take a look, again, now, at PX 241. This has not 11:14:25
11 been admitted yet, but I'd ask you to look at it.

12 Sheriff, it's a July 14, 2008, letter.

13 You see that letter?

14 A. Yes.

15 Q. And it's actually a letter to the East Valley Tribune by 11:14:46
16 someone named Nicholas.

17 Do you see that?

18 A. Yes.

19 Q. That's your handwriting at the top, right?

20 A. Yes. 11:14:58

21 Q. Those are your initials?

22 A. Yes.

23 Q. And you say, Write a thank you letter, is that right?

24 A. Yes.

25 Q. And in fact you did send him a thank you letter, correct? 11:15:07

1 A. I'm not sure whether I did. I presume I may have.

2 Q. Well, you did keep this letter in your file, correct?

3 A. Yes.

4 Q. Well, when you put a note like this in your handwriting on
5 a letter like this, your intention is to tell your assistant to
6 send a thank you letter to the author, is that right?

11:15:27

7 A. Yes.

8 Q. Let's look at the first par --

9 MR. YOUNG: Oh, actually, I'd move the admission of
10 PX 241.

11:15:45

11 MR. CASEY: No objection, Your Honor.

12 THE COURT: Exhibit 241 is admitted.

13 (Exhibit No. 241 is admitted into evidence.)

14 BY MR. YOUNG:

15 Q. The first paragraph of that letter, 241, says, quote: The
16 United States federal government has totally failed the
17 American people by not controlling the southern borders for 50
18 years. All Anglo-Americans are in danger of losing our entire
19 way of life, end quote.

11:15:51

20 Do you see that?

11:16:07

21 A. Yes.

22 Q. And you sent the author of that letter a thank you note,
23 correct?

24 A. Yes.

25 Q. Let's go to PX 26 --

11:16:16

1 A. Doesn't mean I agree with the contents.

2 Q. Let's go to PX 262. Again, this has not yet been admitted,
3 so let's just -- Sheriff, you take a look at it. It's a June
4 30, 2009, letter from Sarah N and Erika S to you. That's your
5 handwriting in the corner, correct? 11:16:38

6 A. Yes.

7 Q. And again, you have a -- a note there to send a thank you
8 note to them?

9 A. Yes.

10 MR. YOUNG: Your Honor, I move the admission of this 11:16:46
11 exhibit.

12 MR. CASEY: Your Honor, my file folder's missing
13 Exhibit 262. I was wondering if I could get a copy other than
14 the one on the screen and look at it briefly.

15 MR. YOUNG: Sure. I'll ask Ms. Mandujano to give you 11:16:57
16 a copy.

17 THE COURT: Any objection, Mr. Casey?

18 MR. CASEY: Allow me real quick, Your Honor, just to
19 look.

20 (Pause in proceedings.) 11:17:11

21 MR. CASEY: No objection, Your Honor.

22 THE COURT: All right. Exhibit 262 is admitted.

23 (Exhibit No. 262 is admitted in evidence.)

24 BY MR. YOUNG:

25 Q. There you can see in the second paragraph at the 11:17:20

1 beginning --

2 Oh, we can publish this?

3 THE COURT: You may.

4 BY MR. YOUNG:

5 Q. The second paragraph says, as for being a racist against 11:17:30

6 Mexicans, this is the most ridiculous thing we have heard.

7 Stopping Mexicans to make sure they are legal is not racist,

8 because our state is a border state to Mexico.

9 You see that?

10 A. Yes. 11:17:44

11 Q. You read this before you wrote the note in the upper

12 right-hand corner instructing your assistant to prepare a thank

13 you letter to these authors, is that right?

14 A. I may have breezed through it. I don't read every line.

15 Q. Then let's take a look at your handwritten note. You say 11:17:58

16 cc sheriff, and then you put a 3 with a circle around it,

17 right?

18 A. Yes.

19 Q. That means that you wanted your assistant to make three

20 copies of it for yourself, is that right? 11:18:14

21 A. Yes.

22 Q. And these copies you sometimes take them home and read

23 them, is that right?

24 A. Yes, I do.

25 Q. And you take copies of letters like this where you've 11:18:23

1 indicated you want copies made, and you put them in files so
2 that you can keep them for later on, is that right?

3 A. Yes.

4 Q. Now, we discussed Chief Sands, who runs your enforcement
5 activities, and who also oversees your saturation patrols and
6 other illegal immigration operations, is that right? 11:18:47

7 A. Yes.

8 Q. You have discussed with Chief Sands letters of support that
9 you have received from the public on the issue of illegal
10 immigration, is that right? 11:19:05

11 A. I don't know if I discuss the letters. I just make sure he
12 got a copy for his information.

13 Q. Is it safe to say that you at least may have discussed
14 letters of support with Chief Sands on the issue of illegal
15 immigration? 11:19:23

16 A. No. No, I haven't discussed the letters with him, nor
17 my -- I do not do that.

18 Q. Your November 16, 2010 deposition, at page 47, line 22 to
19 25, Sheriff, you were asked at that time:

20 "Do you recall ever discussing with Mr. Sands any
21 letter of support you've received from the public on the issue
22 of illegal immigration? 11:19:47

23 "ANSWER: I may have, but I don't recall which ones."

24 Was that testimony accurate at the time you gave it?

25 A. Just what I said now. I don't discuss every letter, but 11:20:03

1 there's a possibility on occasion a letter may be discussed.

2 Q. Thank you.

3 You had an operation in Queen Creek on October 4,
4 2007, correct?

5 I'll tell you that the pretrial order at paragraph 64,
6 your attorneys and plaintiffs have stipulated that you did have
7 an operation in Queen Creek on October 4, 2007.

11:20:28

8 A. Yes.

9 Q. Do you remember that operation in Queen Creek?

10 A. I remember that we may have had an operation at that time.

11:20:44

11 Q. The MCSO is the police force for Queen Creek, is that
12 correct?

13 A. Yes.

14 Q. So they don't have any other law enforcement other than
15 your office, is that right?

11:20:57

16 A. That's correct.

17 Q. Let's look at PX 308, which has been admitted. It's a
18 press release from your office dated October 4, 2007, entitled
19 Sheriff Arpaio Goes After Day Laborers.

20 Now, you talk about this day laborer issue. Simply
21 being a day laborer is not a crime, correct?

11:21:21

22 A. That's correct.

23 Q. Now, in the paragraph, the second -- the third paragraph
24 where you talk about the Queen Creek operation, you say it
25 follows on or comes on the heels of some other operations,

11:21:47

1 including in Cave Creek and in Wickenburg. Do you see that?

2 A. Yes.

3 Q. So at this time in the fall of 2007 you were doing a number
4 of these operations against day laborers, is that right?

5 A. I don't have all the dates, what the time element was
6 between these operations, but if that's what you have, then
7 it's correct. 11:22:03

8 Q. The second-to-last paragraph, the last sentence, is a
9 quotation attributed to you, and you said, quote: As far as
10 I'm concerned, the only sanctuary for illegal aliens is in
11 Mexico, end quote. 11:22:28

12 You were talking about the day laborer activity or
13 operations that you had undertaken in Queen Creek, Cave Creek,
14 and Wickenburg, is that right?

15 A. I'm not sure if it was just Queen Creek that I was talking
16 about. 11:22:48

17 Q. Queen Creek and others, you were talking about that when
18 you said as far as you're concerned, the only sanctuary for
19 illegal aliens is in Mexico, is that right?

20 A. Yes. 11:23:04

21 Q. Do you stand by that statement today?

22 A. What I was saying is when the people that come into this
23 country illegally and then are deported, they should stay in
24 that country and not keep coming back into our country. So
25 it's somewhat of a sanctuary area when they keep coming back. 11:23:31

1 Q. Does that apply to all the day laborers that your officers
2 encountered in Queen Creek, Wickenburg, and Cave Creek as
3 described in this press --

4 A. I'm talking about those that have been arrested and
5 deported. 11:23:49

6 Q. Let's look at PX 219, which has been -- actually, which has
7 been admitted, and let's publish.

8 MR. YOUNG: Your Honor, with permission, can we
9 publish PX 2 -- 129? No, I'm sorry, 291.

10 THE COURT: Exhibit 291 may be published. 11:24:08

11 MR. YOUNG: I'm sorry, it's 219.

12 THE COURT: Well, let's wait a minute, be sure that is
13 the exhibit.

14 MR. YOUNG: Okay.

15 BY MR. YOUNG: 11:24:26

16 Q. We looked at this e-mail chain in your deposition, Sheriff,
17 correct? Do you recall that?

18 A. This e-mail?

19 Q. Right.

20 A. From Sousa to Chagolla, is that who you're talking about? 11:24:35

21 Q. Right. Well, let's look a little further down in the chain
22 and go to the second page.

23 Can we go do the second page?

24 Now, you see Art Sanders' name there in the middle?

25 A. Yes. 11:25:00

1 Q. He was the mayor of Queen Creek, right?

2 A. Yes.

3 Q. And then he sent an e-mail to John Kross, who was the town
4 manager of Queen Creek, is that right? You see that on the
5 first -- second page and then going back to the first page?

11:25:11

6 A. Yes.

7 Q. And then if you go back to the first page, you see that the
8 e-mail ended up with Joseph Sousa and Paul Chagolla and John
9 D'Amico of your department, correct?

10 A. Yes.

11:25:28

11 Q. Now, in this e-mail chain there's someone who writes in to
12 the mayor and council members of Queen Creek who talks about an
13 issue that she's concerned about about Hispanic men standing on
14 a street corner.

15 Do you see that?

11:25:51

16 A. Yes.

17 Q. And she says that as she was waiting for a light to turn
18 green, a Hispanic man was standing on the southwest corner with
19 other Hispanic men, and he came up to my passenger side window
20 and jeered at me. I'm paraphrasing a little bit, but that's
21 what she says.

11:26:12

22 Do you see that language?

23 A. Yes.

24 Q. And then he ran back to another Hispanic man and exchanged
25 high fives and they both laughed. You see that?

11:26:22

1 A. Yes.

2 Q. On the following page, at the top she describes yet another
3 Hispanic man giving her what she described as a very
4 intimidating look.

5 You see that?

11:26:38

6 Go to the third page of the exhibit.

7 Okay. Do you see the language there about the
8 jeering -- the intimidating look, rather -- top of the page?

9 A. Yes.

10 Q. And then there's a paragraph about taking pictures of kids,
11 and whistling, and making noises at kids, or young girls. And
12 then she says: A lot of people feel uncomfortable with the
13 situation that exists on the corners of Ellsworth and Ocotillo.

11:27:07

14 Do you see that?

15 A. Yes.

11:27:28

16 Q. There's no crime that is described in this e-mail chain, is
17 that right?

18 A. Let me just say that I believe that this is passed on to
19 our officials and deputies, and I don't know what they did with
20 it, whether they looked into it or not, especially about kids
21 alleged to -- their pictures taken of the teenage kids.

11:27:55

22 Q. Okay. My question is about your opinion, Sheriff.

23 In your view, you can't tell whether there's a crime
24 described in this paragraph, is that right?

25 A. I can't tell till someone decides to investigate the

11:28:16

1 situation.

2 Q. And you think that the facts that are set forth in this
3 e-mail warrant an investigation?

4 A. I had no idea. That's why I pass it on to the deputies
5 that are responsible for that area. 11:28:35

6 Q. Well, actually, let's look at your deposition of November
7 16, 2010, page 194, lines 11 to 21. And you were asked:

8 "You think the e-mail by this person describes a
9 situation that warranted your department's looking into
10 further?" 11:29:07

11 And you answered: "I believe so, yes."

12 And you say: "And I'm sure that this is passed on to
13 our people, as evidenced by the lieutenant that had some
14 correspondence with a lieutenant that covers that area. And
15 you have to understand, this letter, I believe, was sent to the 11:29:22
16 mayor and to the city manager. And we would be remiss in our
17 duties not to respond, since they pay us to service their
18 community."

19 You gave that testimony?

20 A. Yes. As I just said, I pass it on to my deputies, and I 11:29:34
21 really don't know what action they took, if any.

22 Q. Sheriff, if you go back to the exhibit, if you go back to
23 the exhibit, and the paragraph that says that the author is
24 thinking that a lot of people feel uncomfortable with the
25 situation, that's on page 3. The third and fourth lines say 11:30:12

1 that the service of those men, those Hispanic men, are offering
2 is illegal if the men are illegal immigrants.

3 Do you see that?

4 A. Yes.

5 Q. And then the next paragraph says: These men are highly
6 suspected of being illegal immigrants, but the town turns a
7 blind eye to the situation.

11:30:36

8 See that?

9 A. Yes.

10 Q. Okay. So your view is it warrants an immigration
11 investigation if someone sees a bunch of Hispanic men on a
12 street corner, even if they're only suspected but not known to
13 be illegal immigrants, is that your view?

11:30:56

14 A. No, my view is that we don't go grabbing people on street
15 corners unless we have a crime committed.

11:31:18

16 Q. Okay. Well, you couldn't tell whether there's a crime
17 described in this e-mail, and you did go and grab a bunch of
18 Hispanic people in Queen Creek as described in your press
19 release, correct?

20 A. That were committing state crimes.

11:31:36

21 Q. But you didn't know that at the time that you did the
22 operation before you did the operation. All you had was
23 e-mails that said there are Hispanic men who are acting in a
24 way that makes other people uncomfortable in Queen Creek, is
25 that right?

11:31:48

1 A. I don't know if we went into that area because of this
2 complaint.

3 Q. Oh, really?

4 A. We just don't go into an area overnight; you have to plan
5 the operations.

11:32:02

6 Q. Okay. So there -- there may be other -- this e-mail
7 actually is dated October 4, 2007, which is the same day as
8 that operation. It's possible there are other e-mails from
9 other people in Queen Creek or officials in Queen Creek
10 reporting on similar situation or the same situation, is that
11 right?

11:32:21

12 A. Once again, I don't know. You can't go in to do an
13 operation overnight. These operations are planned. They take
14 three, four weeks to plan the operation.

15 Q. Let's look at PX 129, which has been admitted, so we can
16 publish it. This is a shift summary for the Queen Creek
17 saturation patrol. Actually, the Queen Creek operation; I
18 don't think you called it a saturation patrol.

11:32:38

19 So if you focus on the middle page -- of the page,
20 let's include the "from" and "to" information, and then that
21 first paragraph. You see that?

11:33:06

22 A. Yes.

23 Q. Okay. So it reports on October 4, 2007, HSU conducted a
24 detail in the town of Queen Creek based on e-mails from the
25 town council in reference to the day laborers in their city.

11:33:22

1 That's what we were just talking about, correct?

2 A. Yes.

3 Q. Now, we don't have those other e-mails. I mean, you're
4 aware that your office failed to preserve and, in fact,
5 destroyed certain e-mails that were supposed to be handed over
6 in this lawsuit, correct?

11:33:38

7 A. That's something handled by my attorneys.

8 Q. Well, you've heard about that?

9 A. Yes, I heard.

10 Q. Okay. So we have this October 4, 2007, e-mail, and that's
11 what we have to go on.

11:33:47

12 Based on that, you can see, will you agree with me,
13 that your office just went after day laborers in Queen Creek
14 who were Hispanic because there were people there who were made
15 uncomfortable by their presence, is that right?

11:34:08

16 A. That's not my opinion.

17 Q. Is that a reasonable reading of these e-mails and
18 documents?

19 A. You're going to have to talk to the people running the
20 operation.

11:34:16

21 Q. Let's go on to PX 202, which relates to 36th Street and
22 Thomas, and that's not yet been admitted, so let's, Sheriff,
23 just the two of us look at it for the moment. Let's focus on
24 the e-mail text. It's a November 19, 2007, e-mail. Let's just
25 keep the whole -- keep the whole thing there.

11:34:54

1 Is that your handwriting?

2 Yes, do the whole thing.

3 That's your handwriting, correct, Sheriff?

4 A. Yes.

5 Q. And you cc'd Brian Sands, your chief of enforcement, on it? 11:35:05

6 A. Yes.

7 Q. Okay. So this was in your file, correct?

8 A. It may have been, I'm not sure, but --

9 Q. Well, that -- that is your handwriting and you sent it to
10 Chief Sands? 11:35:21

11 A. Doesn't mean I kept a copy, but normally I do.

12 MR. YOUNG: All right. Your Honor, I'd move the
13 admission of PX 202.

14 MR. CASEY: No objection, Your Honor.

15 THE COURT: Exhibit 202 is admitted. 11:35:34

16 (Exhibit No. 202 is admitted into evidence.)

17 THE COURT: You may publish.

18 MR. YOUNG: And we thus publish it. Thank you, Your
19 Honor.

20 BY MR. YOUNG: 11:35:45

21 Q. Now, there's an e-mail that is there which is part of what
22 you forwarded to Chief Sands from Dr. J. It says: Hi Captain,
23 here are some pics from the latest protest, 11-17-07, across
24 the street from Pruitt's.

25 You recall there being some issues about day laborers 11:36:04

1 congregating near Pruitt's furniture store.

2 A. About criminal activity, yes.

3 Q. Well, there were day laborers there, correct?

4 A. The information we received, yes.

5 Q. And the second sentence of the e-mail says: Note the -- 11:36:23

6 and referring to the pictures -- note the unpermit mariachi

7 band that no one would tell to move or leave, even though they

8 did not have a permit.

9 And then it says: These illegal activists are putting

10 on a freak show and getting away with it. 11:36:43

11 THE COURT: Mr. Young, you're depressing your button,

12 so I can't hear you.

13 MR. YOUNG: Oh, sorry.

14 Is that better?

15 THE COURT: It is much better. 11:36:55

16 MR. YOUNG: Thank you, Your Honor. I'm sorry. It's a

17 crowded lectern and I have a lot of paper, some of which is

18 falling off occasionally, but I'm going to try not to push

19 these buttons.

20 BY MR. YOUNG: 11:37:05

21 Q. So you see the language about the freak show there,

22 Sheriff?

23 A. Yes.

24 Q. Now, you subsequently did some major crime suppression and

25 saturation patrol operations in the area that's discussed in 11:37:20

1 this e-mail?

2 A. Yes.

3 Q. Let's --

4 MR. YOUNG: Actually, did we admit Exhibit 202?

5 THE WITNESS: Excuse me. You said in this meet -- not 11:37:32
6 because of this e-mail.

7 BY MR. YOUNG:

8 Q. Well, I'm just referring to the area, and the area around
9 Pruitt's furniture store, in that general vicinity, you did do
10 a number of major operations, correct? 11:37:44

11 A. Yes.

12 MR. YOUNG: Did we admit Exhibit 202? Okay.

13 Let's go on to Exhibit 310, which has been admitted.

14 BY MR. YOUNG:

15 Q. This is a press release dated January 18, 2008, about a 11:37:59
16 crime suppression operation in Central Phoenix. And it focuses
17 on the area between 16th and 40th Streets and Indian School and
18 McDowell Roads. This relates to the same issue that existed
19 near Pruitt's furniture store, correct?

20 A. Yes. 11:38:26

21 Q. And the action that's described in this press release was
22 in response to a letter from business owners in the area,
23 correct?

24 A. That may be true. I don't recall.

25 Q. That letter that you received from business owners in the 11:38:42

1 area, you gave it to Chief Sands and you asked him to take care
2 of it, is that right?

3 A. Are you talking about that one letter that we just read
4 from the doctor, that her name was not blacked out, where you
5 blacked out everybody else's name? 11:38:57

6 Q. No, I'm actually referring now to Exhibit 310, and
7 actually, I'll guide you to it here. It's on the screen now,
8 which says that the operation comes as a result of a letter to
9 the sheriff from business owners in the area.

10 You see that? 11:39:14

11 A. Yes.

12 Q. You gave that letter to Chief Sands and asked him to take
13 care of it?

14 A. I may have. I'm sure if I did distribute it, it went to
15 him. 11:39:25

16 Q. And he did take care of it, right?

17 A. I believe he did.

18 Q. Now, at the top of the second page of Exhibit 310 --

19 A. Are you missing the last paragraph? Can I repeat, before
20 you get to the second page? 11:39:45

21 Q. I think your attorney will be able to ask you questions. I
22 want to focus on the last page at this point.

23 Actually, let's -- actually, good idea. Let's look at
24 that paragraph, the bottom of page 1, and then go over to the
25 top of page 2. 11:40:00

1 A. The reason I mention that is sometimes it's taken out of
2 context.

3 Q. Well, let's -- let's not do that. Let's look at what's
4 written there. And that last sentence says: The posse
5 volunteers and deputy sheriffs will not racially profile anyone 11:40:13
6 in this operation.

7 And then the quote from you continues: Still, I
8 anticipate that many illegal immigrants will be arrested as
9 this Central Phoenix neighborhood remains a popular spot for
10 day laborers. 11:40:33

11 You see that?

12 A. Yes.

13 Q. You're aware that Chief Sands cannot think of an instance
14 where the MCSO arrested a day labor who was not Hispanic?

15 And I'll -- I'll tell you in fairness that your 11:40:54
16 attorneys and ours have stipulated to that fact in the pretrial
17 order, paragraph 84.

18 Are you aware of that fact, that Chief Sands cannot
19 think of an instance where the MCSO has arrested a day laborer
20 who was not Hispanic? 11:41:09

21 A. No.

22 Q. Were you aware that Deputy DiPietro, Deputy Rangel, and
23 Chief Sands and Lieutenant Sousa all believe that most day
24 laborers in Maricopa County are Hispanic? And that's, again,
25 paragraph 82 of the pretrial order. Were you aware of that? 11:41:28

1 A. I can't speak for them.

2 Q. You did this operation in Central Phoenix because, as your
3 press release says, you thought that there were many illegal
4 immigrants who would be arrested there because it remains a
5 popular spot for day laborers.

11:41:48

6 You see that?

7 A. No, I think what I said was pursuant to our arrests,
8 violators of the state laws, if we come across any illegal
9 immigrants, pursuant to our authority to conduct federal
10 detainment and arrests under that 287(g), we would take action.

11:42:15

11 Q. What you knew when you launched this operation was that
12 there were day laborers there, correct?

13 A. Yes.

14 Q. At the time that you launched the operation, you did not
15 know whether any one of those day laborers was an illegal
16 immigrant --

11:42:30

17 A. That's correct.

18 Q. -- is that right?

19 That's correct?

20 A. That we did not know they were here illegally.

11:42:37

21 Q. That's correct, right?

22 A. Yes.

23 Q. Now, you did another sweep in this same area later in the
24 spring on March 21 to 22, 2008?

25 I think this is also known as 36th Street and Thomas.

11:42:55

1 Do you recall that?

2 A. Yes.

3 Q. Now, a week after that you did another sweep at Cave Creek
4 and Bell Roads, is that right, on March 27 to 28, 2008?

5 A. I don't have the dates in front of me, but if you say it's 11:43:12
6 so, I'll take that.

7 Q. All right. Well, let's look at Exhibit PX 311, which
8 should be published, because it was --

9 MR. YOUNG: And, Your Honor, I'd ask that it be
10 published. It's been admitted. 11:43:26

11 THE COURT: If you confirm that it's admitted,
12 Kathleen, you can publish it.

13 BY MR. YOUNG:

14 Q. You see Exhibit PX 311 there, which is your press release
15 of March 27, 2008? 11:43:43

16 A. Yes.

17 Q. And this operation at Cave Creek and Bell Roads was also a
18 response to a petition that you received from a group of
19 business people, correct?

20 A. I believe that some people were concerned and made a
21 request. 11:43:56

22 Q. Now, you -- you gave a press conference before doing the
23 Bell Road operation, is that right?

24 A. I may have.

25 Q. The night before doing that press conference announcing the 11:44:17

1 Bell Road operation, you spoke to a group at the Sunnyslope
2 Veterans of Foreign Wars headquarters, is that right?

3 A. Possibly did, yes.

4 Q. Well, I'll tell you --

5 A. I don't know about the time, but I did speak before that
6 important organization, the VFW. 11:44:39

7 Q. You've heard of the group United for a Sovereign America?

8 A. I'm not too familiar with that group.

9 Q. But you've heard of it, correct?

10 A. I believe recently. 11:45:00

11 Q. You're briefly familiar with United for a Sovereign America
12 as a group that's against illegal immigration, correct?

13 A. I'm not sure what their whole programs or philosophy is,
14 but I did learn that they wanted to do something about illegal
15 immigration. 11:45:29

16 Q. Now, there were some people from United for a Sovereign
17 America at the Sunnyslope VFW where you spoke the night before
18 you publicly announced your Bell Road operation, is that right?

19 A. I don't know who was in the audience. I don't check
20 everybody out when I give a speech, or ask for their
21 identification. 11:45:47

22 Q. At that meeting, before you made the public announcement of
23 the Bell Road operation, you mentioned to that group the night
24 before at the VFW that you were going to do an operation on
25 Bell Road, is that right? 11:46:08

1 A. Well, according to this press release. But this isn't
2 unusual, because I do announce when I'm going into an area.

3 Q. My question is, though, not your public announcement in the
4 press release, or your press conference. My question is about
5 the group that you addressed the night before your press
6 conference at the VFW. 11:46:30

7 You told that group that you were going to do an
8 operation on Bell Road, is that right?

9 A. It just -- is this on the press release? It just went
10 black. 11:46:48

11 MR. YOUNG: Your Honor, the screen -- okay.

12 THE WITNESS: Okay.

13 I may have.

14 BY MR. YOUNG:

15 Q. And you told that group at the VFW that, quote, I
16 appreciate your support, end quote, and quote, you're on the
17 right track. You're doing what you should be doing, is that
18 right? 11:47:01

19 A. What paragraph of that?

20 Q. Well, I'm not -- I'm not asking you about the press release
21 now; I'm asking you about your appearance at this group at the
22 VFW before you publicly announced the Bell Road operation. 11:47:17

23 You told that group that you appreciated their support
24 and that they were on the right track and doing what they
25 should be doing, is that right? 11:47:38

1 A. I may have. I don't recall everything I said during that
2 speech.

3 Q. Well, you also told the people at that gathering that the
4 good news is that all these people are leaving, and they're
5 going to other states or back to Mexico.

11:47:54

6 Did you say that --

7 A. I may have.

8 Q. -- that evening?

9 You may have?

10 A. Yes.

11:48:02

11 Q. At your press conference on March 21, the leader of United
12 for a Sovereign America was there with you, is that right?

13 A. What press conference?

14 Q. On March 21, 2008, about the Bell Road operation.

15 A. Was that at the VFW?

11:48:25

16 Q. No, this is the next day. You were at the VFW, and then --
17 that evening, and then the next day you gave a press
18 conference.

19 Do you recall someone from United for a Sovereign
20 America being with you at the press conference?

11:48:41

21 A. No.

22 Q. Do you recall being asked at the press conference whether
23 it bothered you that a group that was present at the press
24 conference accepted neo-Nazis?

25 A. In who -- can you repeat that?

11:48:55

1 Q. Do you recall being asked at that press conference whether
2 it bothered you that someone from a group that accepted
3 neo-Nazis was present with you at that press conference?

4 A. I don't recall anyone asking me that, or who may have asked
5 me. If you're talking about the media, I have no recollection, 11:49:18
6 if that did occur, who did ask that question.

7 Q. Well, I'll tell you there was a news story written by
8 Stephen Lemons, who wrote that you were asked that question at
9 that time, and that you said you had no problem because you
10 talk to everybody. 11:49:39

11 Does that refresh your memory?

12 A. I may have said --

13 You talking about Lemons of the New Times?

14 Q. Yes.

15 A. I did -- I may have said I do talk to everybody. That's my 11:49:47
16 philosophy.

17 Q. Now, Mr. Lemons did a news story where he said that at the
18 meeting at the VFW, there were people there from the group
19 United for a Sovereign America.

20 Does that refresh your memory? Do you deny what he 11:50:03
21 says?

22 A. No, I don't know who was at that VFW. I mean, I'm speaking
23 before the VFW. I said before, I don't ask everybody who they
24 are, where they're from. I speak to everybody.

25 Q. Okay, that -- that's good. I'm sure that people appreciate 11:50:19

1 that.

2 At that meeting at the VFW did you say that you were
3 going to need an army probably, and did you ask how many
4 people, the group that you were speaking to, would like to have
5 out there? 11:50:37

6 A. I don't recall that.

7 Q. Now, you did some sweeps in -- in Mesa, too, correct?

8 A. Suppression operations.

9 Q. Let's look at 375, which is not an exhibit, but I'd like
10 the sheriff to look at it. 11:50:57

11 You have people in your office taking notes on phone
12 calls that come in, is that right?

13 A. The front desk, sometimes when they get calls they make
14 notes.

15 Q. Is this one of those sets of notes that your front desk
16 generated recording messages that your office receives? 11:51:10

17 A. Yes.

18 Q. That's your handwriting in the upper right-hand corner?

19 A. Yes.

20 MR. YOUNG: Your Honor, I move the admission of
21 PX 375. 11:51:24

22 MR. CASEY: No objection, Your Honor.

23 THE COURT: Exhibit 375 is admitted.

24 (Exhibit No. 375 is admitted into evidence.)

25 BY MR. YOUNG: 11:51:33

1 Q. You have your front desk make records of what people say
2 when they call in so that you can know what people are saying
3 about your policies?

4 A. Briefly, yes.

5 Q. Near the bottom of the first page there's a note that 11:51:44
6 says -- it's the one second from the last, second from the
7 bottom. And it says: We have called the non-emergency and
8 illegal hotline numerous times, and nobody gets all the
9 Mexicans hanging out on Mesa Drive between Southern and
10 Broadway. Why isn't anything being done? 11:52:12

11 You put a bracket next to that comment, correct?

12 A. Yes.

13 Q. And then you made a note at the top of the document in the
14 upper-right-hand corner of the first page, where you directed a
15 copy of the document to Dave Hendershott and Brian Sands and to 11:52:30
16 yourself with two copies, is that right?

17 A. Yes.

18 Q. You did that on September 24, 2007?

19 A. Yes.

20 Q. There's nothing in the particular note on Mexicans hanging 11:52:44
21 out on Mesa Drive that indicates anyone being discussed there
22 is illegally present in the country, correct?

23 A. Can you repeat that?

24 Q. Okay. Let me reword it.

25 The note says: Nobody gets all the Mexicans hanging 11:53:04

1 out on Mesa Drive between Southern and Broadway.

2 There's no indication that any of those people
3 referred to there are illegal immigrants, correct?

4 A. Yes.

5 Q. And there's no indication that a crime is being committed, 11:53:18
6 correct?

7 A. Yes.

8 Q. But you put a bracket next to this note and sent it to your
9 chief deputy, your chief of enforcement, and two copies to
10 yourself so that they could see this information, is that 11:53:30
11 right?

12 A. We're talking about the hotline that I initiated several
13 years ago. And much information comes across that hotline, but
14 we don't act on this type of information over a hotline.

15 Q. Well, you did send it to Chief Hendershott and Chief Sands, 11:53:51
16 right?

17 A. I sent -- any information I get on illegal immigration I
18 sent to people that have an interest in it that work for me.

19 Q. Well, you picked out this particular note to put a bracket
20 next to it, the one about nobody getting all the Mexicans 11:54:08
21 hanging out on Mesa Drive, is that right?

22 A. Because it was talking about the hotline. She mentioned
23 the no one responds to her calls.

24 Q. And you think that you should have someone look into having
25 someone respond to a call about Mexicans hanging out on Mesa 11:54:29

1 Drive?

2 A. That's up to the people that run the hotline. I'm sure
3 they don't respond to every call that comes in to the hotline
4 unless there's good evidence.

5 Q. Well, it's up to you to decide to put a mark next to this 11:54:43
6 note and then send it to two of your top lieutenants, correct?

7 A. Yes.

8 Q. You made that decision?

9 A. Yes.

10 Q. Sometime after September 20, 2007, which is the date of 11:54:52
11 this document, you started planning a major operation in Mesa,
12 correct?

13 A. I think we'd done two or three, so I'm not sure what time
14 you're --

15 Q. Actually -- 11:55:15

16 A. -- referring to.

17 MR. YOUNG: Can we publish this exhibit, Your Honor?

18 THE COURT: You may.

19 MR. YOUNG: Thank you.

20 BY MR. YOUNG: 11:55:25

21 Q. Well, you see at the top it's dated September 20, 2007?

22 A. Yes.

23 Q. Now, I'll tell you that your attorneys and we have agreed
24 that you did major operations in Mesa on June 26 and 27 and

25 July 14, 2008. So my question is: Sometime between September 11:55:40

1 20, 2007, and June and July 2008, you started planning major
2 operations in Mesa, is that correct?

3 A. Can you repeat the date? You're saying September 20.

4 Q. Yes. The date in this document which is on the screen.

5 A. We did an operation six days later?

11:56:03

6 Q. No.

7 A. September 26?

8 Q. I'll do it again, and I apologize if I've been unclear.

9 There's this comment that you put a mark next to that

10 says: Nobody gets all the Mexicans hanging out on Mesa Drive.

11:56:14

11 And that's from a call that came in on September 20, 2007.

12 Do you see that?

13 A. Yes.

14 Q. Now, in June and July 2008 you did some major operations in
15 Mesa, correct?

11:56:31

16 A. About nine months later, you're talking about?

17 Q. I haven't counted.

18 A. Well, you saying September till June of next year?

19 Q. You're -- as I said, you did some major operations on June
20 26-27 and July 14, 2008. My question to you is: Between the

11:56:49

21 time that you marked this note about nobody getting all the
22 Mexicans hanging out on Mesa Drive in September 2007, and the

23 time that you did those operations many months later in June

24 and July 2008, you started to plan, your office started to plan

25 major operations in Mesa, is that correct?

11:57:17

1 A. Had nothing to do with this comment.

2 Q. Sheriff, I'm asking whether in that time period you started
3 to plan major operations in Mesa.

4 A. We'd been planning all along, and I'm not sure we started
5 right after September 20. 11:57:37

6 Q. My question was: Sometime in that nine-month time period
7 did you start to plan major operations in Mesa?

8 A. Yes.

9 Q. Let's look at PX 223. Again, this has not yet been
10 admitted, but Sheriff, I'm going to ask you to take a look at 11:57:57
11 it. This is a May 8, 2008, letter from Mike S to you.

12 That's your handwriting on the top, right?

13 A. Yes.

14 Q. And you asked your assistant to send a thank you letter to
15 the author of this letter? 11:58:15

16 A. Yes.

17 MR. YOUNG: Your Honor, I move the admission of
18 PX 223.

19 MR. CASEY: No objection, Your Honor.

20 THE COURT: Exhibit 223 is admitted. 11:58:23

21 (Exhibit No. 223 is admitted into evidence.)

22 MR. YOUNG: May we publish the exhibit?

23 THE COURT: You may.

24 MR. YOUNG: Thank you.

25 BY MR. YOUNG: 11:58:31

1 Q. You forwarded a copy of this letter to Chief Sands,
2 correct?

3 A. Yes.

4 Q. Now, let's take a look at the -- the letter. Down at the
5 bottom of the first page it starts, Living in Mesa. And it
6 says: Living in Mesa, I can drive down any of the streets
7 where day laborers, most of whom I would believe to be here
8 illegally, gather and wait for work.

11:58:46

9 You see that?

10 A. Yes.

11:59:07

11 Q. And then he complains that the Mesa Police Department is
12 not doing anything about the day laborers waiting for work.

13 Do you see that?

14 A. Yes.

15 Q. You put a mark next to that paragraph. That's your mark
16 right there on the right-hand side, is that right?

11:59:18

17 A. Yes.

18 Q. And you did that so that Chief Sands would have this
19 information about day laborers in Mesa as backup and
20 intelligence for his operations, is that right?

11:59:38

21 A. Once again, any information I get I transmit to the
22 appropriate officials.

23 Q. And Chief Sands, being the person who oversees your
24 saturation patrols, was the appropriate person to get the
25 information in this letter?

11:59:53

1 A. Yes.

2 Q. You think that simply getting information about day
3 laborers where someone tells you that they believe them to be
4 there illegally is something that warrants your sending to
5 Chief Sands for his enforcement operations?

12:00:11

6 A. Everything I receive I give to him. However, I believe
7 there's another sentence about the Mesa police chief in the
8 same paragraph.

9 Q. Now, let's talk about Chief Sands a bit here.

10 THE COURT: Is now a good time to break for lunch?

12:00:32

11 MR. YOUNG: Actually, it would be, Your Honor.

12 THE COURT: All right. We will break for lunch.

13 We'll resume at 1:15.

14 THE COURT: Thank you. Please be seated.

15 You ready to resume cross-exam -- or examination,

13:15:27

16 Mr. Young?

17 MR. YOUNG: Yes, Your Honor.

18 THE COURT: Before you do that, I just want to make

19 sure, there was an irregularity, particularly with the

20 impeachment exhibit. I understand that the parties have

13:15:38

21 stipulated to its numbering as used by you in examination this
22 morning, is that correct?

23 MR. YOUNG: I think that we submitted an impeachment

24 exhibit which we had identified as 451. And my understanding,

25 and Ms. Gallagher should correct me if I'm wrong, is that your

13:15:55

1 clerk has now marked that as Exhibit 451 in this proceeding,
2 and that future impeachment exhibits should be marked by the
3 clerk in numerical order following that.

4 THE COURT: 451.

5 Do you agree with that, Mr. Casey? 13:16:10

6 MR. CASEY: That's -- that's acceptable, Your Honor.

7 THE COURT: All right. Then please proceed with your
8 examination.

9 MR. YOUNG: Thank you, Your Honor.

10 BY MR. YOUNG: 13:16:19

11 Q. Hello, Sheriff.

12 You're the final decision maker at the MCSO, correct?

13 A. Yes.

14 Q. If you issue your instructions, those instructions are the
15 final word at MCSO on whatever it is that you've instructed on,
16 is that right? 13:16:32

17 A. I delegate to my staff. They carry out my mission, usually
18 on an independent basis.

19 Q. But if you issue instructions, those instructions are the
20 final word at MCSO, is that right? 13:17:02

21 A. I establish the policy, and it's up to my staff, employees,
22 to carry it out.

23 Q. Sheriff, you gave your deposition on December 16, 2009, in
24 this case. At page 66 you testified as follows, starting at
25 line 2: "In other words, as the final decision-maker if you 13:17:23

1 issued instructions, your instructions would be the final word
2 at MCSO?

3 "ANSWER: Yes."

4 That's accurate, correct?

5 A. Yes. 13:17:37

6 Q. Now, sometimes you discuss with Chief Sands the letters of
7 public support that you receive and pass on to him that relate
8 to the subject of illegal immigration. We've seen that, is
9 that correct?

10 A. I think I said I very seldom discuss it. There may be 13:17:55
11 occasions where I do.

12 Q. You also work together or discuss with Chief Sands the
13 issue of where to do crime suppression or saturation patrol
14 operations, is that correct?

15 A. He makes the decision on where to go after good research, 13:18:10
16 and then he tells me what he plans on doing.

17 Q. But you talk to him about that decision making process
18 about where to do crime suppression patrols, is that right?

19 A. He makes a decision after obtaining information,
20 intelligence, and what have you, and then he advises me as to 13:18:39
21 where he's going.

22 Q. You make suggestions to him as to where to do the
23 saturation patrol/crime suppression operations?

24 A. Very seldom do I suggest. I give him the information and
25 he makes a decision on where to conduct the operation. 13:18:56

1 Q. Well, you do make suggestions and you have the final say if
2 you want to exercise your power as sheriff, correct?

3 A. That's correct.

4 Q. You are the sheriff, and if you tell Chief Sands to do
5 something, he will do it, correct?

13:19:22

6 A. I expect him to, yes.

7 Q. And he does, is that right?

8 A. I don't micromanage, but I presume he gets it done.

9 Q. And he definitely does not go into an area with a
10 saturation patrol without your knowing about it, is that right?

13:19:39

11 A. That's correct.

12 Q. Let's take a look at PX 244, which has been admitted, so it
13 can be published.

14 THE COURT: Yes, it can be published.

15 MR. YOUNG: I'm sorry, Your Honor. Thank you.

13:19:59

16 BY MR. YOUNG:

17 Q. Let's look at the first page, which is on the left-hand
18 side of this document. That's your handwriting on the top,
19 correct?

20 A. Yes. Yes.

13:20:15

21 Q. And what it says there, there's a redaction there, but it
22 says: Thanks for your support, right? Says that?

23 A. Yes.

24 Q. And then under that it says something illegal immigration.

25 Do you see that?

13:20:38

1 A. Yes.

2 Q. And then it says: I will be going into Mesa.

3 Do you see that?

4 A. Yes.

5 Q. Now, on the right-hand side there's a -- another note that
6 says: Chain gangs are all over.

13:20:45

7 Do you see that?

8 A. Yes.

9 Q. Now, you also wrote a note on the top to cc this to
10 Chief Sands, is that right, where it says "cc Brian"?

13:21:05

11 A. Yes.

12 Q. George Gascón was the Mesa police chief, correct?

13 A. What time period?

14 Q. In 2008.

15 A. I believe he was.

13:21:23

16 Q. He's Hispanic, correct?

17 A. I don't know.

18 Q. He was publicly critical of your illegal immigration
19 efforts, is that right?

20 A. Yes.

13:21:37

21 Q. Now, on this page, further down toward the bottom where it
22 says do the Mesa, Arizona sweep, can we focus on that?

23 And this letter, by the way, was written by someone

24 named Jack to you on May 24, 2008, and he says: Yes, the Mesa,

25 Arizona police chief drags his feet and stalls enforcing that

13:22:03

1 which the majority vote and some of the politicians put into
2 state and federal law. Add the fact that the head of Mesa's
3 police union is a Hispanic. That's what you get from Mesa.

4 You see that?

5 A. Yes. 13:22:21

6 Q. You drew a line, a bracket, to emphasize that paragraph
7 which you sent on to Chief Sands, is that right?

8 A. Yes.

9 Q. And then toward the bottom, the next paragraph of that same
10 page says that the author spoke to one of your MCSO officers 13:22:41
11 and asked why he did not arrest the 30 plus or minus illegals
12 that were on all four corners.

13 Do you see that?

14 A. Yes.

15 Q. And then the letter-writer to you says: I can't just 13:23:04
16 because they're standing there. And then Jack says that he's
17 going to write to you, Sheriff Arpaio, and complain about his
18 lack of action.

19 Do you see that?

20 A. Yes. 13:23:22

21 Q. Now, go to the next page where the paragraph continues at
22 the top. And let's -- okay.

23 And then Jack writes that the officer that he's
24 complaining about is of Hispanic origin, and that Jack was
25 close enough to see his name badge. 13:23:44

1 Do you see that?

2 A. Yes.

3 Q. This is Jack here in this letter complaining to you about
4 one of your own Hispanic officers, correct?

5 A. Yes.

13:23:58

6 Q. And the complaint was about the officer not arresting a
7 bunch of people who were standing in Mesa on a street corner,
8 is that right?

9 A. Yes.

10 Q. And you sent this complaint about one of your Hispanic
11 officers to Chief Sands, correct?

13:24:08

12 A. Yes.

13 Q. Now, on page 2, Jack asks you to -- where it says
14 Sheriff Joe in all capitals, it says, Sweep a whole bunch of
15 places, Mesa, Chandler, southeast Chandler, Guadalupe, Cave
16 Creek, sweep everywhere.

13:24:34

17 Do you see that?

18 A. Yes.

19 Q. You in fact had saturation patrol operations in those
20 areas, didn't you?

13:24:47

21 A. I don't think we went into Chandler.

22 Q. Okay. But as to the others you think you did go?

23 A. Guadalupe and Cave Creek, yes, and Mesa.

24 Q. Now, you sent Jack here a thank you letter in which you
25 said that you shared his concern about issues relating to

13:25:13

1 illegal immigration, is that correct?

2 A. I say that -- that's a basic letter that I write to
3 everybody.

4 Q. Well, in your note on this letter, though, you say that you
5 will be going into Mesa. 13:25:32

6 A. That's my note.

7 Q. And in fact, you did go into Mesa, didn't you?

8 A. I think we'd been there before 2008, and I'm sure we'd been
9 there three, four times.

10 Q. Well, as we discussed -- well, first of all this letter's 13:25:47
11 dated May 24, 2008. You went into Mesa about a month later in
12 late June, and then you did another operation in July 2008.

13 Do you remember that?

14 A. If those are the dates.

15 Q. I'll tell you those are the dates. 13:26:02

16 You personally attended one or more of those
17 operations in Mesa, correct?

18 A. I wasn't involved in the operation, but I was there, I
19 believe.

20 Q. You believed that your operations in Mesa were in keeping 13:26:18
21 with your promise to the public, correct?

22 A. I don't know the promises that you're referring to to the
23 public.

24 Q. All right.

25 A. We go in there when we have evidence of crimes being 13:26:38

1 committed.

2 Q. Let's look at PX 316.

3 MR. YOUNG: PX 316 has been admitted, Judge. May we
4 publish it?

5 THE COURT: Yes.

13:26:52

6 BY MR. YOUNG:

7 Q. PX 316 is your press release about one of your Mesa
8 operations in June, correct?

9 A. Yes.

10 Q. And the first sentence there says: In keeping with his
11 promise to the public and East Valley state legislators,
12 Maricopa County Sheriff Joe Arpaio today directed his deputies
13 and posse volunteers into the city of Mesa.

13:27:00

14 You see that?

15 A. Yes.

13:27:16

16 Q. So would you agree with me that your going into Mesa was in
17 keeping with your promise to the public?

18 A. I think the heading says All Violations of the Law to be
19 Enforced. That's why we went into Mesa.

20 Q. Sheriff, my question was: Did you think going into Mesa
21 was in keeping with your promise to the public?

13:27:35

22 A. We went into Mesa to enforce all the laws.

23 MR. YOUNG: Judge, could I get an instruction to the
24 witness to answer the question?

25 THE COURT: Sheriff, listen carefully to the question,

13:27:49

1 and if you can, try to answer the question --

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: -- you're asked.

4 BY MR. YOUNG:

5 Q. Sheriff, your going into Mesa, in your view, was in keeping 13:27:57
6 with your promises to the public, is that correct?

7 A. I'm not sure when you say "promises to the public." We
8 don't go into areas because of promises, normally, to the
9 public.

10 Q. So is it your testimony that your press release dated June 13:28:16
11 26 was wrong when it said in keeping with his promise to the
12 public you went into Mesa?

13 A. I think I was referring to legislators.

14 Q. You do -- you're right, you refer to legislators, but you
15 also refer to your promise to the public, correct? 13:28:35

16 A. Well, not on that operation. In general terms I told the
17 public that I will enforce all the illegal immigration laws,
18 but not for that specific Mesa operation.

19 Q. Well, this paragraph is about the specific Mesa operation.

20 Do you see that? 13:28:56

21 A. In keeping with his promise to the public. That's a
22 generic term that goes back, not just for that instance.

23 Q. Okay. Well, in a generic sense, then, your going into Mesa
24 was in keeping with your promise to the public. Is that a
25 correct statement? 13:29:16

1 A. But not only for that operation is what I'm trying to get
2 across to you.

3 Q. You make promises to the public generally, and your other
4 operations besides the ones in Mesa are also in keeping with
5 your promise to the public? 13:29:30

6 A. That's correct.

7 Q. Let's go to PX 228, which is not yet admitted. It's
8 another list of comments from your front desk call-ins.

9 Do you see that?

10 A. Yes. 13:29:55

11 Q. And you have some handwriting copying this to Chief Sands
12 and to Lisa Allen, who's your public information officer,
13 correct?

14 A. Yes.

15 MR. YOUNG: Your Honor, I move for the admission of
16 Exhibit 228. 13:30:10

17 MR. CASEY: No objection, Your Honor.

18 THE COURT: 228 is exhibit -- is admitted.

19 (Exhibit No. 228 is admitted into evidence.)

20 MR. YOUNG: And I would ask that it may be published. 13:30:19

21 THE COURT: May be published.

22 MR. YOUNG: Thank you.

23 BY MR. YOUNG:

24 Q. You read this list of call-in comments and you sent it to
25 Chief Sands because you wanted him to see what people were 13:30:29

1 saying, is that right?

2 A. Yes.

3 Q. And you also wanted to see what people were saying, is that
4 right?

5 A. I don't solicit the phone calls. When they do come in, I 13:30:40
6 receive the messages.

7 Q. And you want to see what messages people are leaving for
8 you, is that right?

9 A. Yes.

10 Q. You also wanted your public information officer, Lisa 13:30:50
11 Allen, to see what in this case people had said, is that right?

12 A. Yes.

13 Q. On the first page under Terril K there's a note -- I'll
14 also say this is July 16, 2008, so you'd done some activities
15 in Mesa already. 13:31:13

16 That person left a message: Please continue coming to
17 Mesa. You have my personal invitation. You put a mark next to
18 that for Chief Sands?

19 A. Yes.

20 Q. And then on the third page of the exhibit there's another 13:31:28
21 comment in the middle from Suzanne B. Let's get that on the
22 board. It's -- no, the next page here.

23 There's another note from Suzanne B, you see that,
24 also thanking you for coming to Mesa.

25 See that? 13:31:55

1 A. Yes.

2 Q. And that person asks you to do a sweep on Mesa Drive at
3 Sixth Avenue and Main Street, correct?

4 A. Yes.

5 Q. And says that illegals are hanging around early in the
6 morning.

13:32:09

7 A. Yes.

8 Q. You put a mark next to that --

9 A. Yes.

10 Q. -- request as well, and then you sent it to Chief Sands.

13:32:16

11 A. Yes.

12 Q. Now, there's more of this on page -- the second page,
13 right? If you would go to the second page of the exhibit
14 there's a note from Joyce F, and it says, among other things,
15 immigration sweeps, she's on your side. Immigrants hanging out
16 on Cave Creek Road on corner daily.

13:32:47

17 You see that?

18 A. Yes.

19 Q. And you put a mark next to that note, too --

20 A. Yes.

13:32:58

21 Q. -- and sent it to Chief Sands?

22 A. Yes.

23 Q. There's nothing in any of these notes that we've looked at
24 that talks about any of these -- well, let's -- let's focus on
25 this one, this Joyce F note. It says: Immigrants hanging out

13:33:08

1 on Cave Creek Road on corner daily.

2 There's nothing there that indicates that those are
3 illegal immigrants, is that right?

4 A. That's correct.

5 Q. And further down at the bottom of the page says Kerrie R. 13:33:21

6 It says: Please make another immigrant sweep at Cave Creek and
7 Bell Road. You see that?

8 A. Yes.

9 Q. And you put a mark next to that note, too.

10 A. Yes. 13:33:36

11 Q. In fact, what you did as you look at these pages -- and
12 maybe we can put the first two pages on this -- is that
13 wherever someone asked for you to do an immigrant sweep -- I'm
14 using Kerrie R's words there -- you put a mark next to that
15 note and you sent it to Chief Sands, is that right? 13:33:55

16 A. I send the whole document to him, especially when it
17 pertains to illegal immigration he gets everything, regardless
18 of what the subject matter is pertaining to illegal
19 immigration.

20 Q. Well, that's -- that's not quite true, right? Because just 13:34:22
21 going back to the first page there's an item from Robert H.
22 That item refers to illegal immigration, but it doesn't ask for
23 a sweep or a suppression patrol.

24 Do you see that?

25 A. Yes. 13:34:46

1 Q. Okay. So you did not put a mark next to that item that
2 relates to immigration --

3 A. No, I did not.

4 Q. -- correct?

5 A. Yes.

13:34:57

6 Q. But you did put a mark next to these other items which
7 specifically call for you and your office to do crime
8 suppression patrols in particular locations.

9 Is that what you did? You did that, correct?

10 A. Yes.

13:35:15

11 Q. You think it's good management for you to send items like
12 this exhibit to Chief Sands, since he runs your illegal
13 immigration enforcement efforts, is that right?

14 A. As I said previously, I sent -- it's my management policy,
15 50 years, I send anything pertaining to a subject matter to who
16 is responsible to them. I think that's good management. They
17 can do what they want with it. If they want to throw it in the
18 wastebasket, that's their discretion.

13:35:40

19 Q. Let's take a look next at PX 237. That's not yet been
20 admitted. This is a letter that someone sent to you from
21 Sun City, is that right?

13:36:08

22 A. Yes.

23 Q. And we'll call her Gail, dated August 1, 2008.

24 Is that your handwriting on the upper right?

25 A. Yes.

13:36:28

1 Q. And then you sent it to Brian Sands, correct?

2 A. Yes.

3 MR. YOUNG: Your Honor, I move for the admission of
4 PX 227.

5 MR. CASEY: No objection, Your Honor. 13:36:37

6 MR. YOUNG: Your Honor, may we publish it?

7 THE COURT: Let me ask, was that 227 or 237?

8 MR. CASEY: 237.

9 MR. YOUNG: I'm sorry, I meant -- oh, it's 237, yes.

10 Thank you. Sorry. 13:36:50

11 May we publish Exhibit 237?

12 THE COURT: Well, yeah, I'll admit 237, and you may
13 publish it.

14 (Exhibit No. 237 is admitted into evidence.)

15 MR. YOUNG: Thank you. 13:37:03

16 BY MR. YOUNG:

17 Q. Now, Sun City is another place where your office is the
18 only law enforcement agency, is that right?

19 A. Yes.

20 Q. And you take action there where -- when people there
21 express concern about crimes, right? 13:37:10

22 A. Yes.

23 Q. Now, this letter is -- has a subject line, Want to check
24 out Sun City, is that right?

25 A. Yes. 13:37:29

1 Q. You did do a major operation in Sun City, correct?

2 A. I think we were planning that three, four weeks before this
3 letter came in.

4 Q. Okay. But you did do an operation in Sun City, right?

5 A. In an area, yes. 13:37:46

6 Q. Now, her letter -- this is Gail -- says in the second
7 paragraph that she was in a McDonald's at Bell Road and Boswell
8 next to the Chase Bank and, quote, there was not an employee in
9 sight or within hearing who spoke English as a first language,
10 to my dismay. 13:38:14

11 You see that?

12 A. Yes.

13 Q. Now, it's not a crime for someone to speak English as a
14 second language, is it?

15 A. No, it's not a crime. 13:38:21

16 Q. And then she says: From the staff at the registers to the
17 back -- to the staff back in the kitchen area, all I heard was
18 Spanish except when they haltingly spoke to a customer.

19 You see that?

20 A. Yes. 13:38:38

21 Q. Speaking Spanish is not a crime, either, right?

22 A. No, it is not.

23 Q. So if you speak English as a second language, or if you
24 speak Spanish, there's not even a potential criminal violation.

25 Would you agree with me on that? 13:38:53

1 A. Yes.

2 Q. You forwarded this letter to Chief Sands and you wrote a
3 note in your handwriting that says, For our operation, is that
4 right?

5 A. Yes. 13:39:11

6 Q. The operation that you were referring to was the Sun City
7 crime suppression operation that you were going to launch, is
8 that right?

9 A. Yes.

10 Q. You sent Chief Sands this information about people speaking 13:39:21
11 Spanish at a McDonald's so he would know about it for purposes
12 of the operation that you and he were planning at that time, is
13 that right?

14 A. I'm not sure. Once again, I sent that letter to him for
15 whatever he wants to do with it. Now, whether he wants to talk 13:39:42
16 to that person, see if that person has information about crime,
17 I don't know.

18 Q. Well, you wanted Chief Sands to know about this letter and
19 about people speaking Spanish at that McDonald's for purposes
20 of his operation. 13:40:03

21 A. Anything that comes in regarding illegal immigration I give
22 to him, and he decides what to do with it.

23 Q. Gail was a constituent, correct, from Sun City?

24 A. I don't -- I don't even know who she is.

25 Q. Okay. Well, you put a note that says, We'll look into it, 13:40:26

1 is that right?

2 A. For him to do what he wants to do with that complaint. Not
3 actually the complaint, but the person that may have
4 information.

5 Q. I'm going to read to you from your deposition on November
6 16, 2010, at line 136 -- page 136, starting at line 1, and
7 don't put this on the screen: Well, what was it, then, that
8 you were looking into about what Gail told you in her letter?

13:40:44

9 And I'm substituting the first name for the last name.

10 "ANSWER: Well, once again, this is two years ago. I
11 don't have all the details on our operation in Sun City. But
12 she is a constituent from Sun City, and I'm not sure as to who,
13 if anybody, contacted her or whether I -- in my letter, I said
14 that we appreciate your information, knowing that probably in
15 the near future we were going to do a crime suppression
16 operation where she lived."

13:41:07

13:41:27

17 That testimony that you gave was accurate, right?

18 A. If I said that back then, yes.

19 Q. You did.

20 A. To the best of my knowledge.

13:41:44

21 I presume everybody in the -- is a constituent in that
22 regard. It was in Maricopa County.

23 Q. You believed that this information in Gail's letter was
24 intelligence regarding the operations that you were going to
25 have in Sun City regarding crime, is that right?

13:42:11

1 A. I call it information that I just passed on to the person
2 responsible for the illegal immigration programs.

3 Q. Well, actually, you think of it as intelligence, correct?

4 A. I would call it more information.

5 Q. And we look at page 134 of your November, 2010,

13:42:32

6 deposition -- and we can put this on the board, or on the
7 screen -- starting at line 5, going to line 12, and what you
8 said in your deposition in response to this question:

9 "What did you mean when you told Brian Sands,
10 forwarding him this information -- forwarding him this letter,
11 'for our operation'?"

13:42:53

12 Your answer was: "Well, once again, we're talking
13 about a situation that's, what, over two years old? I'm not
14 sure, but it could be some intelligence regarding some
15 operations we had in Sun City or in that area regarding crime."

13:43:08

16 A. It's a matter of semantics, information/intelligence. I
17 like using the word "information." I may have used the word
18 "intelligence" at that time.

19 Q. Okay. You did not tell Gail that speaking Spanish is not a
20 crime, is that right?

13:43:35

21 A. I never talked to her.

22 Q. Well, you wrote her a thank you letter, right?

23 A. I don't know. I didn't see it.

24 Q. Well, I haven't seen it, either, actually --

25 A. Then I guess I didn't write it.

13:43:47

1 Q. But your note says that you're going to have your staff
2 write her a thank you letter?

3 A. No, I said look into this.

4 Q. Well, the top doesn't it say letter --

5 A. Yeah, that's right, thank you for information. 13:43:59

6 Q. So you wrote her a thank you letter?

7 A. Which I do with everybody.

8 Q. And you did it with Gail, right?

9 A. I'm not sure if that was carried out. I don't remember the
10 letter. 13:44:10

11 Q. Okay.

12 A. But I did say to my secretary, Write a thank you note --
13 letter.

14 Q. Do you think you would have told your secretary to include
15 in that thank you letter some information back to Gail that
16 simply speaking Spanish is not a crime? 13:44:20

17 A. No.

18 Q. Did it even occur to you that you might say that to her?

19 A. No.

20 Q. Let's go to PX 235. And 235 -- I'm sorry, it's 13:44:31

21 Exhibit 235. When I say PX I'm thinking -- I'm putting an
22 extra letter on there.

23 Exhibit 235, that's a letter from someone named Bob
24 and Lynnette to you dated August 2, 2008. You have some
25 handwriting in the upper right-hand corner, right? 13:45:01

1 A. Yes.

2 Q. And you instructed Helen, your assistant, to write a thank
3 you letter back to them?

4 A. Yes.

5 Q. Could we --

13:45:07

6 MR. YOUNG: I request admission of Exhibit 235, Your
7 Honor.

8 MR. CASEY: Your Honor, I have no objection to that
9 admission. I would just want to point out in my notebook I've
10 got a second page again that appears to be another letter from
11 the same people.

13:45:20

12 MR. YOUNG: Yeah, and I'm only seeking admission of
13 the first page, which is the letter that's on the screen now.

14 MR. CASEY: No objection.

15 MR. YOUNG: And we can use the exhibit later on, with
16 agreement of defendants.

13:45:34

17 THE COURT: All right. Only the first page of
18 Exhibit 235 is admitted. If there's been more than one page
19 submitted, then only the first page is admitted.

20 (Exhibit No. 235 is admitted into evidence.)

13:45:52

21 MR. YOUNG: Thank you, Your Honor.

22 May we publish Exhibit 235?

23 THE COURT: You may.

24 BY MR. YOUNG:

25 Q. Now, you also sent this letter to Chief Sands to help him

13:46:00

1 with his operations, correct?

2 A. Is that the August 8th that's on my screen?

3 Q. Yes.

4 A. Yes.

5 Q. You did have an operation in Surprise, is that right?

13:46:08

6 A. I don't recall the time frame.

7 Q. But do you recall having an operation in Surprise?

8 A. In the Surprise area, yes.

9 Q. In the second paragraph the authors write: I would love to

10 see an immigrant sweep conducted in Surprise, especially -- or

13:46:29

11 specifically at the intersection of Grand and Greenway. The

12 area contains dozens of day workers attempting to flag down

13 motorists seven days a week.

14 You see that?

15 A. Yes.

13:46:45

16 Q. You put a line next to that paragraph to draw the attention
17 of Chief Sands to it?

18 A. Yes.

19 Q. This is also information or intelligence that you wanted

20 him to have for your operations?

13:46:56

21 A. I'm not sure that was a time they were conducting a

22 Sun City/ Surprise operation.

23 Q. Well, I'll tell you for your information, Sheriff, that

24 your attorneys and we have agreed that on October 16 and 17,

25 2009, in Surprise and in the northwest valley, your office held

13:47:13

1 a major operation. That was paragraph 78 of the pretrial
2 order.

3 My question is: Did you put a line next to this
4 paragraph so that Chief Sands could have this intelligence or
5 information for purposes of your office's operations? 13:47:35

6 A. Well, you know, let me say in that time period we were
7 authorized by the government to conduct 287(g) operations. And
8 we had a close relationship with ICE, so that was another
9 reason I would give the information to the chief, in case he
10 would speak with the ICE officials, since we were under their 13:48:05
11 umbrella.

12 Q. So the answer is, yes, this information about day workers
13 in Surprise you sent to Chief Sands so he could have it for his
14 operations, including whatever discussions with ICE he was
15 having, is that right? 13:48:26

16 A. Anything to do with immigration I would send to him.

17 Q. Let's look at P -- at Exhibit 381. This is a February 1,
18 2008, letter to you from Gary and Kay.

19 You have that in front of you?

20 A. Yes. 13:48:52

21 Q. Now, you have another handwritten note on the top of this
22 exhibit, right?

23 A. Yes.

24 MR. YOUNG: Your Honor, may we admit Exhibit 381?

25 MR. CASEY: No objection, Your Honor. 13:49:10

1 THE COURT: Exhibit 381's admitted.

2 (Exhibit No. 381 is admitted into evidence.)

3 THE COURT: You may publish.

4 MR. YOUNG: Thank you, Your Honor.

5 BY MR. YOUNG:

13:49:21

6 Q. The fourth paragraph of this letter, starting in the middle
7 of the page, asks you: Lastly, we would like to know why the
8 Mexicans are allowed to park on the corner of 99th and Broadway
9 peddling their old corn, peanuts, et cetera. I know they do
10 not have a permit. It is not fair we have to see them every
11 day driving into our complex.

13:49:43

12 You see that?

13 A. Yes.

14 Q. Now, you sent the authors of this letter a thank you note,
15 correct?

13:49:59

16 A. I don't see it, but I presume I asked for it to be sent.

17 Q. Okay. Well, just going back to the note at the top of the
18 page you say: Helen, thank you letter.

19 That's your way of telling your assistant to prepare a
20 thank you letter that will go out on your behalf, is that
21 right?

13:50:16

22 A. Yes.

23 Q. And then you write at the top of the letter: Will give
24 information to my illegal immigration officers to look into.

25 Is that right?

13:50:33

1 A. Yes.

2 Q. Now, this letter does talk about Mexicans, right?

3 A. Yes.

4 Q. But there's nothing in this letter, at least the paragraph
5 that we've looked at, indicating that they're illegal
6 immigrants, correct?

13:50:46

7 A. I think we were talking about not having a permit, which is
8 a violation of the law regardless who they are. She was
9 complaining about corn vendors with no permit to operate.

10 Q. And you think that selling something without a permit is
11 something that your illegal immigration officers would be
12 pursuing?

13:51:11

13 A. Whatever they wanted to do with it. We do have drop houses
14 where food is stored, people are selling goods without a
15 permit, which is a health problem.

13:51:31

16 Q. Well, I'm asking about what you intended, though.

17 Do you think that you sent this letter, or this
18 information to your illegal immigration officers because
19 someone was selling something without a permit?

20 A. That, and also we're dealing with possible immigration
21 violations.

13:51:45

22 Q. And the possible immigration violation springs out of the
23 fact, as described in this letter, that the people being
24 described are Mexican, is that right?

25 A. There's always the possibility. I'm not accusing them of

13:52:01

1 being here illegally; I'm giving it to the section of my
2 organization as knowledge about illegal immigration.

3 Q. It's possible in your view every time there's a Mexican
4 that there may be an immigration violation. Is that your view?

5 A. I'm not saying that.

13:52:22

6 Q. Well, isn't that -- is that not what you just said?

7 And why did you send this information to your illegal
8 immigration officers?

9 A. Because we've had intelligence and made many arrests where
10 illegal immigrants were selling goods on the streets, a
11 violation of the law.

13:52:34

12 Q. Well, you -- you've stopped and arrested many people who
13 were and looked Mexican, is that right?

14 A. Pardon?

15 Q. You've stopped many people and arrested many people who are
16 or looked Mexican?

13:52:48

17 A. No, we only stop -- investigate people when they commit a
18 state crime.

19 Q. You have another area of your office that deals with people
20 who are selling things without a permit, correct?

13:53:06

21 A. I don't know where that falls under.

22 Q. Your illegal immigration officers go after people who are
23 selling things without a permit?

24 A. When we have information, as I said before, we've arrested
25 many people selling goods on the street without permits, but

13:53:33

1 has nothing to do with whether they're Irish, Mexican, or what
2 have you.

3 Q. So if someone is Irish and is selling something without a
4 permit, do you send your illegal immigration officers that
5 information so they can look into it?

13:53:51

6 A. It depends on the circumstances.

7 Q. All right. Well, let's just say someone is Caucasian and
8 is selling something without a permit. Do you send your
9 illegal immigration officers after that person?

10 A. If the Caucasian -- if there is a history that -- that a
11 certain group of people were involved in this type of activity
12 and many of them were in this country illegally, it only makes
13 common sense to send it to the person who's handling the
14 illegal immigration problem.

13:54:07

15 Q. And in this case you sent it to your illegal immigration
16 officers because the people selling things without a permit
17 were Mexicans, is that right?

13:54:27

18 A. Not necessarily.

19 Q. Well, there's no other information that you have other than
20 that they're selling without a permit and they're Mexican, is
21 that right? And that's enough for you to send it to your
22 illegal immigration officers?

13:54:39

23 MR. CASEY: Excuse me, Your Honor. For completeness
24 purposes, he's only -- I request that he show the witness the
25 second page of the document for --

13:54:53

1 THE COURT: You can do that on cross-examination.

2 MR. CASEY: Thank you, Your Honor.

3 BY MR. YOUNG:

4 Q. Sheriff?

5 A. The answer is that I sent it to my illegal immigration
6 group of people that handles illegal immigration. 13:55:00

7 Q. Because they're Mexicans selling corn without a permit, is
8 that right?

9 A. We had information about people, Mexican ancestry or
10 whatever, that were involved in selling goods on the street 13:55:24
11 without permits, and I just gave it to the immigration group to
12 look into it. Not accusing them of any violation of the law.

13 Q. Okay, but you're starting an investigation based on the
14 fact that they're Mexicans selling something without a permit,
15 is that right? 13:55:45

16 A. I'm just responding to someone who wrote the information
17 and decided to give it to the immigration group.

18 Q. Have you ever sent to your illegal immigration officers the
19 case of a Caucasian person who was selling things without a
20 permit? 13:56:02

21 A. I don't recall ever coming up with that instance.

22 Q. Because you don't think of Caucasians as being possible
23 illegal immigrants, right?

24 A. They could be.

25 Q. Well, in the context of people selling things without a 13:56:15

1 permit, that's not something that would occur to you, is that
2 right?

3 A. That's correct.

4 Q. Let's go to PX 187. Sheriff, this is a June 19, 2008,
5 letter with your handwriting on it in the upper right-hand
6 corner, correct?

13:56:41

7 A. Yes.

8 Q. And you sent this on to Chief Sands, correct?

9 A. Yes.

10 MR. YOUNG: Your Honor, may we admit PX 187?

13:56:52

11 THE COURT: Any objection?

12 MR. CASEY: No, Your Honor. No objection.

13 THE COURT: Exhibit 187 is admitted.

14 (Exhibit No. 187 is admitted into evidence.)

15 MR. YOUNG: May we publish it?

13:57:04

16 THE COURT: You may.

17 BY MR. YOUNG:

18 Q. Now, this letter is one that you put in your immigration
19 file, is that right?

20 A. I may have.

13:57:19

21 Q. You have a note there that says cc sheriff, so you wanted
22 two copies of this for yourself, is that right?

23 A. Yes.

24 Q. Now, on the bottom of the first page and then running over
25 to the top of the second there is this statement by the author

13:57:33

1 of this letter, Exhibit 187: Then they have the nerve to say
2 we are racial profiling. Please. It is what it is. If you
3 have dark skin then you have dark skin. Unfortunately, that is
4 the look of the Mexican illegal who are here illegally.

5 You see that?

13:58:02

6 A. Yes.

7 Q. Then it talks about, further down in that same paragraph,
8 unclean, disrespectful, integrity-less law-breaking selves. It
9 talks about their firing gunshots into the area and playing
10 their loud obnoxious noise they call music which disrupts the
11 law-abiding citizens.

13:58:21

12 Do you see that?

13 A. Yes.

14 Q. Then in the paragraph below that it talks about how it was
15 a beautiful city to live in 20 years ago. And then in the
16 third line she says, and this is Gina: I am begging you to
17 come over to the 29th Street/Greenway Parkway area and round
18 them all up.

13:58:33

19 You see that?

20 A. Yes.

13:58:50

21 Q. Now, there's a mark in the right-hand corner of this
22 document next to that paragraph begging you to come over to
23 that place and round them all up. That's your mark, right?

24 A. Yes.

25 Q. You put that mark there so that Chief Sands could see it

13:59:00

1 for purposes of his operations, correct?

2 A. Yes.

3 Q. And in fact, in the first -- on the first page in the upper
4 right-hand corner you said to Chief Sands, Have someone handle
5 this, is that right? 13:59:17

6 A. Yes.

7 Q. Sheriff, you're confident that if you send Chief Sands
8 something like this and ask him to handle it, he'll take care
9 of it, is that right?

10 A. In a professional way, yes. I believe -- 13:59:38

11 Q. This letter also men -- this letter mentions gunshots.

12 To your knowledge, did anyone, in response to your
13 sending this letter to Chief Sands, do any searching for
14 anybody who was firing guns?

15 A. I don't know. 13:59:57

16 Q. Let's go to Exhibit 216. This is a May 26, 2009, letter
17 from Stella to you. That's your handwriting on the upper
18 right, is it?

19 A. Yes.

20 Q. And you sent this to Chief Trombi, correct? 14:00:20

21 A. Yes.

22 MR. YOUNG: Your Honor, I move to admit Exhibit 216.

23 MR. CASEY: No objection, Your Honor.

24 THE COURT: 216's admitted.

25 (Exhibit No. 216 is admitted into evidence.) 14:00:34

1 MR. YOUNG: May we publish it?

2 THE COURT: You may.

3 BY MR. YOUNG:

4 Q. Now, this is a little hard to read so we'll need to look a
5 little closer at it, but let's -- let's go to the first
6 paragraph of the letter. And it talks about how Stella entered
7 a parking lot off of Thomas Road and west of Wal-Mart nearest
8 to Home Depot where she always sees numerous Mexicans standing
9 around in that area.

14:00:41

10 You see that language?

14:01:07

11 A. Yes.

12 Q. Then in the second paragraph she talks about a particular
13 day where she says: All of a sudden a large amount of these
14 Mexicans swarmed around my car, and I was so scared and alarmed
15 and the only alternative I had was to manually direct them away
16 from my car. And then she discusses how frightened she was.

14:01:27

17 You see that?

18 A. Yes.

19 Q. Nothing that is described by Stella in this letter is a
20 crime, correct?

14:01:43

21 A. Not that I know of.

22 Q. So Stella here is writing to you and complaining about
23 having a large number of Mexicans around her. You think that
24 her complaint relates to day laborers, is that right?

25 A. I don't see anything about day laborers here.

14:02:06

1 Q. Well, you're right; it just talks about Mexicans. But you
2 think that her complaint, as set forth in this letter, relates
3 to day laborers, is that right?

4 A. I didn't say that. I'm looking at the safety of that area.
5 This lady had some complaints, regardless of what background
6 they were. 14:02:29

7 Q. Well, I'm not going to put this on the screen, but I'll
8 read to you from your November 16, 2010, deposition, at page
9 123, and I'll start at line 9, referring to this letter:

10 "In fact, she gives an address, which is 3721 East 14:02:50
11 Thomas Road. It's underlined in the copy that I have. Did you
12 underline that address?

13 "ANSWER: I may have.

14 "QUESTION: And what was your purpose in doing that?

15 "ANSWER: I believe we've had a lot of complaints in 14:03:03
16 that area. And I just wanted this letter to be another
17 information-gathering document to assist my people in case they
18 had to do some law enforcement activity.

19 "QUESTION: The complaints that you're referring to
20 relate to day laborers? 14:03:21

21 "ANSWER: I'm not sure if that's the only complaint in
22 this letter. That may be one of her complaints."

23 You gave that testimony in November 2010?

24 A. You say so, yes.

25 Q. You thought that this information in Stella's letter 14:03:42

1 warranted further investigation, including a call to her?

2 A. I did not. Once again, I gave it to the people who run the
3 immigration operations under the federal jurisdiction and state
4 jurisdiction. It's up to them what they want to do with it.

5 Q. Well, Sheriff, look at your handwritten note again and
6 let's pull that up on the screen.

14:04:11

7 You wrote to Chief Trombi, Dave Trombi: Keep file on
8 these complaints and also have one contact Stella. You wrote
9 that, correct?

10 A. Yes.

14:04:29

11 Q. So you thought that the information about all the Mexicans
12 in this location warranted having someone contact Stella and
13 you -- you instructed Chief Trombi to have someone do that, is
14 that right?

15 A. Once again, that would be up to him. This is a suggestion,
16 they keep a file on all the complaints we receive, and for him
17 to -- if he saw fit, to contact the complainant and see what
18 her problem is.

14:04:43

19 Q. Really, when -- when you said have one contact Stella, that
20 was just a -- that wasn't an instruction, that was simply a
21 suggestion?

14:05:06

22 A. Yes.

23 Q. You forwarded this letter to Chief Trombi so that he and
24 others could have information that would help them do some law
25 enforcement activity, is that right?

14:05:22

1 A. Yes.

2 Q. And you thought that talking to Stella about her experience
3 with the Mexicans might help your department gather information
4 regarding the illegal immigration problem, is that right?

5 A. That -- once again, we're talking about crime. I believe 14:05:37
6 she was talking about possible criminal complaints. And it's
7 only good law enforcement to try to get to a complainant and
8 see what she has.

9 Q. You just told me that there's nothing in this letter that
10 indicates a crime or a potential crime. 14:05:51

11 A. I didn't read it. It's very difficult to read. I didn't
12 read the whole letter here.

13 Q. So the facts that we did talk about, though, you agree with
14 me that those do not indicate a crime or potential crime,
15 correct? 14:06:10

16 A. The way she wrote the letter, that's possible. But you
17 never know until you can get to talk to the complainant.

18 Q. So you think that you should investigate for a possible
19 crime whenever anyone is concerned that they're surrounded by a
20 bunch of Mexicans. Is that what you're saying? 14:06:25

21 A. Well, I think that it doesn't matter whether they're
22 Mexicans or not, but if you have some concerns about people
23 surrounding your car, it might be a violation of the law.
24 Especially if you're afraid.

25 Q. You think that fear alone, fear of someone of a different 14:06:43

1 ethnicity than yourself, justifies investigation into criminal
2 activity?

3 A. No, I don't -- I don't believe the race of any person
4 enters into it. Whether it's 10 people, Caucasian, whatever,
5 to come and surround your car when you have a little fear, I
6 think someone should look into it. 14:07:04

7 Q. The only thing you know about the people mentioned in the
8 letter is that they're Mexican, according to Stella, correct?

9 A. Doesn't matter if they're Italian or Mexican, it doesn't
10 matter. 14:07:20

11 Q. You did not have Chief Trombi tell Stella that being
12 Mexican is not a crime, did you?

13 A. I did not tell Trombi anything other than he may want to
14 look into it.

15 Q. Would you agree with me that one of the things that makes
16 our country great is that our Constitution and our laws
17 prohibit treating people differently, at least by the
18 government, based on their race? 14:07:34

19 A. I fully agree with that.

20 Q. You've received letters from people -- and we've seen some
21 of them -- asking you to take action against other people based
22 on their race or their ethnicity or their language. And you've
23 written back thank you letters to all of them, correct? 14:07:49

24 A. I answer all the letters, whether they're negative,
25 positive, that's my policy to thank them, at least for writing 14:08:10

1 to my office, regardless of whether I agree with the contents
2 of that letter.

3 Q. And you thank them for supporting your policies on illegal
4 immigration, right?

5 A. I thank them on supporting policies on immigration and our 14:08:26
6 fight against crime.

7 Q. And you pass those letters on to Chief Sands or Chief
8 Trombi so that your officers, your chiefs, can use that
9 information for purposes of their activities, correct?

10 A. If they want to. 14:08:45

11 Q. You have not personally written back -- in all of these
12 thank you letters, in response to all of these letters you've
13 received, you've not personally written back to any of them to
14 tell them that you will not go after other people based on
15 their race, ethnicity, or language, is that right? 14:09:04

16 A. I'm just thanking them for their input, whether it's right
17 or wrong, at least they took the time to write a letter to the
18 elected sheriff, and I am responding to that letter.

19 Q. Okay. My --

20 A. I said again, I don't agree with everything I receive. 14:09:21

21 Q. I appreciate that, Sheriff.

22 My question is this. In all of these cases where
23 people have written in to you asking for you to do something
24 because of somebody else's race or ethnicity or language, have
25 you ever, in all of your thank you letters, written back to 14:09:36

1 them and said: I'm not going to do that because what you've
2 described is not a crime. It's not a crime to speak Spanish.
3 It's not a crime to be Mexican.

4 Have you ever said anything like that in any of the
5 thank you letters that you've sent back to people who write in
6 to you? 14:09:53

7 A. I think I said most times I will get it to my appropriate
8 staff to look into it.

9 Q. Sheriff, you still haven't answered my question.

10 You've sent back thank you letters. We saw one that
11 you wrote to Carole earlier today about the Italian mother or
12 grandmother, right? I'm talking about thank you letters like
13 that. 14:10:08

14 In any of those letters have you ever told the person
15 who wrote to you, No, I'm not going to do that. We don't go
16 after people based on their race, language, or ethnicity? 14:10:21

17 A. I may have, but I don't recall how many or how far back it
18 was.

19 Q. Do you think it would be part of your -- well, as sheriff,
20 you have responsibilities for the public good. 14:10:46

21 Would you agree with me on that?

22 A. Yes.

23 Q. Would you agree with me that it would promote the public
24 good for you to tell all these people that you don't go after
25 people based on race? Wouldn't it be good for you to tell them 14:10:58

1 that in your thank you letter?

2 A. Well, I'm usually responding to their request for some type
3 of action. I'm not going to give them a history lesson; I'm
4 just thanking them for their concern and input.

5 Q. And that -- you don't think it would -- actually, you 14:11:20
6 didn't answer my question. Do you think it would be in keeping
7 with your public responsibilities and your obligation to
8 protect the public good for you to send back as part of your
9 thank you letter something that says, You know, being Mexican
10 is not a crime. Speaking Spanish is not a crime. This is not 14:11:44
11 something that I'm going to respond to?

12 Have you ever done that -- do you think it would be
13 good to do that?

14 A. There's a good possibility, but I like to think that the
15 public understands what we do on illegal immigration by our 14:12:00
16 activities without writing the message to each person.

17 Q. Based on the letters that you're getting from members of
18 the public that we've looked at today, they think that you're
19 going after people who are Mexican or who speak Spanish.

20 Is that what you want to leave them the impression 14:12:23
21 that you do when you send them a thank you letter without
22 telling them that you're not going to do what they're asking?

23 A. You know, I write a lot of letters. I don't see all the
24 letters here. So I'm not sure how many times I may have
25 written back to people and advised them on certain situations. 14:12:40

1 Q. Right, but I --

2 A. I write hundreds -- hundreds of letters around the world,
3 around the country, and locally. I can't remember every letter
4 that I have written.

5 Q. Well, that's right. And if your office had kept any of 14:12:55
6 those letters or provided them in this litigation, we'd be able
7 to look at them, but what we have is what we have.

8 But you'd agree with me, just to make sure we capture
9 this point, you think that -- and you agree with me that it
10 would be helpful to the public good, since you're sending thank 14:13:12
11 you letters back to these people, for you to tell them if you
12 don't go after people based on their race or language?

13 A. That may be helpful, but I like to get the message out in
14 other media ways that we don't go around arresting people
15 because of what they look like. I say that constantly. 14:13:36

16 Q. You're saying that here in court today, correct?

17 A. That's right.

18 Q. But you've never said that in any of your thank you
19 letters, is that right?

20 A. I don't recall. 14:13:47

21 Q. Let's go to Exhibit 249. This is a set of statistics.

22 Is that your handwriting on the top?

23 A. Yes.

24 Q. You forwarded these statistics to Chief Sands, Brian Sands,
25 and also to Scott Freeman, correct? 14:14:12

1 A. Yes.

2 MR. YOUNG: Your Honor, we move for admission of
3 Exhibit 249.

4 MR. CASEY: No objection, Your Honor.

5 THE COURT: Exhibit 249's admitted. 14:14:21

6 (Exhibit No. 249 is admitted into evidence.)

7 MR. YOUNG: May we publish it?

8 THE COURT: You may.

9 BY MR. YOUNG:

10 Q. Now, you thought that this document was also relevant to
11 Chief Sands' duties, correct? 14:14:29

12 A. Yes.

13 Q. And you gave it to him without regard to whether it was
14 correct or not, is that right?

15 A. It says FBI/INS. I presume it may have been correct. 14:14:38

16 Q. Before you send it to Chief Sands with Mr. Freeman --
17 What's Scott Freeman's title?

18 A. Pardon?

19 Q. What's Scott Freeman's title?

20 A. I believe at the time he may have been in charge of the
21 detective bureau. 14:14:54

22 Q. Okay. Is he chief? What's his --

23 A. He's chief now.

24 Q. Okay. Before you sent this set of statistics to
25 Chief Sands and Chief Freeman, you didn't do anything to verify 14:15:08

1 whether any of this information was correct, is that right?

2 A. I did not.

3 Q. Now, down at the bottom -- actually, in the -- in the
4 middle under TV and radio stations, there's a section that
5 talks about Spanish-only TV and radio stations. You see that?

14:15:25

6 A. Yes.

7 Q. And then under schools, the heading, it talks about the
8 number of people in Los Angeles County who speak English and
9 the number who speak Spanish, is that right?

10 A. Yes.

14:15:41

11 Q. And you thought this information was relevant to the duties
12 that Chief Sands was carrying out?

13 A. It's talking about illegal immigration, put out, evidently,
14 by the FBI, and this is good information for them to have, even
15 though most of it is in California.

14:15:58

16 Q. You think that information about the number of Spanish-only
17 TV and radio stations is about illegal immigration?

18 A. I don't know, I didn't prepare this report. I'm just
19 giving the statistical report, as I do always to keep my people
20 informed as to what the statistics are.

14:16:15

21 Q. Let's go to Exhibit 256. Exhibit 256 is a February 14,
22 2009, letter to a congressman from someone named John, it
23 appears. That's your handwriting on the top right, correct?

24 A. Yes.

25 Q. And you sent this to Chief Sands?

14:16:46

1 A. Yes.

2 MR. YOUNG: May we admit Exhibit 256, Your Honor?

3 MR. CASEY: No objection.

4 THE COURT: Exhibit 256 is admitted.

5 (Exhibit No. 256 is admitted into evidence.)

14:17:01

6 MR. YOUNG: May we publish it?

7 THE COURT: You may.

8 BY MR. YOUNG:

9 Q. So -- by the way, that note at the top where you have
10 sheriff 3, you wanted three copies of that for yourself?

14:17:11

11 A. Yes.

12 Q. And you also sent it to Lisa Allen, your public information
13 officer?

14 A. Yes.

15 Q. Look at the fourth paragraph of the letter. The bottom
16 part of that fourth paragraph talks about a sad statement on
17 the dysfunction of Hispanic countries and their governments,
18 and the fact that their governments allow their citizens to run
19 amuck like wild feral animals in all that land area.

14:17:20

20 That paragraph concludes: Also, do not open travel to
21 Cuba because they will come -- just come here illegally also,
22 and we have too many dysfunctional Hispanics already here.

14:17:50

23 Now, you read those statements before passing them on
24 to Chief Sands and Ms. Allen, correct?

25 A. I may have skirted the letter. I'm not saying I read every

14:18:12

1 word.

2 Q. You thought Chief Sands should know about this letter
3 because he runs your illegal immigration program?

4 A. I thought that since it's written to Congressman Conyers,
5 who was head of the judiciary committee, with copies to the
6 President and Attorney General Holder, that he might be
7 interested in someone writing to these government officials,
8 regardless of what the content was.

14:18:37

9 Q. Now, in your deposition I'll tell you at page 45, from
10 November 16, 2011, you say that you presume you did read the
11 letter before you passed it on to Mr. Sands and Ms. Allen.

14:18:59

12 A. I may have, and I just said today I may not have read every
13 word. I don't recall the letter, but now reading it, I guess
14 it refreshes my memory.

15 Q. The three copies that you had made of this letter, you took
16 at least one of those home, correct?

14:19:23

17 A. I may have.

18 Q. Let's go to Exhibit 230.

19 MR. YOUNG: Oh, by the way, did we -- we admitted this
20 letter?

14:19:37

21 Okay. Thank you.

22 BY MR. YOUNG:

23 Q. Exhibit 230 is a letter to the editor on a -- in a
24 newspaper which has been clipped out. It's from the West
25 Valley View. This article is in your immigration file because

14:19:59

1 it mentions you, correct?

2 A. Yes.

3 Q. And you're the one that decided to put the letter in your
4 file?

5 A. I may have. I don't see any initials on this press --
6 press article. 14:20:19

7 MR. YOUNG: Your Honor, we'd move for the admission of
8 Exhibit 230.

9 MR. CASEY: Objection, hearsay, Your Honor -- Your
10 Honor, no foundation. 14:20:30

11 MR. YOUNG: Your Honor, I'm not moving for the
12 admission of this exhibit for the truth of the matter stated.
13 I'm moving for its admission to show communications that go on
14 within the Sheriff's Office. And I can make an offer of proof
15 on that, if you would like, before you decide whether to admit
16 it. 14:20:50

17 THE COURT: Just a second.

18 (Pause in proceedings.)

19 THE COURT: Go ahead and make your offer of proof.

20 BY MR. YOUNG: 14:21:08

21 Q. So, Sheriff, you have someone in your reception office clip
22 things out of newspapers, and then you take those clippings and
23 put them in your immigration file, is that right?

24 A. Some. I don't read every clipping.

25 Q. When those things are clipped -- well, let's talk about 14:21:21

1 this exhibit. This exhibit, 230, was distributed within your
2 office to the public information office and to your top staff,
3 including your deputy chief, your chief deputy, and yourself,
4 is that right?

5 A. I presume so. 14:21:39

6 MR. YOUNG: Your Honor, based on that --

7 THE COURT: I'll admit the exhibit.

8 (Exhibit No. 230 is admitted into evidence.)

9 THE COURT: I'll admit the exhibit.

10 MR. YOUNG: Thank you, Your Honor. May we publish it? 14:22:00

11 THE COURT: You may.

12 THE CLERK: Counsel, what number is that exhibit?

13 THE COURT: I'm sorry, I'll state it. It's
14 Exhibit 230.

15 BY MR. YOUNG: 14:22:09

16 Q. In the second column there's a sentence that says: Call it
17 racial profiling, but if there are 12 million illegals that fit
18 a profile, then it is what it is.

19 Do you see that?

20 A. Yes. 14:22:19

21 Q. Do you think it's a good idea to send items like this to
22 all of your top staff and your public information office?

23 A. Well, they get all the articles that come in automatically,
24 not just this; everything that comes in they get a copy of.

25 Q. And you have your front desk clip out articles on illegal 14:22:37

1 immigration issues, correct?

2 A. On everything.

3 Q. But there's some items that refer to illegal immigration
4 issues, and those are the ones you put in your immigration
5 file, correct? 14:22:50

6 A. If I decide to take it from the master article file.

7 Q. All right. Let's look at 264, Exhibit 264. It's not yet
8 admitted, but it's a letter to the editor from the Daily
9 News-Sun dated April 7, 2009.

10 Now, let's -- yeah. Let's look at the Arrowhead Media 14:23:14
11 stamp on the top there. Arrowhead Media's an organization that
12 your office hires in order to send you clippings from
13 newspapers on matters like this, correct?

14 A. Yes.

15 Q. And you put this clipping into your immigration file, is 14:23:32
16 that right?

17 A. I may have.

18 MR. YOUNG: Your Honor, I move for the admission of
19 Exhibit 264.

20 MR. CASEY: No objection. 14:23:47

21 THE COURT: Exhibit 264 is admitted.

22 (Exhibit No. 264 is admitted into evidence.)

23 THE COURT: You may publish.

24 MR. YOUNG: Thank you, Your Honor.

25 BY MR. YOUNG: 14:23:58

1 Q. Now, Exhibit 264 has some language at the -- in the column
2 on the left. It says: I'd say they should be looking for
3 Mexicans. They most assuredly should be looking for what
4 95 percent of the illegal traffic consists of, which is
5 Mexican.

14:24:25

6 And then it goes on: Profiling is a natural process
7 to be used when looking for anything or anyone illegal. It is
8 a valuable tool for law enforcement, and a police department
9 that doesn't use it should be charged with malfeasance.

10 This article was also circulated to your chief deputy,
11 your deputy chiefs, your public information office, and in
12 fact, anyone who would want to read it, is that right?

14:24:43

13 A. Once again, all the articles are put in the folder and
14 circulated to all my chiefs, deputy chiefs, regardless of what
15 the subject matter is. So I presume they got this article,
16 too.

14:25:06

17 Q. Do you have any regrets about this particular item being
18 circulated in your office?

19 A. I don't pick and choose what's good and what's bad. What's
20 in the newspaper, we circulate. Let me say it's not always
21 good, but we still circulate it.

14:25:29

22 Q. This item, the only reason we have this item is it's in
23 your immigration file. You picked this item to put in your
24 file, correct?

25 A. I presume so, yes. Doesn't mean I agree with it.

14:25:45

1 Q. Let's go to Exhibit 5, which has been admitted, so it can
2 be published. Let's look at the e-mail on the first page.

3 THE COURT: You can publish it, Kathleen.

4 MR. YOUNG: Oh, sorry, Your Honor. I apologize.

5 BY MR. YOUNG:

14:26:07

6 Q. On the first page there's an e-mail from Walter Duncanson
7 to Greg Nottingham. Do you know any of those people?

8 A. I don't recall.

9 Q. Let's look at the second page. Let's blow that up.

10 You've seen this Mexifornia driver's license before,
11 have you, Sheriff?

14:26:38

12 A. Recently, yes.

13 Q. Do you think it's a joke?

14 A. No, I think it's in poor taste.

15 Q. Do you think people in your office have a right to allow
16 them -- that allows them to circulate this kind of material in
17 your office?

14:26:52

18 A. No.

19 Q. Do you have any policy against this kind of material being
20 circulated?

14:27:07

21 A. I believe we do.

22 MR. YOUNG: I'm going to ask that a video of your
23 deposition from November 16, 2010, be played. Starts at page
24 216, line 12. It's JA11.

25 (Video clip played as follows:)

14:27:17

1 "QUESTION: Do you think this Mexifornia driver's
2 license is a joke?

3 "ANSWER: I don't know.

4 "QUESTION: You can't tell --

5 "ANSWER: I don't think it's an official driver's
6 license. I'm pretty certain of that.

14:27:33

7 "QUESTION: Can you tell whether or not it's meant to
8 be a joke?

9 "ANSWER: I don't know. Doesn't look legitimate to
10 me.

14:27:44

11 "QUESTION: Do you think it's funny?

12 "ANSWER: No, I don't think it's funny.

13 "QUESTION: Why not?

14 "ANSWER: It doesn't look like a -- a -- how should I
15 say? You said it looks funny, or did I say it looks funny?

14:28:05

16 "QUESTION: My question was --

17 "ANSWER: I don't think it's in good taste.

18 "QUESTION: And why is it not in good taste?

19 "ANSWER: They're making fun of, it looks like, I
20 don't know if they're Mexicans or illegal aliens, but the
21 connotation, when you look at that, when it says 'illegal
22 alien,' as far as the class is concerned. It's not an official
23 document. And I'm not going to get into freedom of speech.
24 People have a right to say what they want. But I don't think
25 this is in good taste.

14:28:20

14:28:41

1 "QUESTION: Do you have a policy in your office
2 against employees circulating things that are not in good
3 taste?

4 "ANSWER: I don't know if I have a specific policy
5 that says what good taste is and whatnot. But this is my
6 opinion. 14:28:52

7 "QUESTION: Well, just sitting here having looked at
8 it and discussed it for a couple of minutes, are you still
9 unable to tell me whether the circulation of this Mexifornia
10 driver's license violates any policy in your office? 14:29:09

11 "ANSWER: I have no idea about this. First time I
12 have seen this correspondence is right now. So I'm saying,
13 again, that we'll look into it and see if there is any
14 violation.

15 "QUESTION: But as of now -- 14:29:24

16 "ANSWER: I can't answer any of your questions because
17 I don't know."

18 BY MR. YOUNG:

19 Q. Sheriff, we looked at that Mexifornia license in November
20 2010. Do you recall that? 14:29:38

21 A. Yes.

22 Q. Between now and today, are you aware of any investigation
23 or discipline relating to this Mexifornia license?

24 A. If you recall, I said this wasn't in good taste then, and I
25 say it now. After that we looked into the policies and I 14:30:02

1 believed my people gave out certain discipline.

2 Q. Is it correct that you cannot think of a single Caucasian
3 person from Canada, the United States -- or the United Kingdom,
4 rather, Italy, Germany, et cetera, being arrested for illegal
5 immigration violations in your crime suppression operations
6 from their onset through December 2009?

14:30:32

7 A. I -- you say other -- could you repeat that question,
8 please?

9 Q. Yeah. Between the start of your crime suppression
10 operations and December 2009, can you think of a single
11 Caucasian person being arrested for illegal immigration
12 violations in connection with those operations?

14:30:50

13 A. You talking up to 2009?

14 Q. December 2009, correct.

15 A. Up to or after?

14:31:08

16 Q. Up to.

17 A. I can't recall.

18 Q. You're not aware of a written policy in your office about
19 racial profiling, is that right?

20 A. I don't know if we have one specifically for racial
21 profiling. We sure have plenty of training. Probably we're
22 the most trained law enforcement agency in the country with the
23 five weeks of training from the government, academy training,
24 in-house training.

14:31:21

25 Q. You've not seen any written materials or videos on racial

14:31:43

1 profiling within your department, have you?

2 A. I haven't seen it myself.

3 Q. You have never created or approved a specific racial
4 profiling training program within the MCSO, is that right?

5 A. I think my personnel staff has done that.

14:32:00

6 Q. But you never have, is that right?

7 A. Did I prepare it?

8 Q. No.

9 A. No, I delegate that --

10 Q. Approve.

14:32:11

11 A. -- to the people that are in charge of personnel.

12 Q. You don't think you need a racial profiling program within
13 the MCSO, is that right?

14 A. Well, we sure have a lot of training, as I just mentioned.
15 That's very important.

14:32:30

16 Q. Well, you said in one of your depositions that since you
17 don't think you racially profile, you don't need a training
18 program. Do you recall saying that?

19 A. I may have at that time.

20 Q. Do you think Latinos are subject to a lot of prejudice in
21 Maricopa County?

14:32:46

22 A. I haven't found that. And let me say I spent four years as
23 a director in Mexico City, South America, Texas, Turkey, you
24 name it, and I think I would know if there's prejudice here in
25 Maricopa County, but I haven't seen it.

14:33:11

1 Q. You've never seen any prejudice against Latinos in Maricopa
2 County; is that what you're saying?

3 A. Not that I know of.

4 Q. Do you think that calling someone a spic would indicate
5 racial profiling? 14:33:27

6 A. I can't answer that.

7 MR. YOUNG: All right. Well, let's refer to your
8 December 16, 2009, deposition, at page 116, starting on line
9 15. This is a video again, Sheriff JA12.

10 (Video clip played as follows:) 14:33:43

11 "QUESTION: Do you think there is a lot of prejudice
12 against Hispanics in our community?

13 "ANSWER: I don't believe so. I don't -- I haven't
14 really come across that.

15 "QUESTION: You are not aware of the use of racial 14:34:08
16 epithets toward Hispanics in our community?

17 "ANSWER: No. I -- in fact, after all those years
18 living in Mexico and so on, I don't think I know a -- what you
19 just said, believe it or not.

20 "QUESTION: A Latino? 14:34:28

21 "ANSWER: I don't know if that is wrong, Latino. I
22 don't know. I don't know what is politically correct on some
23 of these ethnic comments that people make. So I don't know the
24 bad names that you are talking about.

25 "QUESTION: Well -- 14:34:45

1 "ANSWER: I don't know if Latino is a bad name.

2 "QUESTION: No, but if -- if someone used a pejorative
3 term directed toward an Hispanic, one of your officers, would
4 that be evidence of racial profiling?

5 "ANSWER: I don't know. 14:35:02

6 "QUESTION: Could it be?

7 "ANSWER: Could be.

8 "QUESTION: So if one of your officers called one of
9 my clients in the context of a detention a spic, would that be
10 racial profiling? 14:35:15

11 "ANSWER: I don't know.

12 "QUESTION: But it could be?

13 "ANSWER: It could be.

14 "QUESTION: It could be.

15 "ANSWER: But I doubt it." 14:35:21

16 BY MR. YOUNG:

17 Q. Sheriff, you think it is not a problem when someone who has
18 not committed a crime is stopped on the road as a result of
19 being racially profiled, is that right?

20 A. Can you repeat that? 14:35:46

21 Q. Okay, let me take it a piece at the time. Let's say that
22 you've not committed a crime, and let's say that you've been
23 stopped on the road as a result of being racially profiled.
24 Someone just says, You're of a certain race; I'm going to stop
25 you. 14:36:07

1 You don't think that's a problem, is that right?

2 A. I think it's a problem. That would be racial profiling.

3 If there's no reason to stop someone other than his race or

4 what he looks like, I -- you said I said that's no problem, I'm

5 saying it is a problem.

14:36:24

6 MR. YOUNG: Let's go to your December -- November 16,

7 2010, deposition, page 284, line 25. This is video JA1.

8 (Video clip played as follows:)

9 "QUESTION: Well, how about you as an individual? If

10 you're stopped on the road because you've been racially

14:36:46

11 profiled, but you actually haven't committed a crime, would you

12 think that you've been harmed?

13 "ANSWER: Me, personally?

14 "QUESTION: Yes.

15 "ANSWER: It would not bother me.

14:36:58

16 "QUESTION: Why would it not bother you?

17 "ANSWER: If I did not commit a crime and someone came

18 up to me and I had nothing to hide, why would I be concerned?"

19 BY MR. YOUNG:

20 Q. Sheriff, your relationship with ICE changed in 2009,

14:37:18

21 correct?

22 A. Yes.

23 Q. They took away your field authority under section 287(g)?

24 A. Yes.

25 Q. That change did not affect how your department does its

14:37:32

1 immigration related operations, is that right?

2 A. Not really.

3 Q. You did large-scale saturation patrols after the 287(g)
4 authority was removed?

5 A. Yes. 14:37:46

6 Q. As you look back on what your office has done on the issue
7 of illegal immigration in Maricopa County, do you think that
8 there have been any excesses that you would try to avoid in the
9 future if you could do it all over again?

10 A. Well, you say "excesses," we did investigate, on the 14:38:06
11 streets and in our jail system, over 51,000 illegal aliens.
12 We've done a great job, been commended by the government. So I
13 don't know when you say "excess." We're here to enforce all
14 the laws, and that's what we do.

15 Q. Well, let me put it another way: Do you have any regrets 14:38:35
16 about things that you have done in the area of illegal
17 immigration such that if you could start over again you would
18 do things differently the second time?

19 A. Well, you -- no one is ever perfect, but in general terms
20 we've done a good job, been well trained, and I stand by that. 14:38:54

21 Q. So you don't know of anything that you would do differently
22 if you had the chance to do that, is that right?

23 A. Not right now.

24 Q. People have criticized your policies, correct?

25 A. Some people have criticized me and my policies constantly 14:39:14

1 every day for four years.

2 Q. You don't recall any instance where as a result of that
3 criticism you re-examined any of your policies or practices, is
4 that right?

5 A. We may have tinkered with some situations, but in general 14:39:33
6 terms we're continuing to do what we've been doing for six
7 years.

8 Q. There have been stories in the news media containing
9 criticisms about your office's activities, correct?

10 A. You mean me or my office? 14:39:57

11 Q. Well, your office, and I'm focusing on illegal immigration.

12 A. Okay.

13 Q. There have been news media criticisms of what your office
14 has done on those issues --

15 A. Yes. 14:40:09

16 Q. -- correct?

17 As a result of those, you have not reevaluated or
18 asked any questions about whether those criticized activities
19 are proper, is that right?

20 A. Oh, I don't -- I don't think that I make decisions on what 14:40:20
21 newspapers say.

22 Q. And you don't do investigations about the propriety of your
23 office's actions based on what the newspapers say, either, is
24 that right?

25 A. Well, I don't know in every case. Maybe sometimes you may 14:40:36

1 look at it and sometimes the news media does have good
2 information.

3 Q. In your December 16, 2009, deposition, at page 157, lines
4 10 through 18 -- well, let's -- let's strike that.

5 You're aware of certain articles in The Arizona
6 Republic and the East Valley Tribune on racial profiling in
7 your department, or alleged racial profiling in your
8 department, is that right?

14:41:17

9 A. They may have written reports.

10 Q. But you've never questioned your chief of enforcement,
11 Chief Sands, about what you've read in those papers relating to
12 those allegations of abuse, is that right?

14:41:31

13 A. I'm sure he got copies of the articles.

14 Q. But you've never questioned him about those articles, is
15 that right?

14:41:49

16 A. I may have. I don't recall any specific instance.

17 Q. You recall the East Valley Tribune series won a Pulitzer
18 prize?

19 A. Yes.

20 Q. At page 177 of your December 16, 2009, deposition, page
21 177, line 2, you were asked this question, referring to the
22 East Valley Tribune series:

14:42:03

23 "After this series came out, did you ever question
24 Chief Sands about these statements, for example, that deputies
25 either don't justify the operation or say it is in response to

14:42:33

1 business owners' complaints?

2 "ANSWER: No."

3 Now, the Justice Department of the United States has
4 sued you, correct?

5 And let me make the question more specific. The
6 Justice Department has sued you for some of the same issues on
7 racial profiling that are the subject of this lawsuit plus some
8 other things related to your jail, is that right?

14:42:51

9 A. Yes.

10 Q. As a result of that lawsuit, you have not done anything to
11 change what you're doing, is that right?

14:43:04

12 MR. CASEY: Objection, Your Honor, relevance.

13 MR. YOUNG: Your Honor, it relates to what the
14 department is doing right now.

15 THE COURT: You mean the MCSO?

14:43:22

16 MR. YOUNG: The MCSO, yes.

17 THE COURT: All right. I'll overrule the objection.

18 BY MR. YOUNG:

19 Q. So, Sheriff, as a result of the Department of Justice's
20 lawsuit involving racial profiling against your office, your
21 office has not done anything to change what it is doing, is
22 that right?

14:43:31

23 A. We've continued to enforce the immigration laws, human
24 smuggling, employer sanction. We continue to do so.

25 Q. And you're doing it the same way that you were before that

14:43:51

1 lawsuit, is that right?

2 A. Yes.

3 Q. As a result of either this lawsuit or the Department of
4 Justice lawsuit, have you concluded that anything that you were
5 doing before was illegal and should therefore no longer be
6 done? 14:44:10

7 A. No.

8 Q. Now, I was reading an article in Arizona Public Media dated
9 June 6, 2012, a little over a month ago, and it noted that the
10 Sheriff's Office had completed its last sweep in southwest
11 Phoenix in October 2011. 14:44:29

12 Does that sound right to you?

13 A. Yes.

14 Q. So then it said that your office had gone eight months
15 without doing a sweep, and then the article says, quote:
16 Critics of the self-proclaimed toughest sheriff say legal
17 pressures have led Arpaio to suspend his immigration sweeps,
18 end quote. 14:44:45

19 Do you agree with that statement?

20 A. No. We're still doing crime suppression concentrating on
21 the drug traffic, seized over seven tons recently. Everyone
22 arrested was in this country illegally. So we continue to
23 enforce the illegal immigration laws, the employer sanction,
24 human smuggling, and the drug traffic.

25 Q. You haven't stopped doing anything, correct? 14:45:34

1 A. We continue to enforce the laws, and we do it good.

2 Q. And you're not going to back down even if people take you
3 to court, is that right?

4 A. I have confidence in the courts, and what happens, we'll
5 have to abide by the decision. 14:45:55

6 Q. You gave a speech in Houston in September 2009 to a group
7 called Texans for Immigration Reform and U.S. Border Watch, is
8 that right?

9 A. I give so many speeches, but I guess that's correct if --

10 What year was it? 14:46:13

11 Q. 2009 in September.

12 A. Yes.

13 Q. And the crowd that you spoke to that occasion was a large
14 crowd of about 200 people?

15 A. I believe so. 14:46:26

16 Q. Now, you've become famous in part for making prisoners in
17 your jail wear pink underwear, is that right?

18 A. I don't know about "famous," but they do wear pink
19 underwear.

20 Q. And you've gotten some attention for that, is that right? 14:46:42

21 A. Yes.

22 MR. YOUNG: All right. I'm going to -- I'm going to
23 play a section of PX 410, without a letter suffix, starting in
24 about 33 minutes in, and it's the longer section about the pink
25 underwear. 14:47:05

1 MR. CASEY: I have no objection if it's the section
2 that was used at his deposition in December of 2009.

3 MR. YOUNG: It is, Your Honor.

4 THE COURT: All right. We'll play the section.

5 Yeah, you can publish it. 14:47:19

6 Let me -- if we haven't begun, let me ask, how long --
7 you said this is a long section. How long is it?

8 MR. YOUNG: Probably about 30 seconds or 45 seconds,
9 and I'm almost -- very nearly done, actually.

10 THE COURT: All right. 14:47:37

11 (Video clip played as follows:)

12 "SHERIFF ARPAIO: People wonder about pink underwear.
13 Well, I had a reason for that. They were stealing the white
14 underwear. When they checked out of jail you looked under
15 their belt and it's white. Well, you give them three pairs of 14:47:50
16 white underwear, they smuggle it out and sell it. So I had an
17 idea, let's make it pink, because nobody wears pink underwear.
18 So if they're coming out, that's our underwear. That's the
19 official reason.

20 I always -- I always have an official reason so I can 14:48:11
21 win the lawsuits, and then I have my reasons. So my reason is
22 they hate pink."

23 BY MR. YOUNG:

24 Q. Sheriff, that's your voice, correct?

25 A. Didn't know I was going to be recorded, but I stand by it. 14:48:24

1 Q. You stand by that. That is you?

2 A. Yes.

3 MR. YOUNG: Your Honor, I move the admission of
4 Exhibit 410.

5 MR. CASEY: No objection, Your Honor. 14:48:36

6 THE COURT: Exhibit 410 is admitted.

7 (Exhibit No. 410 is admitted into evidence.)

8 BY MR. YOUNG:

9 Q. So to that audience, you told them that you have things
10 that you tell the courts in order to win the lawsuits, but 14:48:45
11 those aren't your real reasons for doing things, is that right?

12 A. No, I think I said that -- that -- and this is in humor,
13 that I make sure that we do things properly in case I get sued.

14 As far as the personal opinion, I was joking at that.
15 This is not -- Houston, Texas, is not Maricopa County, so 14:49:09
16 there's no connection with Texas and Maricopa County. So I was
17 giving a speech, I don't prepare, and I throw humor in my
18 speeches to keep everybody awake.

19 Q. Sheriff, which is the truth, what you say here in court or
20 what you say to audiences who want to hear you talk? 14:49:33

21 A. What I say in court under oath, that's the truth.

22 Q. And what you said to the audience in Houston, that was not
23 the truth, is that --

24 A. No, I -- I joke. I wasn't under oath in Houston, Texas.

25 Q. Which is the truth, Sheriff: what you're saying here in 14:49:50

1 court or what you said in your book?

2 A. The truth is what I say in court, to the best of my
3 recollection.

4 Q. Which is the truth, Sheriff, what you say here in court
5 today or what you tell interviewers like Lou Dobbs and Glenn
6 Beck on national television? 14:50:05

7 A. Sometimes when you're talking to national television it's
8 much different than testifying, where you're going back and
9 forth very quickly, and sometimes, as you know, the media edits
10 or twists things around. 14:50:24

11 Q. I don't think you answered my question.

12 Is what you're saying here in court true or is what
13 you told Lou Dobbs and Glenn Beck true?

14 A. To the best of my recollection, I'm testifying to what I
15 remember here in court. 14:50:43

16 MR. YOUNG: Thank you, Sheriff.

17 THE WITNESS: Thank you.

18 THE COURT: I think we're going to -- is that the end
19 of direct?

20 MR. YOUNG: Yes, I have no further questions at this
21 time. 14:50:54

22 THE COURT: All right.

23 I'm going to take the afternoon break. I'll ask the
24 parties to be back at five minutes after 3:00.

25 THE COURT: Please be seated. 15:07:17

1 I do want to remind the parties before we begin
2 cross-examination that there is another matter scheduled for
3 this courtroom tomorrow, and we will be resuming for the rest
4 of the trial, this trial, in my regular courtroom, which is
5 room 602 upstairs.

15:07:33

6 You ready to begin cross-examination, Mr. Casey?

7 MR. CASEY: Yes, Your Honor.

8 THE COURT: Please do so.

9 MR. CASEY: Thank you very much, Your Honor.

10 CROSS-EXAMINATION

15:07:41

11 BY MR. CASEY:

12 Q. Good afternoon, Sheriff.

13 A. Good afternoon.

14 Q. I'm going to ask you some questions. Hopefully, they're
15 not going to be too repetitive, but there are some areas that
16 the plaintiffs' lawyer has gone over with you that I'd like to
17 address with you and get additional information or information
18 that they did not talk to you about.

15:07:51

19 But first of all, tell -- tell the Court, where --
20 where do you get mail from, letters?

15:08:12

21 A. Actually, from all over the world: United States, Arizona,
22 just about everywhere.

23 Q. What is your policy if someone takes the time to write a
24 letter to you, or an e-mail to your former secretary, Helen
25 Gonzalez, what is your policy about how you handle that?

15:08:35

1 A. My policy is to respond; if they take the time to write, I
2 can take the time to respond.

3 Q. What happens if they write in and they call you names? Do
4 you write response letters to that?

5 A. That's very seldom, but I probably do respond. 15:08:52

6 Q. What happens if you have someone living in the Dark Ages,
7 for example, that says, We ought to do A, B, and C, and it's
8 stupid and it's illegal? Do you write thank you letters to
9 them if they write you?

10 A. Well, I think it depends. If he said he killed five 15:09:13
11 people, I don't think that right. So it all depends on a
12 letter.

13 Q. The point I guess I'm asking you is, you were asked a
14 series of questions by plaintiffs' lawyer about this person
15 wrote in and -- wrote in to you and said Mexicans, Mexicans,
16 Mexicans. You remember that series of questions? 15:09:30

17 A. Yes.

18 Q. Why not write back to them and say: You know, being
19 Mexican, however you mean it, author, is not illegal. Standing
20 on a street corner is not illegal. 15:09:49

21 Why don't you correct people when they write in to
22 you?

23 A. Well, you know, I get so many letters and I just have sort
24 of a format to say thank you and -- and write back to them
25 without getting into all the details. 15:10:01

1 Q. If you get a letter that says -- from someone, any piece of
2 information, do you put any law enforcement value on that
3 letter before you decide how to circulate it?

4 A. Not really. I usually give it to the people responsible,
5 let them decide. 15:10:22

6 Q. Now, let's say you get a letter in from someone out near
7 Wickenburg who talks about horses being underfed, underwatered.

8 Do you read that?

9 A. Any letter that comes to me I read, but once again, I would
10 give that to my animal cruelty unit, so they'll make a decision 15:10:42
11 what to do about it.

12 Q. Again, do you make any law enforcement assessment on the
13 information that's in there?

14 A. I do not.

15 Q. Okay. I'm in the East Valley and I write in that I live 15:10:53
16 across the street from a park and I see black men,
17 African-Americans, and at night they come out and there's cars
18 driving by exchanging -- they put their hands in the windows
19 and there seems to be some sort of exchange going on, then they
20 drive away, they drive away; they come back, more hand 15:11:15
21 exchanges. Sometimes I see women walking and a car will slow
22 down, and sometimes the women get in the car and go away,
23 sometimes they don't.

24 If you got a letter hypothetically like that that
25 mentions a specific racial ethnic characteristic and also has 15:11:34

1 that other information, what do you do with it?

2 MR. YOUNG: Objection, calls for speculation, Your
3 Honor.

4 THE COURT: I'm going to allow it.

5 THE WITNESS: Once again, I will give it to the
6 appropriate supervisors that handle that type of crime.

15:11:45

7 BY MR. CASEY:

8 Q. Okay. If --

9 A. Alleged crime.

10 Q. Okay. And the alleged crime might be drug transactions,
11 could it not?

15:11:57

12 A. Yes.

13 Q. Might be prostitution, could it not?

14 A. Yes.

15 Q. Did the fact that in my hypothetical, would the fact that
16 an author mentions there are a bunch of black guys there, he
17 mentions race, is that any -- does that play any role
18 whatsoever in your decisions to forward on information to your
19 staff or not?

15:12:05

20 A. No.

15:12:23

21 Q. Now, let's go back for a minute.

22 When -- if you get information that might indicate
23 narcotics, who do you send those letters to?

24 A. To my narcotics bureau.

25 Q. Okay. Now, we -- we have a number of these letters because

15:12:39

1 you kept them in an immigration file. Tell us why you keep an
2 immigration file for your own personal use.

3 A. I not only keep immigration, I keep many other files on
4 policies in the jail, operations, so I can get to it right away
5 if I have to without waiting for the organization to try to
6 track it down. 15:13:15

7 Q. Okay. Explain for the Court if you would, what other types
8 of files do you keep? We've been talking about your
9 immigration file, and here are all of your immigration file,
10 all of your letters and documents that have been produced in
11 the case, these three binders. What other types of files
12 have -- do you keep? 15:13:32

13 A. Many of them.

14 Q. For example, what?

15 A. Whether it's the Tent City, chain gangs, prostitution
16 raids, mall patrol, DUI operation, these are all operations
17 that we do. I keep a separate file in case I have to refer to
18 it immediately, I can get to it. 15:13:44

19 Q. Okay. Now, for example, and I don't have the exhibit
20 number in front of me, but one of the exhibits was from a woman
21 in Sun City on August 1st, 2008, where she described nothing
22 more than going to a McDonald's and having the Spanish language
23 spoken around her. 15:14:09

24 Do you remember that?

25 A. Yes. 15:14:22

1 Q. Why do you keep something like that in your immigration
2 file?

3 A. Well, I believe that we were going to do a crime
4 suppression operation, and I wanted my people to know any
5 information that they could have. Not saying that there is
6 something to this, but let him get it, let him dissect it, and
7 as I say, he can throw it in the wastebasket.

15:14:38

8 Q. Is it fair to say that you pass along, once you
9 characterize it as drug or animal abuse or illegal immigration,
10 you pass it along without determining if there's crime or no
11 crime mentioned?

15:14:59

12 A. Yes. Let me just say this. We get much correspondence
13 every day. I don't see all the correspondence. The only
14 correspondence that I see where it's directed in my name, and
15 then it comes to me when someone writes to me personally.

15:15:17

16 Q. When you -- let's turn now to thank you notes. You said if
17 they take the time to write in to the sheriff, they'll get a
18 thank you note.

19 When you write a thank you note, does that mean you
20 agree with everything the author has said to you in his or her
21 letter?

15:15:32

22 A. No, it does not.

23 Q. Are you intending to convey that message to them, that you
24 agree with whatever he or she -- he or she says by writing a
25 thank you note?

15:15:47

1 A. No, I'm just thanking them for writing a letter to the
2 sheriff.

3 Q. Now, you are, as the sheriff of Maricopa County, under the
4 constitution of our state you are an elected official?

5 A. Yes. 15:15:59

6 Q. Do you write thank you notes -- I'm trying to figure out,
7 is it a matter of the public relations side, or is it a matter
8 of common courtesy, or a combination of these things, why you
9 write thank you notes to everyone?

10 A. I think it's a combination. Once again, I am the chief law 15:16:15
11 enforcement officer, but I'm also elected. And if someone's
12 going to take the time to write to me, they deserve a response.
13 That's just my policy I've had in 40 years of managing offices.

14 Q. Sheriff, other than perhaps letter exchanges with other
15 elected officials or government officials of some type, if you 15:16:40
16 get a letter from a citizen that advocates or appears to
17 advocate the use of something illegal, such as racial
18 profiling, why not write a letter as to them correcting them,
19 educating them, informing them, as Mr. Young has suggested?

20 A. Well, if you're saying there's a potential crime that the 15:17:07
21 person may have committed writing to me, I'm sure not going to
22 write a letter back to them. I will give it to the appropriate
23 authorities.

24 Q. Well, let's say that some of these letters say to you, Hey,
25 call it what it is, it's racial profiling. Most illegal aliens 15:17:23

1 are from south of the border, they're Mexican nationals, and by
2 definition they're Latino, so go after them.

3 Why not write them and correct them as Mr. Young has
4 suggested? Why not do that?

5 A. Because it's my policy just mainly to answer the letter,
6 let them know I got the letter and respond to that. 15:17:39

7 Q. Can you think as you sit here today, separate and apart
8 from this litigation, can you think of any times that you've
9 actually written a letter to a citizen and corrected their
10 opinions, corrected their thoughts? 15:17:57

11 A. I may have, but I don't recall.

12 Q. Is that something that you customarily do, correct people
13 of their opinions?

14 A. No.

15 Q. Now, I'm going to show you right in front of you, it's in
16 the manila color folder right there, Exhibit 1040. That is not
17 in evidence yet, sir. This is a summary of the contents of
18 your immigration file. And as I said here, these are three
19 binders of this. 15:18:06

20 MR. YOUNG: Your Honor, could I get a copy of that? 15:18:32

21 THE COURT: Does he not have a copy of 1040,
22 Mr. Casey?

23 MR. CASEY: (Handing).

24 MR. YOUNG: Thank you.

25 MR. CASEY: I apologize, Your Honor. I thought we all 15:18:43

1 had each other's exhibits. My mistake.

2 BY MR. CASEY:

3 Q. Would you look at the last page of Exhibit 1040, please,
4 which is, again, a summary of your illegal immigration file.

5 A. It's 48.

15:19:02

6 Q. Okay. Should be the very last page.

7 Tell me how many different citizen letters, news
8 clippings and documents are listed in there.

9 A. 592.

10 Q. Okay. Do you have an estimate as you sit here today of how
11 many citizen letters the plaintiffs have used with you during
12 the course of your three or four hours up here?

15:19:13

13 MR. YOUNG: Your Honor, I'll object and move to strike
14 the last answer. We do have an objection to this exhibit, and
15 having the witness simply repeat the hearsay we believe is
16 improper.

15:19:34

17 MR. CASEY: I will move at this time also for the
18 admission of Exhibit 1040 under Rule 1006 as a summary of his
19 entire file.

20 And Your Honor, from an evidentiary standpoint we have
21 produced and made available to counsel the underlying
22 documents. They're also here. That is nothing more than a
23 Rule 1006 Federal Rule of Evidence summary of what's in that
24 file.

15:19:52

25 MR. YOUNG: Your Honor, not all of the underlying

15:20:10

1 documents are admitted. And in fact, we believe that many of
2 the underlying documents are not going to be admissible, and
3 therefore, their descriptions and the summary that's alleged to
4 be contained in this document should not be admissible, either.

5 In addition, we believe that the descriptions that are
6 set forth in the exhibit do not, in our view, reflect the
7 contents of the matters that they are alleged to summarize.

8 Also, the exhibit lacks foundation. Neither the
9 exhibit nor the information provided in the exhibit has been
10 authenticated, and there are characterizations of facts in
11 there that are not, and therefore the exhibit should not be
12 admitted.

13 THE COURT: All right. It seems to that we're taking
14 two different objections. One is your objection to the
15 question and one is the objection to the exhibit.

16 I am not going to admit the exhibit. The reason I'm
17 not going to admit the exhibit is it doesn't sound to me like
18 all the requirements of the rule have been -- have been met;
19 that is, the originals are duplicates. Well, I take that back.

20 Originals and duplicates I assume have been made available
21 because they've been produced. And I have no interest in
22 producing them in court.

23 So I will say this. I'm not going to admit the
24 exhibit, because I don't have the time to go through and assess
25 the accuracy of the description of the exhibit, although I

15:20:30

15:20:53

15:21:08

15:21:29

15:21:43

1 don't question, Mr. Casey, that it's been made in good faith.

2 That being said, my not admitting the exhibit does not
3 mean that I think it's inappropriate for Mr. Casey to ask the
4 sheriff about how many documents were in that file and take
5 account of that. 15:22:04

6 So to the extent that your objection to Mr. Casey's
7 question went to how many documents were in that file, I'm
8 going to overrule that objection.

9 Is everybody clear on how I've ruled?

10 MR. YOUNG: Thank you, Your Honor, yes. 15:22:13

11 MR. CASEY: The defense is, yes. Thank you very much,
12 Your Honor.

13 BY MR. CASEY:

14 Q. Sheriff Arpaio, let me rephrase the question based on the
15 Court's rulings. 15:22:21

16 Out of the 592 documents that were in your immigration
17 file, how many of those citizen letters in there did they show
18 you during your direct exam?

19 A. I haven't counted them, but I would guess maybe 10.

20 Q. Okay. Thank you very much. 15:22:42

21 Now let's talk about some of those letters. And if
22 you would turn to the documents that are in the binder that the
23 plaintiffs gave you, specifically what I'd like you to do is
24 turn to Exhibit 410.

25 Now, excuse me, that's not in there. Let me strike 15:23:02

1 that.

2 Exhibit 410D is a clip of a press conference you
3 conducted that you were shown by plaintiffs' counsel from
4 February of 2007, and it was talking about pure immigration
5 enforcement. And you began to say something about another man
6 who was present during that press conference, and you were not
7 allowed to finish explaining who else was there.

15:23:23

8 You've mentioned it was an SAC --

9 A. That was the head of the ICE/Immigration/Customs under the
10 Homeland Security, and we had a joint press conference.

15:23:48

11 Q. And what was that -- what's SAC stand for?

12 A. Special agent in charge.

13 Q. What is the name of the ICE special agent in charge who had
14 the joint press conference with you that the plaintiff showed
15 in Exhibit 410D?

15:24:02

16 A. I think it was Al Peña, P-e-n-a.

17 Q. When you say Al Peña, is also his full name Alonzo Peña?

18 A. Alonzo, yes.

19 Q. All right. And explain what was the purpose of you having
20 a joint press conference with Special Agent in Charge Alonzo
21 Peña present, why?

15:24:18

22 A. What date was that, Counselor?

23 Q. It was February of 2007.

24 A. That was the date that -- right after that that I signed an
25 agreement with ICE to be able to enforce the federal

15:24:38

1 immigration laws, if you're talking about 2007.

2 Q. Yes. So that was after the announcement of you folks
3 having 287(g) authority granted by the federal government?

4 A. Yes.

5 Q. Okay. At any time during that press conference, after the 15:24:59
6 press conference, did Mr. Peña ever tell you that any of your
7 comments about 287(g) authority or your authority were
8 inappropriate?

9 MR. YOUNG: Objection, Your Honor, hearsay.

10 THE COURT: I'm going to sustain that objection. 15:25:18

11 MR. CASEY: Thank you, Your Honor.

12 BY MR. CASEY:

13 Q. Let's turn now to Exhibit 1 -- 183, if we could, please.

14 Let me know when they're there, sir.

15 You remember a series of questions by plaintiffs' 15:25:50
16 counsel asking you about this particular document?

17 THE COURT: You know what? You know what I'm going to
18 do?

19 MR. CASEY: Yes, sir.

20 THE COURT: Mr. Young, you have these loaded on your 15:26:00
21 computer, correct?

22 MR. YOUNG: Yes, we do.

23 THE COURT: Would it be more convenient for you,
24 Mr. Casey, if I asked Mr. Young, if you're going to refer to an
25 exhibit, that he brings it up so that the witness can see it on 15:26:10

1 the monitor?

2 MR. CASEY: That would be wonderful, Your Honor.

3 THE COURT: Do you have any objection to doing that,
4 Mr. Young?

5 MR. YOUNG: No, not at all, Your Honor. 15:26:17

6 THE COURT: All right. Please do so.

7 (Pause in proceedings.)

8 MR. CASEY: My clock is not ticking, right?

9 THE COURT: I'll let you off the clock for 30 seconds
10 here. 15:26:38

11 MR. CASEY: Thank you, Your Honor. All right.

12 (Off-the-record discussion between the Court and the
13 clerk.)

14 MR. CASEY: I may ask Mr. Braun to highlight some
15 things, Your Honor. 15:27:00

16 BY MR. CASEY:

17 Q. First of all, let's focus, if I could, on the second full
18 paragraph ending with the sentence "nearly 30 warrants."

19 And if I could have that highlighted under the
20 TrialDirector program. Thank you, Mr. Braun. 15:27:16

21 Do you see there the last sentence where it says:
22 Nearly 30 warrants belonging to several valley law enforcement
23 agencies were cleared?

24 A. Yes.

25 Q. Now, the plaintiffs' lawyer was questioning you about 15:27:27

1 illegal aliens, about various things, and about race. My
2 question for you is a little bit different. Explain -- I
3 know -- excuse me, Your Honor. I know the Court understands
4 this, but tell the Court what is an arrest warrant when it's
5 been cleared.

15:27:50

6 A. It's the people that have outstanding warrants did not
7 appear for court. That's one situation. And when you arrest
8 that person you're clearing warrants. You could clear two or
9 three warrants, depending upon how many charges.

10 Q. Do I understand it correctly that if you clear a warrant,
11 that means before a traffic stop was ever made, some court
12 somewhere has issued a warrant for that person's arrest?

15:28:10

13 A. That's correct.

14 Q. If a person is arrested for DUI, does that have anything to
15 do with the race or ethnicity of the arrestee?

15:28:27

16 A. No.

17 Q. If a person is arrested for driving on a suspended license,
18 does that have anything to do with the race or ethnicity of a
19 person?

20 A. No.

15:28:40

21 Q. If a person has a fail -- is arrested for failure to
22 produce ID under Title 28 of Arizona's motor vehicle code, does
23 that have anything to do with race or ethnicity?

24 A. No.

25 Q. Now, the other question is, because you were asked about

15:28:54

1 the arrest of people in the country illegally, whether you call
2 them illegal aliens, undocumented migrants, illegal migrants,
3 unlawfully present, whatever we -- name we give to them, if
4 someone is arrested under 287(g) authority and taken to ICE,
5 does that have anything to do with the race or ethnicity of the 15:29:16
6 person?

7 A. No.

8 Q. The only basis is because they're in the country
9 unlawfully.

10 A. Crossing the border. 15:29:26

11 Q. Okay. Now, you were also asked -- if I could go down and
12 have Mr. Braun very capably go to the fourth paragraph
13 beginning with Mr. -- Mayor Gordon, excuse me.

14 Would you read that second sentence, please.

15 A. Mayor Gordon and other critics have accused the sheriffs 15:29:50
16 volunteer posse and deputies of arresting brown-skinned people
17 for driving with cracked windshields. Also, the mayor stated
18 that the sheriff should be apprehending criminals with
19 outstanding warrants instead of going after illegal aliens.

20 Q. All right. Now, you were asked a series of questions by 15:30:10
21 Mr. Young, plaintiffs' counsel, that because there were people
22 brown-skinned, you associated Gordon and Mayor Jimenez as being
23 pro-illegal alien.

24 Do you remember that exchange?

25 A. Yes. 15:30:27

1 Q. All right. But you notice right here that there's actually
2 a comment about whether or not you should go after illegal
3 aliens based on whether they're criminals or not, you see that?

4 That was a poor question here.

5 Do you see that a policy --

15:30:45

6 Let me ask you -- does it appear that there's a policy
7 dispute between Mayor Jimenez and Mayor Gordon and you as to
8 what your office's law enforcement priority should be?

9 A. Yes.

10 Q. And based on that second sentence that's blown up, it
11 appears that Mayor Gordon and the others are saying, Go after
12 criminals with warrants, don't go after illegal aliens, right?

15:31:02

13 A. Yes.

14 Q. What was your policy at this time?

15 A. Are you talking about Guadalupe?

15:31:21

16 Q. In general about --

17 A. Then my policy is to enforce all the laws, the state laws,
18 and then if we come across, during the pursuing of those
19 arrests, come across illegal aliens, then we take action.

20 Q. Right. Let me turn now to Exhibit 396. And if Mr. Braun
21 would be so kind to pull that up, please. And specifically
22 what I'd like to have Mr. Braun do for the Court is take it to
23 the next page, please.

15:31:40

24 And do you remember that there was -- if I could have
25 this paragraph where it says there were other differences as

15:32:11

1 well. My parents, like all other immigrants.

2 Do you remember being questioned about that, about how
3 exclusive of those people from Mexico you had -- there were
4 certain hopes and dreams, you remember that questioning?

5 A. Yes. 15:32:29

6 Q. Okay. In the context of what is written in Joe's Law, in
7 your book, was this -- were you talking about --

8 If I could also have this expanded, Mr. Braun, down a
9 few lines.

10 Was this about legal immigrants from Mexico or was 15:32:54
11 this about something else?

12 A. Well, once again, my co-author, as I mentioned before,
13 wrote much of this, but I presume that we're talking about
14 legal immigrants.

15 Q. Illegal or legal? 15:33:12

16 A. Legal, coming across into the United States.

17 Q. Now, you see where I've highlighted right here paragraph
18 number 1 where it says: My parents left Italy and basically
19 never expected to return, unlike the illegal Mexican
20 immigrants. 15:33:29

21 Do you see that?

22 A. Yes.

23 Q. Does that refresh your recollection as to whether or not
24 you were discussing the differences from your parents as legal
25 immigrants versus illegal immigrants -- 15:33:36

1 A. Yes.

2 Q. -- from Mexico?

3 What do you understand this to be discussing?

4 A. Well, I believe what my co-author was saying, that since
5 we're close to the United States and Mexico, sometimes the
6 Mexican people come into the United States to work, what have
7 you, and then they go back to their country, where it's very
8 difficult for the Italians, they have to cross an ocean and
9 don't have that luxury to go back and forth.

15:33:51

10 Q. Thank you.

15:34:18

11 Mr. Braun, thank you. That's it for that.

12 I'd like to turn to a different exhibit. This was one
13 of the video clips that was made. It's Exhibit 451. For the
14 record, this was a Lou Dobbs interview. The sheriff in that
15 image appeared to have darker hair; Mr. Dobbs, darker hair and
16 a little thinner.

15:34:32

17 Do you know what year that interview took place, sir?

18 A. Probably 20 years ago, I don't -- no, I don't -- I don't
19 remember how many years ago it was.

20 Q. All right. Now, you were asked a series of questions about
21 appearance and you started to explain, but you were not
22 permitted to explain. What did you mean when you were talking
23 on that show about appearance? Were you talking about skin
24 color?

15:34:45

25 A. No.

15:35:03

1 Q. What were you talking about, sir?

2 A. Well, we -- I think we were talking about when you cross
3 the border and you -- spends three, four days to cross the
4 desert and then you are stopped, sometimes you are heated; your
5 clothes are disheveled, dirty, and that type of thing. I think 15:35:24
6 that's what I was talking about, appearance when you're coming
7 into our country crossing that desert.

8 Q. You were asked earlier about, from plaintiffs' lawyer,
9 Don't you think all Mexican illegals are dirty? You remember
10 that? 15:35:41

11 A. Yes. Of course, I don't.

12 Q. Okay.

13 A. Is that the question?

14 Q. Yeah, that was -- that was the question.

15 A. No, I -- 15:35:48

16 Q. Are you talking about -- explain what you were talking
17 about there.

18 A. I think I was talking about what I just said: that when
19 they are coming into our country and spending days coming in,
20 sometimes they do have the appearance of dirty clothes, 15:36:04
21 disheveled, heat, and I can go on and on.

22 Q. Now, I'd like to refer you to, for the record, Exhibit 410A
23 as in alpha. That was a John Sanchez interview at CNN where he
24 was discussing to you very similar factors. Do you remember
25 that exchange, watching it on your screen? 15:36:29

1 A. Yes.

2 Q. Were you also discussing appearance as you just described
3 here today to me?

4 A. Yes, and also pursuant to an arrest, not just stopping
5 someone because --

15:36:40

6 Q. All right. And that -- that was going to be my next
7 question, because in the context of Mr. Sanchez's interview, it
8 makes it sound like you're stopping people because of skin
9 color appearance in order to make an actual vehicle stop.

10 Is that anywhere allowed in Maricopa County in your
11 office?

15:36:58

12 A. No.

13 Q. What are your folks -- what is the legal basis that your
14 deputies are trained to stop automobiles for?

15 A. Well, they're enforcing the -- the laws, the traffic laws.

15:37:11

16 Q. Probable cause?

17 A. Yes.

18 Q. Reasonable suspicion of --

19 A. Yes.

20 Q. -- violation?

15:37:20

21 A. On those type of crimes.

22 Q. So when you -- and again, so I'm understanding your
23 testimony correctly, when Mr. Sanchez was asking you those
24 questions, you weren't talking about a traffic stop; you're

25 talking about after one has been lawfully made, what are some

15:37:32

1 sort of factors to indicate unlawful presence?

2 A. Yes, that's correct.

3 Q. Were you trying, Sheriff, to describe for CNN ICE
4 indicators of unlawful presence?

5 A. Yes. 15:37:49

6 Q. Okay. Are you --

7 A. I believe -- I believe that was -- I'm not sure if that was
8 the time that that program was taken away, we were talking
9 about it.

10 Q. Now when -- have you ever been 287(g) certified? 15:38:02

11 A. No.

12 Q. You're in management, obviously, as the sheriff.

13 A. Yes.

14 Q. When's the last time you've been actually -- when's the
15 last time you effectuated an arrest? 15:38:17

16 A. As the sheriff?

17 Q. As a law enforcement patrol officer.

18 A. As a patrol officer or with federal drug enforcement --
19 well, let me say this. As sheriff I effected one arrest that
20 was very necessary. 15:38:38

21 Q. Before that, when's the last time you've done some sort of
22 patrol where you've arrested someone? Do you remember?

23 A. Oh, 50 years I've done many arrests around the world, but I
24 can't remember when the last one was.

25 Q. And you never went to ICE 287(g) training, did you? 15:38:54

1 A. No.

2 Q. Would you defer to the men and women in your office who
3 actually were trained by the federal officials about what the
4 indicators are?

5 MR. YOUNG: Objection, leading. 15:39:11

6 THE COURT: I'm going to sustain the objection.

7 BY MR. CASEY:

8 Q. Sir, who knows better about what the actual ICE indicators
9 are for unlawful presence: you or someone that's 287(g) or was
10 287(g) trained and certified? 15:39:27

11 A. Most of my deputies have been trained and are out there
12 operational, enforcing the law.

13 Q. If instead of listening to you about what 287(g) indicators
14 are, is it better for us to listen to what 287(g) witnesses
15 say? 15:39:45

16 MR. YOUNG: Objection, leading.

17 THE COURT: Sustained.

18 BY MR. CASEY:

19 Q. Sir, if we want to know really what's going on with how you
20 use indicators in the field, who do we need to listen to? 15:39:56

21 A. I think you should listen to those that have been trained
22 and are enforcing those laws.

23 Q. Now, let me turn to one related thing before I move on,
24 Sheriff, and that was Exhibit 410B as in bravo. That was the
25 Glenn Beck interview. 15:40:15

1 Again, you mentioned in there that you had the
2 ability -- and that's not in there. That was a video clip that
3 was played after the federal government, under the current
4 administration, revoked 287(g) field authority in October of
5 2009.

15:40:34

6 With that frame of reference, you were asked by Glenn
7 Beck how you could continue to do certain things, and you told
8 him, We can stop them or take action based on what they look
9 like, like they just came from another country.

10 What were you trying to accomplish with that statement
11 to Mr. Beck?

15:40:52

12 A. No, I was -- are you talking about after 287(g)?

13 Q. Yes.

14 A. Well, we still had the authority, pursuant to a legitimate
15 arrest, to determine that person was here illegally. And then
16 if there was no state charge to book that person into the jail,
17 we would turn that person over to ICE.

15:41:05

18 Q. And you have that authority today. In any of your law
19 enforcement actions can you, if you come across someone
20 unlawful, detain them?

15:41:27

21 A. Yes.

22 Q. And what do you do with them?

23 A. We call ICE, and they can pick them up or we deliver the
24 person to their office.

25 Q. At any -- is ICE currently accepting -- when MCSO happens,

15:41:41

1 in law enforcement operations, to come across people in the
2 country unlawfully, is ICE accepting people that you turn over?

3 A. I think probably in the last two weeks we've made over 40
4 arrests of illegal aliens coming into our county, and a few we
5 did not have the state charge, including some young children,
6 and ICE did accept those people. 15:42:10

7 Q. Now, when you said the state charge, explain for the Court:
8 What state charge are you talking about?

9 A. We talked about the human smuggling laws, which are Class 4
10 felonies, and we haven't had any problem yet turning those that 15:42:29
11 we cannot charge in state court over to ICE.

12 Q. Now, this is a related subject but a little bit different.
13 During the end of Mr. Young's questioning he asked you about
14 whether or not you've been doing saturation patrols, and you
15 talked about the focus being on narcotics or drugs. Tell me 15:42:48
16 about that focus and why you have that focus now.

17 A. Well, we still have a big drug problem coming in from
18 Mexico, and we're cracking down on that activity and have
19 seized about 50 pounds of methamphetamine and six, seven tons
20 of marijuana recently. 15:43:15

21 And actually, every arrest that we made were illegally
22 here. I'm not saying every drug trafficker is here illegally,
23 but all those cases we had the smugglers in this country -- in
24 this country coming in from Mexico illegally.

25 Q. And when you make the drug arrests, are there state charges 15:43:39

1 for some sort of drug -- drug charges?

2 A. Yes, we -- these are state violations, and we have them
3 prosecuted in state court.

4 Q. How does that work when they're also in the country
5 unlawfully? Are they taken over to ICE, or they go through the 15:44:00
6 criminal justice system first?

7 A. Those that we don't have state charges we turn over to ICE.

8 Q. Okay. Based on your experience as the sheriff in this
9 county for the last, let's just -- I know it's been close to 20
10 years, but who is generally in charge or in control of the 15:44:20
11 illegal narcotics, the drugs coming into Maricopa County?

12 A. Who is in charge of --

13 Q. Who does it? Who are the bad guys that do that?

14 A. It's usually the drug traffickers in Mexico.

15 Q. Is that the drug cartels? 15:44:41

16 A. Yes. I was the regional director in Mexico City for four
17 years, and South America and Texas and Arizona, so I think I
18 know something about the U.S.-Mexican border, but it is a big
19 problem. The drug traffic's still coming into our country, and
20 also the illegal immigration problem. 15:45:04

21 Q. That was my next question, is based on your experience over
22 the last, you know, 20 years, really the last 10, who's in
23 charge, who's really handling the human smuggling of human
24 beings from south of the border into the United States, at
25 least in Maricopa County? 15:45:23

1 A. Well, there's many, many organizations in Mexico, Central
2 America's, not just Mexico, involved in the illegal immigration
3 and also the drug traffic, and much violence occurring right
4 now in Mexico because of the drug traffic.

5 Q. Is the same organized cartel running the drugs, are they 15:45:42
6 also involved running human beings?

7 A. Some of them are, as evidenced by the fact, as I mentioned,
8 our last 14, 18 arrests on huge amounts of drugs were illegal
9 aliens bringing the drugs into our county.

10 Q. Do you have any opinion, based on your law enforcement 15:46:04
11 experience, as to whether Maricopa County itself is a major
12 smuggling corridor for humans and narcotics?

13 A. It is a major corridor for drugs and illegal immigration,
14 as evidenced by the fact that just recently, as I mentioned, we
15 arrested over 30 smugglers, and the majority were heading to 15:46:27
16 the East Coast and other areas of the country, so it is a
17 transit area, too.

18 Q. Do you have any information, based on your experience --
19 let me back up.

20 Do you have any opinion as to whether or not Maricopa 15:46:47
21 County is a distribution center, Phoenix particularly is a
22 distribution for narcotics and human smuggling?

23 A. Yes, it is, as evidenced by drop houses for the illegal
24 immigrants, which is very serious because of the violence that
25 occurs in the drop houses, and also the drug traffic. 15:47:08

1 Q. The human smuggling, when you say there's violence, could
2 you describe for me what you mean in human violence. What are
3 you talking about here?

4 A. Well, we're concerned more about the drop houses where they
5 are almost kidnapped, if you will, in these houses, till
6 they're shipped out to other areas of the country.

15:47:29

7 Q. Let's turn now -- thank you very much. Let's turn to
8 Exhibit 185. If I could have Mr. Braun pull Exhibit 185, which
9 is in evidence. I'm going to keep Mr. Braun busy, I think,
10 from here on out.

15:48:02

11 If you could just pull up the last half of the letter,
12 please, Mr. Braun. Thank you.

13 Do you remember Exhibit 185? This is the letter
14 written from Carole where she talked about her little mom on a
15 train being racially profiled. Do you remember that?

15:48:20

16 A. Yes.

17 Q. Now, do you have any information one way or the other as to
18 whether or not Carole's recitation of the facts is true or not
19 true?

20 A. No, I do not.

15:48:35

21 Q. Do you know whether her mom was racially profiled as the
22 plaintiffs allege racial profiling is occurring here or not?

23 A. I do not.

24 Q. That's it. Nothing else for 185, sir. If you could turn
25 to Exhibit 308.

15:48:53

1 And Mr. Braun, if I could have 308 up, please, for the
2 Court.

3 All right. All right. 308.

4 Do you remember going over Exhibit 308, this press
5 release?

15:49:18

6 A. Yes.

7 Q. Do the men and women in Human Smuggling, HSU, do they help
8 you write the press releases?

9 A. No.

10 Q. Do they review the press releases to make sure they're
11 accurate for what's actually going on in the operations side?

15:49:29

12 A. No.

13 Q. Who's Lisa Allen? You mentioned her earlier.

14 A. She's the director of our public relations.

15 Q. Is she a sworn peace officer?

15:49:43

16 A. No.

17 Q. Is she a member of your posse?

18 A. No.

19 Q. Has she ever gone to 287(g) training?

20 A. No.

15:49:50

21 Q. Do you know if she ever clears anything she writes for you
22 in press releases with Human Smuggling Unit to make sure it's
23 factually accurate?

24 A. She may talk to Chief Sands, but I don't believe she talks
25 to the deputies enforcing those laws.

15:50:03

1 Q. Okay. Sir, do you know whether or not your deputies in HSU
2 on that Queen Creek operation, on that Cave Creek operation,
3 were going after day laborers?

4 A. No.

5 Q. Look at that. If I could have, Mr. Braun, the second
6 paragraph enlarged. Thank you.

15:50:37

7 Looking and showing this, this is about citizens
8 complaining that day laborers are shouting at the children and
9 photographing them at the bus stop.

10 What is it that's a concern about that to you as a law
11 enforcement chief executive officer?

15:50:55

12 A. Well, it's not the day laborers; it would be anyone
13 that's -- may be taking pictures of young children.

14 Q. Well, why is -- plaintiffs were asking you about day
15 laborers. It was all focused on day laborers.

15:51:16

16 Is there a possibility that this is either criminal or
17 could lead to criminal activity is what I'm asking you.

18 A. If you're talking about taking pictures of young children,
19 yes.

20 Q. What's the problem with that, sir?

15:51:28

21 A. Well, there's a lot -- a lot of problems with that. Why
22 would they be taking pictures of young kids? For kidnapping,
23 assaults; it could be a lot of reasons.

24 Q. Let's turn now -- that's the end of that exhibit. Sheriff
25 Arpaio, let's turn now to Exhibit 219. And let me know -- if

15:51:46

1 we could -- just refresh your recollection, sir. This is an
2 e-mail from Joe Sousa to Paul Chagolla forwarding on various
3 things. If Mr. Braun could take me to the next page. And it
4 appears to be a letter from a citizen forwarded by Art Sanders.
5 Who was Art Sanderson? Sanders.

15:52:21

6 A. At the time he was the mayor --

7 Q. And --

8 A. -- may still be of Queen Creek.

9 Q. Okay. So it appears that a citizen of Queen Creek wrote in
10 to the mayor of Queen Creek, right?

15:52:31

11 A. Yes.

12 Q. And then the mayor sent it to John Kross, the town manager
13 for Queen Creek.

14 A. Yes.

15 Q. And then it went to Joe Sousa.

15:52:41

16 A. Yes.

17 Q. All right. Now, if we look at that, the plaintiffs were
18 focusing on Hispanic men standing on a corner.

19 Do you remember that focus?

20 A. Yes.

15:53:00

21 Q. Okay. Was there anything else that was not discussed by
22 you --

23 Let's turn to the next page, if we could, Mr. Braun,
24 and let's highlight the second paragraph, kids passing this
25 area.

15:53:17

1 Okay. Tell me, is -- is this a concern that you had
2 when you saw this letter?

3 A. Yes.

4 Q. Okay. In fact, let me back up for a minute.

5 Was this in your -- do you know if this was in your
6 immigration file?

15:53:35

7 A. I don't know.

8 Q. Do you know if you ever actually saw this letter?

9 A. I don't see my initials on it.

10 Q. All right. Do you know --

15:53:46

11 A. It wasn't addressed to me. I don't -- I don't believe it
12 was addressed to me personally.

13 Q. Now, this letter from this Deborah is dated, you see
14 that -- if Mr. Braun could go back to the page before -- that
15 was dated September 17th, was it not?

15:54:05

16 A. Yes.

17 Q. Okay. So she's complaining about things that are occurring
18 on that day, is she not?

19 A. Yes.

20 Q. All right. And the Queen Creek detail was a small HSU
21 operation. Do you know -- were you aware that occurred on
22 October 4, 2007?

15:54:15

23 A. I may have.

24 Q. Did you plan that operation out in Queen Creek?

25 A. No.

15:54:35

1 Q. Did you tell anyone -- Sands, Sousa, anyone in HSU -- you
2 will go out to -- you will go out to Queen Creek because of
3 this exhibit, 219?

4 A. No.

5 Q. Did you ever suggest to them that, You will go to Queen
6 Creek. I want you to go to Queen Creek because of this
7 exhibit?

15:54:49

8 A. No.

9 Q. Did this exhibit, 219, in any way influence or affect any
10 of your law enforcement decisions?

15:55:03

11 A. No. I'm not even sure I saw it.

12 Q. All right. Let's turn, let's go to the next exhibit,
13 Exhibit 202.

14 Mr. Braun, please. And thank you very much,
15 Mr. Braun, for your help.

15:55:16

16 Exhibit 202, do you remember talking about this?

17 Do you remember talking about that, sir?

18 A. You mean today?

19 Q. With Mr. Young, yes. Thank you.

20 A. I believe I -- I have -- I do remember.

15:55:43

21 Q. Do you remember, is this part of your file?

22 A. Probably was. Could be.

23 Q. Did this letter, this e-mail, have any influence on any of
24 your law enforcement decisions?

25 A. No.

15:56:05

1 Q. Did you initiate the decision to go and do a saturation
2 patrol near the Pruitt's at 36th Street and Thomas Road?

3 A. Not me. I'm saying again I gave this information to my
4 immigration unit.

5 Q. Okay. Did you ever tell anyone in your immigration unit,
6 because I received this thing from Dr. J, Jafari, or whoever it
7 is, go there and do some sort of saturation patrol? 15:56:24

8 A. No.

9 Q. Did you ever suggest -- and as a lawyer I'm going to use
10 these other words -- suggest, intimate, anything to let them
11 know: I'm the boss. I want this. Get out there? 15:56:41

12 A. No.

13 Q. Those are all the questions on Exhibit 202 I have for you,
14 sir.

15 Exhibit 310, Mr. Braun. Thank you. 15:56:56

16 Sheriff, we'll pull up Exhibit 310 here. You have 310
17 in front of you, do you not?

18 A. Yes.

19 Q. Do you see, sir, in the third paragraph -- excuse me, the
20 fourth paragraph. I misspoke. Do you see anything mentioning
21 property crimes? 15:57:31

22 A. Yes.

23 Q. Okay. What is the significance of that phrase, to the
24 extent you -- you know, of in this press release?

25 Let me rephrase the question. First of all, the crime 15:57:52

1 suppression operation, who conducted that, do you know?

2 A. You mean in our office?

3 Q. Yes, sir.

4 A. It would be Sands' unit.

5 Q. Okay. Did, sir, any criminal aspects, to your knowledge, 15:58:08
6 play any role -- well, let me strike that.

7 Did you have any role, sir, in making that decision to
8 go out there?

9 A. Once again, I gave it to my experts and they -- they made a
10 decision, I guess. 15:58:27

11 Q. Now, you were -- you talked about day laborers and illegal
12 immigration arrests being -- going on. What is -- why include
13 in the press release something about ongoing property crimes
14 occurring there? Do you know?

15 A. Well, when we do go into these areas it is to enforce all 15:58:49
16 the laws, including property crimes, or burglaries.

17 Q. Now, why in here say deputy sheriffs will not racially
18 profile anyone in this operation?

19 A. Because I would -- I think that's important, to let the
20 people know we're not out there to racial profile, although 15:59:13
21 there's been allegations of such.

22 Q. You testified during Mr. Young's questioning that there may
23 not be a specific policy saying thou shall not racially
24 profile. You remember that?

25 A. Yes. 15:59:36

1 Q. Is it an MCSO policy, whether a separate policy or not, not
2 to use race or ethnicity in making law enforcement decisions?

3 A. I'm not sure what the -- if it's in the policy. I do know
4 that we've had tremendous training on that issue.

5 Q. What is that training, sir?

15:59:50

6 A. Well, we've had it in our academy, and the 287(g), five
7 weeks of intensive training that includes the racial profiling
8 issue. Whenever our units go out I'm sure that the supervisors
9 bring that up again, and we've had more training through the --
10 our personnel in the training division, especially in the last
11 two years because of the 1070 law.

16:00:18

12 Q. Okay. What is the -- we heard some testimony about online
13 training from Officer DiPietro. Is there -- is there any other
14 training that you're aware of other than that additional online
15 training?

16:00:37

16 A. Not that I can -- I don't believe so. There may be. But I
17 do know that when they do go out on operations that the
18 supervisors, as I said, bring this up.

19 Q. Okay. Let's turn now -- thank you, sir. Let's turn now to
20 Exhibit 375.

16:00:58

21 Mr. Braun, if I could get 375. Thank you, sir.

22 Do you remember being shown this document during the
23 course of your questioning by plaintiffs' counsel?

24 A. Yes.

25 Q. And specifically, sir, you were asked about your comments,

16:01:16

1 your markings on that.

2 Do you remember that?

3 A. Yes.

4 Q. Okay. And let's look at the one that says down there on
5 September 20th from Wayne L. 16:01:28

6 Does it appear from that caller -- strike that.

7 What do you conclude from that caller about whether or
8 not your office is being responsive to people only mentioning
9 race?

10 A. I mentioned before it had the -- was talking about the 16:01:47
11 hotline. We do have a successful hotline, and we listen to it.
12 And we don't take the word of someone that just says there's
13 some Mexicans hanging out or cutting grass or whatever. We
14 don't look at it. But if we get some concrete information,
15 we'll pursue it. 16:02:12

16 Q. Does this support your statement that you just said that we
17 don't consider race, we disregard it, and here seems to be
18 someone actually complaining about that?

19 A. Yes.

20 MR. YOUNG: Objection, leading. 16:02:28

21 THE COURT: Sustained.

22 BY MR. CASEY:

23 Q. Do you know who handles the hotline tip line?

24 A. I believe it's the people running the illegal immigration
25 programs. 16:02:50

1 Q. Is that the Human Smuggling Unit people?

2 A. Or the employer sanction; I'm not sure which unit.

3 Q. And you -- do you know first-hand how they screen calls and
4 determine whether or not they're -- they warrant follow-up?

5 A. I don't know firsthand.

16:03:13

6 Q. Okay. Thank you very much.

7 You were then asked a question, sir, you see, first of
8 all --

9 MR. CASEY: Bear with me, Your Honor. Excuse me.

10 BY MR. CASEY:

16:03:36

11 Q. All right. Let's turn to Exhibit 244, if we could, please.

12 Do you remember being asked questions about this?

13 A. Yes.

14 Q. And up on your -- up on your notes it said: I will be
15 going to Mesa. Do you remember that?

16:04:04

16 A. Yes.

17 Q. Okay. What does that indicate to you as to whether or not
18 there was a saturation patrol in -- planned, in existence, or
19 being planned, anything like that?

20 A. I think we'd gone in there two, three times, and just
21 wanted the -- our units to have this information.

16:04:18

22 Q. Okay. Did you make any law enforcement -- or place any law
23 enforcement value whatsoever on this document?

24 A. I did not.

25 Q. Did this document, was it intended by you to influence or

16:04:37

1 direct Chief Sands to go into Mesa in the summer of -- June or
2 July of 2008?

3 A. No.

4 Q. That's it for Exhibit 244.

5 Okay. Let's now turn to Exhibit 228, please,

16:04:59

6 Mr. Braun.

7 Here's another call. What I'd like to do is blow up
8 Terry K, first of all.

9 Sheriff, do you see at the top of this letter it's

10 dated July 16, 2008?

16:05:28

11 A. Yes.

12 Q. And the stipulations in evidence that Mr. Young was telling
13 you about is the parties have stipulated that there was a June
14 26 and a July 8 -- excuse me, a June 26 and a July 5 saturation
15 patrol in Mesa, and then again on July 14th.

16:05:48

16 Assuming those things, did Terry K's comment on July
17 16th have any role whatsoever in those saturation patrols?

18 A. No.

19 Q. They were all after the fact, were they not? Her comments
20 were --

16:06:08

21 A. Yes.

22 Q. -- after the saturation patrol.

23 A. Yes.

24 Q. If I could please turn, have Mr. Braun turn to the next
25 page, Joyce F, please. If I could have that highlighted.

16:06:16

1 Thank you, Mr. Braun.

2 Did that description from Joyce F have any role or
3 influence on, to your knowledge, any law enforcement decision
4 in MCSO?

5 A. Not to my knowledge. 16:06:39

6 Q. Now, there was some sort of investigation going on at some
7 point over the years over in Cave Creek. Did this have
8 anything to do with it, to the best of your knowledge?

9 A. Not that I know of.

10 Q. Now, if I could turn to the next page, the last page,
11 please, and have Mr. Braun highlight Susan -- or Suzanne B. 16:06:54

12 Okay. Again, this is dated July 16, 2008, and the
13 stipulated evidence shows the Mesa saturation patrol's already
14 taken place. Would Suzanne B's comments in here have
15 influenced you in any way to make any law enforcement decision? 16:07:29

16 A. Not me, no.

17 Q. Did you at any time tell Brian Sands, Joe Sousa,
18 Brett Palmer, Manny Madrid, anyone in HSU, these people are
19 writing in and I want to go there? Let's find a way.

20 A. No. 16:07:50

21 Q. Did you ever at any time, from January 1st, 2007, until
22 this very date, have you ever told anyone in your office: I
23 want to go there. Find me a way?

24 A. No.

25 Q. Anything like that? 16:08:03

1 A. No.

2 Q. What happens if you get very excited? You're an elected
3 official. There's a lot of things going on. You get people
4 that come up to you and plead with you for something or
5 another.

16:08:20

6 Do you ever get overwhelmed by the idea that, Boy, we
7 gotta do something and we gotta do something now to help
8 people? You ever get overwhelmed like that where you go make a
9 decision?

10 A. You know what? I let my people make the decisions. They
11 enforce the laws. I have confidence in my people that they'll
12 make the right decisions. I leave it up to them.

16:08:29

13 Q. Tell Judge Snow, if that's the case, why are you marking
14 these up and sending them to Brian S? 'Cause you're not
15 marking everything; you're only marking some.

16:08:49

16 Why are you sending it to Brian Sands? If you expect
17 no action.

18 A. He may have an interest. Once again, I've said constantly
19 I believe in circulating anything, whether it's negative or
20 positive, to my people so they can evaluate it. I don't know
21 if this may have some interest to them, or at least some
22 intelligence purposes. That's why I do it.

16:09:06

23 Q. Thank you very much, sir.

24 Let's now turn to Exhibit 237. If I could have
25 Mr. Braun's capable assistance. And if I could just have the

16:09:30

1 whole letter highlighted, please.

2 First of all, sir, the parties have stipulated,
3 Sheriff, into evidence that on August 13 and 14, 2008, there
4 was what's called a large-scale saturation patrol that was
5 conducted Sun City, Sun City West, and U.S. 60 and I-17. 16:10:00
6 That's just the frame of reference for this question, sir.

7 You mentioned that it takes some period of time to
8 prepare saturation patrols. How long do you understand it
9 takes a large-scale saturation patrol to be planned?

10 A. Well, you know, they're very thorough. It could be three 16:10:21
11 weeks, four weeks. It's not done immediately; takes a lot of
12 planning.

13 Q. If Joe Sousa were to testify to this Court that it takes 30
14 to 60 days, if he testifies to that would that surprise you it
15 takes that long? 16:10:41

16 A. No.

17 Q. Now, this letter, would you tell us, what is the date on
18 this letter?

19 A. August 1, 2008.

20 Q. Your marginalia is to the right, correct? 16:10:47

21 A. Yes.

22 Q. And what is the date that you put on your marginalia?

23 A. It's August 5th.

24 Q. Based on those dates and how long you understand it takes
25 to conduct, to plan a saturation patrol, could this letter in 16:11:00

1 any way have influenced anyone's decision to conduct a
2 saturation patrol?

3 MR. YOUNG: Objection, leading, and argumentative.

4 THE COURT: Sustained.

5 BY MR. CASEY:

16:11:15

6 Q. Sir, this -- is there any way that you believe that this
7 letter could have influenced anyone's decision to conduct a
8 satur --

9 A. No.

10 Q. Explain why.

16:11:26

11 A. The timing, number one. As I mentioned, it takes weeks to
12 prepare this -- these type of operations.

13 Q. Let me understand this. I asked you this before, but it
14 still -- it beats on me.

15 This lady mentions nothing other than there are people
16 speaking Spanish, and I'm trying to understand why you keep
17 that in your own personal immigration file for possible use.

16:11:42

18 What possible use could there be for something like
19 this? If you could tell us why you keep that.

20 A. Well, I -- I think she's talking about public servants,
21 self-serving, illegal organizations, and that type of thing. I
22 think that I kept it for that reason, not about the language
23 situation.

16:12:02

24 Q. One final question: Did you expect, in forwarding this to
25 Chief Sands, that he would do anything specific during the

16:12:33

1 Sun City operation because of this letter?

2 A. No.

3 Q. Did you expect him to call this woman?

4 A. Well, if he wanted to. You know, when people write in or
5 call, sometimes it's good to call back, regardless of what the
6 situation is. She took time to write a letter, so I think
7 someone ought to take time to contact her, if -- if it ever
8 happened.

16:12:48

9 Q. You see in there the first sentence where it's talking
10 about an area of illegal immigrants? In the first sentence?

16:13:10

11 A. Yes.

12 Q. Help me understand, is that something that triggered this
13 to be put in your immigration file?

14 A. No, I think the public servants and self-serving
15 pro-illegal organizations that are against you triggered it. I
16 do have many organizations that don't like my programs.

16:13:34

17 Q. Let's turn now to a different document, your -- Sheriff
18 Arpaio, and that is Exhibit 235. That's in evidence.

19 Yeah, if we could just blow that up. Thank you,
20 Mr. Braun.

16:14:02

21 What's the date on this letter?

22 A. August 8, 2008.

23 Q. And there was some testimony -- actually, the established
24 facts that Mr. Braun brought out that stipulated that 16 months
25 later there was a saturation patrol on October 16, 2009, in the

16:14:16

1 Surprise area.

2 With that frame of reference, sir, did this letter
3 have any influence over your decision making on law enforcement
4 actions?

5 A. We're talking about nine months later, is that --

16:14:31

6 Q. Well, there was a -- this letter's dated August 8th, is it
7 not?

8 A. Yes.

9 Q. Okay. And the stipulated facts are that we did something
10 on October 16, 2009, a saturation patrol in Surprise.

16:14:44

11 A. Yes.

12 Q. My question for you is: Did this letter have any influence
13 over any decisions that you made as a law enforcement officer?

14 A. No.

15 Q. Okay. Did you make the decision to go to Surprise?

16:14:55

16 A. I believe Chief Sands made that decision. Of course, he
17 ran it by me and I agreed to it.

18 Q. Did you ever intend, by forwarding this letter over to him,
19 that you were going to influence Chief Sands to go to a
20 particular geographic area?

16:15:18

21 A. Just gave it to him for information.

22 Q. All right. Let's turn now to Exhibit 381, please,
23 Mr. Braun. Thank you.

24 All right. This -- you were asked a series of
25 questions on this and I want to make sure that it's clear.

16:15:44

1 Why did you decide to give this letter, Exhibit 381,
2 to your illegal immigration officers to look into?

3 A. I think there's some concern about speeding by this person.
4 I don't know who wrote it; there's no name to it.

5 Q. And also, if Mr. Braun could turn to the second page. 16:16:11

6 Is there any other information in the second page that
7 also served as a prompt, I guess, if you will, to forward it on
8 to your immigration officers?

9 A. I think the main thing was the speeding. We get quite a
10 few complaints in that area on the traffic violations. 16:16:30

11 Q. I'm looking at the second paragraph in here where somebody
12 says: I fear they are afraid of these illegals, whatever that
13 may mean. Did that have any role in your decision to send
14 something over to your officers?

15 A. Once again, I just sent it to them for their information. 16:16:51

16 Q. All right. The working without a permit, you mentioned
17 drop houses earlier and human smuggling, people being held
18 against their will. Do you have any -- could you tell us, what
19 is your experience of people paying off their drug smuggling
20 fees? 16:17:30

21 Let me rephrase the question. You talked earlier
22 about people being held against their will in drop houses. Do
23 you have any personal knowledge, based on your years as a
24 sheriff, as to how people in our community who are being held
25 by those people pay off their fees for smuggling? Do you know? 16:17:45

1 A. Don't understand the question.

2 Q. All right. I'm going to withdraw the question and move on.

3 Do you know whether any investigation was ever
4 conducted by any 287(g) officers in response to this exhibit,
5 381?

16:18:11

6 A. I lost it.

7 Q. You lost my --

8 A. It's gone, it's blank. Is that the one I was just reading?

9 Q. Just looking at, right.

10 A. And the question, again?

16:18:21

11 Q. Do you know if any investigation -- you said here Info to
12 my illegal immigration officers to look into. Do you know
13 whether or not they ever looked into it?

14 A. No, I do not.

15 Q. Do you know whether they did anything, if -- anything at
16 all?

16:18:32

17 A. I do not.

18 Q. If they did anything, do you know if they took any action
19 other than merely investigating it?

20 A. I do not.

16:18:42

21 Q. Let's turn now to Exhibit 187, please.

22 Thank you, Mr. Braun.

23 Explain for me why you would write something to Brian
24 Sands and say: Have someone handle? What does that mean, sir?

25 A. I'm trying to read the letter.

16:19:15

1 Q. Let's see if I -- Mr. Braun, if you could pull out the
2 call-out so he could read the two pages, please.

3 Thank you, sir.

4 A. I think that the person writing the letter was concerned
5 with her neighborhood, the crime in her neighborhood, and I
6 thought that maybe he should get in touch with this person and
7 get more information.

16:19:50

8 Q. All right. Now, do you see the second page where it says,
9 second paragraph from the bottom: I'm begging you to come over
10 to the 29th Street/Greenway Parkway area and round them all up?

16:20:11

11 You see that?

12 A. Yes.

13 Q. Did you mean by saying, "Have someone handle this," that
14 there was going to be police action taken in response to that
15 request?

16:20:26

16 A. No, she was -- whoever it was was also talking about
17 gunshots in the area, which is very dangerous, so I just gave
18 it to Sands. If he wanted to send someone to talk to her,
19 okay.

20 Q. Finally, sir, if we could just ask you on this: Did you at
21 any time try to influence Chief Sands to go to anywhere near
22 29th Street and Greenway Parkway in response to this letter,
23 Exhibit 187?

16:20:42

24 A. No.

25 Q. Okay. One other exhibit, 216, please.

16:21:07

1 Okay. If I could have, Mr. Braun, it would be the
2 fourth paragraph from the bottom. It says, With all the
3 controversy, and having that blow up. You see that's very,
4 very difficult to read.

5 Sir, do you see the part that reads -- it's in
6 evidence: Although the Mexicans at this location may be within
7 their legal right to be there, I feel they do not have the
8 right to harass motorists driving through the above-mentioned
9 area.

10 Explain for me what you understood that to mean when
11 you received that letter.

12 A. Well, if anybody is being harassed, I think someone should
13 look into it. That's why I gave it to him, if he wanted to
14 look into it and get more information.

15 Q. Did Dave Trombi have anything to do with initiating
16 saturation patrols?

17 A. I believe he did.

18 Q. Okay. Do you know if he was ever a decision maker in where
19 to conduct a saturation patrol?

20 A. I'm not sure whether he, in conjunction with Chief Sands,
21 worked together on making those decisions.

22 Q. Other than saying, Contact Stella, the author, what did
23 you -- what else -- what did you expect to be done with this
24 letter?

25 A. I don't know. As I say, I gave it to them, and sometimes

16:21:40

16:21:57

16:22:17

16:22:30

16:22:49

1 good police work is talk to the people who complain about
2 issues. She was complaining about being harassed.

3 MR. CASEY: One final area, Your Honor, before we sit
4 down and conclude this.

5 BY MR. CASEY:

16:23:10

6 Q. Sheriff Arpaio, would you explain to the Court how you set
7 policy in your office, whether it is a written policy or
8 whether you decide to emphasize a particular crime and make it
9 a priority. How do you make policy in your office?

10 A. Well, I -- of course, we have our normal duties in law
11 enforcement, but sometimes I think that something is important
12 and we'll establish a policy to concentrate on certain issues.

16:23:27

13 For example, we have gone after prostitution many
14 times, DUIs, warrants, animal cruelty, how to operate the
15 jails. So I listen to my staff and get their input, and then
16 when I establish the policy I expect them to carry it out,
17 which they do in a very professional manner.

16:23:59

18 Q. Do you ever -- do you ever establish policy just by what I
19 call fiat, edict, by order: This is what it's going to be.
20 Make it happen. Accomplish it, please.

16:24:23

21 Do you ever do anything like that?

22 A. No, I establish the policy and -- and it's not a -- it's
23 not a policy in a way as we talk about personnel matters, but I
24 establish priorities and policies and my people carry it out.

25 They do a little research and educate themselves on the

16:24:46

1 policies that I may want to conduct. We don't just take it out
2 of the sky. So I use my staff to study the situation and then
3 we go forward.

4 Q. Do you get feedback from your deputy chiefs about ideas for
5 policy, whether it's good or bad, things like that? 16:25:08

6 A. On occasion they may come up with some ideas, and then I
7 make the final decision.

8 Q. Do you set forth MCSO policy in press releases?

9 A. Sometimes -- you mean policies --

10 Q. Yeah. 16:25:30

11 A. Sometimes we do publicize what we are going to do. I don't
12 run a CIA secret organization; I have an open-door policy. I
13 want everybody to know what the sheriff does. So sometimes we
14 use the vehicle of the media to get the word out.

15 Q. And other than getting the word out, it is -- do you -- do 16:25:48
16 you set policy when you speak to Glenn Beck? When you speak to
17 Lou Dobbs? When you speak to John Sanchez?

18 A. No, I don't establish policy. I may talk about the
19 policies, but I don't establish policy through the news media.

20 Q. Do you, in any of your decisions from 2007, January 1st, to 16:26:08
21 today, do you consider race or ethnicity in any aspect of the
22 decision making you make?

23 A. No.

24 Q. You were asked about truths and lies. Remember that was --

25 THE COURT: Mr. Casey? 16:26:26

1 MR. CASEY: I'm sorry.

2 THE COURT: I'm having a hard time hearing you.

3 MR. CASEY: I apologize, Your Honor. Please forgive
4 me.

5 BY MR. CASEY:

16:26:32

6 Q. You were asked about truth, lies, and it was in the context
7 of the pink underwear.

8 Do you remember those questions?

9 A. Yes.

10 Q. Okay. Explain for me just briefly why that con -- that
11 comment in Houston you said was humorous.

16:26:39

12 A. Why I use humor?

13 Q. Yeah, why do you use humor?

14 A. That's what I do. I don't read speeches. I don't prepare
15 speeches. I talk off the cuff. Sometimes I throw some humor
16 into it.

16:26:59

17 Q. Were you telling that audience in Houston that there's the
18 truth, and on the other hand there's the reasons to win
19 lawsuits?

20 A. No.

16:27:12

21 MR. CASEY: All right. Those are all the questions I
22 have for you, Sheriff Arpaio. Thank you --

23 THE WITNESS: Thank you.

24 MR. CASEY: -- very much for your patience.

25 THE COURT: Redirect?

16:27:25

1 MR. YOUNG: I do have some, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. YOUNG:

4 Q. Sheriff, you were asked some questions about the number of
5 items in your immigration file. 16:27:38

6 Did you count those items to come up with that number?

7 A. I don't know who counted them; I just saw it in this form
8 here.

9 Q. So you actually have no idea whether the number that you
10 testified to is correct or not, is that right? 16:27:53

11 A. I'm going by this form.

12 Q. Do you know who made this form, this piece of paper that
13 you were shown?

14 A. No.

15 Q. Other than looking at that piece of paper, you don't really 16:28:06
16 have any idea how many items are in your immigration file, is
17 that right?

18 A. I didn't count them, no, personally.

19 Q. You've been in law enforcement for over 50 years, is that
20 right? 16:28:17

21 A. Yes.

22 Q. And as a result of that experience, you know how to assess
23 whether a situation has the potential for a criminal violation
24 or not, is that right?

25 A. Well, right now I'm the head of an agency, as I said 16:28:37

1 before, that I delegate to my people and they make decisions.
2 They can assess. I don't make individual decisions on law
3 enforcement.

4 Q. You're the head of a law enforcement agency?

5 A. That's correct.

16:28:57

6 Q. And as the head of a law enforcement agency and with 50
7 years' experience in law enforcement, you do have the ability
8 to look at a situation and assess whether there is the
9 potential for a criminal violation, correct?

10 A. If it comes to my attention, yeah.

16:29:08

11 Q. You were asked some questions by Mr. Casey about drug
12 trafficking.

13 A. Yes.

14 Q. Is it your view that Mexicans are potentially drug
15 traffickers?

16:29:36

16 A. All Mexicans? Is that your question? The answer is no.

17 Q. Some Mexicans?

18 A. Some are.

19 Q. And some Mexicans are suspects for kidnapping and other
20 crimes relating to children?

16:29:55

21 A. Yes.

22 Q. In the discussion about Queen Creek, you were asked some
23 questions by Mr. Casey about people taking pictures, is that
24 right?

25 A. Yes.

16:30:13

1 Q. And he referred you back to the e-mail where someone in
2 Queen Creek said a bunch of Hispanics are taking pictures of
3 children.

4 A. Yes.

5 Q. In your review of that e-mail did you see any particular
6 reference to a specific person taking pictures, or was it just
7 a group of Hispanic men taking pictures?

16:30:24

8 A. I believe there was no individual mentioned, but there were
9 a group of people taking pictures.

10 Q. It was just a group of Hispanic men, correct?

16:30:48

11 A. Whoever it was, the focus was taking pictures of young
12 kids.

13 Q. So there wasn't any particular person that was identified
14 as taking pictures; it was just a group of Hispanic men.

15 A. Yes.

16:31:06

16 Q. In your view, did that justify thinking that that group of
17 Hispanic men might be kidnappers or other criminals who ought
18 to be looked into?

19 A. No, doesn't matter what background of the group is.

20 Q. Please go to Exhibit 219, which is that Queen Creek e-mail
21 that we looked at earlier. And can we go to the last page of
22 that exhibit.

16:31:27

23 All right. Well, take that exhibit down.

24 There have been occasions when you have directed your
25 office to perform a saturation patrol or other enforcement

16:32:06

1 action in a particular location, is that correct?

2 A. Once again, I say I delegate that to the experts, and they
3 make the decision on where to go, when, and so on.

4 Q. But remember the press release we looked at about the Mesa
5 operations that said that you were fulfilling a promise to both 16:32:36
6 the public and to certain legislators?

7 A. Yes.

8 Q. You were requested by certain legislators to do an
9 operation in Mesa.

10 A. Yes. 16:32:55

11 Q. And based on that request to you from the legislators, you
12 had your office do a Mesa operation, correct?

13 A. We told them to get -- to look into it to see if it
14 justified an operation.

15 Q. Have you ever said that legislators who provide your office 16:33:14
16 with additional funds to do immigration enforcement should be
17 listened to when they make requests to you about where to do
18 immigration related enforcement activities?

19 A. Well, I think when Congress makes an issue and wants
20 something done by law enforcement, they pretty well jump. And 16:33:41

21 when you have legislators that have an interest in their area,
22 Mesa, I think we ought to look into that, because you had
23 legislators, about seven of them, that have a concern, know who
24 the constituents are, have good information what's occurring in
25 their area on crime, so I'd look at that as a pretty good 16:34:06

1 source to at least look into it to see if we're going to pursue
2 their concerns. Not meaning that we have to do it, but I think
3 it's good management to do that.

4 Q. And in that case of Mesa in response to those legislators'
5 concerns, you did go into Mesa, correct? 16:34:28

6 A. Only after my people studied the area to see if there was a
7 crime issue and it was worth going into that area.

8 Q. Your people studied that issue because you instructed them
9 to, correct?

10 A. I asked them to look into it and they did. 16:34:44

11 MR. YOUNG: Thank you very much, Sheriff.

12 THE WITNESS: Thank you.

13 MR. YOUNG: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Have you had enough for the day, or do you want to
16 call your next witness? 16:35:02

17 Sheriff Arpaio, you may step down. Thank you.

18 THE WITNESS: Thank you.

19 MR. YOUNG: I think we could get the next witness done
20 in 20 or so minutes, Your Honor. 16:35:11

21 THE COURT: Do you know what? I am going to -- with
22 all due respect, I'm going to end for the day because we have
23 to move our materials up to my courtroom. So I think we're
24 going to end for the day so we give the -- my staff a little
25 time to move things up. 16:35:25

1 We will begin promptly at 8:30 tomorrow morning in my
2 courtroom. Thank you.

3 (Proceedings recessed at 4:35 p.m.)
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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 24th day of July, 2012.

s/Gary Moll

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

1			
2			
3			
4	Manuel de Jesus Ortega)	
	Melendres, et al.,)	
5)	
	Plaintiffs,)	CV 07-2513-PHX-GMS
6)	
	vs.)	Phoenix, Arizona
7)	July 25, 2012
	Joseph M. Arpaio, et al.,)	8:43 a.m.
8)	
	Defendants.)	
9)	
10	<hr/>		

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(BENCH TRIAL DAY 3 - Pages 538-816)

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Transcript prepared by computer-aided transcription

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I N D E X

<u>Witness:</u>	<u>Page</u>
-----------------	-------------

DANIEL MAGOS	
--------------	--

Direct Examination by Mr. Hults	546
---------------------------------	-----

Cross-Examination by Mr. Liddy	556
--------------------------------	-----

Redirect Examination by Mr. Hults	563
-----------------------------------	-----

MICHAEL KIKES	
---------------	--

Direct Examination by Mr. Casey	565
---------------------------------	-----

Cross-Examination by Ms. Lai	585
------------------------------	-----

Examination by The Court	608
--------------------------	-----

Redirect Examination by Mr. Casey	623
-----------------------------------	-----

MANUEL NIETO, JR.	
-------------------	--

Direct Examination by Ms. Lai	626
-------------------------------	-----

Cross-Examination by Mr. Casey	636
--------------------------------	-----

VELIA MERAZ	
-------------	--

Direct Examination by Ms. Lai	648
-------------------------------	-----

Cross-Examination by Mr. Casey	655
--------------------------------	-----

BRETT PALMER	
--------------	--

Direct Examination by Ms. Wang	661
--------------------------------	-----

Cross-Examination by Mr. Casey	738
--------------------------------	-----

Redirect Examination by Ms. Wang	777
----------------------------------	-----

BRIAN L. SANDS	
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Direct Examination by Mr. Young	785
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
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452	Previously marked as Exhibit No. 467	711
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P R O C E E D I N G S

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3

THE COURT: Thank you. Please be seated.

4

5

THE CLERK: This is CV 07-2513, Melendres v. Arpaio,
on for continuation of bench trial.

08:43:14

6

THE COURT: Kathleen.

7

(Off-the-record discussion between the Court and the
clerk.)

9

THE COURT: The Court is informed the attorneys have
some matters to raise prior to next witness.

10

08:43:52

11

MR. YOUNG: Yes, Your Honor. Good morning.

12

Both parties, both sides have adopt -- have invoked
the exclusionary rule for witnesses, and I wanted to let the
Court know, we've talked about this beforehand, we've agreed
that that does not apply to expert witnesses, but it does apply
to fact witnesses. So I just wanted to make sure the Court
understood that. Actually, I think on both sides we've had
expert witnesses who have had access to testimony that has gone
on so far in the trial.

15

08:44:10

16

17

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19

20

THE COURT: All right.

08:44:27

21

MR. YOUNG: The second issue relates to the videos
that we showed yesterday. I've also conferred with Mr. Casey
on this. The videos that were played in court yesterday have
been admitted. The exhibits that were lodged with the Court --
namely, 357, 410, 410A through D, and 451 -- are actually the

23

24

25

08:44:45

1 entireties of the news broadcasts or whatever out of which the
2 sections that were played in court and admitted were excerpted.

3 And what Mr. Casey and I have discussed is that we
4 would provide the clerk with substitutes for those exhibits
5 that would comprise only the clips that were shown in court 08:45:11
6 yesterday and were admitted, and I'd ask the Court's permission
7 to do that.

8 THE COURT: All right. Let me get the names of those
9 exhibits again.

10 MR. YOUNG: Yes. 357, 410, 410A, 410B, 410C, 410D, 08:45:24
11 and 451.

12 THE COURT: All right.
13 You agree with that, Mr. Casey?

14 MR. CASEY: Yes, I do. Only those that were admitted
15 yesterday ought to be in the Court's record, yes. 08:45:50

16 THE COURT: All right. I'll allow that, then.

17 MR. YOUNG: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. CASEY: Just one other thing. Plaintiffs have
20 graciously agreed that they're going to be calling a witness 08:45:59
21 this morning, and immediately after that we're going to take an
22 MCSO deputy named Michael Kikes regarding the -- regarding the
23 Nieto-Meraz stop out of order, and he will be the second
24 witness because of a personal matter that he has that he's not
25 going to be available the rest of the trial. 08:46:22

1 So I wanted to alert the Court to that and thank on
2 the record the plaintiffs for their courtesy.

3 THE COURT: All right. I do want to commend both
4 parties. It seems to me this is a very highly contended case,
5 but I think that the attorneys have behaved professionally and
6 with courtesy to expedite it and make the matters
7 comprehensible.

08:46:36

8 I do want to let the plaintiffs know that you have, by
9 my count -- and my count is not appealable unless you can
10 convince me I've made an error -- you have taken six hours and
11 43 minutes, and the defendants have taken four hours and 43
12 minutes.

08:46:54

13 You ready to call your next witness, Mr. Young?

14 MR. YOUNG: Yes, Your Honor. Thank you.

15 Mr. Hults will be presenting our first witness today.

08:47:11

16 THE COURT: All right. Mr. Hults.

17 MR. HULTS: Plaintiffs call Daniel Magos.

18 MR. LIDDY: Excuse me, Your Honor. The defense
19 objects to this on the basis of relevance. The plaintiffs
20 propose to have this witness testify about events on December
21 4th, 2009, and the parties have stipulated that December 4th,
22 2009, was not a saturation patrol day.

08:47:45

23 THE COURT: And so is it your position that only
24 saturation patrol days are relevant?

25 MR. LIDDY: Your Honor, the -- the plaintiffs are

08:48:04

1 trying to make the case that there is racial profiling during
2 saturation patrols, and so there are more Hispanics on
3 saturation patrol days by saturation patrol officers and that
4 the stops take longer. And this witness has no experience, no
5 firsthand experience about any issues that --

08:48:22

6 THE COURT: I appreciate it and understand the basis
7 for your objection. I'm going to overrule it, because as I
8 understand it there are not only saturation patrol claims, but
9 there are claims relating to the operations of HSU that may or
10 may not be characterized as saturation patrols. There are
11 Fourth Amendment and Fourteenth Amendment claims, and I can't
12 determine beforehand whether this witness has any relevant
13 knowledge pertaining to something that may still be left in
14 this case.

08:48:37

15 So I'm overruling your objection without prejudice to
16 your renewing the objection, the moving to strike, to the
17 extent that you're going to take the position that anything he
18 testifies to isn't relevant to the remaining claims.

08:48:50

19 MR. LIDDY: Thank you, Your Honor.

20 THE COURT: Sir, would you please come forward to be
21 sworn.

08:49:02

22 THE CLERK: Right up here, sir. Actually, right over
23 here.

24 Please state and spell your first name.

25 MR. MAGOS: Daniel Magos.

08:49:21

1 THE CLERK: Did you say "Daniel"?

2 MR. MAGOS: Yes.

3 THE CLERK: Okay.

4 MR. MAGOS: Magos, M-a-g-o-s.

5 THE CLERK: Please raise your right hand.

08:49:33

6 (Daniel Magos was duly sworn as a witness.)

7 THE CLERK: Thank you. Please take our witness stand.

8 THE COURT: Mr. Hults, would you, please.

9 DANIEL MAGOS,

10 called as a witness herein, having been duly sworn, was

11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HULTS:

14 Q. Good morning.

15 A. Good morning.

08:50:11

16 Q. Please state your name.

17 A. Daniel Magos.

18 Q. How old are you?

19 A. I'm 67 years old.

20 Q. What is your date of birth?

08:50:19

21 A. July 3, 1945.

22 Q. Where do you live?

23 A. I live in Phoenix, Arizona.

24 Q. And how long have you lived in Phoenix?

25 A. Over 50 years.

08:50:34

1 Q. What is your level of education?

2 A. One and a half years of college.

3 Q. What is your current occupation?

4 A. I work in the maintenance department to one of the school
5 districts.

08:50:53

6 Q. What is your ethnicity?

7 A. Mexican American.

8 Q. Are you married?

9 A. Yes.

10 Q. For how long have you been married?

08:50:59

11 A. Forty-five years.

12 Q. What is your wife's ethnicity?

13 A. Mexican American.

14 Q. Do you have any children?

15 A. Yes, two.

08:51:11

16 Q. Do you have any grandchildren?

17 A. Granddaughter and a grandson.

18 Q. Where were you born?

19 A. I was born in Chihuahua, Mexico.

20 Q. What is your current citizenship status?

08:51:24

21 A. I'm an American citizen.

22 Q. And how long have you been a U.S. citizen?

23 A. For over 45 years.

24 Q. Is your wife a U.S. citizen?

25 A. Yes, she was born in Phoenix.

08:51:37

1 Q. Did you encounter a deputy from the Maricopa County
2 Sheriff's Office, or MCSO, on December 4th, 2009?

3 A. Yes, I did.

4 Q. What were you doing at the time?

5 A. I was on my way to a job site. 08:51:56

6 Q. What was your job at the time?

7 A. At the time I was doing maintenance and remodeling.

8 Q. Approximately what time of day was it?

9 A. It was approximately 10 o'clock in the morning.

10 Q. Were you alone? 08:52:19

11 A. No, my wife was in the truck with me.

12 Q. Why was your wife with you?

13 A. Occasionally she would go to some of the jobs with me, you
14 know, assist me with tools or whatever and...

15 Q. What kind of truck were you driving? 08:52:36

16 A. It's a '93 Ford pickup truck, ST series, or F-150.

17 Q. Was there anything in the bed of your truck?

18 A. Yes, I was carrying my tools.

19 Q. What type of tools?

20 A. There was some landscaping tools, hoes, shovels, rakes, a
21 wheelbarrow. 08:52:59

22 Q. And how were those tools situated in the bed of your truck?

23 A. I had them standing up, and I had devised a, you know, some
24 kind of a brace to keep them upright so they didn't get all
25 mixed up in the back of my truck. 08:53:28

1 Q. Was there anything behind your truck?

2 A. Yes. I was towing a flatbed trailer, a small trailer.

3 Q. Was there anything in the trailer?

4 A. No, nothing. It was empty.

5 Q. Were you driving with your windows down at the time?

08:53:43

6 A. They were up until I came to the stop. There was a traffic

7 light, and I was about to make a left turn from northbound 27th

8 onto westbound Durango. And when I come to an intersection, I

9 usually lower my driver's side window about halfway for better

10 visibility. The tinting on the window is slightly blurry on

08:54:17

11 the driver's side.

12 Q. Was the deputy that you saw in a vehicle?

13 A. Yes.

14 Q. What kind of vehicle was the deputy in?

15 A. It was a marked patrol car, you know, the -- brown with the

08:54:40

16 gold insignia on the side.

17 Q. Where was the deputy in relation to you when you first saw

18 him?

19 A. He was to my left, and he was getting ready to make a

20 right-hand turn into southbound 27th Avenue.

08:55:02

21 Q. Could you see the deputy's face at the time?

22 A. Yes.

23 Q. What happened when you saw the MCSO deputy?

24 A. He was making his right-hand turn at a very slow rate of

25 speed. And he stared at my wife, and then he stared at me as

08:55:28

1 he was coming parallel to my truck.

2 Q. Did you say anything after you noticed him staring at you?

3 A. I asked my wife why he was staring at us that way.

4 Q. And what happened after he began to turn slowly by you?

5 A. He accelerated. I could hear the -- his engine roaring at 08:55:55
6 a high RPM. He went south about 200 feet and then made a
7 sudden U-turn.

8 Q. And then what happened after he made the sudden U-turn?

9 A. The traffic light changed and I made my left turn, and then
10 he came behind me and followed me for about couple a hundred 08:56:23
11 feet, three hundred, and then he turned his emergency lights
12 on.

13 Q. Did you pull over?

14 A. Yes, I pulled over on the next northbound street. There
15 wasn't too much room on Durango to pull over. 08:56:46

16 Q. And what happened after you pulled over?

17 A. The deputy remained in his car. He did not make any move.
18 So my wife and I proceeded to get off the truck to go check
19 with the deputy, see why he had stopped us.

20 Q. And how long was it between the time you stopped and when 08:57:09
21 you exited the truck?

22 A. Probably about a minute.

23 Q. And then what happened after you exited the truck?

24 A. The deputy got off his car and he started yelling at us to
25 get back in the truck, so we got back in. 08:57:30

1 Q. What happened after you got back in the truck?

2 A. The deputy went back in his car for couple of minutes, and
3 then finally he decided to come over to my -- to the driver's
4 side window of the truck and asked me for my license, and asked
5 my wife for ID, and then he specified that he wanted her
6 driver's license. 08:57:57

7 Q. What was the deputy wearing?

8 A. He was wearing the regular Maricopa County sheriff's
9 uniform.

10 Q. What do you mean by regular Maricopa County sheriff's
11 uniform? 08:58:16

12 A. Brown pants, lighter brown shirt.

13 Q. And did you -- what did you say when he asked for your and
14 your wife's driver's licenses?

15 A. I asked him why he had stopped us, and he just asked me for
16 the other documents, my registration and proof of insurance. 08:58:32

17 Q. Did you provide your and your wife's licenses to the
18 deputy?

19 A. Yes, we did.

20 Q. Did you provide your insurance card to the deputy? 08:59:02

21 A. Yes. I looked for the insurance card, and I also looked
22 for the registration. I was unable to find the registration to
23 the truck, so I just gave him the insurance -- proof of
24 insurance. Told him I couldn't find the registration. He
25 said, Don't worry. It's not important. 08:59:29

1 Q. Did you ask why the deputy requested your wife's license?

2 A. Yes, I did at one time when he was -- when he asked for the
3 license, I told him she was not the driver. He insisted we
4 provide with my wife's license, driver's license.

5 Q. And what was his tone of voice?

08:59:57

6 A. All during the stop he was yelling at us. He never
7 addressed us in a civil manner or a normal conversation tone of
8 voice, always yelling.

9 Q. Did you find out at this time why you were stopped?

10 A. Yes. He told me my license plate on my truck was not
11 visible.

09:00:21

12 Q. Did your truck have a license plate on it?

13 A. Yes.

14 Q. And where was the trailer relative to the license plate on
15 your truck?

09:00:45

16 A. The trailer sits at a lower height than the license plate.
17 From a car you can plainly see it.

18 Q. And what happened after you provided your licenses and your
19 insurance card to the deputy?

20 A. The deputy asked me if I was carrying any drugs, any
21 weapons, or any bazookas in my truck. I told him I was not
22 carrying any bazookas or drugs, but -- but I was carrying a
23 handgun. He told me to step out of the truck so that he could
24 gain access to my handgun.

09:01:10

25 Q. Did you legally own the handgun?

09:01:42

1 A. Yes, it was perfectly legal under Arizona law.

2 Q. And was it legally in your car?

3 A. Yes.

4 Q. And did you provide the handgun to the deputy?

5 A. Yes. He got it himself and put it on his waist under his 09:01:55
6 belt.

7 Q. And what happened after you gave the handgun to the deputy?

8 A. He told me to put my hands against the truck, and to take a
9 step or two back and open my legs, spread my legs open, so that
10 he could search me. 09:02:31

11 Q. Did you say anything in response to the deputy's statement
12 that you would be searched?

13 A. Yes. I asked him why I was being searched, and he said
14 that I was being searched for weapons and drugs. I told him
15 that I had already stated that I didn't have any drugs, and 09:02:55
16 that my only weapon was my handgun.

17 Q. Did you comply with being searched?

18 A. Under protest. I told the deputy that if he searched me,
19 it was against my consent. He just said, you know, Do as I say
20 and I'm going to frisk you. 09:03:21

21 Q. And you did --

22 A. Yes.

23 Q. -- do as he said?

24 A. Yes.

25 Q. Please describe the search. 09:03:27

1 A. He searched my underarms, the sides, my groin area. And he
2 searched my pockets, one of my pants pockets. The shirt pocket
3 he picked out the contents. Usually, I carry notes and my pen.
4 And he got the contents out of the pocket and got his other
5 hand into it and found nothing, so he put the -- my notes.

09:04:12

6 Q. How did the search make you feel?

7 A. Humiliated. Worthless. Defenseless.

8 Q. What happened after you were searched?

9 A. The deputy went back to his car with our ID and my gun and
10 told me to wait in the truck, so I got in the truck and waited.
11 You know, he took several minutes, probably up to 10, up to
12 about 10 minutes. And then one of my clients called me on the
13 phone and I answered the phone call; I was late to meet with
14 him.

09:04:52

15 Then the deputy came, came out of his car and came to
16 my window, and again yelling that I hang up the phone. And,
17 you know, I was still talking to my client then he yelled
18 again, so I hung up the call.

09:05:22

19 Q. And what happened after you hung up the phone?

20 A. The deputy told me that the plate on the trailer was
21 missing. I asked him if I could go and see for myself, and
22 there was no plate on the trailer. Then he told me I was free
23 to go, and apologized for yelling and screaming and scaring us
24 during the stop with his behavior.

09:05:50

25 Q. Do you know why there was no license on -- license plate on

09:06:25

1 the trailer?

2 A. No, absolutely not. I usually check it, and I had checked
3 it the night before and it was there.

4 Q. And were you cited for not having a plate on the trailer?

5 A. No, I was not cited for not having a plate or not being
6 able to provide a registration on the truck. 09:06:46

7 Q. And what happened after he said that you were free to go?

8 A. He proceeded to make a U-turn and went westbound on
9 Durango. I made a U-turn and went by the job site and went and
10 met with my client. 09:07:15

11 Q. Just to be clear, were you issued any citation that day?

12 A. No, no citation whatsoever.

13 Q. Did you say anything to him after he said you were free to
14 go?

15 A. No, but after his apology he told me that that stop had
16 nothing to do with racial profiling. I told him that was
17 exactly what it was. 09:07:40

18 Q. Did you take down his name and badge?

19 A. Yes. I had a pad and a pen. I took the name off his
20 uniform, wrote it down, and then I asked him for his badge,
21 'cause he was not wearing one. So he showed me his badge and I
22 took the number down. 09:08:21

23 Q. And what was his name?

24 A. I believe the initial was B. Russell.

25 Q. Did this incident change your view of the MCSO? 09:08:41

1 A. Yes, completely. I lost respect for the MCSO's deputies
2 and sheriff.

3 Q. Do you feel you were treated differently because of your
4 ethnicity?

5 A. Yes. 09:09:06

6 Q. Did you do anything to complain about the incident?

7 A. Yes. My daughter's boyfriend, who was at the time working
8 for a law firm, wrote up a letter, and he tried to call the --
9 he called the deputy's office or the Sheriff's Office to make a
10 verbal complaint, and he made a -- several attempts. He talked 09:09:33
11 to the secretary and talked into the recorder and left
12 messages. They never responded. They never answered the call.

13 MR. HULTS: No further questions.

14 THE COURT: Cross-examination, Mr. Liddy.

15 CROSS-EXAMINATION 09:09:59

16 BY MR. LIDDY:

17 Q. Good morning, sir.

18 A. Good morning.

19 Q. You've previously testified that you had dark window
20 tinting on the driver's side window of your truck, is that 09:10:14
21 correct?

22 A. Correct.

23 Q. Did you have any tinting on any of the other glass in the
24 cabin of your truck?

25 A. Yes, they all have a tint. 09:10:23

1 Q. Would that include the rear window of the truck?

2 A. Yes.

3 Q. And is that tinting the same darkness as the tinting that
4 you described on the driver's side window?

5 A. Yes.

09:10:39

6 Q. Now, you previously testified that the deputy continued to
7 proceed south for about 200 feet and then executed a U-turn.

8 Am I remembering your testimony correctly?

9 A. Yes.

10 Q. How do you know that he proceeded south for 200 feet and
11 executed a U-turn?

09:10:59

12 A. That was an approximation.

13 Q. Did you -- were you able to see that yourself?

14 A. I was looking through the side mirror.

15 Q. So you could see his vehicle?

09:11:15

16 A. Yes.

17 Q. You testified that he asked you a question about potential
18 contents in your vehicle, including bazookas.

19 Do you recall that testimony?

20 A. Yes.

09:11:37

21 Q. Did you observe anything in his mannerism that would lead
22 you to believe that his reference to bazookas was an attempt to
23 decrease the tension in the situation?

24 A. I did not notice, 'cause most of the time he was yelling.

25 He was not talking in a normal tone of voice.

09:11:56

1 Q. Was he yelling when he asked whether you had any bazookas
2 inside your truck?

3 A. Particular the time the word "bazooka" came up, I don't
4 remember if he was, you know, changing the facial expressions
5 or... 09:12:15

6 Q. You mentioned that you had a weapon with you in the truck
7 at the time of this stop, is that correct?

8 A. Yes.

9 Q. And would you describe that weapon for the Court, please.

10 A. Yes. That's a .25 caliber pistol. 09:12:27

11 Q. Is that a semiautomatic pistol?

12 A. Yes.

13 Q. Do you recall the manufacturer of that?

14 A. No, I don't.

15 Q. How long have you owned this semiautomatic pistol? 09:12:38

16 A. About eight years.

17 Q. Did you regularly carry this semiautomatic pistol with you?

18 A. Yes.

19 Q. Did you keep it on your person?

20 A. No, not on my person. 09:13:01

21 Q. Did you keep it in the truck?

22 A. Yes.

23 Q. And where, precisely, did you keep it inside the truck?

24 A. At times it was on my seat; other times it was on the
25 floor. 09:13:18

1 Q. Did you have it holstered?

2 A. No, it doesn't.

3 Q. When you made turns with your truck would the centrifugal
4 force move the semiautomatic pistol to the left and the right,
5 depending on your turn?

09:13:33

6 A. No.

7 Q. Was it in a fixed position?

8 A. Fixed position.

9 Q. And did you have an apparatus inside your truck in order to
10 keep it in a fixed position?

09:13:41

11 A. No, but there's rubber matting on the floor of the truck
12 and it was sitting on that.

13 Q. So there were no straps of any sort?

14 A. No.

15 Q. And at the time of this traffic stop, precisely where was
16 that .25 caliber semiautomatic pistol?

09:13:51

17 A. It was on the floor of the truck.

18 Q. In proximity to the driver's seat?

19 A. Yes, right behind my right foot.

20 Q. Excuse me, right behind your what?

09:14:10

21 A. Right foot.

22 Q. Right foot. Thank you.

23 And did you keep a weapon in your truck on a regular
24 basis for your personal protection?

25 A. Yes.

09:14:25

1 Q. Did you have a conceal carry permit at the time of this
2 stop in 2009?

3 A. No.

4 Q. You previously testified that when you were initially
5 pulled over, that the deputy did not immediately approach your
6 truck.

09:14:43

7 Do you recall that testimony?

8 A. Yes.

9 Q. Were you observing the deputy in your rearview mirror?

10 A. Yes.

09:14:57

11 Q. You were able to see through the rearview mirror -- through
12 the rear window through the tinting --

13 A. Yes.

14 Q. -- observe the deputy?

15 A. Yes.

09:15:06

16 Q. Do you recall whether you were able to see whether the
17 deputy had an onboard computer inside his --

18 A. No.

19 Q. -- vehicle?

20 A. No, I couldn't see.

09:15:18

21 Q. Did you see him talking on the radio?

22 A. No.

23 Q. I think it's clear from your testimony, but I want to make
24 the record clear that this was a very upsetting experience for
25 you, was it not?

09:15:39

1 A. Yes, it was.

2 Q. Was it one of the worst experiences of your life?

3 A. Yes, especially with my wife present.

4 Q. Did you write to the Maricopa County Sheriff's Office to
5 complain of your treatment on that day?

09:15:53

6 A. No, I didn't.

7 Q. Did you write to the FBI to complain about your treatment
8 by the Maricopa County Sheriff's deputy as you perceived it?

9 A. No, I didn't.

10 Q. Did you write to the Civil Rights Division of the
11 Department of Justice?

09:16:09

12 A. No, not at the moment.

13 Q. Was it your testimony that you did not write to them at
14 that moment?

15 A. No, not -- not at the moment, not at that time.

09:16:21

16 Q. Have you subsequently written to the Department of Justice
17 to complain about your treatment?

18 A. I have not written, but I have talked to some of the
19 investigators.

20 Q. Approximately how long after the stop, December 4th, 2009,
21 did you discuss this incident with the Department of Justice?

09:16:39

22 A. It probably took month and a half.

23 Q. So you would estimate that it would be, perhaps, in January
24 or February of 2010?

25 A. Yes.

09:17:03

1 Q. Did you write a letter to the American Civil Liberties
2 Union?

3 A. Yes, I did.

4 Q. Can you tell me the approximate time that you wrote to the
5 ACLU about this stop by the Maricopa County Sheriff's
6 Department?

09:17:21

7 A. It was mid to later part of December.

8 Q. Did you bring a copy of that letter with you here to court
9 today?

10 A. No, I don't have. It's -- it's not a letter; it's a form
11 that the ACLU supplies. They sent me one in the mail and I
12 filled it out and sent it in.

09:17:39

13 Q. Would I be correct if I inferred from your testimony that
14 the ACLU contacted you and not that you contacted the ACLU?

15 A. No, I contacted the ACLU.

09:18:02

16 Q. And then subsequently they sent you a form?

17 A. Yes.

18 Q. Did you contact them by writing them?

19 A. No, I contacted them by phone.

20 Q. Have you filed a notice of claim with Maricopa County?

09:18:16

21 A. No, not that I know.

22 Q. Now, after December 4th, 2009, how many more times have you
23 been stopped by the Maricopa County Sheriff's Office deputies
24 while driving in Maricopa County?

25 A. None.

09:18:39

1 MR. LIDDY: Sir, I appreciate you coming this morning.

2 I have no further questions, Your Honor.

3 THE WITNESS: Thank you.

4 THE COURT: Redirect?

5 MR. HULTS: Just have a few additional questions. 09:19:02

6 REDIRECT EXAMINATION

7 BY MR. HULTS:

8 Q. Do you believe the deputy could have seen the missing
9 license plate on your trailer at the time he accelerated and
10 made a U-turn? 09:19:23

11 A. No, 'cause he was still parallel to my truck when he
12 accelerated. That was immediately after the staring in to my
13 wife and I.

14 Q. Did you need to have a concealed weapons permit to carry
15 the gun legally in your car? 09:19:45

16 MR. LIDDY: Objection. This question calls for a
17 legal conclusion, Your Honor.

18 THE COURT: Objection sustained.

19 BY MR. HULTS:

20 Q. Did you believe you were carrying the gun legally in your
21 car? 09:20:01

22 A. Yes.

23 If I can elaborate on that, it had never been an issue
24 with any other police department: Phoenix, DPS, immigration

25 department. I was stopped by the Border Patrol once, middle of 09:20:22

1 the night. We were coming from El Paso, Texas, from donating
2 blood for my brother. And I told the Border Patrol that I was
3 carrying a weapon and they said they had no problem.

4 Q. And were you cited that day for violating any gun laws?

5 A. No, none whatsoever.

09:20:52

6 Q. How many times did your son-in-law attempt to lodge a
7 complaint with Maricopa County Sheriff's Office?

8 A. It was at least four.

9 Q. Do you feel you're at risk of being stopped again by the
10 Maricopa County Sheriff's Office because of your ethnicity?

09:21:16

11 MR. LIDDY: Objection, Your Honor. Calls for
12 speculation.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, I do, because the deputy had no
15 grounds that day to stop me, had no reason.

09:21:31

16 MR. HULTS: No further questions.

17 THE COURT: Mr. Magos, thank you for your testimony.
18 You may step down, sir.

19 THE WITNESS: Thank you.

20 THE COURT: Next witness.

09:21:43

21 MR. CASEY: Yes, Your Honor. Again, so it's clear for
22 the record, defendants will be taking out of order, with
23 agreement and concurrence of plaintiffs' counsel, Deputy
24 Michael Kikes, K-i-k-e-s.

25 THE CLERK: Come right here, sir. Can you please

09:22:34

1 state and spell your full name.

2 MR. KIKES: Michael Kikes, K-i-k-e-s.

3 THE CLERK: Hang on a second. Michael, okay.

4 MR. KIKES: Kikes, K-i-k-e-s.

5 THE CLERK: Thank you. Please raise your right hand. 09:22:50

6 (Michael Kikes was duly sworn as a witness.)

7 THE CLERK: Thank you. Please take our witness stand.

8 MICHAEL KIKES,

9 called as a witness herein, having been duly sworn, was

10 examined and testified as follows: 09:22:59

11 DIRECT EXAMINATION

12 BY MR. CASEY:

13 Q. Good morning. Would you please tell the Court your full
14 name.

15 A. Michael Dean Kikes. 09:23:23

16 Q. And who are you employed by, sir?

17 A. Maricopa County Sheriff's Office.

18 Q. And what do you do for the Maricopa County Sheriff's
19 Office?

20 A. I currently work in the security detail for the sheriff in
21 threats unit. 09:23:30

22 Q. And how long have you been doing that?

23 A. Approximately two years.

24 Q. Before you became part of that security unit, would you

25 tell the Court what you did for Maricopa County in the 09:23:42

1 preceding three years.

2 A. I worked as a motor officer for the Sheriff's Office.

3 Q. On the dates of March 27th and March 28th of 2008, would
4 you tell the Court what you did as an MCSO deputy?

5 A. I was working as a motor unit and working a crime
6 suppression detail.

09:24:03

7 Q. All right. Now, Deputy Kikes --

8 Am I saying your last name correctly.

9 A. Yes, sir.

10 Q. -- the parties have stipulated that the MCSO conducted a
11 large-scale saturation patrol, or crime suppression operation,
12 on March 27 and 28, 2008, near Cave Creek Road and Bell Road.

09:24:11

13 Did you participate in that saturation patrol?

14 A. Yes.

15 Q. In what role did you participate?

09:24:31

16 A. Just as another unit, motor unit in that area, patrolling
17 it.

18 Q. What type of -- lawyers always say "vehicle" instead of
19 "car" or "truck." What were you driving as a patrol -- as a
20 patrol deputy that day?

09:24:48

21 A. I was driving a Harley-Davidson motorcycle.

22 Q. You were what I'd call a motorcycle cop.

23 A. Motor unit, yes, sir.

24 Q. Okay. What was your role as a motorcycle deputy on March
25 28, 2008, during that saturation patrol?

09:25:03

1 A. We were looking for violations of the law.

2 Q. When you say "looking for violations of the law," explain
3 for me what you mean.

4 A. Any motor vehicle violations, any movement, any equipment
5 failures, anything of that nature. 09:25:19

6 Q. Were you ever trained by ICE, or anyone, to be a 287 --
7 what's called a 287(g) certified officer?

8 A. No, sir.

9 Q. All right. Thank you.

10 How was it that you, as a motorcycle officer, were
11 somehow involved in this saturation patrol, if you know? 09:25:31

12 A. It was just chosen, various units were chosen to do the
13 operation.

14 Q. Focusing on March 28, 2008, at some time during that day
15 did you hear a radio transmission, a radio call from Deputy
16 Ramon Charley Armendariz? 09:25:56

17 A. Yes, I did.

18 Q. Do you know Deputy Armendariz?

19 A. Yes, I do.

20 Q. And how long have you known Deputy Armendariz? 09:26:06

21 A. Approximately four years.

22 Q. As of that date you had known him for four years?

23 A. Yes, sir.

24 Q. Had you worked with him before?

25 A. On various types of details. 09:26:16

1 Q. Are you familiar with what his voice sounds like during
2 normal conversation?

3 A. Absolutely.

4 Q. Are you familiar with what his voice sounds like when it
5 comes across a radio transmission in what I guess we could call 09:26:26
6 a normal transmission?

7 A. Yes, sir.

8 Q. During that call that you heard, that transmission from
9 Deputy Armendariz, what did you hear on that call?

10 A. It wasn't a normal response. It was a higher pitch, a more 09:26:42
11 type of a hurried response from him, an anxious type of radio
12 transmission.

13 Q. And what was he asking for, if anything?

14 A. He was asking for assistance and a backup unit to his
15 location. 09:27:02

16 Q. What was it about what you heard from Deputy Armendariz
17 that made you think it was, I don't want to put words in your
18 mouth, but a higher urgency or higher stress, whatever the word
19 that you use there, what was it that led you to that
20 conclusion? 09:27:17

21 A. The anxiety in his voice, the higher pitch; the faster
22 transmission of his voice of a normal call.

23 Q. Okay. What do -- what did you interpret that call for
24 backup to mean in light of how you interpreted his voice?

25 A. That something out of the norm was going on, something of 09:27:33

1 an emergency type was -- had begun or is beginning or in the
2 process of.

3 Q. Now, when you say some type of emergency may have taken
4 place or had occurred, what do you mean by that?

5 A. Something where -- whether it was an officer safety issue
6 or some kind of crime had been committed, that he was the sole
7 officer on that call and he needed help immediately.

09:27:47

8 Q. What is -- in MCSO language, MCSO parlance, what is a
9 station 45 code on radio traffic?

10 A. That means all radio traffic has to cease, and only the
11 people that are on the call at that situation, that time, that
12 have logged into that call can transmit, so that they can get a
13 clear understanding of what's going on at that time.

09:28:09

14 Q. When, in your experience as an MCSO patrol deputy, when are
15 station 45s used?

09:28:28

16 A. Basically in extreme emergencies, in situations where
17 there's an officer safety issue, or danger, or something has
18 occurred.

19 Q. Was there, to your knowledge, a station 45, or a stat 45,
20 in place following Deputy Armendariz's call for backup?

09:28:45

21 A. I believe there was.

22 Q. Okay. Now, let's turn to a different subject.

23 After you heard the call for backup, what did you do?

24 A. I immediately left where I was sitting on Cave Creek Road
25 and proceeded to his location, where he advised where he was

09:29:04

1 at.

2 Q. Do you remember the -- roughly the cross streets of where
3 he was at?

4 A. I want to say Cave Creek Road and Nisbet Road or Nisbet
5 Drive. 09:29:17

6 Q. Can you describe the -- what was the location where Charley
7 Armendariz, Ramon, was?

8 A. He was in a gas station type mini mart location.

9 Q. Okay. What route did you take to Deputy Armendariz's
10 position at Cave Creek and Nisbet Road? 09:29:31

11 A. I came southbound on Cave Creek Road.

12 Q. Did you do anything -- did you -- well, let me back up.
13 Excuse me.

14 Did you drive there normally? Did you use any of your
15 equipment? How would you describe your trip to Armendariz's
16 location. 09:29:50

17 A. No, I actually drove with lights and sirens because of the
18 extent of his voice and him calling for backup at that point.

19 Q. Okay. Tell me what you saw or did -- back up.

20 Tell me what you saw when you arrived. 09:30:10

21 A. As I arrived, I saw the officer -- or the deputy's patrol
22 car pulled behind another vehicle, and Deputy Armendariz was
23 off to the left of the patrol vehicle by the front. And I saw
24 a vehicle pulling out of the driveway at the south end of the
25 parking lot in a rather quick hurry, and Charley at that point 09:30:32

1 signaled to me and said: Go get the black SUV. He waved his
2 arms in a frantic mode to go get the black SUV.

3 Q. Okay. Now, do I understand that you pulled into the
4 convenience mart, gas station where Deputy Armendariz was?

5 A. Correct, I came in at the north end of it and I didn't
6 stop. I swept through there as he was pointing to me, and I
7 directly never lost sight of the vehicle he was pointing to and
8 quickly got behind it.

09:30:56

9 Q. So I understand what you're saying, as you're pulling in,
10 you're seeing a black SUV leaving?

09:31:10

11 A. Correct.

12 Q. All right. Now, you described that this black SUV was
13 leaving quickly, hurried. What's the basis for your conclusion
14 that it appeared to be leaving quickly or hurried?

15 A. The way the vehicle left the driveway, not using its turn
16 signal to let people know that it was moving to the left, the
17 back end of the vehicle was down, and it was -- you could tell
18 that it was moving quickly. It jettted across both northbound
19 lanes and then into the southbound lane, the number 1 lane.

09:31:25

20 Q. What is the significance, to those of us who may not be
21 familiar with it, with when you say the back of the vehicle
22 going down as it accelerates, what did that indicate?

09:31:46

23 A. That accelerates horsepower, horsepower being driven to the
24 rear of the vehicle drivetrain, causing the vehicle, lower end
25 of the vehicle to dip in its -- because it's trying to catch up

09:32:01

1 to the front end as it's picking up speed.

2 Q. And Deputy Armendariz pointed the vehicle out and said:

3 Get the black SUV?

4 A. Correct.

5 Q. Okay. What did you do after that?

09:32:15

6 A. I pulled directly behind the SUV, came slightly out to the

7 left side, looking into the driver's side rearview mirror. Had

8 my lights on. At that point I went ahead and told him to pull

9 over with the PA system that we have in the motor unit, to pull

10 to the right. He failed to pull to the right. He kept going.

09:32:37

11 We did make eye contact back and forth, and he kept driving

12 further down the road.

13 Q. You said you had your lights on?

14 A. Correct, my lights on.

15 Q. Was your siren on?

09:32:48

16 A. Not when I was voicing my telling him to come to the right.

17 After that and he failed to, then I -- then I went ahead and

18 activated my siren.

19 Q. Okay. Explain for me, it sounds like there's some audio

20 speaker system on the motorcycle. Is that a fair statement?

09:33:03

21 A. Yes, there is. There's a PA system on there.

22 Q. And how do you operate that while you're also driving a

23 motorcycle?

24 A. Everything is done by thumbs and fingers up by the controls

25 of the motorcycle, the front of the motorcycle. You don't have

09:33:16

1 to leave your hands off the handlebars at all.

2 Q. What did you say when you used that signal -- excuse me.

3 What did you say as you were using that system when
4 you were behind the black SUV?

5 A. I was telling him to pull over to the right. 09:33:32

6 Q. Now, would you tell the Court, please, what was the
7 probable cause or reasonable suspicion, if any, that you had
8 for making that traffic stop that you intended to make on that
9 black SUV?

10 A. Well, at this point I thought there was exigent 09:33:54
11 circumstances at this point, and that was my reason for
12 stopping him, that something had occurred in the gas station
13 with Charley at that time. He couldn't leave his people that
14 he had detained and handcuffed and chase after another vehicle.

15 So as he was waving to me in a frantic mode that, to 09:34:11
16 me, something had occurred, some crime or something had
17 occurred, and at that point my PC was to go after the vehicle
18 and then pull it over.

19 Q. All right. Now, you just mentioned that some crime may
20 have occurred. Did you believe that the driver of this black 09:34:24
21 SUV may have been fleeing a crime scene?

22 A. Yeah, by the -- by the speed of him leaving the driveway,
23 by the franticness of the deputy, by everything that curtailed
24 in those short time that I heard on the radio from the time I
25 saw the vehicle leaving to the time I was after the vehicle. 09:34:42

1 Q. Did the -- did the driver -- strike that.

2 You mentioned earlier that when you were following the
3 vehicle you got into a position, as I understand your
4 testimony, that you lined up your bike with the side rearview
5 mirror. Is that a correct summary? 09:35:04

6 A. Correct, yes. We --

7 Q. Why did you do that?

8 A. We do that because on a motor unit it's kind of tough to
9 see behind you when you're driving a regular vehicle if he's
10 placed right behind you, so we come out to the side so he can 09:35:12
11 not only see our lights, but he can see that it is an actual
12 police officer or deputy, and you can see and focus on the
13 driver's movements, on his eyes, what he's doing if he, in
14 fact, has acknowledged that he sees you.

15 Q. Were you ever able to determine one way or the other if the 09:35:28
16 driver was able to see you from the rearview mirror, or
17 anything like that?

18 A. Yeah, we had eye contact several times and he leaned
19 forward, looked to see who I was, and then he kept going.

20 Q. Were you able from that distance to determine anything 09:35:43
21 about the driver's race or ethnicity?

22 A. No. I just concentrated on his eyes and where he was
23 watching, where he was focusing, where I was going, my distance
24 between him and I, and to make sure that he didn't slam on his
25 brakes or something occurred. 09:35:59

1 Q. Did that driver of the black SUV ever pull over or yield,
2 pursuant to your directions?

3 A. No, he never hit his brakes and/or pulled to the right.

4 Q. Did that cause you, as a motorcycle officer involved in
5 patrol, any type of concern issue?

09:36:16

6 A. Absolutely. It raises the -- it raises the awareness of
7 you twofold, because now you have a vehicle that has left a
8 place, has accelerated away from a scene, and now he's not
9 pulling over and he's not listening to your direction, and he
10 acknowledges that you're there. So the awareness and the
11 officer safety issue becomes twofold now.

09:36:34

12 Q. Is the -- based on your experience, is the failure to yield
13 or stop a violation of Title 28 of the motor vehicle code?

14 A. Yes.

15 Q. All right. Describe for us what happened since this
16 vehicle, this black SUV, is not stopping, what did it do next?

09:36:48

17 A. The next thing the vehicle did was proceed farther
18 southbound on Cave Creek Road. Then he made a left into a
19 mechanic's yard or driveway and come to a stop at that point,
20 where I pulled behind him and had got off my motorcycle.

09:37:12

21 Q. As the driver pulled left, could you describe for us how it
22 pulled left in terms of speed and anything like that.

23 A. He pulled in quickly to the -- the driveway. I -- the
24 vehicle bounced somewhat, not of a normal slow like you would
25 enter a driveway and be cautious. He bounced -- the front end

09:37:36

1 bounced, the back end bounced, and he pulled in and came to a
2 stop.

3 Q. All right. Now, it stopped in a business?

4 A. Correct, a mechanic shop, I believe it was.

5 Q. Now, before we go on I want to ask you, before this black
6 SUV came to a stop, could you see the number of people in the
7 vehicle?

09:37:51

8 A. All I could see was heads. I couldn't tell you whether it
9 was two, three, four, and at this point I could -- I was
10 focusing just strictly on the driver.

09:38:07

11 Q. Before this black SUV came to a stop could you determine
12 the gender, the sex, of anybody in the vehicle?

13 A. Just the -- just the driver. It looked -- appeared to be
14 to be a male driver, and that was all.

15 Q. Before this SUV came to a stop, could you determine the
16 race or ethnicity of the driver?

09:38:23

17 A. No, not from the back of the head, no.

18 Q. Before the black SUV came to a stop, Deputy Kikes, could
19 you determine the race or ethnicity of any occupants in that
20 S -- that vehicle?

09:38:39

21 A. No, 'cause the windows were -- were basically blacked out
22 from the passenger side -- or from the rear seats all the way
23 back.

24 Q. Did you use race or ethnicity in any way to make that
25 decision to stop that vehicle?

09:38:53

1 A. No, absolutely not.

2 Q. Okay. Now, let's go back to where -- before I started
3 asking these questions about what you could see or determine.

4 After this vehicle had stopped, what did you -- first
5 of all tell us, what did the driver of that vehicle do after it 09:39:08
6 stopped?

7 A. The driver was on his cellphone when he got into the
8 parking lot, or into the driveway at a complete stop. I
9 positioned my motorcycle in a cross position across the back so
10 in case he did back out he would obviously would have had to 09:39:26
11 run over the motorcycle to stop. And then I got onto the left
12 back pillar of the vehicle looking in to see if anybody was
13 looking out at me and if anything odd was coming up at this
14 point, because it was now becoming almost a high-risk stop.

15 Q. What made it a high-risk stop? 09:39:44

16 A. The fact that the vehicle didn't yield to the lights and
17 siren; didn't pull to the right, kept driving. The fact that
18 he acknowledged to me that he saw me, he knew I was there; and
19 the fact that the frantic voice of Deputy Armendariz was waving
20 his hands to go get the vehicle, that something was wrong. 09:40:06

21 Q. You mentioned that you parked your motorcycle behind the
22 SUV. Did I understand that correctly?

23 A. Correct.

24 Q. Why?

25 A. Well, that's -- that's in case for some protection for 09:40:16

1 officer safety reason, and in case he backed out he would have
2 had to have gone over the top of the bike. That's what we
3 practice.

4 Q. Well, didn't he, when he stopped, turn off his engine?

5 A. No, his -- his vehicle was still running. He was on the 09:40:27
6 phone, and which as another height awareness for us for
7 officer safety-wise. We had a fear of him either possibly
8 leaving the situation or backing out over us or something at
9 that point.

10 Q. Was the driver's side window, as you began to do your 09:40:40
11 approach, was it up or down?

12 A. No, it was up. All windows were up in the vehicle.

13 Q. How was it that you were able to determine that the driver
14 was on a cellphone?

15 A. As I slowly went -- started moving towards the front of the 09:40:52
16 vehicle, clearing the vehicle, being able to look into the
17 back, I had a close view, make sure there was no other
18 occupants other than now the person up front in the driver's
19 seat and the passenger side. I was able to get up and I could
20 see him more clearly at that point, being on the phone through 09:41:08
21 the rearview mirror of a side.

22 Q. At any time did you ever remove your sidearm, your weapon,
23 your gun, from its holster?

24 A. No, I had my hand -- I had the hood released on my sidearm
25 and I had my hand on my weapon, as I do every stop. 09:41:24

1 Q. Okay. Now, let's pick up where you're saying you're
2 starting -- you're moving ahead, you're trying to determine
3 what's in the vehicle. What happened next?

4 A. I kept asking the driver to step out of the vehicle. He
5 would look at me and he'd keep talking on the phone and not
6 acknowledge my commands at all to come out. 09:41:37

7 Q. And what else was happening after that?

8 A. I started to see two gentlemen come out of the mechanic
9 shop, began to yell and curse at me and tell me to get off
10 their property, as I was still trying to talk to the driver of 09:41:56
11 the vehicle.

12 Q. Now, the vehicle has pulled into this commercial property;
13 you're trying to work on finding out what's going on. Is that
14 correct so far?

15 A. Yes, sir. 09:42:10

16 Q. All right. And then where did these two people come from
17 that you now are -- are seeing approach you?

18 A. They're now -- they came out of the garage of the
19 mechanic's shop and started walking towards the driveway where
20 we were, where we had the vehicle pulled over at. 09:42:24

21 Q. And you said two gentlemen, so two men?

22 A. Two men.

23 Q. And I understand we're in a courtroom and perhaps we don't
24 need specific details unless the Court wants it, but what do
25 you mean they were cursing at you or yelling at you? 09:42:37

1 A. Well, basically every other word was the F word and telling
2 me to get off their property, I had no business being there,
3 what was I doing there, and get the F off their property.

4 Q. And would you tell me, what was your thought process, to
5 the extent you remember it, about how this situation was
6 developing with the vehicle that was engine on, the driver not
7 getting out, and now two other people coming out cursing at
8 you?

09:42:52

9 MS. LAI: Objection, compound.

10 MR. CASEY: All right. I could break it up if you'd
11 like, Your Honor. All right.

09:43:05

12 BY MR. CASEY:

13 Q. All right. Let's just take it -- tell me, what was your
14 thought process, your thought process when this was all going
15 on.

09:43:14

16 A. Well, now my officer safety awareness is now even gotten
17 worse, because now I've got to be able to control a scene that
18 has people coming at me, people are swearing at me, I've got a
19 driver that's failing to obey to the commands, and I don't know
20 who's around me, I've never been in that area before, so I
21 don't know where else or what else is adjacent to that, and I'm
22 trying to get control of the situation at that point.

09:43:28

23 Q. Okay. Tell me what happened next, if you would, please.

24 A. At that point I finally got to the driver's door, opened
25 the driver's door, and told the driver to step out of the

09:43:42

1 vehicle.

2 Q. Would he do that voluntarily?

3 A. He -- he motioned that he was coming out. He -- and I told
4 him to get off the phone, put the cellphone down, and he
5 finally came out of the vehicle. I held the door open to the
6 vehicle. 09:43:53

7 Q. And what did you do with him once he got out of the
8 vehicle?

9 A. Once I got him out of the vehicle I brought him to the back
10 of the vehicle, explained to him at that point, I said, Look,
11 you're not under arrest. I'm just trying to find out what's
12 going on here. At this point we're going to go ahead and
13 handcuff you and detain you because of the situation. I said
14 until we get further information from the other officer who
15 made the initial, it's his, the primary officer, then this is
16 where we're going to be for now and I need to get him out of
17 the front of that vehicle. 09:44:01

18 Q. Explain for us, what was it in your mind that gave you the
19 cause or the basis for you to remove this driver and put cuffs
20 on him and detain him? 09:44:16

21 A. Well, the entire action from the moment I saw the vehicle
22 to the moment I stopped, he -- he never obeyed or wanted to
23 respond to us in any way, shape or, form, and from the initial
24 call from Deputy Armendariz is the reason why he was brought to
25 the back. 09:44:35

09:44:52

1 Q. What role did your safety, the safety of anyone else at the
2 scene, play in that decision?

3 A. A huge role, because we -- we now had people that were very
4 upset in the parking lot coming at us. We now had the person
5 that failed to yield, that failed to obey a direct order, and 09:45:09
6 everything now is becoming height awareness and officer safety
7 by twofold again.

8 Q. How did the -- how was your judgment affected by the two
9 other men coming out, yelling the F word at you, telling you to
10 leave? How did that affect your judgment on controlling the 09:45:28
11 situation?

12 A. Immensely, because now I had to worry about whether they
13 were going to come past the gates, whether I was going to have
14 a situation with them. I had a person that I had to detain and
15 keep in control, as well as now there was three or four other 09:45:40
16 things going on.

17 Q. Okay. What happened -- well, let me back up.

18 Did you forcibly remove this driver from the vehicle?

19 A. No.

20 Q. Did you ever somehow kick out his feet? 09:45:54

21 A. No. I walked him to the back of the vehicle, and that's
22 where he was handcuffed was in the back of the vehicle.

23 Q. Did you ever in any way somehow cause him to drop to one or
24 both of his knees?

25 A. No. He sat on the rear bumper of the vehicle. 09:46:12

1 Q. Okay. Did you at any time in any way push him, slam him,
2 or anywhere force him and his face against any part of the
3 black SUV?

4 A. No, I don't recall that at all.

5 Q. When you say you don't recall it, did it happen? 09:46:26

6 A. No, it didn't happen.

7 Q. Okay. Now, what happened after, Deputy, you placed Mr. --
8 excuse me, we haven't established that name yet -- the driver
9 of the SUV, the black SUV, you put him in cuffs. You've
10 detained him. What happened next? 09:46:43

11 A. At that point a -- they were still yelling out of the front
12 at us to the rear. Another deputy showed up behind me in a
13 vehicle, car, fully-marked patrol unit.

14 Q. Do you know who that deputy was?

15 A. That was Deputy Beeks. 09:46:59

16 Q. Okay.

17 A. And at that point we -- basically, I just stayed with the
18 occupant, the driver, and Deputy Beeks made a phone call and
19 was on the phone with Deputy Armendariz to find out the whole
20 situation and what exactly occurred. 09:47:13

21 Q. And what happened then?

22 A. After we've got the information from Deputy Armendariz, we
23 went ahead and released the driver. I went ahead and took his
24 handcuffs off and kind of just talked to him for a couple
25 minutes, told him that, you know, this was just all done out of 09:47:29

1 officer safety. I didn't know, and we weren't aware of exactly
2 what happened until we talked to the primary officer, and at
3 that point he was released.

4 Q. Do you have any information as to why -- well, strike that.

5 Was any citation issued to the man?

09:47:44

6 A. No, there was not.

7 Q. Do you know why a citation was not issued?

8 A. I believe that came from Deputy Armendariz, and that he

9 felt at that point there had been not enough of a crime or not

10 enough of a situation to warrant and issue a citation for any

09:47:58

11 reason.

12 Q. Same thing as to an arrest. Do you have any information as
13 to why no arrest was made of this person?

14 A. No crime had been committed as far as I understood, and

15 that's why he was not arrested.

09:48:10

16 Q. Okay. Now, sir, the evidence is going to show that there

17 was another occupant in the vehicle. Do you know anything

18 about what was occurring to her at this time?

19 A. No. On traffic stops like that type of situation, we try

20 to have them stay in the vehicle so that's one less person to

09:48:24

21 have to handle at the scene. That was enough going on with the

22 people in front, the driver, and the situation, to have

23 somebody else step out.

24 Q. I think I only have three more questions for you, then

25 we're going to sit down.

09:48:39

1 Did the race or ethnicity of this driver of the black
2 SUV play any role in your decision to remove him or ask him to
3 be removed from the black SUV?

4 A. No.

5 Q. Did the race or ethnicity of the driver of the black color
6 SUV play any role in your decision to move him back to the back
7 of the vehicle?

09:48:50

8 A. No.

9 Q. Did the race or ethnicity of the driver of the black SUV
10 play any role in your decision to detain him with handcuffs?

09:49:07

11 A. No.

12 MR. CASEY: Okay. Thank you, sir. No other
13 questions.

14 I pass the witness, Your Honor.

15 THE COURT: Hold on one second.

09:49:17

16 Cross-examination.

17 CROSS-EXAMINATION

18 BY MS. LAI:

19 Q. Good morning, Deputy.

20 A. Good morning, ma'am.

09:49:35

21 Q. As your lawyer asked you, on March 28th, 2008, you were
22 working the saturation patrol in North Phoenix?

23 A. Yes, ma'am.

24 Q. And since you were working the saturation patrol, it's true
25 that any stop or arrest you made on that saturation patrol

09:49:49

1 would be counted in the statistics for that patrol, correct?

2 A. I believe so. I wasn't with the statistic. I didn't -- I
3 didn't handle the statistics area of it.

4 Q. If you made an arrest on the patrol it would be counted
5 towards the total arrests for that patrol?

09:50:04

6 A. I believe so.

7 Q. Okay. And if you made a stop on that patrol, it would be
8 considered part of the patrol?

9 A. I would believe so.

10 Q. And on that day you responded to a radio communication from
11 Deputy Armendariz, you testified?

09:50:14

12 A. I'm sorry, I didn't know that was -- is that a question?

13 Q. You just testified on that day you -- the reason you
14 responded to the scene was because there was a radio
15 communication from Deputy Armendariz, correct?

09:50:32

16 A. Yes, ma'am.

17 Q. When you arrived at Deputy Armendariz's location, the
18 vehicle that you eventually stopped had already left the gas
19 station, correct?

20 A. Correct, it was pulling out as I was pulling in.

09:50:43

21 Q. It was driving south on Cave Creek Road, correct?

22 A. Yes, ma'am.

23 Q. Cave Creek Road runs north-south?

24 A. Yes, ma'am.

25 Q. And the gas station is on the corner with Nisbet Road?

09:50:53

1 A. I believe so.

2 Q. Nisbet Road runs east-west, correct?

3 A. Yes, ma'am.

4 Q. You didn't encounter that vehicle until another 50 feet or
5 further south on that road, correct?

09:51:06

6 A. Correct, on Cave Creek Road.

7 Q. And that would have been approximately 75 feet from the
8 intersection with Nisbet Road?

9 A. I'm not sure the feet from the intersection at all.

10 Q. It was 50 feet further down from your location, you recall
11 that?

09:51:25

12 A. Okay.

13 Q. When you arrived, Deputy Armendariz gestured towards the
14 vehicle?

15 A. Yes, ma'am.

09:51:37

16 Q. You understood from that gesture he wanted you to follow
17 the vehicle and stop it?

18 A. Along with his voice.

19 Q. You didn't observe the vehicle commit any crime, did you?

20 A. No, I was going off of Deputy Armendariz's.

09:51:51

21 Q. Did you observe the vehicle commit a traffic violation?

22 A. After I pulled -- after I pulled behind him or before that?

23 Q. Before you decided to stop the vehicle you didn't observe
24 the vehicle commit any traffic violation, correct?

25 A. No.

09:52:07

1 Q. The information you had about this vehicle was that it was
2 headed southbound and Deputy Armendariz wanted you to stop it,
3 correct?

4 A. That's correct. He pointed to it and he voiced, Go after
5 the black SUV. 09:52:18

6 Q. No other -- no other information, correct?

7 A. Correct.

8 Q. And Deputy Armendariz hadn't said over the radio that the
9 vehicle or the vehicle occupants had committed any crime,
10 correct? 09:52:31

11 A. No, he did not.

12 Q. Now, you say that Deputy Armendariz used the words, Go get
13 the black SUV?

14 A. Correct.

15 Q. And he said that to you verbally, not over the radio? 09:52:39

16 A. He was yelling that from his location.

17 Q. He yelled that from the gas station?

18 A. Right, as I pulled in.

19 Q. He didn't say that over the radio?

20 A. Not that I'm aware of. 09:52:51

21 Q. Are you sure of that?

22 A. I'm not sure of that. I didn't look at the radio call.

23 Q. Is it possible he could have said it over the radio?

24 A. It's possible.

25 Q. You gave a deposition in this case in 2010. Do you recall 09:53:03

1 that?

2 A. February 15th, yes.

3 Q. And at that deposition you took an oath to tell the truth?

4 A. Yes.

5 MS. LAI: Okay. Your Honor, may I approach the
6 witness with a copy of the deposition?

09:53:19

7 THE COURT: You may.

8 BY MS. LAI:

9 Q. Deputy, just bear with me a moment while I find the page.

10 If you could turn to page 73 of your deposition
11 transcript. If I could direct your attention to lines 1
12 through 12 of page 73.

09:53:45

13 A. Okay.

14 Q. Do you see where it starts:

15 "Okay. And when he said the black SUV that just left,
16 he said that to you --"

09:54:08

17 A. Correct.

18 Q. And you answered: "Headed southbound."

19 "QUESTION: Headed southbound.

20 He said that to you in person, not over the radio?

09:54:18

21 "ANSWER: In the radio.

22 "QUESTION: In the radio?

23 "ANSWER: Yeah, I heard it in the radio."

24 A. Okay.

25 Q. Okay. So you didn't have a conversation with Deputy

09:54:27

1 Armendariz in person?

2 A. No, I never stopped.

3 Q. Okay. And that, the testimony you gave in your deposition
4 is the testimony you stand by today?

5 A. I believe so, yes.

09:54:38

6 Q. So if we listen to the radio transmission, we would hear
7 Deputy Armendariz describing the back -- black SUV headed
8 southbound on the radio?

9 A. I believe so. At that point in time everything was
10 frantic, so I'm pretty sure he either said it over the radio or
11 loud enough where I could hear it.

09:54:52

12 Q. Now, are you aware that Deputy Armendariz told the vehicle
13 occupants to leave the gas station?

14 A. No, I was not aware what their conversation was before I
15 got there.

09:55:04

16 Q. If you're not aware today, certainly at the time of the
17 stop you couldn't have been aware of that, correct?

18 A. Correct.

19 Q. And did you know that deputy -- did you know for sure that
20 Deputy Armendariz was patrolling alone that day?

09:55:15

21 A. No, I don't know enough about each and every unit that was
22 out there at all.

23 Q. So when you heard the transmission over the radio, you
24 didn't know whether he was alone, correct?

25 A. Correct.

09:55:28

1 Q. All right. And Deputy Armendariz, you testified, was
2 speaking in a faster, you said a faster transmission over the
3 radio?

4 A. That would be correct.

5 Q. Would it be possible that he was speaking with the vehicle
6 occupants?

09:55:38

7 A. No.

8 Q. It's not possible that he spoke to the vehicle occupants at
9 the gas station?

10 A. Not when he was on the radio at the same time.

09:55:48

11 Q. Well, if he was -- if he needed to put -- to say something
12 over the radio while he was speaking to them, wouldn't that
13 explain why he had to put in a faster transmission?

14 A. I would only be speculating on what he does when he's on
15 the radio when he had the occupants in front of him. I don't
16 know what was going on at that time, I wasn't there.

09:56:02

17 Q. Now, going back to Cave Creek Road, when you first spotted
18 the vehicle that Mr. Nieto and Ms. Meraz, who were the vehicle
19 occupants, you eventually learned, when you first spotted that
20 vehicle it was traveling in the number 1 lane, correct?

09:56:24

21 A. That would be correct.

22 Q. That's the lane that's on the left closest to the center
23 divider?

24 A. That's correct.

25 Q. In other words, the left turn lane?

09:56:31

1 A. No, the left travel lane. There wasn't a turn lane there.

2 Q. If an individual wanted to turn left at some point on the
3 road, he would certainly want to be in that lane, correct?

4 A. Using his turn signal, yes.

5 Q. Okay. As soon as you felt you were close enough to where
6 he could see you were a law enforcement officer, that's when
7 you signaled to pull him over?

09:56:46

8 A. Yes, ma'am.

9 Q. Okay. And so you didn't signal to pull him over
10 immediately; you needed to get close enough to pull him over,
11 correct?

09:56:56

12 A. Oh, I could make eye contact with him so he'd know who I
13 was with the lights and the siren.

14 Q. And if that -- that vehicle did pull over about 300 feet
15 further down the road, correct?

09:57:08

16 A. Correct.

17 Q. Can you estimate how fast the vehicle was traveling?

18 A. No, not at that time. I was watching the vehicle.

19 Q. All right. And you've been a deputy for quite some time
20 now?

09:57:20

21 A. Yes, ma'am.

22 Q. Okay. For the years that you were on your motor unit, you
23 didn't have a speedometer on that motor unit?

24 A. Absolutely.

25 Q. Correct?

09:57:26

1 A. Yes, you do.

2 Q. Okay. You do have a speedometer?

3 A. Yes, you do have a speedometer --

4 Q. So you do have a way --

5 A. -- and a tachometer.

09:57:33

6 Q. You do have a way to measure the speed of the -- how fast a
7 vehicle is driving?

8 A. In the short distance you're not measuring the speed,
9 you're keeping an eye on the vehicle, 'cause your

10 officer safety at this point has been endangered because the

09:57:45

11 vehicle's not yielding to the right-of-way of when you're

12 trying to pull the vehicle over.

13 Q. I'm not asking on that situation, but in regular patrol if

14 you have a speedometer, you have a way to measure the speed

15 that a vehicle's traveling, correct?

09:57:56

16 A. If you pace a vehicle approximately a quarter of a mile,
17 yes.

18 Q. In all your years as a deputy, you would be able to judge

19 how fast a vehicle was driving, correct?

20 A. In a longer distance, yes.

09:58:07

21 Q. Now, if the vehicle was driving approximately 20 miles per
22 hour, traveling 300 feet, that would take about 10 seconds to
23 travel that distance?

24 A. Approximately.

25 Q. Okay. If a vehicle has a signal light on, that means it's

09:58:19

1 about to pull over, correct?

2 A. Correct.

3 Q. It understands you're there if you're trying to pull it
4 over?

5 A. If it has a signal, it understands I'm there?

09:58:29

6 Q. Correct.

7 A. Yes.

8 Q. Now, you mentioned that the vehicle pulled over to the left
9 and not to the right?

10 A. That's correct.

09:58:43

11 Q. That's not unusual, though, in your experience, is it?

12 A. It's not unusual for them to stop in the middle of the
13 road, either, but the norm for the law states that you need to
14 yield to the right-of-way, come to a complete stop.

15 Q. In your experience, cars do pull over to the left when
16 you're trying to pull them over?

09:58:57

17 A. They pull over to the left, but not into some driveway and
18 keep the car running.

19 Q. In your experience, cars pull over to the left when you're
20 trying to pull them over?

09:59:08

21 A. Sometimes.

22 Q. When you had the vehicle pulled over, you approached from
23 the driver's side?

24 A. The rear of the driver's side.

25 Q. You said you could see the driver talking on his cellphone?

09:59:16

1 A. Yes, ma'am.

2 Q. You could see his eyes?

3 A. Yes, he was looking at me.

4 Q. You could also observe there was a passenger?

5 A. Not from the driver's side mirror.

09:59:24

6 Q. Okay. Focusing on the driver, if you could see his eyes,
7 presumably you could see his face?

8 A. Pretty much, yes.

9 Q. You could see his race?

10 A. You could see somebody in the vehicle, yes.

09:59:39

11 Q. You could see his skin color, you could observe it,
12 correct?

13 A. No, 'cause it was slightly tinted.

14 Q. Okay. So you couldn't see his facial features?

15 A. I couldn't see the color of his skin, if that's what you're
16 looking for.

09:59:48

17 Q. You couldn't tell that the driver was Hispanic?

18 A. Not till I was completely up on the vehicle and had the
19 driver's door open.

20 Q. Okay. So before you opened the driver door you're telling
21 me you couldn't see through the window and see the driver's
22 race?

09:59:58

23 A. All I could see was his eyes at that point, 'cause he kept
24 leaning over looking at me going back and forth and bobbing.

25 Q. Can you please answer the question. You're telling me you

10:00:10

1 couldn't see the driver's race while you were looking through
2 the window at his face and his eyes?

3 A. From behind the vehicle, no.

4 Q. You couldn't see -- you could see his face, but you could
5 not see his race. Is that your testimony? 10:00:22

6 A. Yes.

7 Q. Okay. And if the driver was talking on the cellphone he
8 had one phone on his -- he had one hand on the phone, correct?

9 A. That would be, yes.

10 Q. Okay. Now, your testimony is that you were concerned for
11 officer safety? 10:00:34

12 A. Yes.

13 Q. And you didn't draw your weapon at any time during the
14 stop?

15 A. No, I did not. 10:00:47

16 Q. Okay. Now, you removed the driver out of the vehicle,
17 correct?

18 A. I assisted the driver out of the vehicle.

19 Q. Okay. You put your hands on him --

20 A. On his arm. 10:01:00

21 Q. -- as he -- as he was coming out of the vehicle, correct?

22 A. Yes, I did.

23 Q. But did you do that immediately?

24 A. Not until he was out of the vehicle completely, and then I
25 put my hand on his arm to control him. 10:01:09

1 Q. Okay. You opened the door to take him out of the vehicle,
2 correct?

3 A. Correct.

4 Q. Did you do that immediately as you approached?

5 A. No.

10:01:17

6 Q. You waited?

7 A. Yes.

8 Q. Okay. You waited until he got off the phone, correct?

9 A. Correct, I had asked him to get off the phone.

10 Q. Okay. And you waited until after he finished the phone
11 call to open the door and take him out of the vehicle, correct?

10:01:28

12 A. That would be correct.

13 Q. At that point you put your arm on him and you removed him
14 from the vehicle, correct?

15 A. No.

10:01:39

16 Q. You didn't remove him from the vehicle?

17 A. I didn't put my arm on him. I put my hand on his arm and
18 assisted him out of the vehicle to have control of him.

19 Q. Okay. You took his arm and, as you say, assisted him out
20 of the vehicle.

10:01:53

21 A. That would be correct.

22 Q. Okay. You handcuffed him?

23 A. Not till we got to the back of the vehicle.

24 Q. You remember that clearly, that you didn't handcuff him
25 until he was at the back of the vehicle?

10:02:05

1 A. That's correct.

2 Q. He was not handcuffed on the ground or when he was placed
3 against the vehicle?

4 A. He was never placed on the ground or placed against the
5 vehicle.

10:02:15

6 Q. You never placed him against the vehicle?

7 A. No, ma'am.

8 Q. Okay. Are you sure of that?

9 A. Yes, ma'am.

10 Q. Okay. Please turn to page 81 of your deposition.

10:02:23

11 At the bottom there, line 24, do you see that?

12 A. Yes.

13 Q. Going to the top of page 82. Do you see where it says:

14 "QUESTION: Was Mr. Nieto -- did you place Mr. Nieto
15 against the car when you removed him from the vehicle?"

10:02:58

16 On the next page:

17 "ANSWER: I believe so."

18 A. Yes, I see that.

19 Q. Did you place him against the car?

20 A. It might have been in the back of the vehicle where he sat
21 down against the bumper he was placed, but if you read farther
22 up you'll see that we walked him to the back of the vehicle
23 first.

10:03:09

24 Q. You placed him against the vehicle, though.

25 A. As he sat down, yes.

10:03:20

1 Q. You placed Mr. Nieto against the car when you removed him
2 from the vehicle, correct?

3 A. Once he was in the back of the vehicle, as I stated
4 earlier.

5 Q. Now, you testified about some individuals coming out of the 10:03:36
6 shop?

7 A. Yes, ma'am.

8 Q. They were approaching you?

9 A. They were.

10 Q. They were trying to speak to you? 10:03:47

11 A. I don't recollect they were speaking to me. They were
12 yelling at me; they weren't speaking to me.

13 Q. They were trying to tell you about their family members
14 that you had stopped, correct?

15 A. They said nothing about a family member. 10:03:59

16 Q. You thought they were threatening?

17 A. Yes, I did.

18 Q. They weren't carrying any weapons, though, however?

19 A. I don't know if they were or weren't. I was looking at
20 their facial expressions and trying to control my situation 10:04:07
21 where I was at with my occupant of the drivers.

22 Q. You were looking at their facial expressions?

23 A. Yes.

24 Q. You weren't looking at their hands?

25 A. I was looking everywhere at that time. 10:04:15

1 Q. You didn't look at their hands to see if they had any
2 weapons?

3 A. Again, I was looking everywhere at that time.

4 Q. But you just testified your attention was to their face?

5 A. Their face and their motions and their direction. 10:04:27

6 Q. Okay. And they were wearing mechanic's uniforms?

7 A. Yeah, looks like they were wearing blue shirts with names
8 on it.

9 Q. So you could observe that they were wearing blue shirts
10 with names on them in the commotion that was occurring? 10:04:38

11 A. Yes.

12 Q. Okay. And you looked at their face?

13 A. Yes, and their direction of travel.

14 Q. And you could see that they were Hispanic, correct?

15 A. I didn't make a decision whether they were Hispanic or not, 10:04:50
16 but yes, they were Hispanic.

17 Q. You could observe their facial appearance?

18 A. Yes.

19 Q. Now, you eventually released Mr. Nieto?

20 A. That's correct. 10:04:58

21 Q. You released him without charges?

22 A. That's correct.

23 Q. Without any charges, without any citation?

24 A. Yes.

25 Q. And you say somebody spoke with Deputy Armendariz and said 10:05:06

1 that there was -- they learned from Deputy Armendariz no crime
2 had been committed?

3 A. That's correct.

4 Q. Was that person Deputy Beeks?

5 A. I believe so. 10:05:20

6 Q. Okay. You say Deputy Beeks didn't arrive at the scene
7 until after Mr. Nieto had been handcuffed and moved to the back
8 of the vehicle?

9 A. I believe he was there just at -- just as I was bringing
10 him to the back. 10:05:32

11 Q. Okay.

12 A. I believe so.

13 Q. Deputy Beeks didn't arrive when the -- when the driver was
14 still in the vehicle, correct?

15 A. Not that I know of. I don't remember who was actually
16 behind me or exactly when he showed up. 10:05:36

17 Q. But you saw that he arrived later, that was your testimony,
18 correct?

19 A. Correct.

20 Q. Okay. Now, earlier you -- well, you're familiar with the
21 term "zero tolerance"? 10:05:45

22 A. Correct.

23 Q. Okay. That was a policy that was adopted on some Sheriff's
24 Office sweeps?

25 A. Correct. 10:06:01

1 Q. And according to you, that includes if somebody commits a
2 traffic violation, it's mandatory to issue a citation, correct?

3 A. That's correct.

4 Q. And if somebody commits a crime, it's mandatory to make an
5 arrest, correct?

10:06:15

6 A. Correct.

7 Q. If there's any probable cause to believe that somebody has
8 committed any kind of crime, you would arrest that person
9 because it's a zero tolerance policy, correct?

10 A. That's correct.

10:06:24

11 Q. And there was a zero tolerance policy, according to you, in
12 effect during that saturation patrol?

13 A. That's correct.

14 Q. That was the first sweep, in fact, that you participated in
15 where this instruction was given?

10:06:35

16 A. Yes, ma'am.

17 Q. That policy requires that no person will be excused if any
18 law has been broken, correct?

19 A. That's correct.

20 Q. So if the driver or the passenger of that vehicle had
21 committed any violation of the law, they would have been cited
22 or arrested, correct?

10:06:45

23 A. Correct.

24 Q. They would not have been excused under the zero tolerance
25 policy, correct?

10:06:59

1 A. That's correct.

2 Q. Now, you're aware MCSO never conducted an internal
3 investigation into this incident?

4 A. I believe so. I have no idea what they did with the
5 situation.

10:07:08

6 Q. To your knowledge, no one was required to file a use of
7 force report?

8 A. I don't know what the other officers, if they were talked
9 to or not. There was no use of force done at that point.

10 Q. Okay. Guns being drawn, that's not a use of force?

10:07:20

11 A. I didn't have anything drawn, so I would not be involved in
12 that if there was any type of investigation made on that.

13 Q. To your knowledge, none of the other officers filed use of
14 force reports?

15 A. As far as I'm aware of, I do not have any knowledge of them
16 filing a report.

10:07:34

17 Q. You were never questioned by anyone at MCSO about this
18 incident, correct?

19 A. No, ma'am.

20 Q. Now, at the March 2008 patrol there was a preoperation
21 briefing?

10:07:43

22 A. Yes.

23 Q. Am I correct that you weren't provided with any information
24 about specific criminal activity to look out for at this

25 briefing?

10:07:56

1 A. Right.

2 Q. And this was the same on the other saturation patrols that
3 you've participated in, as far as you can remember?

4 A. Yes, ma'am.

5 Q. You did learn at the preoperation briefing, however, that
6 the operation was conducted in response to complaints, correct? 10:08:04

7 A. As far as I know, that's what the initial reason why we'd
8 be in the areas that we were in, because of complaints from
9 citizens.

10 Q. Okay, complaints from citizens. You heard that at the
11 operation briefing, correct? 10:08:20

12 A. Correct.

13 Q. And when you participate on an operation you sign in on the
14 sign-in roster?

15 A. Yes, ma'am. 10:08:32

16 Q. You don't know of any patrols where you participated but
17 didn't sign in, correct?

18 A. No, ma'am.

19 Q. Now, does the zero tolerance policy also apply to traffic
20 stops, the decision to stop a vehicle? 10:08:43

21 A. On the crime suppressions?

22 Q. Correct.

23 A. I believe so.

24 Q. And so if you see any vehicle committing any kind of moving
25 or equipment violation, you would have to stop -- it would be 10:08:54

1 mandatory to stop that vehicle?

2 A. Yes, ma'am.

3 Q. Okay. But you can't stop every vehicle on the road with a
4 traffic or equipment violation, correct?

5 A. Not enough. Not enough vehicles to stop everybody for
6 traffic violations that are on the road today. 10:09:05

7 Q. As an officer, it would be physically impossible to stop
8 every vehicle on the road that's violating the law, correct?

9 A. That's correct.

10 Q. Officers have to exercise some discretion? 10:09:19

11 A. Yes.

12 Q. And some types of violations are considered less serious
13 from a public safety perspective than others?

14 A. Correct.

15 Q. For example, a small crack in the windshield would be
16 considered less serious from a public safety perspective than
17 others? 10:09:27

18 A. Depending on the location of where the crack is at.

19 Q. Okay. And if the crack is, in your judgment, not a serious
20 crack, or there's nothing impairing the driver's vision, you
21 might not cite that -- that driver, correct? 10:09:41

22 A. Provided that's the only violation on the vehicle.

23 Q. Okay. And you might not stop that driver, correct, on
24 regular patrol?

25 A. That's correct. 10:09:53

1 Q. A turn signal being -- lights being out, that's an example
2 of a violation that's considered less serious?

3 A. No, that's considered serious.

4 Q. A turn signal light being out?

5 A. Not indicating which direction you're going, you just make 10:10:07
6 the movement into another lane causing an accident is serious.

7 Q. You didn't testify at your deposition that a turn signal
8 light being out is considered a less serious violation than
9 others?

10 A. We also didn't talk about whether it caused an incident or 10:10:25
11 whether there was a violation in great cause.

12 Q. Okay. Would you please turn to page 20 of your deposition.

13 A. Okay.

14 Q. Can you start on line -- just direct your attention to line
15 21, and I'm going to the top of page 21. 10:11:00

16 Do you see where it says:

17 "QUESTION: Are there other equipment or moving
18 violations that you consider typically less serious and
19 presenting less of a danger to the public, and, therefore, you
20 might not stop that vehicle if you observed a violation? 10:11:15

21 "ANSWER: Yes.

22 "QUESTION: And can you give me some examples of
23 those?

24 "ANSWER: Maybe a turn signal light out.

25 "QUESTION: Any others? 10:11:24

1 "ANSWER: Nothing off the top of my head."

2 A. Okay.

3 Q. Was that your testimony?

4 A. Yes, it was.

5 Q. Do you stand by it today?

10:11:30

6 A. Yes, I do.

7 Q. Okay. Failing to signal a lane change, that's a moving
8 violation that might considered less serious than others?

9 A. Yes.

10 Q. Now, you're familiar with the CAD database, correct?

10:11:40

11 A. CAD database?

12 Q. The Computer Automated Dispatch database?

13 A. Yes.

14 Q. Do you use that yourself?

15 A. Yes, I have.

10:11:56

16 Q. You're familiar with what the final disposition codes are?

17 A. Yes, I am.

18 Q. In the CAD, a disposition code of 7 means a citation was
19 issued?

20 A. That would be correct.

10:12:07

21 Q. And 5 means that no violation occurred or that no citation
22 was issued, correct?

23 A. The call was clear.

24 Q. No violation occurred or no citation was issued, correct?

25 A. The call was just cleared. It doesn't mean that a citation

10:12:16

1 won't be issued later.

2 Q. It doesn't mean that no citation was issued on the stop?

3 A. Correct.

4 Q. Does it mean that or does it not?

5 A. Nothing was given at that time.

10:12:26

6 MS. LAI: Okay. Thank you very much. I have no
7 further questions.

8 THE COURT: Actually, I have a few, Ms. Lai. And so
9 consistent with my practice, I will allow you to ask follow-up
10 before we return to Mr. Casey for redirect.

10:12:42

11 EXAMINATION

12 BY THE COURT:

13 Q. Did you participate in other saturation patrols besides the
14 saturation patrol on March 27 and 28 in -- that you've been
15 discussing?

10:13:17

16 A. Yes, sir.

17 Q. How many other saturation patrols did you --

18 A. I believe there was either two or three other saturation
19 patrols.

20 Q. Do you remember the locations that you participated in?

10:13:22

21 A. I can -- one was in the city of Guadalupe, and I believe
22 the other one was in Buckeye.

23 Q. And I believe in this saturation patrol did you participate
24 in both days of that saturation patrol?

25 A. I don't recall whether I was both or just single.

10:13:42

1 Q. Do you recall whether you participated for the full length
2 of the day when you participated?

3 A. Yes, I did.

4 Q. And if you participated on both days, would you have
5 participated the full length of the operation on both days?

10:13:59

6 A. I believe so. You would have been required to.

7 Q. That would have been a requirement?

8 A. Yeah, to put in your hours.

9 Q. All right. Now, was there a briefing -- I think you
10 indicated in testimony to Ms. Lai that there was a briefing on
11 the date of the 28th.

10:14:10

12 A. Right, there's usually a briefing at the beginning of each
13 one.

14 Q. I'm sorry?

15 A. There's usually a briefing at the beginning on each one of
16 them.

10:14:20

17 Q. Okay. On the beginning of each operation --

18 A. Yes.

19 Q. -- or the beginning of each day?

20 A. Each day.

10:14:26

21 Q. All right. And did you attend the briefing at the
22 beginning of all of the days in which you participated in a
23 patrol?

24 A. Yes, I did.

25 Q. Okay. Now, do you recall where the briefing was --

10:14:33

1 briefing took place?

2 A. It's usually at the center of the command post, and that
3 varies from place to place to place, where we set up the
4 command post where the people would be brought in to be booked.

5 Q. All right. So it would be like a vacant lot in which the
6 sheriff had set up operations with various mobile facilities?

10:14:49

7 A. Yes, sir.

8 Q. Do you recall who gave the briefing?

9 A. I do not recall who, exactly. It could have been a
10 lieutenant, could have been a sergeant, one of those two.

10:15:05

11 Q. You don't recall?

12 A. Not exactly who the name was.

13 Q. You don't recall who gave the briefings in this case?

14 A. No, I do not.

15 Q. Do you recall who gave the briefings in any other instance?

10:15:13

16 A. They varied every time.

17 Q. So you never had the same officer give you -- or you don't
18 recall having the same officer give you the briefings more than
19 once in any of the saturation patrols in which you
20 participated?

10:15:29

21 A. I believe Lieutenant Sousa did twice on our briefings, but
22 I'm not a hundred percent sure, and then a sergeant would also
23 tail onto that and make sure he'd say what he had to say.

24 Q. All right. How long did these briefings take?

25 A. They'd take probably, speculating, 20 minutes or so.

10:15:46

1 Q. All right. And they were held in this vacant lot or where
2 you'd set up operations?

3 A. Correct, everybody would attend.

4 Q. And everybody was required to attend?

5 A. Absolutely mandatory. 10:16:01

6 Q. Would you sign up -- would you sign up and sign in to
7 reflect your attendance?

8 A. Yes, sir.

9 Q. And would that be the sign-in sheet?

10 A. Yes, sir. 10:16:07

11 Q. All right. What was your patrol assignment on March 27th
12 and 28th?

13 A. I was a motor unit, 624 David.

14 Q. And were you assigned a particular division?

15 A. At that point I was assigned to the motors unit. We only 10:16:27
16 had four motor units at that point in the sheriff's department,
17 and it wasn't like a specialty unit other than just motors,
18 strictly motors, which we did moving violations, accidents, and
19 those things, DUI task force, things of those natures.

20 Q. All right. Were you given any materials that you recall at 10:16:47
21 either -- at any of the briefings?

22 A. The only thing we were given was the initial sheet of the
23 date, the time, and remarks to make sure that there was
24 absolutely no racial profiling. In bold letters I remember
25 that exclusively at the bottom of it, the sheet. Make sure 10:17:13

1 there was absolutely no racial profiling of any kind, and that
2 was it. Just the location and the areas that had the heavy
3 problems in, and they wouldn't state exactly what the problems
4 were, whether it was traffic, speeding, accidents, DUIs, but
5 just the areas to be aware of the location.

10:17:30

6 Q. All right. And so there would be a statement at the bottom
7 of the sheet "no racial profiling"?

8 A. Absolutely.

9 Q. Now, what did that mean to you?

10 A. To me there was no profiling. You don't just pick on
11 the -- the Chinese, the Americans, the whites, the blacks, the
12 browns, the greens. Anybody and everybody who had a violation
13 was to be stopped; was to be cited; was to be pulled over.

10:17:39

14 Q. Something about -- and I'm a little confused, because I
15 think you said that -- that you didn't have discretion; if you
16 saw a violation, you had to pull him over and stop him.

10:17:57

17 A. Correct.

18 Q. And you had to give him a citation?

19 A. They were to be cited.

20 Q. Or arrested if --

10:18:05

21 A. Correct, if it was criminal.

22 Q. -- if it merited an arrest?

23 A. Yes, sir.

24 Q. But then I think you said to Ms. Lai -- and I'm sorry if
25 I'm mispronouncing your name, Ms. Lai -- that you couldn't

10:18:12

1 possibly stop everybody you see so you had to exercise some
2 discretion. Have I misunderstood?

3 A. Correct, you -- it would be literally impossible to stop
4 every single person there was that made a violation with the
5 amount of cars that go by, whether they were -- a taillight was
6 out, something of that nature. 10:18:30

7 Q. Is it fair to say that on most cars you could develop a
8 reason to stop them if you followed them for very long?

9 A. If you followed them, sure.

10 THE COURT: Kathleen, could you please hand the
11 witness Exhibit No. 82. 10:18:48

12 THE CLERK: (Handing).

13 THE WITNESS: Thank you.

14 THE CLERK: You're welcome.

15 BY THE COURT: 10:18:58

16 Q. That's a multiple-page document. I want to ask you about
17 several pages of it.

18 The first two pages look like they're an incident
19 action plan. Have you -- and it looks like, it's -- and I will
20 tell you this exhibit has been admitted into evidence. It
21 looks like it's an incident action plan for March 27 and March
22 28, 2008. Have you ever seen that before? 10:19:12

23 A. I believe that was what we had that day.

24 Q. Okay. So that was the document that was distributed to you
25 that told you you shouldn't racially profile? 10:19:30

1 A. Correct.

2 Q. Can you show me anywhere on that document where it says
3 you're not to racially profile?

4 A. That was voiced by them at the actual command.

5 Q. Okay. So you remember somebody saying, Don't racially
6 profile?

10:19:41

7 A. Correct.

8 Q. All right. So you were actually given a copy of this
9 document?

10 A. I believe so.

10:19:48

11 Q. Now, it says that the command post was at the northwest
12 corner of Cave Creek and Bell, but then it says "tentative."

13 Is that where you remember -- does that refresh your
14 recollection about where the command post was for this
15 operation?

10:20:01

16 A. Yes, it was on the northwest corner of Bell and Cave Creek.

17 Q. And then it says briefing time 1500 at command post?

18 A. Yes, sir.

19 Q. And so you would -- you believe you would have been there
20 at about 3 o'clock at the command post?

10:20:12

21 A. Yes, sir.

22 Q. And then it says patrol operations, HSU, ES Ops, SAU --

23 Do you see where I'm talking at the --

24 A. Yes, sir.

25 Q. -- bottoms of the document?

10:20:21

1 -- TOI, K-9, Lake Patrol, and Mountain Division
2 personnel --

3 A. Um-hum.

4 Q. -- as available.

5 Which one of those were you?

10:20:28

6 A. None. Motors.

7 Q. You were motors. So you were from a division that's not
8 listed on this document?

9 A. That's correct.

10 Q. Now, I do see where it says that all criminal violations
11 encountered will be dealt with appropriately. And so do you
12 believe you read that?

10:20:41

13 A. Yes, I did.

14 Q. If you would, would you please turn, then, to the third
15 sheet in that exhibit. And that talks about a stats sheet for
16 saturation patrol, and it looks like -- it looks to me like
17 it's a summary sheet for March 27, 2008.

10:21:07

18 A. Okay.

19 Q. Have you ever seen a summary like this before?

20 A. No, I do not.

10:21:25

21 Q. Did you keep records of all the stops -- did you have a
22 stat sheet in which you kept records of all the stops that you
23 made?

24 A. Yes, we turn those in.

25 Q. Do you know who you turn them in to?

10:21:34

1 A. To whichever deputy or person was at the desk when you came
2 back at the end of the night.

3 Q. All right. And so if you would have participated on March
4 27th, you would have done that, and if you would have
5 participated on March 28th, you would have done that as well. 10:21:50

6 A. Yes, sir.

7 Q. All right. If you'll turn now to -- five pages back into
8 the document, it looks like a personnel sign-in for Cave Creek
9 and Bell on 3-28.

10 Do you see that in the top right-hand corner? 10:22:04

11 A. Yes, sir.

12 Q. And it looks like it goes on for two pages.

13 I don't see your name there. Have I missed it?

14 (Pause in proceedings.)

15 THE WITNESS: No, I don't see it as well. 10:22:44

16 BY THE COURT:

17 Q. All right. Thank you.

18 Now, if you'll turn back several more pages, there's
19 another handwritten form, and it has on the top -- it's divided
20 up. It has names -- it has several columns. It has what looks 10:23:00
21 like name and date of birth. It has a column entitled Charge.
22 It has another column that looks to me like 287(g). Another
23 one that looks like PC. And another one that looks like
24 Arresting Deputy.

25 Do you see that form? 10:23:16

1 A. On which page, Your Honor? I'm sorry.

2 Q. If we start -- thank you. If we start with the exhibit --

3 A. Okay.

4 Q. Well, you see down in the lower right-hand corner where it
5 has MCSO and it has Melendres, then MCSO and a number? 10:23:30

6 A. Yes, sir.

7 Q. You see down in the bottom right-hand corner where there's
8 Melendres MCSO 001851?

9 A. Correct.

10 Q. That's the document, that's the page I'm looking at right
11 now. 10:23:40

12 A. Okay.

13 Q. And do you see those various columns?

14 A. Correct.

15 Q. And do you see up on the -- in the top left there's a
16 notation that say this is for 5-28-08? 10:23:46

17 A. Correct.

18 Q. Do you have any idea whose handwriting that is?

19 A. No, I do not.

20 Q. If we look down the Arresting Deputy column, we find your
21 name on 28 and 29. It looks like you arrested somebody
22 named -- well, I don't -- I don't know, but it looks like
23 Kikes. 10:23:58

24 Do you see that?

25 A. Yes, there's two in a row. 10:24:14

1 Q. There's two in a row, and it looks like they are -- whoever
2 wrote this is recording stops that was made by an arresting
3 deputy, Kikes.

4 A. Correct.

5 Q. Are you aware of any other Kikeses --

10:24:27

6 A. No.

7 Q. -- that operated on this saturation patrol?

8 A. Just one, Your Honor.

9 Q. All right. And so do you have any recollection on March --

10 or I think it was March 28th, I think that says 3-28-08, is

10:24:37

11 that your recollection?

12 A. Yes, sir.

13 Q. Do you have any recollection on March 28, '08, of arresting

14 somebody for -- well, looks like you were -- well, I'm not

15 going to say anything.

10:24:53

16 Do you have any recollection, does that help refresh
17 your recollection as to whether or not you arrested anybody on
18 March 28th, 2008?

19 A. No, that doesn't help me.

20 Q. All right. Do you see the name that is -- that is listed

10:25:04

21 as being arrested by the officer -- Deputy Kikes was Freddy

22 Apolinar Hernandez?

23 A. Correct.

24 Q. With a date of birth, looks like January 8th of '90?

25 A. Correct.

10:25:17

1 Q. And then if we look in the charge document -- the Charge
2 column, it says, looks to me like "failed to provide"?

3 A. Correct.

4 Q. And if we look in the 287(g) column it says "yes"?

5 A. Correct.

10:25:27

6 Q. And then if we look in the PC column it says "failure to
7 maintain lane"?

8 A. Correct.

9 Q. What does that -- does that mean anything to you, a failure
10 to maintain a lane?

10:25:37

11 A. Yeah, it's -- that means he wasn't driving in the lane he
12 was supposedly supposed to be driving in. He went over the
13 lane, went over the lines, came back, came back into another
14 lane, weaving.

15 Q. All right. And then it says Arresting Deputy, Kikes?

10:25:48

16 A. Yes, sir.

17 Q. Now, on the next entry -- that was line 28. You see line
18 29, looks like Marcos Martinez Lopez, with a date of birth
19 November 24th, 1982?

20 A. Yes, sir.

10:26:06

21 Q. And the charge, it looks like 287(g)?

22 A. Correct.

23 Q. And then the 287(g) column is obviously marked yes. And
24 then in the PC column we have it looks like PASS number 28,
25 which I interpret to mean "passenger" for number 28, is that

10:26:23

1 correct? Or do you have any recollection of that one way or
2 another?

3 A. I believe that was probably the passenger in the vehicle
4 for number 28, yes.

5 Q. Do you have any idea what the column PC means? 10:26:35

6 A. As far as passenger, number 28?

7 Q. Well, you see the top of the column it says PC?

8 A. Correct.

9 Q. And then we have various things here like cracked
10 windshield, window tint, passenger number 3, lane change 10:26:48
11 violation. Do you have any idea what PC would mean?

12 A. "Probable cause."

13 Q. Okay. So any recollection of arresting somebody based on
14 probable cause because they were a passenger in a car that you
15 cited for failure to maintain a lane? 10:27:06

16 A. It looks -- it looks like that I had the 287(g) come out to
17 my location and to speak to this gentleman, and that the
18 reason, being that he was arrested at the beginning, was
19 probably for failure to provide ID of any kind.

20 Q. You're talking about number 29 now, entry number -- 10:27:25

21 A. Right.

22 Q. -- 29?

23 A. Correct.

24 Q. Okay. You, of course, were not 287(g) certified at the
25 time? 10:27:36

1 A. No, sir, I was not.

2 Q. I think that's what you said?

3 A. Correct.

4 Q. So you said if this would be you, you would have had a
5 287(g) come out? 10:27:42

6 A. For translation.

7 Q. And what -- what basis would you have determined that you
8 were going to bring a 287(g) officer out?

9 A. There was many 287(g) officers working the suppression, and
10 it was the luck of the draw that it was a 287(g) that came to 10:27:58
11 my location that would have spoke Spanish and be able to
12 understand so he'll be able to translate for me, and at that
13 point he would have decided that the arrest would have been
14 made.

15 Q. There's no other arrests on this sheet that are indicated 10:28:11
16 the arresting deputy is Officer Kikes?

17 A. On that sheet or the next sheet?

18 Q. Well, it looks to me, and tell me if you interpret it
19 differently, like the next sheet, I was going to ask you about
20 this, is for March 27, so that would be for the day before? 10:28:29

21 A. Correct.

22 Q. And that does indicate that there was one arrest made by
23 Officer Kikes.

24 A. Right, line 17.

25 Q. And that is of a Francisco Raciél Garcia Soto? 10:28:37

1 A. I can't read the writing.

2 Q. It looks to me --

3 A. Better than me.

4 Q. Okay. But it's something like that?

5 A. Correct.

10:28:49

6 Q. And the date of birth, 12-20-87?

7 A. Okay.

8 Q. Well, yeah. That may or may not be; that's my attempted
9 interpretation. And the charge was failure to provide ID?

10 A. Correct.

10:29:02

11 Q. And 287(g) is yes.

12 A. Yes, sir.

13 Q. And then PC was?

14 A. Speeding.

15 Q. And then you're listed as the arresting deputy?

10:29:13

16 A. Correct.

17 Q. Would this lead you -- does this refresh your recollection
18 as to whether you participated on both the 27th and the 28th?

19 A. I believe so, Your Honor, I did.

20 Q. And do you have any recollection of making any other

10:29:24

21 arrests of any other persons or any other citations for any

22 other persons other than those that are listed on these sheets?

23 A. These look like they're just basically more -- more of

24 the -- all the arrests that were made.

25 Q. Sort of a summary sheet?

10:29:40

1 A. A summary, and not all the citations that were actually
2 given out.

3 Q. Okay. But how do -- the parole [sic], or the operations
4 look like they took place from 4 o'clock in the afternoon to
5 11 o'clock in the evening on both days, is that correct? 10:30:02

6 A. Yes, Your Honor.

7 THE COURT: Okay. I don't think I have any other
8 questions.

9 Ms. Lai?

10 MS. LAI: No further questions, Your Honor. 10:30:12

11 THE COURT: Mr. Casey?

12 MR. CASEY: Briefly, Your Honor. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. CASEY:

15 Q. Deputy, you were asked a question, or a series of questions 10:30:19
16 by plaintiffs' counsel about saturation patrols and a zero
17 tolerance. Do you remember those series of questions?

18 A. Yes, sir.

19 Q. You were also asked by the Court some questions about
20 discretions during traffic stops or the issuing citations. 10:30:34

21 Do you remember that?

22 A. Yes.

23 Q. Okay. Was the traffic stop you made of the black Suburban,
24 was that part of the saturation patrol?

25 A. No, it was not. 10:30:48

1 Q. What was it a part of?

2 A. That was no part of anything. That was just a violation
3 that had occurred in the parking lot at that time and something
4 had happened. So that was not part of the actual patrol that
5 day of what happened.

10:31:02

6 Q. Okay. And you testified earlier that that traffic stop and
7 everything was initiated by all the communications, the
8 experience that you had hearing -- let me rephrase the
9 question.

10 You made the traffic stop essentially in response to
11 information you gathered in response to a call for backup?

10:31:15

12 A. Correct.

13 Q. Does the saturation in that context -- if there was a zero
14 tolerance in place during saturation patrols at that time, did
15 that policy apply to this particular vehicle?

10:31:32

16 A. No, it did not.

17 Q. Did it apply to these particular people?

18 A. No.

19 Q. Okay. Now, let's turn now to the other thing that the
20 Court was asking you about, discretion during traffic stops.

10:31:39

21 If you are an officer, would you describe for us if
22 you -- if you see five cars driving by, all in excess of the
23 speed limit during a saturation patrol, how do you determine
24 which car you're going to pull over?

25 A. You -- you really can't. You have to -- at that point it's

10:32:04

1 just your best guess of who's either traveling the fastest or
2 who's endangering the public the most.

3 Q. Okay. If a single car goes by at an excessive rate of
4 speed and there's a zero tolerance in effect, what are you to
5 do then? 10:32:24

6 A. I will proceed to go after the vehicle.

7 Q. And let's go back where there's a multiple scenario where
8 you're on -- you're on Bell Road and you got five cars speeding
9 by, all of them would implicate the zero tolerance to pull
10 over. Do you personally ever try to determine anything about 10:32:39
11 the race, ethnicity, the demographics, anything about the
12 occupants of those vehicles in order to determine which one
13 you're going to stop out of the five?

14 A. No.

15 MR. CASEY: That's all the questions I have. Thank 10:32:58
16 you, Your Honor.

17 THE COURT: Thank you.

18 MS. LAI: Your Honor, if I may ask a couple of
19 questions of the witness.

20 THE COURT: I'm sorry, you may not. You had the 10:33:04
21 opportunity and you've surrendered it.

22 And I don't mean to be too harsh, but I am going to
23 hold strictly to the rules that I follow in the courtroom, and
24 that's what I'm going to do here.

25 Officer Kikes, we appreciate your testimony. You're 10:33:17

1 excused.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Thank you. We're going to take the
4 morning break. Please be back -- I'm going to have you be back
5 at five minutes to 11:00. 10:33:31

6 (Recess taken.)

7 THE COURT: Please be seated. Thank you.

8 Next witness.

9 MS. LAI: Plaintiffs call Manuel Nieto.

10 THE COURT: Mr. Nieto, please come right here to be 10:55:29
11 sworn.

12 THE CLERK: Right here. Can you please state and
13 spell your full name.

14 MR. NIETO: Manuel Nieto, Jr. M-a-n-u-e-l, N-i-e-t-o,
15 Jr. 10:55:49

16 THE CLERK: Thank you. Please raise your right hand.

17 (Manuel Nieto, Jr., was duly sworn as a witness.)

18 THE CLERK: Thank you. Please take our witness stand.

19 THE COURT: Please.

20 MANUEL NIETO, JR.,

21 called as a witness herein, having been duly sworn, was

22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. LAI:

25 Q. Good morning, Mr. Nieto. 10:56:27

1 A. Good morning.

2 Q. How old are you?

3 A. I'm 37 years old.

4 Q. Where do you live?

5 A. Arizona. Phoenix, Arizona. 10:56:32

6 Q. How long have you lived in Phoenix?

7 A. Twenty-one, twenty-two years.

8 Q. What do you do for work?

9 A. I'm an auto mechanic.

10 Q. Where do you work? 10:56:46

11 A. I work at Angel's Auto Repair.

12 Q. And who is the owner of Angel's Auto Repair?

13 A. My brother is.

14 Q. Did the shop at some time have a different name?

15 A. Yes, it did. 10:56:56

16 Q. What was that name?

17 A. Manuel's Auto Repair.

18 Q. And who was Manuel's Auto Repair named after?

19 A. My father.

20 Q. This is a family business? 10:57:05

21 A. Yes, it is, that's correct.

22 Q. Are you married, Mr. Nieto?

23 A. I am married. I have five kids and I have a beautiful

24 family, yes.

25 Q. Where were you born? 10:57:16

1 A. I was born in Chicago, Illinois.

2 Q. What is your citizenship status?

3 A. U.S. citizen.

4 Q. Do you have any felony convictions for the last 10 years?

5 A. Yes, I do. I have one.

10:57:28

6 Q. What was that for?

7 A. It was for burglary. I signed a plea bargain for burglary,
8 but it was a domestic dispute.

9 Q. Have you had any problems with the law since then?

10 A. No, I have not.

10:57:44

11 Q. Do you have an older sister?

12 A. I do have an older sister. Her name is Velia Meraz, and
13 she's right back there.

14 Q. Okay. Were you aware that on March 28th, 2008, that the
15 Maricopa County Sheriff's Office was conducting an operation in
16 the North Phoenix area?

10:58:03

17 A. Yes, I was, I was aware.

18 Q. How did you learn that?

19 A. Through the media, on the radio, word of mouth, customers
20 coming in and out of our shop. It was -- it was just out
21 there, patrol deputies just going up and down the street, so
22 yeah, I did have knowledge of it.

10:58:19

23 Q. Were you yourself stopped that day?

24 A. I was. I was stopped that day.

25 Q. About what time of day were you stopped?

10:58:34

1 A. It was about -- between 2:00 and 3:00, because that's when
2 we take our lunch break, so it was between 2:00 and 3:00.

3 Q. Where did you go on your lunch break?

4 A. We went to the gas station, which is right down the street
5 from our shop. We went to a buy some Gatorades and some
6 cigarettes, and that's where we first made contact with one of
7 the deputies. 10:58:53

8 Q. What did you see when you arrived at the gas station?

9 A. As I was driving to the gas station, I seen what appeared
10 to be a sheriff's deputy with two detainees sitting on the gas
11 pumps, and I just pulled into the parking spot. 10:59:14

12 Q. Whose car were you driving?

13 A. I was driving my sister's SUV.

14 Q. When you arrived at the gas station did you park in a
15 designated parking spot? 10:59:33

16 A. Yes, I did. Yes, I did. At that time when I pulled in, I
17 saw the deputy that I saw as I was pulling in walking towards
18 our vehicle.

19 Q. Were the windows rolled down?

20 A. Yes, they were rolled down. 10:59:48

21 Q. What happened after you -- after the deputy started walking
22 towards the vehicle?

23 A. The deputy walked towards the passenger side of the
24 vehicle, and my sister was sitting in the passenger side. He,
25 in an angry manner, I want to say yelling, said: You need to 11:00:08

1 leave now. My sister asked why, and he just repeated himself:

2 You need to leave now.

3 Q. You said earlier that the deputy had some people detained?

4 A. Yes, I did say that, he did.

5 Q. Did the deputy leave the detainees in order to speak to
6 you?

11:00:36

7 A. Yes. He walked from where he was at from the gas pump, the
8 detainees were sitting on the floor, and he walked from where
9 he was to our vehicle, yes, he did.

10 Q. Did your sister say anything else to the deputy?

11:00:49

11 A. He -- like I said, she asked him why. He said: You need
12 to leave now. You gotta get out of here. I'm gonna arrest
13 you. That's when I said: What did we do wrong? He said: You
14 two, you need to leave now or I'm gonna arrest you for
15 disorderly conduct.

11:01:14

16 At that point my sister asked him for his name and his
17 badge number. He gave her that information, very angry, very
18 upset, and at that point we just -- I started reversing.

19 Q. Now, when you pulled in did you have the radio on?

20 A. No, it was -- well, we pulled in. As soon as we got there
21 I turned the radio down or shut the vehicle off, one of the
22 two, but there was no music playing as we were conversating
23 with the -- with the deputy.

11:01:29

24 Q. All right. Did you ever get out of the car before you left
25 the gas station?

11:01:44

1 A. We were not given a chance to.

2 Q. Did you ever open the car door?

3 A. No, I did not.

4 Q. And you said you obeyed the deputy's order to leave the gas
5 station?

11:01:58

6 A. Yes. Yes. Yes, I did.

7 Q. When you were leaving the gas station, did you back out
8 onto Nisbet Road or Cave Creek Road?

9 A. I backed up into Nisbet Road the same way I came in.

10 Q. Where were you headed?

11:02:12

11 A. We were going back to our business. After the
12 officer said, You guys need to leave now, You need to leave now
13 or I'm gonna arrest you, arrest you for disorderly conduct,
14 those words were exchanged, I reversed into Nisbet, proceeded
15 to Cave Creek Road, put my signal light, turned left. Right
16 before I knew we were at our business, 'cause it's like right
17 down the street.

11:02:31

18 Q. Okay. What lane did you get in when you turned onto Cave
19 Creek Road?

20 A. I'm sorry. Repeat that?

11:02:44

21 Q. What lane did you get in when you turned onto Cave Creek
22 Road?

23 A. I turned -- I turned left, so I had to turn on the very
24 first lane going south. And within matter of seconds I have to
25 merge to the yellow lane because our shop is, like, right next

11:02:59

1 to the -- almost next to the gas market.

2 Q. Okay. What happened next?

3 A. I pulled -- I pulled up to the -- I pulled up to the front
4 of the shop. I hear sirens. I hear -- I see a motorcycle
5 officer in back of us. It was -- it was chaos. I pulled up. 11:03:22
6 I see more SUVs coming in back of our vehicle. They draw guns
7 on the vehicle. They pull my sister out, tell her to get out
8 of the vehicle.

9 At that time I'm on the phone with 911 trying to
10 explain my situation as to what's happening. The motorcycle 11:03:45
11 officer tells me to get out of the vehicle. I explained to him
12 I was on the phone with 911 and he said, I don't care who
13 you're on the phone with. Get out of the vehicle.

14 So the door was unlocked, he opened the door, pulled
15 me out, threw me to the ground, and within seconds I had two, 11:04:12
16 three other officers or posse members on top of me while they
17 were cuffing me.

18 Q. Do you remember the motorcycle deputy on Cave Creek Road
19 trying to pull you over?

20 A. Yes. 11:04:31

21 Q. Did you pull over?

22 A. I did pull over. Yeah, I did pull over. The only way I
23 could pull over was already me turning into our business.

24 Q. How is it that he indicated to you he wanted you to pull
25 over? 11:04:50

1 A. He was -- I heard on his mike and the sirens: Pull over.
2 Pull over. So as he's saying that on the mike, I'm already
3 with my signal light ready to turn into our business, 'cause,
4 like I said, it's -- it's feet. It's, like, right there.

5 Q. Why were you on the phone with 911?

11:05:10

6 A. Because I -- I was being harassed. I was -- I feared for
7 my -- for my life. I was first asked to leave from a
8 convenience store for no reason. When I see all -- when the
9 situation takes place at the shop with the guns drawn, all the
10 commotion going on, Get out of the car, I'm -- I'm -- I'm on
11 the phone with 911. I'm scared.

11:05:38

12 Q. When you were handcuffed, taken out of the vehicle,
13 handcuffed, and put against the vehicle, what was going through
14 your mind at the time?

15 A. It -- it's kind of hard to explain my feelings now that so
16 much time has passed by, but what I can tell you is that as I
17 told you when you first questioned me that if I have a prior
18 conviction, I do. I went to prison for three years. I got
19 released from prison February 28th, 2008. This incident
20 happened four weeks after, March 28th.

11:05:55

11:06:25

21 Me, as paying my debt to society, working for my
22 family, doing good, enjoying my family now that I'm out, for me
23 to be in handcuffs again for no reason, thinking my family's
24 going to be taken away from me, it -- it's -- it's horrible.

25 And -- and, again, that question you asked me, that's what was

11:06:52

1 running through my mind.

2 Q. Did they try to verify your license or identity, the
3 deputies?

4 A. They did. They asked me for -- if I had a driver's
5 license. I was handcuffed. I was able to pull my wallet out 11:07:05
6 of my back pocket. As soon as I pulled my wallet out, the
7 deputy got my wallet out of my hands and he took my driver's
8 license out and -- and verified myself, he verified my
9 information.

10 Q. Did your family see what was happening to you? 11:07:25

11 A. They did. My father and my brother seen all the commotion.
12 They were scared. They -- I looked and I could see them, like,
13 lost: What's going on? Why is my -- my son, why is my brother
14 on the floor? What did he do wrong? I could just see it in
15 their face. And whatever deputies or posse members were there 11:07:56
16 were keeping them away, like, Stand back. Stand back.

17 Q. Um-hum.

18 A. But it was a terrifying moment.

19 Q. Did anyone else there at the shop see what happened?

20 A. I was, like I said, cuffed. And after they took me to the 11:08:12
21 back I could see people at the shop, what customers that we had
22 there. There was my family there. And what I know after that
23 happened, that vendors were complaining 'cause they couldn't
24 get in and out of the shop. So yeah, there was -- there was
25 quite a few people there. 11:08:44

1 Q. Did the deputies ever tell you why they stopped you?

2 A. They -- when they verified my information, the deputy with
3 the motor -- with the motorcycle, he's the one that ver -- that
4 called in, I remember that clearly, ran my name, everything
5 came back good. He uncuffed me. They huddled up on the side 11:09:07
6 of the shop, they were just talking for a few minutes, and
7 everybody just got on their vehicle and just left.

8 Q. Did they issue --

9 A. I was never -- I was never said why I was stopped. They
10 never gave me a citation. They didn't arrest me. They just 11:09:25
11 left it at that.

12 Q. Did they ever apologize to you?

13 A. No, not at all.

14 Q. After the deputies left, did you try to go back to work?

15 A. I was at work. I didn't work. What I did, I -- first 11:09:39
16 thing I did, I wanted to file a complaint so I called 911 again
17 to let them know the situation. Through all that chaos they
18 had me jumping back and forth from the sheriff's department to
19 the Phoenix PD wondering what jurisdiction it was. And that I
20 recall, the last thing they told me, that a detective was going 11:10:12
21 to contact me back. To this date I have not got that phone
22 call from that -- that detective.

23 Q. And that was a detective with the Maricopa County Sheriff's
24 Office?

25 A. You know what? They had me jumping back and forth that I'm 11:10:24

1 not even sure if it was Maricopa or if it was the Phoenix PD.

2 Q. Mr. Nieto, do you believe you could be stopped again?

3 A. Yes, I actually do. I have not been stopped ever since the
4 incident, but I do believe I will be able -- they'll probably
5 stop me again. And if all this racial profiling does not stop, 11:10:50
6 that's my opinion, I think that my kids in the future will be
7 looking forward to the same thing and I'll be fearing for their
8 lives, yes.

9 MS. LAI: Thank you very much.

10 THE WITNESS: You're welcome. 11:11:08

11 THE COURT: If you can give me just a second --

12 MR. CASEY: Yes, Your Honor.

13 THE COURT: -- Mr. Casey.

14 Please proceed.

15 MR. CASEY: Thank you, Your Honor. 11:11:28

16 CROSS-EXAMINATION

17 BY MR. CASEY:

18 Q. Good morning, Mr. Nieto. How are you?

19 A. Good morning. I'm doing fine.

20 Q. I don't know if you'll remember me, but I met you at your 11:11:35
21 deposition some time ago.

22 A. Okay.

23 Q. Do you remember me?

24 A. You look familiar.

25 Q. Well, I lost a little weight. I got off the pizza and the 11:11:45

1 doughnuts, so I...

2 A. Okay.

3 Q. Mr. Nieto, I want to make sure that I'm understanding your
4 testimony clearly. You remember March 28, 2008, was on a
5 Friday, wasn't it?

11:12:05

6 A. I don't remember if it was on a Friday, but I know the
7 incident did happen March 28.

8 Q. You and your sister were going to decide to take your lunch
9 break, which was a late lunch break around 2 o'clock or so?

10 A. We always take a lunch break at 2 o'clock.

11:12:20

11 Q. So the answer to my question is yes, around 2 o'clock?

12 A. Yes, between 2:00 and 3:00, yes.

13 Q. And what you decided you folks were going to do was drive
14 down to the near QuikStop, a convenience mart nearby, to pick
15 up some cigarettes and Gatorades or drinks, right?

11:12:33

16 A. That's correct.

17 Q. And you actually were the driver in your sister's black,
18 what, Suburban?

19 A. It's a Suburban, yes.

20 Q. It's a black color?

11:12:46

21 A. Yes.

22 Q. It has window tinting, doesn't it?

23 A. Yes, it does.

24 Q. And your sister was riding in the right-front passenger
25 seat, also known as riding shotgun?

11:12:54

1 A. If you want to call it that, yes. Yes.

2 Q. All right. We're riding in the right-front passenger seat.
3 You're comfortable with that, right?

4 A. Yes.

5 Q. And so you folks drive in there and as you drove in there, 11:13:03
6 what you've told the Court is you see an MCSO deputy there with
7 other -- two other people, do you not?

8 A. Yes. Yes.

9 Q. And what you described for the Court is you saw what
10 appeared to be two people in detention or under arrest, but you 11:13:20
11 don't know whether they were cuffed or not.

12 A. There were two gentlemen on the gas pumps sitting down with
13 their hands behind their back and a deputy standing by them,
14 yes.

15 Q. All right. And what you said is you folks parked your car, 11:13:36
16 right?

17 A. Pulled up into the parking spot.

18 Q. Okay. You parked in the parking spot, and next thing you
19 know the deputy comes up to you, just he walks up to you,
20 doesn't he? 11:13:50

21 A. He left the -- left where he was at and walked towards our
22 vehicle, yes.

23 Q. And he left the two people that you saw sitting down with
24 their hands behind their back, didn't he?

25 A. Yes, he did, sir. 11:14:01

1 Q. And he came up to you and said, Get out, Leave right now,
2 something to that effect?

3 A. Came up to my sister's window and told her first, yes.

4 Q. Okay. And you -- and you hadn't said anything to him is
5 what you're telling us, true? 11:14:14

6 A. Not when he first walked up to the vehicle, no.

7 Q. All right. Before he ordered you to leave, you are telling
8 this Court under oath --

9 A. Um-hum.

10 Q. -- that you said nothing to him. 11:14:25

11 A. When he was speaking to my sister.

12 Q. Okay. No, I'm going to -- I'm going to rephrase this
13 question. I want --

14 A. Okay.

15 Q. -- you to focus just on my question. 11:14:35

16 A. Yes, sir.

17 Q. Before he says anything to you when he's walking up, you
18 had said nothing to the deputy, true?

19 A. True.

20 Q. Your sister had said nothing to the deputy, true? 11:14:46

21 A. True.

22 Q. Okay. The deputy leaves the two men you see sitting by the
23 gas pumps with their hands behind their backs and walks up to
24 your car, true?

25 A. Yes, sir. 11:15:01

1 Q. And he yells at you, doesn't he?

2 A. Not at me. At my sister first.

3 Q. He yells at your sister?

4 A. Yes.

5 Q. And he says: You gotta leave now or I'm going to arrest
6 you for disorderly conduct?

11:15:07

7 A. "You need to leave now."

8 Q. Okay.

9 A. My sister asked why.

10 Q. Okay. And what did he say in response?

11:15:16

11 A. "You better leave now. I'm going to arrest you for
12 disorderly conduct."

13 Q. And your sister, did she yell anything out of the car to
14 anybody?

15 A. She -- she said something to the effect after we were --

11:15:28

16 Can I clear that up so we won't have --

17 Q. Not yet, sir. Your lawyer will be able to ask you --

18 A. Ask me the question again, please. I'm sorry.

19 Q. At any time, from the point you pulled in until this
20 officer ends his conversation with your sister about leaving --

11:15:42

21 A. Um-hum.

22 Q. -- okay? And she asks why, and he says, Leave or I'm going
23 to disorderly conduct, did she yell anything at anyone before
24 that time?

25 A. She yelled -- she yelled out the window, Don't sign

11:15:57

1 anything. Just give him your name. After the fact she got his
2 badge number and his name, and we were pulling out.

3 Q. All right. So there's a little bit more to the story than
4 what you told us earlier, isn't there?

5 A. Can you be more specific? 11:16:15

6 Q. Sure. Your sister yelled something out the window, is what
7 I understand you're telling us, when you folks were driving
8 out, didn't she?

9 A. After we were leaving, yes.

10 Q. Okay. And would you tell the judge: What did she yell
11 out? 11:16:29

12 A. She, after -- when we were leaving she told the detainees
13 not -- you have the right not to sign nothing. Just tell him
14 your name.

15 Q. And did she do that in the English language or the Spanish
16 language? 11:16:42

17 A. I believe it was Spanish.

18 Q. Okay.

19 A. I believe it was Spanish.

20 Q. Did she yell at them, Don't speak till you get a lawyer? 11:16:49

21 A. I do not recall exactly.

22 Q. But she told them in Spanish, Don't sign anything, didn't
23 she?

24 A. After the officer told us to leave that we were leave -- we
25 were already backing up leaving. 11:17:03

1 Q. All right. Did your sister, as you're driving out, yell
2 any profanities at the officer?

3 A. No, sir. No, sir.

4 Q. Did she yell any profanities or vulgarities about
5 Sheriff Joe being an f'ing Nazi? 11:17:16

6 A. No. No, sir, not at all.

7 Q. Did you yell anything out the window?

8 A. No, I did not.

9 Q. Okay. All right. So in summary, you were asked to leave,
10 told to leave -- 11:17:27

11 A. Which I did.

12 Q. Okay. And you basically had done nothing.

13 A. Absolutely nothing.

14 Q. Okay. And the only -- the only thing that your sister had
15 done before she was told, Leave or you're going to be arrested 11:17:39
16 for disorderly conduct, was ask, Why do we have to leave?
17 That's all that happened, right?

18 A. Yes.

19 Q. Okay. Now, sir, you mentioned this earlier, but you do
20 agree with me, you have problems controlling your anger, do you 11:17:56
21 not?

22 MS. LAI: Objection. Are you referring to a
23 conviction?

24 THE COURT: I'm not going to allow speaking
25 objections. What's the basis of your objection? 11:18:07

1 MS. LAI: If Mr. Casey's about to go into the details
2 of the conviction --

3 THE COURT: I'm going to overrule the objection,
4 'cause I don't think that the question anticipates that.

5 MS. LAI: Okay.

11:18:19

6 BY MR. CASEY:

7 Q. Sir, you have trouble controlling your anger, do you not?

8 A. Now that -- as we speak, or in my past?

9 Q. At the time of July -- excuse me, of March 28, 2008 --

10 A. No, I did not.

11:18:33

11 Q. Okay.

12 A. No.

13 Q. You have trouble controlling your rage, do you not?

14 A. At the time? I ask again, at the time or in the past?

15 Q. Well, let's just -- we'll do it in the past. In the past
16 you --

11:18:44

17 A. In the past I have, yes.

18 Q. Okay. You've had trouble controlling your emotions,
19 haven't you?

20 A. In the past, yes.

11:18:50

21 Q. And that has gotten you in trouble, hasn't it?

22 A. Yes, it has.

23 Q. Okay. Now, even though you've had trouble controlling your
24 anger and your emotions, sir, you're telling me that at no time
25 did you ever act aggressively towards that deputy that

11:19:03

1 approached you, true?

2 A. That's true.

3 Q. You're telling us that at no time did you ever refuse to
4 leave that quick stop.

5 A. Absolutely, you're right. 11:19:14

6 Q. You're telling us that at no time did you ever have any
7 threatening conduct whatsoever towards that deputy or his
8 detainees?

9 A. I did not.

10 Q. Okay. What you're telling us is that you obeyed his
11 instruction to leave as soon as it was given, true? 11:19:24

12 A. Yes, that's true, 'cause I didn't get cited or arrested,
13 yes.

14 Q. Okay. And, sir, when you were driving away from the scene,
15 you testified that you saw a motorcycle cop behind you, didn't
16 you? 11:19:40

17 A. Yes.

18 Q. And you saw lights on, right?

19 A. Yes.

20 Q. You saw sirens on, or heard sirens on? 11:19:47

21 A. I heard sirens, yes.

22 Q. And you also heard him speaking over a loudspeaker to pull
23 over, didn't you?

24 A. And I did, yes.

25 Q. You didn't pull over to the right; you pulled into your 11:19:57

1 family business?

2 A. No, I -- as he got in back of me I was already pulling --
3 turning left into the family business.

4 Q. Okay. And when you pulled up into the family business, you
5 pulled up to a gate that was closed, didn't you, in the family
6 business? 11:20:07

7 A. No, you're wrong, sir. It was not closed.

8 Q. Okay.

9 A. It's an open gated so vehicles could go in and out, so the
10 shop was open at the time. 11:20:16

11 Q. Did you have your -- did you turn your engine off or did
12 you leave it on when you stopped?

13 A. I do not recall.

14 Q. Did the officer tell you to get out of the vehicle at any
15 time? 11:20:27

16 A. He did tell me to get out of the vehicle.

17 Q. Did you, as just like you said, when he told you to leave
18 the QuikStop and you did it right away --

19 A. That's right.

20 Q. -- when he asked you to leave the -- get out of your car,
21 did you get out right away? 11:20:37

22 A. I told him I was on the phone with 911. He said, I don't
23 care who you're on the phone with. At that time he opened the
24 door, pulled me out, the phone fell, and next thing you know

25 I'm on the floor and I have two, three other deputies on my 11:20:50

1 back getting handcuffed.

2 Q. Now, Mr. Nieto, I appreciate and thank you for sharing
3 that, but my question was a little bit different.

4 A. Um-hum.

5 Q. Just like you obeyed quickly at the QuikStop, my question 11:21:02
6 is not whether you're on the phone, not whether you explain.
7 My question was: When the officer approached you, asked you to
8 get out of your car, did you immediately comply with that
9 demand?

10 A. I would have to say so, yes, immediately. All I have -- 11:21:18
11 all I did say is, I'm on the phone with 911, and after that the
12 door was open and I was thrown out.

13 Q. And your testimony is that you had multiple guns pointed at
14 you.

15 A. Yes. 11:21:33

16 Q. And you were thrown to the ground and you had multiple
17 people topple you or dog pile you, as I used to call it when I
18 was growing up?

19 A. Those aren't the words I used, so, no, I wouldn't say
20 dog pile. Like I said, I had -- I was thrown to the ground and 11:21:44
21 I had either posse members or deputies on my back getting
22 handcuffed.

23 Q. Let's -- one other thing before we go, sir. You understand
24 that your lawyers, on your behalf, are alleging that that
25 deputy and other deputies are acting pursuant to a policy, 11:22:06

1 pattern, or practice set by Sheriff Arpaio to racially
2 discriminate against Latino citizens in our communities.

3 You understand that, don't you?

4 A. If that's what you're saying, okay, those are your words of
5 putting it, okay, I understand. 11:22:24

6 Q. Okay. Well, you believe that you were stopped and treated
7 the way you were because of the color of your skin, is that
8 correct?

9 A. May I answer that question?

10 Q. Please, I asked that. 11:22:35

11 A. I do believe so. And the reason why I say that is because
12 you, as being a smart person, if somebody does something wrong,
13 either gets arrested or gets a citation for not following the
14 traffic -- or get during a traffic violation. As you're well
15 aware of, I didn't get a citation or either was arrested. So I 11:22:58
16 do believe I was racially profiled.

17 Q. Okay. Thank you, sir.

18 A. Um-hum.

19 Q. And since, since, despite that policy or pattern or
20 practice that supposedly exists in this county, since March 11:23:10
21 28th, 2008, you have never again been stopped by the MCSO, have
22 you?

23 A. I have not. But I do fear.

24 Q. I understand your fear, but the reality is you have not
25 been stopped again, have you? 11:23:27

1 A. No, I have not.

2 Q. My statement's correct?

3 A. Yes. Yes. I have not been stopped.

4 MR. CASEY: All right. Thank you very much, sir.

5 THE COURT: You may step down. 11:23:36

6 THE WITNESS: Thank you, sir.

7 THE COURT: Well, hold it. Hold it. One moment.

8 Do you have any redirect? I apologize.

9 MS. LAI: No, I do not. Thank you, Your Honor.

10 Plaintiffs call Velia Meraz. 11:23:53

11 THE CLERK: Right over here, ma'am.

12 Can you please state and spell your full name.

13 MS. MERAZ: Yes. My name is Velia Meraz. V-e-l-i-a,
14 M-e-r-a-z.

15 THE CLERK: Thank you. Please raise your right hand. 11:24:20

16 (Velia Meraz was duly sworn as a witness.)

17 THE CLERK: Thank you. Please take our witness stand.

18 THE COURT: Please.

19 VELIA MERAZ,

20 called as a witness herein, having been duly sworn, was

21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LAI:

24 Q. Ms. Meraz, good morning.

25 A. Good morning. 11:25:03

1 Q. Are you the sister of Manuel Nieto?

2 A. Yes, I am.

3 Q. How old are you?

4 A. I'm 39.

5 Q. Do you work with your brother?

11:25:11

6 A. Yes, I do.

7 Q. Are you a mother also?

8 A. A mother to three little angels.

9 Q. What is your citizenship status?

10 A. I am a U.S. citizen.

11:25:22

11 Q. On the day that you and your brother were stopped in March
12 2008, do you remember parking at the convenience store at the
13 gas station?

14 A. Yes.

15 Q. Which side of the convenience store did you park on?

11:25:33

16 A. It was on the north side of the convenience store.

17 Q. When you were pulling up was the radio on?

18 A. Yeah, we had the radio on.

19 Q. What was playing?

20 A. Some Spanish music.

11:25:46

21 Q. What kind of music?

22 A. It was a cumbia, because I was getting into it and kind of
23 dancing around in my seat.

24 Q. Were you singing along to the music?

25 A. Yes, I was.

11:25:57

1 Q. Was the music loud?

2 A. I don't know if it was loud or not, but I was listening and
3 singing along.

4 Q. Now, you heard your brother testify that the deputy came
5 over to you? 11:26:14

6 A. Yes.

7 Q. Do you recall that as well?

8 A. Yes, I do.

9 Q. What specifically did the deputy say?

10 A. He marched up to my side, passenger side, and kind of 11:26:22
11 harshly said: You need to get out of here now.

12 And I said: Why?

13 He said: You need to get out of here now before I
14 arrest you for disorderly conduct.

15 And then after that my brother proceeded to ask: Why? 11:26:41
16 What did we do wrong?

17 And he says: And you, too, you need to get out of
18 here before you get arrested for disorderly conduct.

19 And I then said, Sir, I says, I don't know why you're
20 doing this, I says, but it's not right, and I says, Can I 11:26:55
21 please have your number and your badge -- your badge number and
22 your full name?

23 Q. Did he provide his badge number?

24 A. Yes, he did. A little upset about it, seemed, but yes.

25 Q. Did you buy what you went to the gas station to purchase? 11:27:11

1 A. No, we did not.

2 Q. Did you ask the deputy if you could go inside and buy those
3 things?

4 A. I do remember asking, Can we at least get what we came for
5 and leave, sir? And he says, Nope, get outta here now. 11:27:27

6 Q. Did you ever speak to the detainees who were by the gas
7 pumps?

8 A. As we were pulling out to leave like we were told, I did
9 kind of yell out, Don't sign anything you don't understand, and
10 provide your names only. 11:27:47

11 Q. Did you say that in English or Spanish?

12 A. In Spanish.

13 Q. What happened after you left the gas station?

14 A. We backed out onto Nisbet, stopped right there on Cave
15 Creek, put our signal on to go left. And we made a turn and 11:28:02
16 got on the far left lane, and then just about quickly right in
17 the middle lane to make the left to the shop. It's fairly
18 close.

19 Q. Did you at some point observe sheriff's deputies following
20 you on Cave Creek Road? 11:28:22

21 A. First I heard the sirens, and then I kind of turned around
22 in my seat and looked in the mirror and saw a motorcycle cop as
23 well as other deputies and vehicles.

24 Q. And your brother pulled into the shop, is that right?

25 A. Yes, he did. 11:28:37

1 Q. What happened on your side of the vehicle after your
2 brother pulled into the shop?

3 A. Once he pulled into the shop, there was a motorcycle cop
4 and other deputy vehicles as well, and they had drawn their
5 weapons, and one of them was on their speaker thingy saying:
6 Get out of the vehicle now. Get out with your hands up.

11:28:56

7 And I proceeded to get out. And when I got out I
8 noticed that there were a couple of deputies pointing their
9 guns. And so I slowly walked around the vehicle towards, like,
10 the front.

11:29:22

11 Q. Did you know what you had done wrong at that point?

12 A. No.

13 Q. Did you see your brother get pulled out of the vehicle?

14 A. Yes, I did.

15 Q. What did you see?

11:29:36

16 A. I saw that he was sitting inside on the phone. He was only
17 told, I believe, about one time to get out, and then the deputy
18 went to the door, opened it, pulled him out. He hit the floor,
19 and then a couple of them kind of like put their knee on him,
20 like to put the handcuffs on him.

11:30:01

21 Q. Where were you standing when you saw this happen?

22 A. I was standing right in front of the shop.

23 Q. Is that in the front of the vehicle?

24 A. Correct.

25 Q. Do you remember your father coming out of the shop?

11:30:16

1 A. Yes.

2 Q. Did anybody else come out of the shop?

3 A. It was him and a brother of mine. Several people.

4 Q. Was your father and brother wearing mechanic's uniforms?

5 A. Yes.

11:30:41

6 Q. Did your father appear worried?

7 A. Very much so.

8 Q. Why was your father worried?

9 A. Well, he just --

10 MR. CASEY: Objection, Your Honor.

11:30:50

11 THE COURT: Sustained.

12 MR. CASEY: Yeah.

13 BY MS. LAI:

14 Q. What did your father say when he came out of the shop?

15 A. What's going on? What's wrong? Why you guys doing that to
16 him? What's going on?

11:30:58

17 And I just said, We didn't do anything.

18 And he goes: Let my children go. Those are my
19 children. Those are my children. They're U.S. citizens. What
20 did they do wrong?

11:31:16

21 Q. What happened after the father told the deputy you
22 were U.S. citizens?

23 A. They backed off.

24 Q. Did they let your brother go?

25 A. Shortly thereafter.

11:31:30

1 Q. Did the deputies provide you or your brother with an
2 apology?

3 A. No.

4 Q. Did the deputies cite you or press any charges against you?

5 A. No.

11:31:45

6 Q. Ms. Meraz, do you have any convictions from the past 10
7 years?

8 A. Yes, I do.

9 Q. What was that --

10 A. One.

11:31:53

11 Q. -- for?

12 A. One for fraudulent schemes and artifices.

13 Q. Have you completed all the requirements in connection with
14 that conviction?

15 A. Yes, I did, and early.

11:32:00

16 Q. Now going back to the incident, did you ever file a written
17 complaint with the Sheriff's Office?

18 A. No, I did not, but my brother tried to that day.

19 Q. Why did you not file a written complaint with the Sheriff's
20 Office?

11:32:17

21 A. I was there with him when he was making the phone call.

22 Q. Do you believe the deputies in this incident treated you
23 unfairly?

24 A. Yes, I do.

25 Q. Why is that?

11:32:30

1 A. I still don't understand why it is that we went through
2 this, had guns drawn, and for what? We weren't issued a
3 warning, a citation, a ticket. I believe that if we had done
4 something wrong, that would have been the case.

5 Q. Do you believe you could be pulled over again by the
6 Sheriff's Office?

11:32:51

7 A. Yes, I do.

8 Q. Why?

9 A. He -- Sheriff Arpaio keeps saying it on national TV that
10 he's going to continue what he's doing, and that means that
11 includes these sweeps and these stops. So I do believe it
12 could happen again.

11:33:06

13 MS. LAI: Thank you very much.

14 THE COURT: Cross-examination?

15 MR. CASEY: Yes, Your Honor. Thank you.

11:33:22

16 CROSS-EXAMINATION

17 BY MR. CASEY:

18 Q. Ms. Meraz, good morning to you.

19 A. Good morning.

20 Q. I will not be long. Your lawyer asked you about your
21 conviction. In fact, was it around the year 2005 that you were
22 convicted for a felony involving dishonesty?

11:33:28

23 A. It was -- I don't remember exactly when it was, but it was
24 for fraudulent schemes and artifices.

25 Q. And that's for dishonesty, isn't it?

11:33:48

1 A. That's not what the charge says, sir.

2 Q. I understand. But you were convicted, as you said, of
3 fraudulent schemes and artifices, true?

4 A. Correct.

5 Q. Because when you worked for Catholic Social Services you
6 were an immigration caseworker there --

11:33:58

7 A. Um-hum.

8 Q. -- were you not?

9 MS. LAI: Objection, Your Honor, as to the details of
10 the criminal case.

11:34:08

11 THE COURT: I'm going to take into account the
12 criminal conviction; I don't think you need to go any further,
13 Mr. Casey.

14 MR. CASEY: All right. Thank you very much.

15 BY MR. CASEY:

11:34:14

16 Q. And what you're telling the Court is when -- you were --
17 first of all, you were present when I questioned your brother,
18 right?

19 A. Yes, I was.

20 Q. And what you're -- what you're telling the Court is when
21 you and your brother pulled in, you had said nothing to the
22 officer at any time before he ordered you to leave, true?

11:34:20

23 A. I don't recall being asked that, sir.

24 Q. Let me -- let me ask you. Did you say anything to the
25 deputy before you were asked to leave?

11:34:39

1 A. Before I was asked to leave?

2 Q. Yes, ma'am.

3 A. I asked -- I asked him why he was asking us to leave.

4 Q. Okay. Before he asked you to leave did you say anything to
5 him? 11:34:54

6 A. No.

7 Q. Did you yell anything to him?

8 A. No, I did not.

9 Q. Did you say anything to the detainees that you saw in
10 handcuffs at the station? 11:35:04

11 A. As we were on our way leaving I did.

12 Q. Before you were asked to leave by the deputy, did you say
13 anything to those people that were being detained?

14 A. Not that I can recall.

15 Q. Did you yell anything at those two people? 11:35:20

16 A. On our way out of there, yes.

17 Q. Okay. So the only time you yelled anything was on the way
18 out?

19 A. Yes, sir.

20 Q. And what did you yell? 11:35:30

21 A. If you don't understand -- or don't -- don't sign anything
22 you don't understand.

23 Q. In what language did you yell it?

24 A. In Spanish.

25 Q. Okay. Did you yell it repeatedly or just a single time? 11:35:46

1 A. Just a single time.

2 Q. Okay. And as you were leaving, your brother driving out,
3 did you yell any profanities either at the officer or towards
4 the officer?

5 A. Never.

11:36:04

6 Q. Did you yell anything about vulgarities towards the
7 officer?

8 A. No, sir.

9 Q. Okay. Can you explain to the Court, to the judge, who's
10 the finder-of-fact in this case, if you have any reason, any
11 opinion, any explanation for why you would simply pull up in a
12 car and all of a sudden an officer with some -- with two people
13 detained would walk away from them and tell you folks to leave?

11:36:23

14 Do you have any explanation that you can offer us
15 about how that happened?

11:36:43

16 MS. LAI: Objection, compound.

17 THE COURT: Overruled.

18 THE WITNESS: Do I have to answer that question?

19 THE COURT: You do have to answer the question.

20 THE WITNESS: Sorry about that.

11:36:58

21 I don't know, sir. We pulled in with Spanish music; I
22 was singing along to it. That was it.

23 BY MR. CASEY:

24 Q. Nothing happened to -- is what you're telling us that would
25 ever justify any reasonable human being or officer to actually

11:37:12

1 have you leave. Is that a fair statement?

2 MS. LAI: Objection, argumentative.

3 THE COURT: Want to rephrase that one?

4 MR. CASEY: Yeah.

5 BY MR. CASEY:

11:37:26

6 Q. In your judgment, ma'am, did anything happen that would
7 ever allow any officer to request you to leave?

8 A. Not to my knowledge, sir.

9 Q. At some point you learned the name of the deputy, did you
10 not?

11:37:38

11 A. Yes, I did.

12 Q. And what was the deputy's name?

13 A. Mr. Armendariz.

14 Q. Okay. Did you ever determine what race Mr. Armendariz was,
15 Deputy Armendariz?

11:37:46

16 A. He looks Latino.

17 Q. Do you believe that Deputy Armendariz was treating you
18 differently because you yourself were Latino?

19 A. I don't know what was running through his mind, sir.

20 Q. And I understand that, and I never asked you about what was
21 running through his mind. I'm asking for what's running
22 through your mind --

11:38:02

23 A. Um-hum.

24 Q. -- your belief.

25 Do you believe that he was treating you differently

11:38:11

1 because you were Latino?

2 A. I believe so.

3 Q. Okay. Now, since that day on March 28, 2008, have you ever
4 again been stopped by any MCSO deputy?

5 A. No, sir. 11:38:30

6 Q. Have you at any time since that date been questioned by any
7 MCSO deputy?

8 A. No, sir.

9 MR. CASEY: Thank you very much for your time, ma'am.

10 THE COURT: Redirect? 11:38:40

11 MS. LAI: No further questions. Thank you.

12 THE COURT: Okay.

13 Thank you, Ms. Meraz. You can step down.

14 Next witness.

15 MS. WANG: Good morning, Your Honor. Cecillia Wang 11:38:56

16 for the plaintiffs. Plaintiffs call Brett Palmer.

17 (Pause in proceedings.)

18 THE CLERK: Right up here, sir.

19 Can you please state and spell your full name.

20 MR. PALMER: Brett Palmer. B-r-e-t-t, P-a-l-m-e-r. 11:39:57

21 THE CLERK: Thank you. Please raise your right hand.

22 (Brett Palmer was duly sworn as a witness.)

23 THE CLERK: Thank you. Please take our witness stand.

24

25

1 BRETT PALMER,
2 called as a witness herein, having been duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. WANG:

11:40:41

6 Q. Good morning, sir.

7 A. Good morning.

8 Q. You are a sergeant with the Maricopa County Sheriff's
9 Office, correct?

10 A. Yes, ma'am.

11:40:47

11 Q. And you started working at the MCSO in about 2000?

12 A. Correct.

13 Q. You're currently one of two sergeants supervising the Human
14 Smuggling Unit, correct?

15 A. I was one of two sergeants. In the last two months I've
16 been transferred to a different division.

11:41:00

17 Q. I see. But up until recently -- or let me ask this: When
18 were you transferred?

19 A. Approximately mid-May, last week of May.

20 Q. So until May of this year, 2012, you were one of the
21 supervising sergeants of the Human Smuggling Unit?

11:41:12

22 A. Yes.

23 Q. The other supervising sergeant is Manuel Madrid, correct?

24 A. Yes, Sergeant Madrid and I did serve together for a few
25 years.

11:41:27

1 Q. And, sir, is it true that the Human Smuggling Unit actually
2 consists of three subunits, two Human Smuggling Units and an
3 employment sanctions unit, correct?

4 A. Yes, not three separate units. There's an interdiction
5 street team that has two squads that me and Sergeant Madrid
6 ran, and the other unit you're speaking of would be the
7 employer sanctions unit.

11:41:41

8 Q. And so there's two sections, basically: human smuggling
9 section and an employer sanction section within HSU, correct?

10 A. Yes, ma'am.

11:41:56

11 Q. And Lieutenant Joe Sousa commands the entire HSU?

12 A. Yes, ma'am.

13 Q. Thank you.

14 Now, you began as a supervisor of the Human Smuggling
15 Unit in about April of 2008, is that correct?

11:42:05

16 A. Yes.

17 Q. And you did not submit an application for that position,
18 correct?

19 A. That's correct.

20 Q. You were tapped for that position by a higher-up person
21 within MCSO, correct?

11:42:15

22 A. Yes.

23 Q. That was Lieutenant Sousa?

24 A. Yes.

25 Q. And you considered that a positive career step for you,

11:42:25

1 right?

2 A. Yes.

3 Q. HSU's mission is one of the sheriff's top priorities for
4 the entire MCSO, correct?

5 A. Yes. 11:42:35

6 Q. And the sheriff has been involved personally in HSU
7 operations?

8 A. Yes.

9 Q. He's been present at some of those operations?

10 A. Yes. 11:42:44

11 Q. And he's given press conferences about HSU operations?

12 A. Yes.

13 Q. And you've personally spoken to the sheriff about HSU work,
14 correct?

15 A. Yes. 11:42:53

16 Q. And HSU is a desirable assignment within the MCSO, correct?

17 A. Yes.

18 Q. Now, sir, you command about seven -- you used to command
19 about seven deputies within HSU?

20 A. Approximately, yes, ma'am. 11:43:07

21 Q. And Sergeant Madrid commanded about another seven deputies?

22 A. Yes.

23 Q. But you and Sergeant Madrid would co-supervise each other's
24 deputies on occasion, correct?

25 A. Yes. 11:43:19

1 Q. Now, the sergeant position is very important within MCSO,
2 right?

3 A. Yes.

4 Q. You're supervising directly deputies under your command,
5 correct?

11:43:28

6 A. Yes.

7 Q. And they need to follow your lead?

8 A. Yes.

9 Q. Sergeant, you're familiar with the term "saturation
10 patrol"?

11:43:38

11 A. Yes.

12 Q. Is that synonymous with "crime suppression patrol" or
13 "sweep"?

14 A. Yes, it is.

15 Q. And HSU has done saturation patrols, right?

11:43:45

16 A. Yes, ma'am.

17 Q. I'd like to talk about a particular saturation patrol.

18 This was in Fountain Hills on May 6th and 7th of 2008.

19 Do you recall that patrol?

20 A. I do.

11:43:58

21 Q. Okay. You were present at that patrol in Fountain Hills?

22 A. Yes.

23 Q. Now, you were told what the objective of that saturation
24 patrol was, correct?

25 A. Yes.

11:44:15

1 Q. You did not decide what the objective of that patrol was,
2 correct?

3 A. That's correct.

4 Q. And the objective you were told was to go to the specified
5 area and interdict on crime in the area and enforce the civil
6 traffic code for the state of Arizona, is that correct?

11:44:24

7 A. Yes.

8 Q. There's a -- in general, is there a briefing for MCSO
9 personnel before these kinds of saturation patrols?

10 A. Yes.

11:44:46

11 Q. Did you attend the briefing for this particular one?

12 A. Yes, I conducted it.

13 Q. Now, before the patrol you were not told of particular
14 persons that were being targeted, is that right?

15 A. No, ma'am, not any particular persons, no.

11:45:03

16 Q. And you were not told of a specific crime that was under
17 investigation, isn't that right?

18 A. A specific crime, no. There were reports of criminal acts
19 in the area, and some shopkeepers had some issues with some
20 people they had trespassing their property, but as far as
21 specific crime you could say trespassing, disorderly conduct,
22 criminal damage, those would be specific.

11:45:20

23 Q. So fair to say that you were told in general there was
24 crime going on in the Fountain Hills area?

25 A. Yes, ma'am.

11:45:34

1 Q. And but for purposes of this saturation patrol you were not
2 told of particular crimes that were under investigation,
3 correct?

4 A. We were not there to investigate particular criminal acts,
5 correct. 11:45:46

6 Q. As you said before.

7 A. Correct.

8 Q. Now, you did not choose the location for this operation,
9 correct?

10 A. That's correct, I did not. 11:45:54

11 Q. And you do not know who selected the location, correct?

12 A. No, I do not know.

13 Q. You did not know why the location was chosen?

14 A. No, I don't know.

15 Q. And all of that is generally true of saturation patrols,
16 correct? 11:46:06

17 A. From my position, yes.

18 Q. So in general you did not know why the locations were
19 chosen for saturation patrols?

20 A. That's correct. 11:46:21

21 Q. Or even who chose the locations.

22 A. I imagine it was someone above my pay grade, but I don't
23 know who that was.

24 Q. Thank you.

25 Now, after the Fountain Hills operation you had a 11:46:30

1 debriefing of sorts, right?

2 A. Yes.

3 Q. That was informal, you'd say?

4 A. Yes.

5 Q. You didn't announce ahead of time, Everybody who

11:46:39

6 participated in the saturation patrol should gather and we're

7 going to talk it over"?

8 A. I announced it to the people that were participating under

9 my command that day to gather up at the Fountain Hills

10 substation, and I conducted what I would deem to be an informal

11:46:53

11 debriefing with them about the operation.

12 Q. And that informal debriefing was with whoever was still

13 around the substation in Fountain Hills after the operation?

14 A. Correct. Nobody would have left. It would have

15 encompassed everyone involved in the operation. But I say

11:47:07

16 informal 'cause we were in the parking lot, I think is where I

17 debriefed.

18 Q. Sir, you've been deposed for this case twice, correct?

19 A. Yes.

20 Q. Let me, if the judge will permit, hand you the deposition

11:47:17

21 transcript from your first deposition on October 23rd, 2009.

22 MS. WANG: May I, Your Honor?

23 THE COURT: You may.

24 MS. WANG: Thank you.

25 THE WITNESS: Thank you.

11:47:35

1 THE COURT: You have a copy of the transcript,
2 Mr. Casey?

3 MR. CASEY: Your Honor, I do have it.

4 THE COURT: All right.

5 MS. WANG: Do you need one, Your Honor? 11:47:45

6 THE COURT: I'd appreciate one unless I already have
7 it somewhere. And I don't see it. Thank you.

8 BY MS. WANG:

9 Q. Sir, I'm going to have you turn to page 79 and call your
10 attention to line 10. You were asked: 11:48:04

11 "Was there a specific meeting where that occurred
12 where they said: Let's address what went on in this particular
13 saturation patrol to see what was good, what was bad."

14 And you answered: "Informally, yes."

15 Correct? 11:48:26

16 A. Yes, ma'am.

17 Q. You see that? And that -- that was true, right?

18 A. Yes.

19 Q. Okay. And the very next line you were asked:

20 "Informally? And who was involved informally. 11:48:39

21 "Answer: Well, I believe I conducted that at the
22 Fountain Hills substation prior to departing."

23 That was your testimony?

24 A. Yes.

25 Q. And the question was: "With whoever was left? 11:48:51

1 "Answer: Correct."

2 Is that right?

3 A. Yes.

4 Q. And your testimony now is that everybody was left?

5 A. Yes.

11:49:01

6 Q. So it's your testimony now that everybody who participated
7 in that patrol was still in the substation at the time of this
8 postoperation briefing?

9 A. It was a few years ago, but I'm not aware of anybody having
10 left.

11:49:17

11 Q. You didn't have a sign-in sheet for that postoperation
12 informal briefing, did you?

13 A. I don't recall, but I don't imagine we would have had one
14 for that particular one, no.

15 Q. Sir, I'm going to hand you an exhibit. We may show some
16 portions of it on the screen, but for now I'll hand you the
17 whole thing. It's already in evidence, Plaintiffs'
18 Exhibit 108.

11:49:28

19 MS. WANG: With the judge's permission.

20 THE COURT: You may do so.

11:49:46

21 MS. WANG: Thank you.

22 THE WITNESS: Thank you.

23 BY MS. WANG:

24 Q. Sir, as I said, Exhibit 108 is already in evidence. Why
25 don't you take a quick look at it. It is a few pages.

11:50:08

1 Sir, does this reflect some documents relating to the
2 Fountain Hills saturation patrol that we're discussing?

3 A. Yes, I believe it does.

4 Q. And again, this patrol covered two days, isn't that right?

5 A. Yes, I believe it did. 11:50:29

6 Q. May 6th and 7th, 2008?

7 A. Yes, ma'am.

8 Q. And let's turn to the page that's marked MCSO 014433 and
9 continues on to 34. It's titled Human Smuggling Unit Shift

10 Summary. 11:50:49

11 Do you see that?

12 A. Yes.

13 Q. Sir, this is a shift summary that you wrote about the
14 Fountain Hills patrol, correct?

15 A. Yes. 11:50:55

16 Q. And on the first day, May 6th, 2008, this -- this is what
17 the shift summary covers, correct?

18 A. Yes.

19 Q. Now, you note on this document that during that first day,
20 May 6th, 2008, HSU and ES -- 11:51:11

21 That's "Employer Sanctions," correct?

22 A. Yes, ma'am.

23 Q. -- detectives conducted a total of seven traffic stops for
24 civil infractions.

25 Do you see that? 11:51:24

1 A. Yes, ma'am.

2 Q. So that day during the saturation patrol there were seven
3 traffic stops conducted, correct?

4 A. Yes.

5 Q. And then the next sentence reads: 11 total civil citations 11:51:34
6 were written to drivers, ranging from suspended vehicle
7 registration and insurance violations to turning violations and
8 improper window tinting, is that correct?

9 A. Yes, ma'am.

10 Q. And then you note, In total, seven individuals were 11:51:49
11 arrested for 287(g), correct?

12 A. Yes.

13 Q. 287(g) refers to the agreement that MCSO had at that time
14 with the United States Department of Homeland Security?

15 A. Yes. 11:52:10

16 Q. So this sentence here, In total, seven individuals were
17 arrested for 287(g), that refers to people who were turned over
18 to ICE for administrative processing, correct?

19 A. Yes.

20 Q. They were not arrested on any Arizona state criminal 11:52:22
21 charge, correct?

22 I beg your pardon. Let me withdraw that.

23 The next sentence says six were processed
24 administratively through ICE, correct?

25 A. Yes. 11:52:41

1 Q. So that means six of the seven people who were arrested for
2 287(g) were processed administratively through ICE, correct?

3 A. Yes.

4 Q. None of those six were charged with any crime under Arizona
5 law, correct?

11:52:56

6 A. No.

7 Q. And then the next sentence reads: One was booked into the
8 Fourth Avenue Jail for an outstanding felony warrant for drug
9 possession and originally arising out of a Phoenix PD report.

10 Do you see that?

11:53:10

11 A. Yes, ma'am.

12 Q. And that individual, just to be clear, I want to make sure
13 I understand this, he was arrested because of a prior warrant
14 on an old matter, correct?

15 A. Yes, that appears to be what I've written there.

11:53:22

16 Q. Okay. So there wasn't -- it wasn't a situation where
17 deputies during the saturation patrol developed new evidence
18 about a drug possession charge, is that right? Based on what
19 you wrote here?

20 A. Correct. He had a warrant for his arrest from a previous
21 charge.

11:53:37

22 Q. And then you noted in the next sentence that that
23 individual, the one who was picked up on the outstanding
24 warrant, was in the United States illegally and, therefore, had
25 an ICE detainer placed on him at the jail, correct?

11:53:48

1 A. Yes, ma'am.

2 Q. Now, of the seven people who were arrested for 287(g), to
3 be clear, none of them was arrested for an Arizona state crime
4 arising out of events that day, May 6th, 2008, isn't that
5 right?

11:54:05

6 A. Yes, that would appear to be so from the shift summary.

7 Q. Nobody that day was charged with human smuggling, is that
8 right?

9 A. Correct.

10 Q. I'll have you turn to the next page, MCSO 01443 -- sorry,
11 014434. Now, you've got a list here --

11:54:18

12 Again, this is a report you wrote, correct?

13 A. Yes, ma'am.

14 Q. You have a list here of the individuals who were processed
15 administratively through ICE, is that right?

11:54:37

16 A. Yes.

17 Q. And there are one, two, three, four, five, six, seven,
18 eight names, right?

19 A. Yes.

20 Q. They all appear to you to be Hispanic names, is that right?

11:54:48

21 A. Yes.

22 Q. And in the next paragraph you indicated the person who was
23 booked into the jail with the felony warrant, the old warrant
24 from the Phoenix Police Department, is that right?

25 A. Yes.

11:55:07

1 Q. He also had a Hispanic last name, correct?

2 A. Yes.

3 Q. And then finally, the last paragraph indicates there was a
4 person arrested for a techno-cop warrant, felony warrant,
5 et cetera, et cetera. Do you see that?

11:55:21

6 A. Yes.

7 Q. That name is not a Hispanic name, right?

8 A. No, it is not.

9 Q. So it looks like there were 10 people in all who were
10 arrested during the saturation patrol on May 6, 2008, is that
11 right?

11:55:30

12 A. Yes.

13 Q. And nine of them, nine of the ten had Hispanic names,
14 correct?

15 A. Yes.

11:55:44

16 Q. I'm going to have you turn a couple of pages to MCSO
17 014436. And this one is the shift summary you wrote for the
18 next day, May 7th, correct?

19 A. Yes, it appears so.

20 Q. And it's -- it's similar in format to the one we just
21 looked at, correct?

11:56:02

22 A. Yes, ma'am.

23 Q. And on May 7th, again 10 people were arrested, is that
24 right?

25 A. Yes, ma'am, it appears so.

11:56:20

1 Q. And seven were turned over to ICE for administrative
2 processing, is that right?

3 A. Yes, it appears so. I've listed that seven were 287(g).

4 Q. Could we highlight the paragraph beginning "Narrative,"
5 please.

11:56:52

6 So why don't we break this down. You wrote, During
7 patrol, 10 suspects were taken into custody, right?

8 A. Yes.

9 Q. Seven were 287(g) only in U.S. illegally, right?

10 MR. CASEY: Your Honor? I'm sorry to do this. For
11 whatever reasons, it's not popping up on our screen. I see
12 it's at other -- everywhere else, but not here.

11:57:07

13 THE COURT: Yeah. Well --

14 MR. CASEY: I'm following along on my computer, but I
15 don't see the highlighting that they're emphasizing.

11:57:20

16 THE COURT: Let me ask you, if you can follow along on
17 a hard copy, we will get our tech person up here during lunch
18 and make sure you --

19 MR. CASEY: No, I just wanted to alert the Court for
20 this afternoon.

11:57:32

21 THE COURT: Yeah, I appreciate it. We're going to
22 break in just a minute. We'll get our tech person up here and
23 make sure that your monitor is functioning appropriately.

24 MR. CASEY: Thank you, Your Honor.

25 THE COURT: Unless you're telling me you're having any

11:57:39

1 problem following now.

2 MR. CASEY: No, I'm not having any trouble at all
3 following, Your Honor. I just wanted to make sure that there
4 is highlighting, that I have to look one way or the other to
5 see what they're emphasizing.

11:57:48

6 THE COURT: All right. If you have any issue --

7 MR. CASEY: Okay. It's working now.

8 THE COURT: Okay. Thank you.

9 MR. CASEY: Thank you, Your Honor.

10 THE COURT: Thank you, Kathleen.

11:57:55

11 MS. WANG: I'm sorry, Mr. Moll, can you tell me if
12 there was a pending question?

13 (The record was read by the court reporter.)

14 BY MS. WANG:

15 Q. Is that right, sir?

11:58:17

16 A. Yes.

17 Q. And three were United States citizens booked on state
18 charges, right?

19 A. Yes.

20 Q. None of the seven people who were 287(g) only were arrested
21 on any Arizona state charge, is that right?

11:58:22

22 A. It appears that way, yes.

23 Q. And if you -- let's go back up to the listing at the --
24 under Suspects at the top of the page, the first three names.

25 There are three names listed there. Those were the

11:58:49

1 three United States citizens who were arrested that day on a --
2 on a criminal charge, right?

3 A. Yes, ma'am.

4 Q. It says 910S. Do you see that?

5 A. Yes, ma'am. 11:59:03

6 Q. That means driving on a suspended license, is that right?

7 A. Yes, ma'am.

8 Q. And if we look at the day's total arrests of all the 10
9 people, you had three people arrested on driving with a
10 suspended license, and seven people arrested only on
11 immigration administrative -- excuse me, let me rephrase that.

12 You had three people arrested on driving for -- with a
13 suspended license, and seven people who were arrested merely
14 for administrative immigration matters, is that right? 11:59:18

15 A. Yes, ma'am. 11:59:39

16 Q. Nobody that day -- May 7, 2008 -- was arrested for human
17 smuggling, correct?

18 A. No, ma'am.

19 Q. And looking again at this list of names up at the top, 10
20 names in all, fair to say that eight of those ten names are
21 Hispanic names? 11:59:52

22 A. Yes, ma'am.

23 Q. So over the course of the two-day saturation patrol you had
24 17 out of 20 people arrested with Hispanic last names, is that
25 correct? 12:00:14

1 A. Yes, ma'am.

2 Q. That did not raise a concern for you about possible racial
3 profiling?

4 A. No, ma'am, it did not.

5 Q. You did not follow up to see if there was a problem with
6 racial profiling during that saturation patrol?

12:00:24

7 A. No, ma'am, I did not.

8 Q. Let's set aside Fountain Hills for now and talk more
9 generally about saturation patrols.

10 THE COURT: Well --

12:00:39

11 MS. WANG: Or take a lunch break?

12 THE COURT: Let's take a lunch break right now.

13 MS. WANG: Okay.

14 THE COURT: And we'll be back at 1:15.

15 (Lunch recess taken.)

13:18:07

16 THE COURT: Thank you. Please be seated.

17 We ready to resume?

18 MS. WANG: Thank you. Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 BY MS. WANG:

13:18:20

21 Q. Good afternoon, Sergeant.

22 A. Good afternoon.

23 Q. Sergeant, did you talk to anyone about your testimony
24 during the lunch break?

25 A. I conferred with my attorney.

13:18:26

1 Q. Okay. Sir, MCSO has used posse members during these HSU
2 saturation patrols, correct?

3 A. Yes.

4 Q. And on at least one occasion a posse member named Jim
5 Van Allen e-mailed you about some HSU activity, is that right? 13:18:43

6 A. Yes.

7 MS. WANG: I'm going to ask that Exhibit 280 be put up
8 on the screens. This is already in evidence.

9 BY MS. WANG:

10 Q. And can you take a look at Exhibit 280. 13:18:58

11 Is this one such e-mail from -- e-mail address says
12 jvacarefreeaz. Is that Mr. Van Allen?

13 A. Yes.

14 Q. And he wrote to you in the first e-mail at the bottom:
15 Sergeant and the J.J., please give me a call if we are going
16 fishing today in Anthem. Thanks, Jim. 13:19:14

17 You see that?

18 A. Yes.

19 Q. And then you responded on the same day, is that right?

20 A. Yes. 13:19:24

21 Q. Now, Mr. Van Allen is a member of the posse for MCSO,
22 correct?

23 A. Yes.

24 Q. In fact, he has frequently participated in HSU operations,
25 correct? 13:19:38

1 A. Yes.

2 Q. And he had already at the time that he sent this e-mail?

3 A. Yes.

4 Q. Were you aware, sir, that on March 10th of 2009,
5 Mr. Van Allen had sent an e-mail to Lieutenant Sousa talking
6 about operation wetback?

13:19:46

7 A. I'm aware of it, yes.

8 Q. Were you aware of it at the time of this e-mail exchange?

9 A. I'm aware of it after it was sent to Lieutenant Sousa.

10 Q. And was that before October 13th, 2009?

13:20:07

11 A. I don't recall the date, ma'am.

12 Q. Okay. Would it refresh your recollection to take a look at
13 the e-mail that he sent Lieutenant Sousa?

14 A. Yes.

15 Q. Actually, I'll come back to that later.

13:20:18

16 Sir, a couple of days after October 13th, 2009,
17 Mr. Van Allen wrote to you again by e-mail, is that right?

18 A. He may have.

19 MS. WANG: Your Honor, I have a deposition exhibit
20 from Sergeant Palmer's deposition that may refresh his
21 recollection. It has not previously been marked for
22 identification.

13:20:48

23 May I show it to him?

24 THE COURT: Is it just a page from his -- pages from
25 his deposition?

13:21:00

1 MS. WANG: It's actually the exhibit to the
2 deposition.

3 THE COURT: Yeah. And you're showing it to him for
4 purposes of refreshing his recollection?

5 MS. WANG: Correct, Your Honor. I don't plan do
6 introduce it into evidence. 13:21:08

7 THE COURT: All right. You may do so.

8 MS. WANG: Thank you.

9 MR. CASEY: May I get the exhibit number, please?

10 MS. WANG: I have a copy. 13:21:14

11 MR. CASEY: That's all right. I have the exhibits
12 here.

13 MS. WANG: It was Exhibit 3 to the deposition of
14 Brett Palmer on November 9th, 2010, the second deposition.

15 MR. CASEY: Thank you, Counsel. 13:21:28

16 THE WITNESS: Thank you, ma'am.

17 BY MS. WANG:

18 Q. Sergeant, does that refresh your recollection that
19 Mr. Van Allen wrote to you again on October 17th, 2009?

20 A. Yes, it does. 13:21:42

21 Q. And again he asked, I will assume we will do the same
22 fishing up in the Anthem area this afternoon unless you advise
23 to the contrary, correct?

24 A. Yes.

25 Q. And you responded the same day, is that right? 13:21:51

1 A. Yes.

2 Q. And you wrote, The guys will be at the Anthem substation at
3 1300 hours, correct?

4 A. Yes.

5 Q. And by "the guys" you meant HSU deputies?

13:22:01

6 A. Yes.

7 Q. Now, by "fishing" did you take Mr. Van Allen to mean that
8 members of HSU would go out on patrol in the Anthem area?

9 A. Yes.

10 Q. And look for immigration law violations?

13:22:19

11 A. No.

12 Q. Look for crime?

13 A. Yes.

14 Q. Okay. That was not a saturation patrol, as you understand
15 the term, correct?

13:22:31

16 A. Correct.

17 Q. You didn't plan it for many weeks beforehand?

18 A. No, that was the normal business of HSU.

19 Q. Okay. And that's something that HSU does often, this kind
20 of fishing?

13:22:43

21 A. We patrol known smuggling routes often, yes, for human
22 smuggling loads.

23 Q. And what Mr. Van Allen referred to as fishing, which you
24 responded to, that's something HSU does often?

25 A. Yes.

13:22:57

1 Q. So I want to turn now to talk about saturation patrols more
2 generally. Sometimes HSU saturation patrols involve
3 significant MCSO resources, correct?

4 A. Yes.

5 Q. Lots of deputies, right?

13:23:11

6 A. Yes.

7 Q. Sometimes more than a hundred?

8 A. I'm not privileged to the exact numbers, but it's -- could
9 be.

10 Q. Would it surprise you if it was more than a hundred
11 deputies at some of these saturation patrols?

13:23:25

12 A. I don't know if the number's ever been to a hundred sworn
13 deputy sheriffs, but probably close to a hundred personnel
14 between deputies and posse personnel, yes.

15 Q. Okay. There might be also MCSO detention officers during
16 these saturation patrols?

13:23:37

17 A. Yes.

18 Q. And a during these saturation patrols we're talking about,
19 is it fair to say that virtually all of HSU would be present
20 and participating?

13:23:50

21 A. Yes.

22 Q. By the way, HSU has a high propensity for overtime pay
23 among MCSO units, is that right?

24 A. Yes.

25 Q. Now, it wouldn't just be HSU personnel involved in these

13:24:02

1 saturation patrols, right?

2 A. Correct.

3 Q. There are far fewer than a hundred personnel in HSU, right?

4 A. Yes.

5 Q. So you'd bring in other MCSO sworn deputies?

13:24:16

6 A. Yes.

7 Q. Including the tactical operations unit?

8 A. Yes.

9 Q. That's MCSO's SWAT team?

10 A. Yes.

13:24:27

11 Q. They would come dressed in their SWAT uniforms?

12 A. Yes.

13 Q. And there would be deputies at the saturation patrols
14 sometimes wearing balaclavas?

15 A. Yes.

13:24:36

16 Q. And there would be many, many MCSO vehicles involved in the
17 saturation patrols, correct?

18 A. Yes.

19 Q. The sheriff himself was often present?

20 A. Yes.

13:24:44

21 Q. And these saturation patrols would sometimes span two or
22 three days?

23 A. Yes.

24 Q. Now, we talked earlier about how you learned about
25 saturation patrols. You were told when a saturation patrol

13:24:55

1 would take place, correct?

2 A. Yes.

3 Q. Generally by Lieutenant Sousa?

4 A. Yes.

5 Q. Would anyone else above you in the chain of command tell
6 you about saturation patrols coming up? 13:25:04

7 A. I might have had a passing conversation with Chief Sands at
8 some point, but it was a meeting in the hallway, it wasn't a
9 formal meeting. It would be like if I just saw him going up to
10 his office for some other matter, we might talk about when the
11 next saturation patrol might be, but that was maybe once or
12 twice. 13:25:23

13 Q. Okay. So on occasion you learned from Chief Sands of a
14 saturation patrol?

15 A. Correct. 13:25:33

16 Q. Let's talk about preoperation briefings. I think we
17 previously talked about postoperation briefings.

18 There would be a preoperation briefing before every
19 saturation patrol is that right?

20 A. Yes, ma'am. 13:25:50

21 Q. And you would be present?

22 A. Very often, yes.

23 Q. Sometimes you would present information?

24 A. Yes.

25 Q. Lieutenant Sousa also would present information? 13:25:55

1 A. Yes.

2 Q. And you would tell the deputies who would participate in
3 the patrol that -- what their objective was, is that right?

4 A. Yes.

5 Q. And that, again, was to basically do traffic stops and look 13:26:06
6 for crime, is that right?

7 A. Yes.

8 Q. You did not tell deputies why the location was selected for
9 the saturation patrol, is that correct?

10 A. I don't recall specifically disseminating that information 13:26:20
11 in a briefing, no.

12 Q. Okay. Well, going back to the Fountain Hills patrol that
13 we discussed earlier, you did not even know why the location
14 was chosen, is that correct?

15 A. That's correct. 13:26:34

16 Q. So you could not have conveyed that information to deputies
17 during the preoperation briefing?

18 A. Correct.

19 Q. We talked before about a postoperation briefing after the
20 Fountain Hills operation, correct? 13:26:46

21 A. Yes.

22 Q. And you said that you conducted that briefing with whoever
23 was left in the Fountain Hills substation after the brief --
24 after the operation?

25 A. Yes. 13:26:54

1 Q. You called that an informal postoperation briefing, right?

2 A. Yes.

3 Q. There was no formal assessment of whether that Fountain
4 Hills operation was successful, is that right?

5 A. How I would define formal, no, I don't believe there was a 13:27:08
6 formal assessment, no.

7 Q. So you didn't look to see whether the saturation patrol had
8 any impact on the crime rates in that area, correct?

9 A. I would not have been the person to assess that data, no.
10 I did not do that. 13:27:25

11 Q. Do you know whether anyone assessed any data afterwards?

12 A. I'm not privileged to information -- if someone had or had
13 not, I don't know if anyone did.

14 Q. So you do not know whether any postoperation assessment
15 based on crime rates was done? 13:27:38

16 A. That's correct, I do not.

17 Q. Sergeant, your own view, though, is that even a single
18 arrest during a saturation patrol would make it a success, is
19 that right?

20 A. Yes. 13:27:52

21 Q. Sergeant, during the postoperation briefing for Fountain
22 Hills did you discuss the fact with deputies who were there
23 that you had made no human smuggling arrests during that
24 operation?

25 A. No, I did not. 13:28:07

1 Q. And talking more generally, setting aside Fountain Hills in
2 particular, it was not the regular practice of HSU to do a
3 formal postoperation briefing after saturation patrols, is that
4 right?

5 A. I'm sorry, specifically with my HSU personnel? 13:28:23

6 Q. Or in general, it was not the practice of MCSO to do a
7 formal postoperation briefing after these saturation patrols?

8 A. Correct.

9 Q. Sergeant, you generally expected a large number of illegal
10 immigrants to be arrested during saturation patrols, isn't that 13:28:45
11 right?

12 A. Based on previous patrols, yes.

13 Q. And in fact, prior to one saturation patrol you wrote an
14 e-mail to someone named Virginia Collins to advise her: We
15 expect many arrests, to include many 287(g) arrests, is that 13:29:03
16 right?

17 A. Yes.

18 Q. Virginia Collins is a lieutenant with MCSO, is that
19 correct?

20 A. A lieutenant detention officer, yes, ma'am. 13:29:12

21 Q. She's on the detention side of MCSO, right?

22 A. Yes.

23 Q. And she is in charge of the 287(g) -- well, withdrawn.

24 She was in charge of the 287(g) certified MCSO

25 detention officers, correct? 13:29:25

1 A. Yes, ma'am.

2 Q. At the time you wrote that e-mail to her?

3 A. Yes.

4 Q. And at the time you wrote Ms. Collins -- or, excuse me,
5 Lieutenant Collins, you previously had already had high numbers
6 of 287(g) arrests during your HSU saturation patrols, right?

13:29:36

7 A. Yes.

8 Q. One of the measures of whether your saturation patrols are
9 successful is the number of illegal immigrants arrested, isn't
10 that right?

13:29:50

11 A. No, ma'am, I would not say that.

12 Q. Sir, you wrote reports after these operations, right?

13 A. I wrote shift summaries, yes.

14 Q. Sorry, shift summaries.

15 A. Yes.

13:30:09

16 Q. And you reported important information in those shift
17 summaries?

18 A. Yes.

19 Q. You sent them up the chain of command, right?

20 Is that a yes?

13:30:15

21 A. Yes.

22 Q. And you wanted to include what was important in reporting
23 to your commanding officers about the saturation patrols,
24 right?

25 A. I reported what was asked of me to report, yes.

13:30:26

1 MS. WANG: Can we please show Exhibit 108, which is
2 already in evidence?

3 THE COURT: You may.

4 MS. WANG: I want to go to the second page, which
5 we've seen already.

13:30:45

6 Let's highlight the first sen -- paragraph.

7 BY MS. WANG:

8 Q. Sergeant, you report in this first paragraph how many
9 people you arrested for 287(g), correct?

10 A. Yes.

13:31:02

11 Q. You also noted that the one person who was arrested on an
12 outstanding felony warrant was in the United States illegally,
13 right?

14 A. Yes.

15 Q. And as you go on to the next paragraph and outline the
16 individual traffic stops, again, you note everywhere you had an
17 illegal immigrant, isn't that right?

13:31:11

18 A. Yes.

19 Q. And that was true with the last page of this exhibit where
20 you did a shift summary for the second day of the patrol, isn't
21 that right?

13:31:31

22 A. Yes.

23 Q. So isn't it fair to say that you prominently noted the
24 number of illegal immigrants arrested during a saturation
25 patrol in your shift summary?

13:31:43

1 A. Yes.

2 Q. And you reported that to your chain of command?

3 A. Yes.

4 MS. WANG: I'd like also now, Your Honor, to show
5 Exhibit 168, which is also already in evidence.

13:31:56

6 THE COURT: You may.

7 MS. WANG: And let's turn to -- let's turn to page
8 MCSO 057010, please.

9 BY MS. WANG:

10 Q. And let's take a look at this page. This is an e-mail that
11 you sent, correct?

13:32:20

12 A. Yes, the highlighted box, yes, ma'am.

13 Q. And this was your shift summary for a crime suppression
14 patrol on July 23rd and July 24th of 2009, is that correct?

15 A. Yes, ma'am.

13:32:39

16 Q. This was a saturation patrol in the southeast valley,
17 right?

18 A. Yes, ma'am.

19 Q. And down below where it says Friday's patrol you list the
20 salient facts about this saturation patrol, correct?

13:32:49

21 A. Yes, ma'am.

22 Q. The first thing you say is that there were a total of 27
23 suspects taken into custody, correct?

24 A. Yes.

25 Q. And the next thing you list is of the 27 suspects, six were

13:32:58

1 illegally in the country, 287(g), correct?

2 A. Yes.

3 Q. Let's turn to the next page. This looks like the -- the
4 exhibit got cut off a little bit between page 057010 and
5 057011, but the first sentence -- or the first line on the
6 second page we have up here has a sentence fragment that says:
7 Suspects arrested with warrants, none were illegal alien.

13:33:25

8 Do you see that?

9 A. Yes, ma'am.

10 Q. And so is it fair to say that here, though we don't see the
11 beginning of the sentence, you're reporting how many suspects
12 who were arrested on outstanding warrants were illegal aliens,
13 is that correct?

13:33:38

14 A. Yes.

15 Q. So, sir, in your shift summaries you, as you testified a
16 moment ago, highlighted very prominently how many illegal
17 immigrants were arrested during the saturation patrol, correct?

13:33:52

18 A. Yes.

19 Q. That's true for this southeast valley operation, right?

20 A. Yes.

13:34:09

21 Q. Was true in the Fountain Hills operation as well, right?

22 A. Yes.

23 Q. And that was consistent with all of the shift summaries
24 that you wrote for these operations, correct?

25 A. Yes.

13:34:17

1 Q. Is it still your testimony -- let me ask you again, is it
2 still your testimony that the number of illegal immigrants
3 arrested was not a measure of success for these HSU operations?

4 A. It was not a measure of success to me.

5 Q. Okay. But to someone else it might have been?

13:34:31

6 A. I don't know who that was, ma'am. I was instructed what to
7 put in my shift summaries, what numbers were relevant.

8 Q. By your chain of command?

9 A. Correct.

10 Q. And so it was important to your chain of command the
11 number of illegal immigrants arrested?

13:34:43

12 A. I can assume so.

13 Q. Sir, in fact, HSU did arrest large numbers of people who
14 were undocumented immigrants during saturation patrols, is that
15 right?

13:34:54

16 A. Yes.

17 Q. Sergeant, at some point in time HSU adopted something
18 called a zero tolerance policy for saturation patrols, is that
19 right?

20 A. Yes.

13:35:11

21 Q. It was about mid-2008, correct?

22 A. I don't recall the exact date, but it was shortly after I
23 arrived in the unit, so that's probably true, yes.

24 Q. Okay. That was before the Fountain Hills saturation patrol
25 we were discussing?

13:35:23

1 A. Yes.

2 Q. And after this zero tolerance policy was implemented, it
3 meant that if a deputy observed any violation of law during a
4 saturation patrol they were required to make a stop, is that
5 right?

13:35:35

6 A. Yes.

7 Q. They didn't have their ordinary discretion to let someone
8 go if they felt it was a minor violation, correct?

9 A. Yes.

10 Q. So even a very minor traffic violation would trigger a stop
11 under the zero tolerance policy, correct?

13:35:48

12 A. Yes.

13 Q. Sir, the zero tolerance policy was adopted for HSU
14 saturation patrols to avoid having the race card played, isn't
15 that right?

13:36:06

16 A. That would be a fair assessment, yes.

17 Q. Meaning there were lots of public criticisms that MCSO was
18 engaging in racial profiling at that time it was instituted,
19 right?

20 A. Yes.

13:36:18

21 Q. And MCSO wanted to avoid those criticisms?

22 A. Yes.

23 Q. And according to you, when the zero tolerance policy is in
24 place, you know that your deputies are not racially profiling
25 during saturation patrols?

13:36:35

1 A. Yes.

2 Q. Because of the zero tolerance policy?

3 A. In part, yes.

4 Q. And the other part is that you trust your deputies?

5 A. In part, yes. 13:36:47

6 Q. And that you tell people that racial profiling is
7 prohibited?

8 A. In part, yes.

9 Q. Sergeant, deputies are permitted to pull a suspected
10 smuggling vehicle over if they have probable cause to believe a 13:37:01
11 traffic violation has been committed, right?

12 A. Yes.

13 Q. And that's true even if they just have a hunch that this is
14 a smuggling load, right?

15 A. A hunch absent indicators, no, but a hunch with indicators, 13:37:17
16 yes.

17 Q. Sorry, the -- the premise of my question was that they have
18 the probable cause that a traffic violation has been committed.

19 A. Yes.

20 Q. Once you have probable cause that there's a traffic 13:37:30
21 violation, you could pull a vehicle over, right?

22 A. Yes. Actually, you only need reasonable suspicion for a
23 traffic infraction for civil violations, but yes.

24 Q. I apologize, you're right.

25 So when a deputy has reasonable suspicion of a traffic 13:37:53

1 violation, he can go ahead and pull that vehicle over, right?

2 A. Yes.

3 Q. He might have a hunch that it might be a human smuggling
4 load, but he doesn't need that. He already has the probable
5 cause or reasonable suspicion on the traffic violation, right? 13:38:09

6 A. Yes.

7 Q. If a deputy has a hunch that he's got a human smuggling
8 vehicle but he doesn't have articulable suspicion that it is a
9 human smuggling vehicle, he can follow that car until he
10 develops probable cause of a traffic violation, right? 13:38:27

11 A. Until he develops reasonable suspicion for the violation,
12 yes, ma'am, that's correct.

13 Q. Of the traffic violation, right?

14 A. Yes.

15 Q. Now, you've been on patrol, right, as an MCSO sworn deputy? 13:38:38

16 A. Yes, ma'am.

17 Q. And in your experience, if you follow any vehicle on the
18 roads of this county for even a short amount of time, you will
19 be able to pull that person over for some kind of violation,
20 isn't that right? 13:38:51

21 A. My opinion is yes.

22 Q. And once you see that traffic violation you can stop the
23 vehicle?

24 A. Yes.

25 Q. And if you had a hunch all along that it was a smuggling 13:39:02

1 load, you can investigate that hunch during the traffic stop?

2 A. Yes.

3 Q. And during that stop you might develop reasonable suspicion
4 that a person in the car is an undocumented immigrant, isn't
5 that right? 13:39:17

6 A. Yes.

7 Q. Even if it's not a smuggling load?

8 A. Yes.

9 Q. Sir, you're familiar with the 287(g) agreement that MCSO
10 once had? 13:39:35

11 A. Yes.

12 Q. That's the task force agreement, to be clear.

13 A. Yes.

14 Q. That was terminated by DHS in about October of 2009?

15 A. Yes. 13:39:46

16 Q. Now, I want to ask you a question about when that 287(g)
17 task force agreement was still in place. Okay?

18 A. Okay.

19 Q. When it was in place, if a non-287(g) deputy pulled over a
20 car and suspected that someone might be an undocumented
21 immigrant in it, he would have to call a 287(g) certified
22 deputy over to check that out, isn't that right? 13:40:00

23 A. Yes.

24 Q. The non-287(g) deputy could not do that investigation him-
25 or herself, correct? 13:40:18

1 A. Correct.

2 Q. He'd have to wait for the 287(g) certified deputy to arrive
3 on the scene?

4 A. Correct.

5 Q. Now, after the 287(g) agreement was terminated by DHS there 13:40:23
6 was no 287(g) deputy to call upon, correct?

7 A. Correct.

8 Q. So since the termination of that agreement, any MCSO deputy
9 who finds himself with a person who might be an undocumented
10 immigrant now has to wait for an ICE agent to come, correct? 13:40:45

11 A. Has to wait for contact with an ICE agent, correct.

12 Q. Okay. Sergeant Palmer, you're knowledgeable about the laws
13 pertaining to immigration in this country, correct?

14 A. I have a fairly working -- good working knowledge, I would
15 think so, yes. 13:41:03

16 Q. You keep up with developments in the case law in
17 immigration?

18 A. Yes, I try to.

19 Q. Do you still do that since your transfer out of HSU?

20 A. Yes, I do. 13:41:12

21 Q. Can I ask you what -- where are you now within MCSO?

22 A. Civil process division.

23 Q. Okay. Sir, during your second deposition in this case in
24 2010 you testified about the impact of the termination of the
25 287(g) agreement. 13:41:28

1 Do you remember that?

2 A. Yes.

3 Q. And your view was that MCSO deputies still had inherent
4 authority with respect to immigration enforcement, despite the
5 termination of the 287(g) agreement, is that right?

13:41:41

6 A. In accordance with the training from Kris Kobach that was
7 received by the office, yes, ma'am, that's correct.

8 Q. So at the time of your second deposition in this case you
9 believed that even without 287(g) authority, an MCSO deputy
10 would have the inherent authority to make reasonable detentions
11 of individuals for whom he has reasonable suspicion to believe
12 is in fact an illegal alien in the United States, is that
13 correct?

13:42:00

14 A. Yes.

15 Q. And at the time of your second deposition that was an
16 accurate statement of MCSO policy, is that right?

13:42:12

17 A. Yes.

18 Q. Sir, is that still the law today?

19 A. No.

20 Q. Okay. And is that because of this Court's order in
21 December of last year?

13:42:23

22 A. Yes, in part, and also I believe that there was a ruling at
23 some level that what Kris Kobach was teaching was actually a
24 civil violation, not a criminal violation.

25 Q. Okay. So you're talking about this training that someone

13:42:39

1 named Kris Kobach put together for MCSO, is that -- is that
2 right?

3 A. Yes, ma'am.

4 Q. Mr. Kobach's training reflected the inherent authority
5 principle that we were just discussing, is that right?

13:42:58

6 A. Yes.

7 Q. The same principle that you testified to in your deposition
8 in 2010?

9 A. Yes.

10 Q. And his training reflected that same principle, is that
11 right?

13:43:04

12 A. Yes.

13 Q. And that training was given to all MCSO deputies?

14 A. Yes.

15 Q. And that was a video that deputies would access on MCSO's
16 website-based training system?

13:43:12

17 A. Yes.

18 Q. Sir, at the time prior to this change in the law that we're
19 talking about, when an MCSO deputy pulled someone over, he
20 could develop reasonable suspicion that someone in the car was
21 an undocumented immigrant under this inherent authority
22 doctrine, is that right?

13:43:32

23 A. Yes.

24 Q. And you testified that being in the United States illegally
25 is a federal crime?

13:43:46

1 A. I may have then, yes.

2 Q. You know that's not true any more?

3 A. That's true, that's correct.

4 Q. But at the time you told people in your chain of command
5 that being in the United States illegally was a federal crime? 13:43:57

6 A. Yes.

7 Q. And you told deputies under your supervision that being in
8 the United States illegally is a federal crime?

9 A. For the two weeks before I was corrected on it by my chain
10 of command, yes. 13:44:13

11 Q. Okay. That was sometime in 2009?

12 A. Yes.

13 Q. And you previously testified that overstaying a visa also
14 is a federal crime, correct?

15 A. That was my understanding, yes. 13:44:25

16 Q. And you now know that was incorrect?

17 A. That's correct.

18 Q. Sir, at the time that MCSO's task force 287(g) agreement
19 was terminated, there was a period in which MCSO deputies were
20 told to call you or Sergeant Madrid if they encountered someone
21 suspected of being an illegal immigrant, is that right? 13:44:46

22 A. Yes, ma'am.

23 Q. After the termination of the 287(g) agreement, that deputy
24 would have to call ICE, is that right?

25 A. Yes, ma'am. 13:45:01

1 Q. That's still the case today, right?

2 A. Yes.

3 Q. Sir, Chief Sands asked you to do some research on
4 immigration law, is that correct?

5 A. Yes.

13:45:18

6 Q. And you sent him some of your legal research on inherent
7 authority, as we just discussed?

8 A. Yes.

9 MS. WANG: I'd like to show Exhibit 269, which is
10 already in evidence. Your Honor, is that okay?

13:45:33

11 THE COURT: Yes.

12 MS. WANG: And let's highlight the first e-mail on
13 this page.

14 Sorry, I meant the -- the lower one.

15 BY MS. WANG:

13:45:50

16 Q. So this is an e-mail you sent to Chief Sands on July 15,
17 2009, correct?

18 A. Yes.

19 Q. And you said: Hey chief, here is the info you're looking
20 for. That's because he had asked you to do some research --

13:46:06

21 A. Yes.

22 Q. -- on the authority of local officers to enforce
23 immigration law?

24 A. Yes.

25 Q. And you have a citation here to Section 8,

13:46:12

1 U.S.C. 1324(a) (1) (A) (iv) (b) (iii).

2 See that?

3 A. Yes.

4 Q. And let's highlight in the second paragraph about halfway
5 down there's a sentence that starts, Immigration officers and
6 local law enforcement officers.

13:46:35

7 Do you see that?

8 A. Yes.

9 Q. You wrote -- well, actually, did you write this or did you
10 just pull this off of the Internet?

13:46:49

11 A. My recollection is that I cut and paste.

12 Q. Okay. So you cut and pasted this language from a website
13 and conveyed it to Chief Sands?

14 A. Yes.

15 Q. Okay. And this said: Immigration officers and local law
16 enforcement officers may detain an individual for a brief
17 warrantless interrogation where circumstances create a
18 reasonable suspicion that the individual is illegally present
19 in the U.S. Specific facts constituting a reasonable suspicion
20 include evasive, nervous, or erratic behavior, dress or speech
21 indicating foreign citizenship, and presence in an area known
22 to contain a concentration of illegal aliens, correct?

13:46:59

13:47:17

23 A. Yes.

24 Q. And you conveyed this to Chief Sands?

25 A. Yes.

13:47:31

1 Q. Sir, the date on this e-mail is July 15, 2009.

2 You see that?

3 A. Yes.

4 Q. That was about a week before HSU did a saturation patrol in
5 Chandler and southeast valley, isn't that right? 13:47:45

6 A. Looking back at the dates there, you know, but yes, I
7 believe so.

8 Q. Okay. You don't need to see a document to --

9 A. No, I believe you're right.

10 Q. Okay. Now, I want to call your attention -- let's take the 13:48:04
11 highlighting off that middle sentence. The next sentence says:
12 Hispanic appearance -- oops.

13 The next sentence said: Hispanic appearance alone is
14 not sufficient.

15 You see that? 13:48:26

16 A. Yes, ma'am.

17 Q. But it was your understanding that Hispanic appearance, if
18 combined with other factors, could be sufficient to establish
19 reasonable suspicion of illegal presence in the United States,
20 isn't that right? 13:48:36

21 A. My understanding --

22 Q. That's right.

23 A. -- Hispanic appearance? No.

24 Q. Your understanding was not that Hispanic appearance
25 combined with other factors could be sufficient under the law? 13:48:49

1 A. No.

2 Q. Okay. We'll come back to that later.

3 Now, you later found out -- let's take this
4 highlighting down.

5 You later found out that there is no such federal
6 statute as 8 U.S.C. 1324(a)(1)(A)(iv)(b)(iii), is that right?

13:49:01

7 A. Yes.

8 Q. You pulled the information from some website and gave it to
9 Chief Sands, right?

10 A. Yes.

13:49:16

11 Q. You did not check Title 8 of the United States Code to
12 verify the information before sending it on to Chief Sands?

13 A. I assumed that they would have our attorneys do that.

14 Q. So you gave the information to Joe -- Chief Sands?

15 A. Yes.

13:49:31

16 Q. Also to Joe Sousa, correct?

17 A. Yes.

18 Q. And in fact, at some point after that the sheriff actually
19 mentioned this supposed statute in public, isn't that right?

20 A. Yes.

13:49:43

21 MS. WANG: I'm going to now ask that we show
22 Exhibit 467. This evidence is not in evidence yet.

23 THE COURT: You may show it to the witness.

24 MS. WANG: Okay. Why don't we highlight, but -- oh,
25 sorry. I thought I would have it, too. Let me get there.

13:50:15

1 THE COURT: You can have it. I can have it. The
2 witness can have it.

3 MR. CASEY: What? I'm sorry --

4 THE COURT: Everybody else can have it.

5 MR. CASEY: -- what was the exhibit number?

13:50:24

6 MS. WANG: 467.

7 THE COURT: Kathleen, I can see it. The witness can
8 see it. You can show counsel table.

9 MR. CASEY: It's not showing up on defense counsel's
10 table.

13:50:33

11 THE COURT: Is it not electronically loaded?

12 THE WITNESS: It's not on here.

13 MS. WANG: I have copies. Not to worry.

14 THE COURT: Okay. Well, I'm not going to allow you to
15 publish it.

13:50:43

16 MR. CASEY: It's up now.

17 MS. WANG: Okay.

18 THE COURT: You're going to need to wait a minute
19 because we can control who gets it.

20 MR. CASEY: Excuse me, Your Honor. Just may I make an
21 inquiry whether this is an impeachment exhibit? It's not
22 pulling up on my list of exhibits for the plaintiffs.

13:50:57

23 THE COURT: Is this an impeachment exhibit?

24 MS. WANG: It was identified to the Court previously
25 as an impeachment exhibit, yes.

13:51:09

1 THE COURT: All right.

2 (Off-the-record discussion between the Court and the
3 clerk.)

4 THE COURT: Okay. This is -- this is, then, an
5 unnumbered impeachment exhibit, 'cause we're going to give it 13:51:20
6 the next consecutive number, assuming that it's admitted, but
7 as -- as it stands right now, you can refer to it however you
8 want to designate it in the record, but I'm -- we're not
9 assigning it a number yet.

10 MS. WANG: Thank you, Your Honor. This was previously 13:51:34
11 marked for identification by plaintiffs as PX 467.

12 BY MS. WANG:

13 Q. Sergeant Palmer, do you see -- let's highlight the top up
14 until the -- where it says section 1324.

15 Sergeant Palmer, is this an e-mail that you sent to 13:51:53
16 Lieutenant Sousa and others on October 14th, 2009?

17 A. Yes.

18 Q. And again, this -- this e-mail has some material that you
19 pulled from websites, is that right?

20 A. Yes. 13:52:10

21 Q. But it also has information that you wrote yourself,
22 correct?

23 A. Yes.

24 Q. Where it says Palmer and then a colon, those were your
25 annotations on the material from websites, is that right? 13:52:22

1 A. Yes.

2 Q. And on the first part you wrote: My interpretation is that
3 state and local LEO --

4 That stands for "law enforcement officer," correct?

5 A. Yes. 13:52:39

6 Q. -- fall under "other officers," is that correct?

7 A. Yes.

8 Q. And other officers is in quotations. Is that because you
9 found that language appearing in this supposed federal statute?

10 A. I don't recall, but likely, yes. 13:52:51

11 Q. Okay. And then you continue on: A person we as local
12 officers lawfully encounter in the course of duty who gives off
13 indicators, as stated in U.S.C. and the INA, that lead us to
14 reasonably believe the person is an illegal alien then and must
15 lead to the reasonable suspicion that the person may be guilty 13:53:08
16 of a federal crime because all violations of the INA are
17 federal criminal violations.

18 Do you see that?

19 A. Yes.

20 Q. And again, that was incorrect? 13:53:21

21 A. Yes.

22 Q. So this e-mail was sent in October of 2009, correct?

23 A. Yes.

24 Q. And the previous one was sent in July of 2009, isn't that
25 right? 13:53:45

1 A. Yes.

2 MS. WANG: Can you show the last exhibit, please. I
3 believe that was -- there we go. No. That was 169.

4 THE COURT: I believe it was 269.

5 MS. WANG: Oh, sorry, Your Honor. 269.

13:54:08

6 BY MS. WANG:

7 Q. So to be clear, you sent the first e-mail about this
8 purported federal statute to Chief Sands and Lieutenant Sousa
9 July 17, 2009, is that correct?

10 A. Yes.

13:54:29

11 Q. And then the second one in October of 2009, right?

12 A. Yes.

13 Q. I think you testified a few minutes ago that you had this
14 mistaken understanding of the federal law for only a couple of
15 weeks?

13:54:42

16 A. In reference to the specific long string that you
17 identified, yes, of the U.S. code.

18 Q. Okay. But you -- by October of 2009 you still believed --

19 MS. WANG: And can we highlight the -- the top of this
20 exhibit again?

13:54:59

21 BY MS. WANG:

22 Q. By October of 2009 you still believed that a local
23 officer who had reasonable belief that a person is an illegal
24 alien is guilty of a federal crime?

25 A. I apologize, ma'am. Yes, I do believe -- at that time I

13:55:15

1 believed they were guilty of a federal crime.

2 What I -- I misspoke earlier. The long string that
3 you identified in the U.S. code, I know that's an inaccurate
4 string, doesn't exist. That part of the U.S. code does not
5 exist.

13:55:33

6 Q. Okay. And so by October of 2009, to be clear, you still
7 believed that MCSO officers, as local law enforcement officers,
8 could arrest people based on reasonable -- sorry, could detain
9 people based on reasonable suspicion that they were illegal
10 aliens?

13:55:49

11 A. Yes.

12 MS. WANG: Your Honor, I would move this exhibit, what
13 we marked for identification as Plaintiffs' Exhibit 467, into
14 evidence.

15 (Off-the-record discussion between the clerk and the
16 Court.)

13:56:02

17 THE COURT: If we admit it, that's what it will be.
18 Any objection?

19 MR. CASEY: Yes, Your Honor. It's impeachment. It's
20 not been marked as a formal exhibit or disclosed for those
21 purpose. It's been used for impeachment. It doesn't come in
22 substantively, Your Honor.

13:56:13

23 THE COURT: Well, I -- I agree that it -- it is only
24 going to come in for impeachment, but I am going to admit it
25 for purposes of impeachment only.

13:56:29

1 And the exhibit number, just so we're all clear, is
2 going to be Exhibit No. 452.

3 (Exhibit No. 452 is admitted into evidence.)

4 MS. WANG: Thank you, Your Honor.

5 BY MS. WANG:

13:56:58

6 Q. Sergeant Palmer, deputies in HSU who were under your
7 supervision also learned of your mistaken interpretations of
8 federal law as expressed in these e-mails, correct?

9 A. Yes.

10 Q. In fact, at least one deputy forwarded on the information
11 in what's now been marked Exhibit 452 to others, is that
12 correct?

13:57:12

13 A. I don't know. I don't see that, ma'am.

14 Q. Okay.

15 A. If you could show me where you're looking.

13:57:23

16 Q. Sure. What I'd like to show you is actually a different
17 exhibit.

18 MS. WANG: Again, this is to refresh recollection
19 with permission, Your Honor. This has previously been marked
20 for identification as Plaintiffs' Exhibit 469. I have a copy
21 for Mr. Casey.

13:57:34

22 THE COURT: You can give Mr. Casey a copy.

23 Mr. Casey?

24 MR. CASEY: Yes, sir?

25 THE COURT: You can also approach the witness with it.

13:57:50

1 MS. WANG: Thank you, Your Honor.

2 MR. CASEY: Thank you, ma'am.

3 THE COURT: But right now it's not being introduced.

4 (Pause in proceedings.)

5 MS. WANG: Your Honor, may I inquire of the witness? 13:58:45

6 THE COURT: You may.

7 Have you had a chance to review the document?

8 THE WITNESS: May I take a few more minutes, Your
9 Honor?

10 THE COURT: You may. 13:58:52

11 THE WITNESS: Thank you.

12 MR. CASEY: Your Honor? So we can expedite this
13 matter, so I don't interrupt Ms. Wang's tes -- her questions,
14 she hasn't offered it yet, but we will object to the
15 admissibility. 13:59:09

16 THE COURT: Well, I understand it's not been offered.
17 It's only been -- it's only been shown to him to refresh his
18 recollection.

19 MR. CASEY: Okay. I was just going to make a record
20 while we had a pause. Excuse me for jumping the gun. 13:59:19

21 THE COURT: Your record is you object for?

22 MR. CASEY: My record is we object on that it's being
23 offered for recollection, presumably for impeachment. It's an
24 improper exhibit --

25 THE COURT: Well, until it's offered for impeachment, 13:59:30

1 we won't worry about it.

2 MR. CASEY: All right. Thank you, Your Honor.

3 MS. WANG: Your Honor, I could have shortcutted that
4 and said that I don't plan to move this into evidence.

5 THE COURT: All right.

13:59:39

6 MS. WANG: I merely want to refresh the witness's
7 recollection.

8 Also, for the record, just to identify this document,
9 what was marked for identification as Plaintiffs' Exhibit 469
10 spans MCSO 078815 through 18 of the documents produced by MCSO
11 in this case.

14:00:07

12 THE COURT: All right. Well, just -- just so that we
13 can be clear, as long as we're talking about the record, what
14 you have identified it doesn't mean it's been marked for
15 identification that way.

14:00:25

16 MS. WANG: Correct, Your Honor. I want it just so
17 that we know what it was, since I don't I don't plan to move it
18 into evidence.

19 THE COURT: Do you plan to mark it for identification?

20 MS. WANG: Yes, I would like to do that.

14:00:36

21 THE COURT: All right. And so if you're going to mark
22 it for identification, it's going to be marked for
23 identification as Exhibit 453.

24 MS. WANG: Thank you, Your Honor.

25 BY MS. WANG:

14:00:47

1 Q. Sergeant, have you had a chance to review what's been
2 marked for identification as Exhibit 453?

3 A. Yes, ma'am.

4 Q. Does that refresh your recollection that at least one HSU
5 deputy forwarded on the information in Exhibit 452 to others? 14:00:58

6 A. He forwarded it to the Maricopa County Attorney for review,
7 yes, ma'am.

8 Q. Thank you, sir.

9 Sergeant, you were at one time certified under the
10 287(g) program, correct? 14:01:20

11 A. Yes, I was.

12 Q. And you went through ICE training in order to become
13 certified?

14 A. Yes.

15 Q. Now, a few minutes ago you testified that your
16 understanding of the law is that Hispanic appearance alone
17 cannot be one factor among others in deciding whom to stop
18 based on suspicion of illegal presence in the United States. 14:01:27

19 Was that your testimony?

20 A. That's my personal opinion, yes. 14:01:46

21 Q. I'm sorry, I didn't ask you for your personal opinion; I
22 asked you was that your understanding of the law.

23 That was your testimony a few minutes ago?

24 A. Yes.

25 Q. You went through ICE training for the 287(g) program, 14:01:54

1 correct?

2 A. Yes.

3 Q. Wasn't it your understanding, based on that ICE training,
4 that race could be one factor among others in determining whom
5 to stop based on suspicion of illegal presence in the United
6 States?

14:02:08

7 A. Based on training received from Immigration and Customs
8 Enforcement, yes. Not Hispanic appearance, race.

9 Q. So your understanding based on the ICE training was that
10 Mexican ancestry can be one, among other factors, to justify
11 stopping an individual based on suspicion of illegal presence
12 in the United States, correct?

14:02:25

13 A. Per ICE training, yes.

14 Q. And that was not your understanding of MCSO's practice,
15 correct?

14:02:44

16 A. Correct.

17 Q. According to you, it is not HSU's practice to use race or
18 ethnicity in deciding whether to stop a vehicle, is that right?

19 A. Correct.

20 Q. But once a vehicle is already stopped based on probable
21 cause of a traffic violation, it is MCSO policy that race or
22 ethnicity can be one factor among others in initiating an
23 investigation into immigration status, isn't that right?

14:02:56

24 A. No.

25 Q. Was that true at the time of your first deposition in this

14:03:17

1 case?

2 A. I believe so, yes.

3 Q. So at the time you first were deposed in this case in 2009,
4 skin color or ethnicity could be a factor in deciding when to
5 begin an investigation into immigration status, correct? 14:03:34

6 A. I'm sorry, ma'am. We've never used race to start or stop
7 an investigation.

8 Q. Sir, I'd like to show you the transcript from your first
9 deposition at page 20. Let's highlight lines 17 through 24.

10 You were asked: "Can skin color or ethnicity be a 14:04:01
11 factor in whether you begin an investigation?"

12 "ANSWER: To begin an investigation?"

13 "QUESTION: Yes.

14 "ANSWER: Yes.

15 "QUESTION: And you're differentiating that it cannot 14:04:12
16 be a factor in your decision to stop?"

17 "ANSWER: Correct."

18 That was your sworn deposition testimony, correct?

19 A. Yes, that's correct.

20 Q. So MCSO policy made a distinction about the use of race in 14:04:26
21 deciding whether to initiate a stop versus deciding whether to
22 initiate an immigration investigation, correct?

23 A. Yes.

24 Q. You can't stop someone based on race as one factor among
25 many, correct? 14:04:46

1 A. Correct.

2 Q. But you could decide to initiate an investigation during a
3 stop based on race or ethnicity, among other factors, correct?

4 A. Among several factors, yes, ma'am.

5 Q. Sir, in the course of your duties as a sergeant commanding 14:04:57
6 the Human Smuggling Unit you reviewed field reports by
7 deputies, correct?

8 A. Yes.

9 Q. And you've reviewed reports in which MCSO deputies reported 14:05:13
10 that they did consider race or ethnicity as one factor among
11 others in forming reasonable suspicion that they were dealing
12 with a human smuggling load, correct?

13 A. Yes.

14 Q. Sir, have you ever told a deputy that it's not proper to 14:05:29
15 consider Hispanic descent as one factor among others in
16 deciding whether to initiate an investigation into human
17 smuggling?

18 A. No, I haven't.

19 Q. Sir, I want to show you what's been marked as Exhibit 162.

20 MS. WANG: This is not in evidence and there is a 14:05:56
21 pending objection to it. And let's just highlight the top so
22 that the sergeant can see it.

23 BY MS. WANG:

24 Q. Sir, is this an incident report on an MCSO form?

25 A. Yes. 14:06:13

1 Q. And the reporting officer is listed as E.A. Quintero, is
2 that right?

3 A. Yes.

4 Q. Deputy Quintero is in the Human Smuggling Unit, right?

5 A. Yes.

14:06:24

6 Q. You know him?

7 A. Yes.

8 Q. And he is assigned to the Human Smuggling Unit?

9 A. Yes.

10 Q. You were present at this particular incident, isn't that
11 right?

14:06:30

12 A. I believe I testified in my deposition that I was, yes.

13 Q. Okay. Let's turn -- okay. That's fine.

14 And let's turn to page 38089.

15 So on this page it's titled Narrative. This is like a
16 narrative supplement to the incident report, correct?

14:06:59

17 A. Yes.

18 Q. And up at the top it shows that you were on the scene,
19 correct?

20 A. Yes, it does.

14:07:11

21 Q. And this referred to a stop at -- on U.S. 93 at milepost
22 198 on April 15, 2008, is that right?

23 A. Yes.

24 Q. Okay. Now, let's highlight the second paragraph on this
25 page. Here Deputy Quintero is describing how he made this

14:07:33

1 traffic stop, right?

2 A. Yes.

3 Q. And he's basically describing that at this particular point
4 on the highway there are two lanes that merge into one,
5 correct?

14:07:52

6 A. Yes.

7 Q. And he pulled over this vehicle because the driver failed
8 to turn on the turn blinker in merging from one lane into the
9 next, correct?

10 A. Yes.

14:08:03

11 Q. That's a forced lane change, right, because the road's
12 merging?

13 A. Yes.

14 Q. And going on to the next paragraph, the next one, he calls
15 this an unsafe lane change?

14:08:27

16 A. Yes.

17 Q. That was his probable cause to make the stop?

18 A. Yes, it appears so.

19 Q. Okay. Let's turn to the next page. In the first
20 paragraph, Deputy Quintero notes that he contacted the driver
21 of the vehicle, is that right?

14:08:47

22 A. Yes, ma'am.

23 Q. And the driver spoke only Spanish?

24 A. Yes.

25 Q. And then looking at the next paragraph, basically Deputy

14:08:54

1 Quintero explains why he thought this was a human smuggling
2 load, right?

3 A. Yes.

4 Q. There were a lot of people in that vehicle, right?

5 A. Yes.

14:09:11

6 Q. And people were lying down on the floorboard, et cetera?

7 A. Yes.

8 Q. Those are pretty good signs it's a human smuggling load,
9 right?

10 A. Among others, yes.

14:09:21

11 Q. Okay. Let's go to the next paragraph.

12 Let's focus on the last sentence. Deputy Quintero
13 writes: The Hispanic descent of the occupants within the
14 vehicle, their inability to speak the English language, the
15 pungent body odor, and lack of luggage for traveling also
16 raised my suspicions.

14:09:40

17 See that?

18 A. Yes.

19 Q. He's saying that Hispanic descent was one of the factors
20 among others that led him to think this was a human smuggling
21 load?

14:09:50

22 A. Yes.

23 Q. As well as the inability to speak English, is that right?

24 A. Yes.

25 Q. According to you, that's perfectly legitimate?

14:09:57

1 A. Among the other indicators listed there I don't see an
2 issue with that, no.

3 Q. Sir, when a deputy provides a field report that states that
4 he took some action inconsistent with MCSO policy, a
5 supervising sergeant should take corrective action, isn't that
6 right? 14:10:22

7 A. Yes.

8 Q. If a deputy reports that he took some action that's
9 contrary to law, a supervising sergeant should take corrective
10 action? 14:10:33

11 A. Yes.

12 Q. So according to this document -- withdrawn.

13 An MCSO deputy may form reasonable suspicion that a
14 person is in the United States illegally, based in part on race
15 or ethnicity, in addition to other factors? 14:10:53

16 A. In the United States illegally, no.

17 Q. But that it's a human smuggling load?

18 A. Yes.

19 Q. Sir, an MCSO deputy can develop reasonable suspicion based
20 on the fact that -- withdrawn. 14:11:12

21 An MCSO deputy may form reasonable suspicion that a
22 person is an undocumented immigrant if the person's manner of
23 dress indicates that he has recently arrived from Mexico?

24 A. Yes.

25 Q. Speaking Spanish only, not being able to speak English, is 14:11:29

1 also a factor that can lead an MCSO deputy to trigger an
2 investigation of human smuggling?

3 A. Among others, yes.

4 Q. Speaking little or no English is one of those factors?

5 A. Among others, yes, ma'am.

14:11:51

6 Q. Speaking broken English can give rise to reasonable
7 suspicion that someone is in the country illegally?

8 A. Yes, ma'am.

9 Q. And appearing to have recently arrived from Mexico is
10 another one of the factors that can trigger an investigation
11 into immigration violations?

14:12:04

12 A. Yes.

13 MS. WANG: Okay. Let's take that down.

14 BY MS. WANG:

15 Q. Sir, as a sergeant in the Human Smuggling Unit, one of your
16 responsibilities was to supervise deputies under your command,
17 right?

14:12:17

18 A. Yes.

19 Q. You need to make sure that deputies are acting in
20 compliance with MCSO policy?

14:12:28

21 A. Yes.

22 Q. You need to make sure they're complying with the law?

23 A. Yes.

24 Q. Now, deputies in HSU, when you were a sergeant there, were
25 not required to submit documentation to you on the race of

14:12:40

1 people they stopped, isn't that right?

2 A. Required to submit it to me, no.

3 Q. They weren't required to write it down, were they?

4 A. If they wrote a report or a citation, yes, both of those
5 require ethnicity delineation. 14:12:59

6 Q. If they didn't write a traffic citation or make an arrest,
7 you wouldn't know what the race of anyone they contacted was?

8 A. Not necessarily, no, ma'am.

9 Q. So if a deputy conducted a traffic stop and then let the
10 person go with a warning, you wouldn't know anything about the 14:13:13
11 race of the person they stopped?

12 A. Not unless I had specific conversation with that deputy and
13 it came up, no.

14 Q. The general practice is unless you write the citation or
15 write an incident report, you don't report the race of the 14:13:25
16 person stopped, true?

17 A. Correct.

18 Q. And as a sergeant in the HSU, you did not keep statistics
19 so you could monitor for deputies who might have, say, an
20 unusual number of arrests of Latinos, isn't that right? 14:13:41

21 A. That's right.

22 Q. To your knowledge, nobody at MCSO monitors such statistics,
23 is that right?

24 A. Correct.

25 Q. Sir, MCSO deputies are not required to submit daily logs of 14:14:00

1 their activity to their supervising sergeants, isn't that
2 right?

3 A. Yes, ma'am.

4 Q. They do have to?

5 A. No, no, they do not, you're right. 14:14:11

6 Q. Deputies do not have to submit daily logs to their
7 supervisors?

8 A. Do not, correct.

9 Q. And they do not have to submit shift summaries to their
10 supervisors? 14:14:22

11 A. Do not, correct.

12 Q. Now, sometimes you would get documentation from deputies
13 about their traffic stops, correct?

14 A. Yes.

15 Q. You might get something like the incident report we just
16 went over? 14:14:37

17 A. Yes.

18 Q. And those documents sometimes would explain what the
19 reasonable suspicion was that justified the traffic stop, is
20 that right? 14:14:48

21 A. Yes.

22 Q. And if you looked at that, once you saw that a deputy had
23 reasonable suspicion to justify the stop, you would know they
24 didn't engage in racial profiling during that stop, is that
25 your opinion? 14:15:03

1 A. Yes.

2 Q. Sir, according to you, deputies do not stop people because
3 they're Hispanic, is that right?

4 A. That's right.

5 Q. How do you know that? Is that because you trust your
6 brothers and know that they abide by the law?

14:15:20

7 A. In part, yes.

8 Q. Sir, I want to go back to one thing we covered a few
9 minutes ago. I asked you whether Hispanic descent could be one
10 factor among others in determining whether -- in developing
11 reasonable suspicion that someone is unlawfully in the United
12 States.

14:15:37

13 Do you remember that?

14 A. Yes.

15 Q. You testified no just now?

14:15:46

16 A. Yes, I think that's correct.

17 Q. Okay. I'd like to go to --

18 MS. WANG: Sorry, Your Honor. Just a moment.

19 BY MS. WANG:

20 Q. I'd like to go to your first deposition from 2009 to
21 page 28, lines 18 through 24. Sorry, 23.

14:16:10

22 Sir, you were asked during your deposition:

23 "And in addition to these criteria, at least for
24 further investigation, you would add, or it would be proper to
25 use Hispanic descent as a factor; is that correct?"

14:16:33

1 "ANSWER: In determining on whether to carry on an
2 investigation for a human smuggling load? Yes."

3 And then let's continue on.

4 "QUESTION: Not for the stop or the detention, but as
5 part of an investigation to see if the person, if there's
6 reasonable suspicion -- let's put it that way -- that the
7 person is here illegally?

14:16:57

8 "ANSWER: Yes."

9 Do you see that?

10 A. Yes, ma'am.

14:17:07

11 Q. That was your sworn testimony then?

12 A. Yes.

13 Q. Are you going to stand by that, or are you going to stand
14 by what you said a minute ago?

15 A. I'll stand by my sworn testimony.

14:17:14

16 MR. CASEY: Excuse me. Objection, Your Honor,
17 argumentative.

18 BY MS. WANG:

19 Q. Sir, do you stand by your testimony from your deposition
20 when you were sworn to tell the truth?

14:17:23

21 A. Yes.

22 Q. Thank you. Sergeant, you know someone named John Little?

23 A. I do.

24 Q. He's an MCSO deputy, right?

25 A. Correct.

14:17:44

1 MS. WANG: I'd like to show what's been marked
2 Exhibit 2 and is already in evidence.

3 BY MS. WANG:

4 Q. Sir, is this an e-mail exchange between you and John Little
5 from June 12th and 13th, 2009? 14:18:10

6 A. Yes, ma'am.

7 Q. And Deputy Little sent you an e-mail on -- on June 12th,
8 2009, correct?

9 A. Yes.

10 Q. From his MCSO e-mail account? 14:18:22

11 A. Yes.

12 Q. To your MCSO e-mail account?

13 A. Yes.

14 Q. And you forwarded this e-mail on to deputies in HSU and
15 Enforcement Support, correct? 14:18:32

16 A. Yes.

17 MS. WANG: Let's highlight the numbered lines in the
18 middle of that first e-mail at the bottom.

19 BY MS. WANG:

20 Q. The e-mail that Deputy Little sent you starts out: I found 14:18:47
21 this an interesting set of facts:

22 From the L.A. Times. Number 1. 40 percent of all
23 workers in L.A. County -- L.A. County has 10.2 million
24 people -- are working for cash and not paying taxes. This is
25 because they are predominantly illegal immigrants working 14:19:03

1 without a green card.

2 Do you see that?

3 A. Yes, I do.

4 Q. And at the time you forwarded this e-mail you did not know
5 whether that was true or not, correct?

14:19:13

6 A. That's correct.

7 Q. And then if you look at number 4 it says: Over two-thirds
8 of all births in Los Angeles County are to illegal alien
9 Mexicans on Medi-Cal, whose births were paid for by taxpayers.

10 You see that?

14:19:29

11 A. Yes, ma'am.

12 Q. At the time you forwarded this e-mail you did not know
13 whether that was true, correct?

14 A. Correct.

15 Q. And if you look a little bit down it says: Over 300,000
16 illegal aliens in Los Angeles County are living in garages.

14:19:34

17 You see that?

18 A. Yes, ma'am.

19 Q. You didn't know where that -- whether that was true,
20 either, do you -- did you?

14:19:55

21 A. No, ma'am, I did not.

22 Q. Number 9 says: 21 radio stations in L.A. are Spanish
23 speaking. You see that?

24 A. Yes.

25 Q. That has nothing to do with crime, does it?

14:20:03

1 A. No, ma'am, it does not.

2 Q. And you did not know whether that was true when you
3 forwarded this e-mail on, correct?

4 A. Correct.

5 Q. Number 10 says: In L.A. County 5.1 million people speak
6 English, 3.9 million speak Spanish.

14:20:09

7 And that, again, does not involve any kind of crime,
8 does it?

9 A. No.

10 Q. And let's go down to the bottom of the e-mail where it
11 says: We are a bunch of fools for letting this continue.

14:20:23

12 Next page, please.

13 You see that? We are a bunch of fools for letting
14 this continue. How can you help?

15 A. Yes.

14:20:44

16 Q. And it's basically a chain letter. It says, Send this
17 letter on to others, correct?

18 A. Yes.

19 Q. And that's what you did.

20 A. Yes.

14:20:52

21 Q. You sent the e-mail on to deputies under your command in
22 HSU without verifying the information, correct?

23 A. Yes.

24 Q. You later found that this information was not correct,
25 didn't you?

14:21:02

1 A. Yes.

2 Q. You found that out during your second deposition in this
3 case?

4 A. I believe so, yes.

5 Q. During a break in the deposition, someone looked on the
6 Internet and found out all these statistics had been debunked
7 as a hoax?

14:21:09

8 A. Yes.

9 Q. And you saw that during the deposition break on the
10 Internet for yourself, right?

14:21:20

11 A. Yes.

12 Q. One of the websites you looked at was Snopes.com?

13 A. Yes, I believe so.

14 Q. That was a common and familiar website to you?

15 A. Yes.

14:21:30

16 Q. And you looked at some other Internet sites reviewed
17 during -- you looked at other Internet sites during the break
18 in the deposition?

19 A. Yeah. I don't think I looked personally at them, I was
20 conferring with my attorney, but yes.

14:21:42

21 Q. Okay. During that second deposition your attorney,
22 Mr. Liddy, introduced as an exhibit a printout from the
23 L.A. Times website showing that the statistics were false,
24 correct?

25 A. Yes.

14:21:54

1 Q. And that the L.A. Times had never published any such
2 statistics, is that right?

3 A. Yes.

4 Q. What was the date of that L.A. Times article?

5 A. I don't see it on the --

14:22:07

6 Q. I'm sorry, the one that Mr. Liddy introduced at your
7 deposition from the actual L.A. Times website.

8 A. I don't know, ma'am.

9 MS. WANG: Can we show PX 10? This is not in
10 evidence. I'm using this just to refresh recollection.

14:22:18

11 THE COURT: Then just show it to the witness. Do not
12 put it up on the screen.

13 If you'll put it up we can show it to the witness. We
14 can control screens that it goes on.

15 MS. WANG: Okay. Let's highlight where it says May
16 Day myth-busting with the date underneath.

14:22:39

17 BY MS. WANG:

18 Q. So this L.A. Times article debunking the statistics you
19 sent was dated April 30th, 2007, isn't that right?

20 A. Yes, ma'am.

14:22:50

21 Q. So by the time you forwarded the false statistics on June
22 13, 2009, the L.A. Times had already debunked that, correct?

23 A. Yes.

24 Q. And the information was readily available on the Internet,
25 isn't that right?

14:23:05

1 A. Yes.

2 Q. When you forwarded Deputy Little's e-mail, you intended it
3 as factual information for your deputies, right?

4 A. Yes.

5 Q. You sent it for training purposes?

14:23:14

6 A. Yes.

7 Q. You should not have sent that e-mail, should you?

8 A. No, ma'am, I should not have.

9 Q. But you did not rescind it?

10 A. Rescind it?

14:23:23

11 Q. You didn't send an e-mail later to say, Disregard the
12 e-mail that I sent?

13 A. I don't recall if I did or not.

14 Q. Sir, I'd like to show you a document that is not yet in
15 evidence. That's Exhibit 3. There is a pending objection to
16 this.

14:23:39

17 Sir, Wade Voeltz is an MCSO deputy, right?

18 A. Yes, ma'am.

19 Q. He sent you this e-mail on August 3rd, 2009?

20 A. Yes.

14:23:58

21 Q. And the e-mail is a document titled: No one has asked what
22 does Raza studies teach and why we want to shut it down.

23 Do you see that?

24 A. Yes.

25 Q. By someone named Laura, right?

14:24:11

1 A. Yes.

2 Q. And the first page contains a statement in the second
3 paragraph: Here I found an attitude problem, but only Mexicans
4 seemed to have it who told me their government informed them
5 that this is their land, they're taking it back.

14:24:37

6 You see that?

7 A. Yes, ma'am.

8 Q. And it also contains the statement: Even many
9 Mexican Americans appeared to have this attitude problem and
10 told me they were Mexicans first.

14:24:51

11 See that?

12 A. Yes, ma'am.

13 Q. Deputy Voeltz sent this to you from his MCSO e-mail
14 account, correct?

15 A. Yes.

14:24:57

16 Q. To your MCSO e-mail account?

17 A. Yes.

18 Q. You never told him, Don't send me something like this?

19 A. No.

20 Q. Sir, I'd like to also put on the screen now Exhibit 18,
21 which is in evidence.

14:25:09

22 MS. WANG: And I'd ask, Your Honor, that it be
23 published.

24 MR. CASEY: I'm sorry. What was the exhibit,

25 Ms. Wang?

14:25:23

1 MS. WANG: 18.

2 MR. CASEY: Thank you.

3 MS. WANG: And let's blow this up so that the
4 sergeant can read it. The whole chain, please.

5 BY MS. WANG:

14:25:37

6 Q. This is an e-mail chain between -- well, looks like someone
7 named Jerome Hepp is forwarding you an e-mail.

8 See that?

9 A. Yes, ma'am.

10 Q. Jerome Hepp is an MCSO deputy, correct?

14:25:47

11 A. He is, yes.

12 Q. Again, he sent this from his MCSO e-mail account to your
13 MCSO e-mail account, correct?

14 A. Yes.

15 Q. And the subject line says: Forward. A rare photo of
16 Mexican navy SEAL. Do you see that?

14:25:59

17 A. Yes, ma'am.

18 Q. Let's turn to the last page of this exhibit. This is the
19 attachment to the e-mail.

20 A. Yes, ma'am.

14:26:14

21 Q. That's the rare photo of a Mexican navy SEAL?

22 A. Yes.

23 Q. A dog in a scuba diving outfit?

24 A. Yes.

25 Q. Let's go back to the first page. Let's highlight the

14:26:22

1 e-mail again.

2 You forwarded this e-mail on to numerous MCSO staff,
3 isn't that right?

4 A. Yes, ma'am.

5 Q. Including HSU deputies under your supervision, correct? 14:26:41

6 A. Correct.

7 Q. And then it looks like Deputy Quintero sent it on to
8 another deputy, is that right?

9 A. Yes.

10 Q. Sergeant, do you consider this a joke? 14:26:52

11 A. At the time I considered it a joke e-mail, yes, ma'am.

12 Q. A joke worth sending to deputies under your supervision?

13 A. At the time, yes.

14 MS. WANG: I'd like to put up on the screen, Your
15 Honor, Exhibit 29, which is already in evidence. I'd like to
16 publish that, if I may. 14:27:15

17 THE COURT: You may.

18 MS. WANG: Let's highlight the top of this so we can
19 read the -- the e-mail information.

20 MR. CASEY: Your Honor, I apologize. I just needed
21 the exhibit number. Excuse me. 14:27:30

22 MS. WANG: 29, Tim.

23 MR. CASEY: Thank you very much.

24 MS. WANG: You're welcome.

25 Let's scroll down so we can see all of the e-mail 14:27:39

1 string from about halfway. Thank you.

2 BY MS. WANG:

3 Q. Sir, again, this was an e-mail that Jerome Hepp, Deputy
4 Hepp, sent on to you and others, correct?

5 A. Yes. 14:27:54

6 Q. And again, this was through the MCSO e-mail system?

7 A. Yes, it was.

8 Q. And again this was something that you forwarded on to many
9 others on MCSO e-mail, correct?

10 A. Yes, ma'am. 14:28:07

11 Q. Including HSU deputies under your supervision?

12 A. Yes.

13 Q. And again, it looks like a Deputy Ruiz sent that on to
14 others, is that right?

15 A. Yes. 14:28:20

16 Q. And the subject line of this was: Indian yoga versus
17 Mexican yoga, is that right?

18 A. Yes, ma'am.

19 Q. Let's turn to the second-to-last page, MCSO 38848.

20 This, in the original version, was labeled Indian
21 yoga, isn't that right? 14:28:36

22 A. Yes, ma'am.

23 Q. That was a photo of a man doing a yoga pose, correct?

24 A. Yes.

25 Q. Let's turn to the last page. 14:28:45

1 This photo was captioned Mexican yoga, correct?

2 A. Yes, ma'am.

3 Q. That's a photograph of two men with a bottle of tequila on
4 the table?

5 A. Yes. 14:29:08

6 Q. And one of them appears to be passed out drunk?

7 A. Yes.

8 Q. Sergeant, you were never disciplined for sending any of
9 these e-mails on to deputies under your supervision, were you?

10 A. Actually, yes, I was. 14:29:19

11 Q. You were?

12 A. Yes.

13 Q. When was that?

14 A. I don't recall the date, ma'am, but I was disciplined.

15 Q. After this lawsuit started? 14:29:26

16 A. No, I believe it was before.

17 Q. But you stayed a sergeant at HSU?

18 A. Yes.

19 MS. WANG: Thank you. I have nothing further for this
20 witness, for now. 14:29:40

21 THE COURT: Cross-examination?

22 MR. CASEY: Yes, Your Honor. Thank you.

23 May I have a brief moment to set up my laptop?

24 THE COURT: You surely may.

25 MR. CASEY: Thank you. 14:30:09

1 (Pause in proceedings.)

2 CROSS-EXAMINATION

3 BY MR. CASEY:

4 Q. Sir, the Indian yoga, the Mexican navy SEAL e-mail, the
5 L.A. Times statistics, were those mistakes?

14:30:44

6 A. Yes, they were.

7 Q. You testified that as to Exhibit 18, which I believe was
8 the Mexican navy SEAL, and the Indian yoga, Exhibit 29, that
9 you had, as I understand it, intended it to be humorous?

10 A. Yes.

14:31:05

11 Q. Do you understand -- well, let me tell you, do you
12 understand now whether it was humorous or not?

13 A. I do understand, yes.

14 Q. It appears that you sent it to a number of people within
15 HSU. Did you also send it to people outside HSU?

14:31:15

16 A. I don't recall. I may have, sir.

17 Q. Okay. Did you ever receive any feedback from any -- anyone
18 indicating to you this indicates to them that you have a
19 problem, somehow you're racist; somehow you have some issue?

20 A. No, sir, I did not.

14:31:40

21 Q. Now, the discipline, you're certain that you were
22 disciplined when these things surfaced?

23 A. I'm uncertain of the time of the discipline, but I am
24 certain that I was disciplined.

25 Q. All right. Thank you, sir.

14:32:02

1 Now, what I'd like to do is I am going to go over some
2 of the things that we -- that were asked of you during the
3 course of your testimony, and specifically what I'd like to do
4 is I'm going to pull up some exhibits that were used. The
5 first one will be the Exhibit 108. And I'm going to refer to
6 the last page.

14:32:23

7 Is that being shown up on your screen?

8 A. Yes.

9 Q. It's in evidence.

10 And specifically what I'm going to do is enlarge this
11 a bit so you can see it. Okay.

14:32:39

12 Now, you were asked -- and this is the last page of
13 Exhibit 108. And you were asked a specific question by the
14 plaintiffs' lawyer about: Does the fact that 17 out of the 20
15 arrestees in -- and I believe this was Fountain Hills --
16 whether it caused you any problem or concern because those 17
17 out of 20 arrestees had Hispanic surnames.

14:33:03

18 Do you remember being asked that question?

19 A. Yes, I do.

20 Q. You said it did not. Did I understand your answer
21 correctly?

14:33:19

22 A. Yes, sir.

23 Q. All right. But you were never asked to explain why it did
24 not, so my question is: Why was it not a concern to you that
25 17 out of the 20 people that were arrested appear to have

14:33:33

1 Hispanic surnames?

2 A. Several reasons, sir. One, we're a border state with the
3 country of Mexico. I don't have U.S. census -- census data,
4 but I would wager by common sense that we would probably have a
5 lot of Hispanic Americans living in Arizona, being a border
6 state, as with Texas, New Mexico, and California.

14:33:56

7 I would also add that -- I was asked the question
8 based on surnames, and as surnames are listed here it doesn't
9 cause me concern at all, because as an example, if I may --

10 Q. Please.

14:34:13

11 A. -- Sergeant Manny Madrid, his wife is Tiana Madrid, same
12 last name, but she's white haired, white skin, blue-eyed. Her
13 name appearing on this, Tiana Madrid, could also give a false
14 impression that she's Hispanic, which she is not.

15 And so that's -- I've seen plenty of U.S. citizens and
16 other individuals that have Hispanic surnames that are not
17 necessarily Hispanic.

14:34:29

18 Q. Is there anything when you look at this exhibit,
19 Exhibit 108, at page 3, is there anything about the nature of
20 why they were arrested that alleviates any potential concern?

14:34:48

21 A. No, there's nothing listed about why they were arrested.

22 Q. Well, for example, let me -- let me point out, for example,
23 there was a -- if you're looking at the screen, it appears that
24 one woman that, at least in my judgment, sir, a Nicole Chapman,
25 that does not appear to me to be a Hispanic surname.

14:35:11

1 Do you see that there?

2 A. Yes, I do.

3 Q. Do you see what the reason that you wrote for Nicole
4 Chapman's arrest was?

5 A. Felony warrant. 14:35:23

6 Q. Does it indicate anything else next to felony warrant?

7 A. For dangerous drugs.

8 Q. Now, my question for you is: If someone has a felony
9 warrant for dangerous drugs, does that have anything to do with
10 race or ethnicity of the person? 14:35:42

11 A. No, sir, it's race neutral.

12 Q. Is that something, a factor that you look at or rely on
13 when you're evaluating arrest sheets?

14 A. No, sir, I don't -- it's not a factor -- it's a factor in
15 the sense that the reasonable suspicion for the traffic stop or 14:35:55
16 the probable cause for the arrest would be race neutral
17 elements.

18 Q. Okay. Is having an outstanding warrant out a race-neutral
19 factor?

20 You understand my question? 14:36:12

21 A. No, sir.

22 Q. Okay. When someone -- if someone is pulled over and they
23 run -- officers, do they run a search on the -- on the person's
24 license, identification?

25 A. Generally, yes, sir. A license check and a records check 14:36:24

1 for warrants.

2 Q. And how does -- and a warrant comes back and says it exists
3 or it doesn't exist?

4 A. Yes.

5 Q. Okay. And so that means what to you as an officer? 14:36:33

6 A. If a warrant does not exist they don't have any outstanding
7 warrants for their arrest, and the opposite, consequently.

8 Q. Now, the fact that this person had a warrant out for
9 dangerous drugs or narcotics, that's independent of whether
10 they're Caucasian, whether African-American, or Hispanic, is 14:36:52
11 that a fair statement?

12 A. Yes.

13 Q. Now, if you look at the next one that -- there's a Santiago
14 Martinez-Gonzalez. That name is listed under a description
15 that they were booked in jail for felony warrant, and it says 14:37:07
16 felony warrant with an ICE detainer. Tell me, what does that
17 indicate?

18 A. The warrant is not specifically identified, but it is
19 indicated they had a felony warrant for their arrest. That's
20 why they were taken into custody and booked into the jail. And 14:37:21
21 subsequent to a 287(g) screening process they received an ICE
22 detainer.

23 Q. Is the -- does the existence of a warrant, when you run a
24 check on an identification, does that have any bearing or
25 dependency on the race or ethnicity of the person you're 14:37:39

1 checking?

2 A. No, it does not.

3 Q. Now, let's just go before we move on, on the top of the
4 screen here there are one, two, three, four, five, six, seven,
5 eight individuals there that you have under the heading
6 Processed Administratively Through ICE.

14:37:54

7 What does that mean, processed administratively
8 through ICE?

9 A. Processed administratively through ICE means that they were
10 turned over to the custody of ICE personnel.

14:38:09

11 Q. Why is that?

12 A. Subsequent to a 287(g) screening process they were
13 determined to be illegal aliens within the United States
14 borders and turned over to ICE personnel.

15 Q. Does the fact that -- even though we're a border state, in
16 and of itself, does the fact that someone is here unlawfully in
17 the United States mean that they're necessarily Hispanic or
18 Latino?

14:38:24

19 A. No.

20 Q. Now, I'd like to turn to a different subject, and that is
21 posse members. You were asked questions about posse members.

14:38:40

22 Do you remember that?

23 A. Yes.

24 Q. What tasks -- please explain what tasks posse members do or
25 perform during saturation patrols.

14:38:59

1 A. During saturation patrols, as with any other operation or
2 patrol time, they perform a support role. Posse members are
3 not sworn police officers in the state of Arizona. They carry
4 no arrest power. They cannot stop cars. They cannot take law
5 enforcement action unless duly commanded by a law enforcement
6 officer, a deputy sheriff, to take such action. 14:39:19

7 But that would be the case with any citizen, too, that
8 an officer would need to invoke the assistance of. They would
9 provide vehicles, caged units for us to secure prisoners into,
10 traffic control, security. 14:39:39

11 Q. Sir, explain for me, and I think you already mentioned
12 this, whether posse members can do any particular stops on
13 saturation patrols. Can they make traffic stops?

14 A. Independently, no.

15 MR. CASEY: Your Honor, I'm having a little bit of a
16 computer difficulty pulling up images on this. I maybe would
17 ask for a break at maybe 10, 15 minutes. 14:40:14

18 THE COURT: Sure. It's about time for a break,
19 anyway. Why don't we -- why don't we give you 20 minutes and
20 we'll be back at 3 o'clock. 14:40:32

21 MR. CASEY: Thank you, Your Honor.

22 (Recess taken.)

23 THE COURT: Thank you. Please be seated.

24 Did you get the glitch fixed, Mr. Casey?

25 MR. CASEY: Thank you, Your Honor, for breaking at 15:01:51

1 that time, accommodating me, and also the plaintiffs' counsel.

2 BY MR. CASEY:

3 Q. Sergeant Palmer, I'd like to return to some of the
4 questions, and I'm going to be going around here and changing
5 subjects. You were asked a question about a posse member named
6 Jim Van Allen, an e-mail where he asked about fishing.

15:02:02

7 Do you remember that?

8 A. Yes, sir.

9 Q. What was your understanding of what posse member Jim
10 Van Allen was referring to?

15:02:16

11 A. Referring to human smuggling, going out and performing our
12 assigned task looking for human smuggling load vehicles in the
13 Anthem area.

14 Q. Did you understand that in any way to be some sort of
15 pejorative, some sort of mean-streaked comment about people
16 that were in the country unlawfully?

15:02:28

17 A. No, sir, not at all, and I've heard other officers from
18 multiple agencies. I myself have, when I was a deputy back in
19 2001-2002, would comment to my sergeant at that time that I was
20 going to fishing in the state trust land, but it wasn't for
21 illegal aliens; it was for people having sex in vehicles and
22 committing acts of drug -- drug use and other crimes.

15:02:48

23 Q. All right. Thank you very much.

24 Let me move on to Exhibit 168, where I was going
25 before my computer gave me fits.

15:03:03

1 I'm going to show you -- this was what the plaintiffs'
2 lawyer was asking about. It was a shift summary, and it was
3 saturation patrols.

4 Do you remember being asked a series of questions
5 about your emphasis and your highlighting of certain data?

15:03:19

6 A. Yes.

7 Q. All right. Now, you were specifically asked about your
8 emphasis about the arresting of illegal immigrants.

9 Do you remember that?

10 A. Yes.

15:03:34

11 Q. Would you go over here on Friday's -- under the heading
12 Friday's patrol. And I know the Court has a copy of this in
13 front of you, but what types of information were you actually
14 highlighting?

15 A. The total number of arrests made; how many out of those
16 arrested were identified through 287(g) screening to be illegal
17 aliens inside the U.S. borders. And then the delineation
18 between number of arrests and some various other crimes that I
19 was asked to place in there, such as how many were arrested for
20 failing to provide identification, which is a criminal
21 violation in the state of Arizona, and other such stuff like
22 that, how many and warrants, stuff like that.

15:03:43

15:04:11

23 Q. All right. And out of this 27 total suspects taken into
24 custody, looking at the last bullet point, would you read that
25 into the record? What does it indicate there?

15:04:29

1 A. The last bullet point, sir?

2 Q. Yes, sir.

3 A. 21 U.S. citizens were booked on the state charges ranging
4 from DUI, driving suspended, drug possession, to misdemeanor
5 felony warrants.

15:04:41

6 Q. Thank you, sir.

7 And my question for you is: In your mind's eye as a
8 sergeant in HSU, you were -- were you trying to emphasize any
9 particular data on these types of shift summaries when you
10 authored them?

15:04:58

11 A. No.

12 Q. All right. Thank you, sir.

13 Now, one other different area they asked you about --
14 asked some questions about after the DHS, ICE, revoked 287(g)
15 authority in October of 2009.

15:05:17

16 You remember generally those types of questions?

17 A. Yes, sir.

18 Q. They also asked you about inherent authority. At one point
19 you testified that you believed that there was an inherent
20 authority?

15:05:30

21 A. Based on training from Kris Kobach, yes, sir.

22 Q. That's Professor Kris Kobach from the University of
23 Missouri?

24 A. Yes, sir.

25 Q. And at some point also you testified to one of the

15:05:37

1 exhibits, it's actually Exhibit 452, also identified in the
2 record as 467, that was an e-mail of a legal opinion, some sort
3 of analysis that you did.

4 You remember that?

5 A. Yes, sir. 15:05:53

6 Q. Are you a -- are you an attorney?

7 A. No, sir, I'm not.

8 Q. Do you have any training in analyzing law at all?

9 A. No, sir, I do not.

10 Q. Tell us what your interest is in following law as a law 15:06:01
11 enforcement.

12 A. Ensuring that we do uphold the rights of citizens and the
13 rights of everybody in this country, and ensuring that legal
14 requirements are met for all things, not just human smuggling,
15 immigration related matters, but also for search and seizure 15:06:19
16 type laws and procedures, search warrant laws and procedures,
17 proper procedure when following a DUI investigation, and others
18 of the like.

19 Q. Do you believe that is a responsible thing for a 15:06:36
20 sergeant to do to keep abreast of changes in the law?

21 A. I do.

22 Q. Okay. Now, you also indicated that at one point you were
23 under the belief that the mere presence of a person in the
24 United States was a crime under the federal law.

25 Did I understand that correctly? 15:06:52

1 A. Yes, sir.

2 Q. At some point that changed, regardless of when it was?

3 A. Yes.

4 Q. Okay. When you learned of corrections or changes based on
5 the law, what did you do at MCSO when you learned those
6 changes?

15:07:04

7 A. I changed my procedures in how me and my crew conducted
8 ourselves in the field.

9 Q. When you learned that law had either clarified or changed,
10 depending on, I guess, the reader, that mere unlawful presence
11 was not a crime under federal law, did you teach that to the
12 people you supervise?

15:07:19

13 A. Yes, it was to -- communicated, yes.

14 Q. And when you learned that inherent authority did not exist
15 under any federal or state law for you folks to enforce
16 immigration law, did you teach that to your subordinate
17 officers or deputies?

15:07:40

18 A. Yes, sir, I did.

19 Q. All right. There's another area that I think is important
20 because I -- I'm just going to ask you about it.

15:07:53

21 Ms. Wang testified -- testified, excuse me.

22 Ms. Wang questioned you about whether the Human
23 Smuggling Unit uses race to stop vehicles.

24 Do you remember that?

25 A. Yes, sir.

15:08:09

1 Q. And what was your answer to that?

2 A. No, we do not use race to stop vehicles.

3 Q. All right. Then she went to another area where she asked
4 you whether HSU uses race to -- and the record will speak for
5 itself, but my note's to initiate investigations.

15:08:23

6 Do you remember that?

7 A. Yes, sir.

8 Q. Okay. And you answered yes.

9 Do you remember that?

10 A. Yes.

15:08:31

11 Q. Would you explain for me what you were talking about when
12 you said yes.

13 A. I was the human smuggling sergeant. My job revolved around
14 human smuggling crimes. I was answering to that effect. We --
15 we searched for a very specific crime. We would not use race
16 in a report or for an investigation into a DUI driver, into a
17 drug crime, into a suspended license status, into any other
18 crime, but with human smuggling we would use race because
19 Arizona is a nexus for human smuggling through the Mexican
20 border.

15:08:48

15:09:10

21 Q. Thank you very much.

22 Now, what -- I'm going to give you a different
23 scenario. What about a saturation patrol, hypothetically in
24 Sun City, where there are two people driving their car and
25 they're pulled over for speeding. And let's assume that the

15:09:23

1 stopping deputy has reasonable suspicion that one of the
2 persons is there in the country unlawfully.

3 Is that MCSO policy for that officer to use race as an
4 indicator of unlawful presence?

5 A. No.

15:09:45

6 MS. WANG: Objection, Your Honor. The question was
7 compound and confusing.

8 BY MR. CASEY:

9 Q. Did you understand my question?

10 THE COURT: I'll rule on the objection.

15:09:57

11 BY MR. CASEY:

12 Q. Did you understand my question, sir?

13 A. I do.

14 Q. Okay.

15 THE COURT: I'll rule on the objection, Mr. Casey.

15:10:05

16 MR. CASEY: Oh, I'm sorry. I thought you said
17 "overruled." I apologize.

18 THE COURT: No, I said I'll rule on the objection.

19 MR. CASEY: Oh, I'm so sorry, Your Honor.

20 THE COURT: I'm going to sustain the objection.

15:10:26

21 MR. CASEY: Okay.

22 MS. WANG: Your Honor, I'd move to strike the
23 testimony, in that case, please.

24 THE COURT: I am going to strike the testimony.

25 MS. WANG: Thank you, Your Honor.

15:10:33

1 BY MR. CASEY:

2 Q. Sir, do you have your deposition in front of you?

3 A. The one dated October 23rd, 2009, yes, sir.

4 Q. Yes. Would you turn to page 28. Let me know when you're
5 there, sir. 15:11:01

6 A. I'm there.

7 Q. And would you -- I'm going to refer you to line 18. I'm
8 going to read the question to you.

9 "QUESTION: And in addition to these criteria, at
10 least for further investigation, you would add, or it would be 15:11:19
11 proper to use Hispanic descent as a factor; is that correct?"

12 And the answer beginning at line 22 in your words is
13 what? Would you please read that for me?

14 A. My answer was beginning: "In determining on whether to
15 carry on an investigation for a human smuggling load? Yes." 15:11:37

16 Q. And that's what you were explaining about for a human
17 smuggling load?

18 A. Yes.

19 Q. Were you talking about a specific saturation patrol traffic
20 stop not involving a suspected human smuggling load? 15:11:50

21 A. No.

22 Q. All right. Thank you very much, sir.

23 Now, when did you join the MCSO, Deputy?

24 A. Began the academy around June-July OF 2000; graduated
25 November 2000. 15:12:18

1 Q. And where did you attend your academy training?

2 A. MCSO academy.

3 Q. During that academy training was there any training that
4 you underwent regarding racial issues, the prohibition on
5 racial profiling, things like that?

15:12:30

6 A. Yes, I believe there was.

7 Q. What is your understanding on whether or not the MCSO
8 accepts, tolerates, or otherwise allows the use of race or
9 ethnicity in making law enforcement decisions?

10 A. In making law enforcement decisions?

15:12:47

11 Q. Yes, sir.

12 A. We don't use race as a factor, specifically, in conducting
13 traffic stops or making contacts.

14 Q. In the time period of 2007 and 2009 you were a sergeant in
15 HSU?

15:13:04

16 A. Yes.

17 Q. Describe the general breakup. Who was the overall
18 commander of HSU?

19 A. Lieutenant Joe Sousa was the commander. He reported

20 directly to Chief Dave Trombi, who reported directly to

15:13:17

21 Chief Brian Sands, and on to the chief deputy and the sheriff
22 at that point.

23 Q. Who was under Lieutenant Sand -- excuse me,
24 Lieutenant Sousa?

25 A. Lieutenant Sousa supervised three supervisors, two of which

15:13:33

1 were myself, Sergeant Palmer, and my partner at the time,
2 Sergeant Madrid. Later Sergeant Trowbridge was other agency
3 sergeant who replaced Sergeant Madrid.

4 And then there's a third supervisor who is Deputy
5 Cesar Brockman, and he hands the -- he heads the employer
6 sanctions unit, criminal employment squad. 15:13:53

7 Q. And employer sanction squad is inclusive of the Human
8 Smuggling Unit?

9 A. Yes.

10 Q. At any given time, if you could state between the years
11 2007 and the end of 2009 how many deputies were you sort of
12 assigned to in a squad or group? 15:14:06

13 A. It ranged between four to five, up to six or seven
14 individuals. Usually it was staffed for six deputies and one
15 detention officer on each squad, for seven total bodies. 15:14:29

16 Q. All right. Now, in -- let me back up for a minute.

17 Describe for me generally how do you supervise those
18 deputies?

19 A. How do I supervise them?

20 Q. Yes. 15:14:46

21 A. Very directly. We spend 95 percent of our time in field on
22 the roadway hunting for human smuggling load vehicles, human
23 drop houses, and other crimes related to human smuggling. I'm
24 with my squad, as well as Sergeant Madrid was out there with
25 his squad, working together side by side. 15:15:06

1 I've personally conducted numerous traffic stops and
2 made personal apprehensions of human smuggling load vehicles.
3 So has Sergeant Madrid. We regularly stop with our guys
4 whenever they have a human smuggling load to oversee the
5 investigation and take a hands-on approach to those
6 investigations.

15:15:26

7 Q. You were asked a question by plaintiffs' counsel about how
8 you know or believe that your deputies are not using race in
9 making law enforcement decisions, traffic stops, detainments.

10 Do you remember that?

15:15:47

11 A. Yes.

12 Q. And she asked you about, You know your brothers.

13 Do you remember that?

14 A. Yes.

15 Q. Would you explain for us, what are some of the things that
16 you do as a supervisor, when you were at HSU, to try to
17 determine whether or not your officers were complying with
18 policy and the law?

15:15:52

19 A. I'm not a hands-off sergeant. I supervise very closely
20 with my guys. I eat lunch with my guys. I regularly brief
21 with my guys. I'm regularly on all their traffic stops. Not
22 every one, obviously, but regularly on their traffic stops,
23 overseeing their investigations.

15:16:09

24 We do talk regularly outside of work as well. We do
25 associate, both with the camaraderie on an individual level, as

15:16:29

1 well as on a team level for the MCSO. And I feel I have a good
2 understanding of all of them, their personalities, their lives,
3 their families.

4 Q. How is it that attending traffic stops helps you supervise
5 them for following MCSO policy and following the law? 15:16:50

6 A. Being on the traffic stop I'm seeing exactly why they
7 pulled the vehicle over. The individual that is there can --
8 has an opportunity to make a complaint about the traffic stop,
9 even those that were not human smuggling load vehicles that
10 ended up being as -- where no report was written and no 15:17:13
11 citation was written, I've been on those stops as well.

12 And I've seen the -- heard what the reasonable
13 suspicion was for the stop, seen what other probable cause
14 factors might -- might have for charging or leading to an
15 arrest, and being on a hands-on approach with the deputies 15:17:30
16 under my supervision.

17 Q. Now --

18 THE COURT: You know, Sergeant Palmer, I'm going to
19 ask you to slow down just a little bit. You speak pretty
20 quickly, and I want to make sure I catch everything you say. 15:17:39

21 THE WITNESS: Yes, sir, I apologize.

22 THE COURT: No problem. Thank you.

23 BY MR. CASEY:

24 Q. And I apologize, I may not have picked this up, but on
25 average, between the years '07 to the end of '09, three-year 15:17:48

1 time period, how many people were you directly responsible for
2 supervising in HSU?

3 A. I apologize, sir. Just to clarify, in '07 I don't think I
4 was in human smuggling. It was April of '08 --

5 Q. Okay.

15:18:01

6 A. -- and then after. So I apologize. I just want to make
7 sure I'm clear on that. But as far as one more time, sir, how
8 many people did I supervise?

9 Q. Yes. On average during that time period, I'm trying to get
10 a gauge of that, of how many people you had to supervise.

15:18:14

11 A. Roughly, on average, five to six. There were times when an
12 individual would be transferred, perhaps, and we wouldn't get a
13 replacement body for a month or two, but on an average, five.
14 Again, we were staffed at one point up to seven, six deputies
15 and one detention officer on each squad.

15:18:37

16 Q. Did you review arrest reports of your deputies after any
17 particular -- whether it's large-scale or small-scale
18 saturation patrols?

19 A. Yes.

20 Q. What was the purpose for your reviewing those?

15:18:49

21 A. To assure -- what I review reports for is to assure that
22 the who, what, when, where, why and how are all met for the
23 charging of the -- of the case, and that the reason for the
24 stop is clearly articulated, the subjects are clearly
25 identified, the crime is clearly identified, the probable cause

15:19:08

1 has been met for the crime with all the evidence, and -- and
2 that proper procedure and policy were followed.

3 Q. Does that help you in your judgment to determine whether or
4 not MCSO policy, and generally law, is being complied with?

5 A. Yes, I believe it does.

15:19:27

6 Q. Okay. And I -- it may be repetitive, but explain, how does
7 it help you determine that?

8 A. I'm reviewing their reports constantly, consistently. For
9 the record, I've seen probably just as many arrest reports, I
10 don't have statistics in front of me, but just as many arrest
11 reports on white Caucasian males out of my human smuggling
12 stats as I've seen out of black males or Hispanic males or
13 Asiatic.

15:19:44

14 I've read the arrest reports. If anything seemed
15 suspicious to me, over the four years I was in the unit, I
16 would have flagged that and pulled an individual in for a
17 conversation on it. But with my in-field supervision, the
18 closeness that I feel I had with my squad, and having reviewed
19 those reports, I don't feel there ever was an issue.

15:20:03

20 Q. Now, let's go to a hypothetical situation where there is a
21 saturation patrol out at location A. Was there a common
22 practice of you and the other sergeant --

15:20:18

23 First of all, where would Lieutenant Sousa usually be,
24 based on your knowledge?

25 A. Lieutenant Sousa would generally remain at the command

15:20:36

1 post.

2 Q. Okay. And of the two sergeants most of the time, you and
3 Manny Madrid, what would you both do?

4 A. One of us would be designated the in-field supervisor and
5 one of us would be designated as the command post supervisor. 15:20:52
6 Lieutenant Sousa would remain as the commander of the operation
7 in most cases, and then one of us would remain at the command
8 post as his support aide in logistical things that may come up
9 and other -- other stuff, decisions that may need to get made
10 or be disseminated by a sergeant. 15:21:14

11 Q. What do you do as an in-field supervisor --

12 A. The same thing --

13 Q. -- during a saturation patrol?

14 A. The same thing that I would do during human smuggling on --
15 investigations with my human smuggling squad. I would be in 15:21:24
16 the field making traffic stops, responding to the traffic stops
17 of other deputies. That would include other deputies outside
18 the human smuggling. I would respond to stops of Lake Patrol
19 deputies, of the enforcement support deputies, of any deputy
20 who was working the operation. 15:21:44

21 I would also respond to citizen complaints.

22 Oftentimes, there were complaints with media cameras
23 encroaching and what the deputy felt was violating their
24 investigative procedure for the traffic stops, so I would
25 respond and try to handle that administratively. 15:22:00

1 Q. You already actually brought up, I guess, my next question.
2 That was, we've had testimony, the Court's heard testimony that
3 in large operations, people other than deputies from other than
4 HSU participated in. Is that your understanding?

5 A. Yes. 15:22:21

6 Q. Okay. So my question is: Do you also join traffic stops
7 of, say, a K-9 unit member, or a SWAT member, TOU, and
8 supervise there?

9 A. Yes.

10 Q. There was a word used, and I'm going to butcher it,
11 balaclava. Balaclava. It's like a face covering? 15:22:37

12 A. Yes.

13 Q. Do you know how to say that?

14 A. Top of my head, no.

15 Q. Okay. 15:22:47

16 A. Balaclava.

17 Q. Okay. I'm going to -- I'm going to leave that alone.

18 During any saturation patrols that you ever
19 participated did you ever see any deputies interact with the
20 public with one of those on? 15:22:59

21 A. Yes.

22 Q. And what were the circumstances of that, please?

23 A. The deputies who wore the balaclavas were from human
24 smuggling operations, and they were at times from special
25 investigations. And special investigations deals almost 15:23:16

1 exclusively with narcotic, drug-related crimes. Both of us
2 operate in undercover capacities at varying levels.

3 With specific regard to human smuggling, we have had
4 HSU detectives, select two or three that we would designate to
5 meet with coyotes, the suspects, for a human exchange, much
6 like a buy/bust for dope or cocaine, we would do a buy/bust for
7 humans. It would be an extortion human smuggling related case,
8 and we would have a HSU detective pose as a family member for
9 the extorted family to participate in the exchange of money for
10 the -- for the body. And eventually resulted in the

15:23:39

15:24:08

11 apprehension of all suspects and the safe return of the victim.

12 Q. What about going out to a certain part of Mesa and doing a
13 saturation patrol? Are those things used in a context like
14 that?

15 A. Yes. Yes, they are. And the reason they wear the
16 balaclavas is simply because we're trying to protect that
17 individual's identity. Because we do have media cameras all
18 over those saturations, and we don't necessarily want unduly to
19 be just plastering the deputies' faces all over the news and
20 all over the media.

15:24:24

15:24:42

21 Q. Do they go out and make traffic stops with those masks on?

22 A. They don't make them with them on. They were instructed to
23 place them on upon the -- what they -- at their -- at their
24 call. They would make that decision. If a -- people showed up
25 taking pictures or cameras, or if the media showed up, that

15:25:00

1 would be their decision on whether or not to use that.

2 Q. All right. Thank you, sir. Let's turn to a different
3 subject, and that's ICE. Were you ever -- what year were you
4 trained as a 287(g) officer?

5 A. I don't recall specifically, but I think it was in '08. I 15:25:17
6 think it was almost immediately after my arrival.

7 Q. So that would have been first half of 2008?

8 A. In the summer, yeah. Maybe around May or June.

9 Q. Do you remember how long that training was?

10 A. Five weeks. 15:25:30

11 Q. Where was your -- where was your training?

12 A. ICE personnel conducted the training at the MCSO training
13 center.

14 Q. And where's the MCSO training center?

15 A. It's located on the corner of 35th Avenue and Lower Buckeye 15:25:41
16 in Phoenix.

17 Q. Was there any discussion during your training by the ICE
18 officials about the use of race in law enforcement activities?

19 A. Yes.

20 Q. Were you taught about the prohibition of using race and 15:26:00
21 solely race to make any law enforcement decisions?

22 A. Were we taught that by ICE?

23 Q. Yes, sir.

24 A. No, I don't believe so specifically.

25 Q. All right. And, sir, what I'm going to do is show you 15:26:14

1 what's been marked and admitted in evidence, it's Exhibit 67 on
2 the screen, and represent to you this -- well, first of all, do
3 you recognize this -- this document?

4 A. It looks like a handout we would have received at the ICE
5 academy. 15:26:33

6 Q. All right. And I'm going to -- and it appears to be
7 printouts of some sort of presentation, a PowerPoint slide?

8 A. Yes, sir.

9 Q. And I'm going to point out the third point on this.

10 If you look at item number 7 on this slide, can you
11 tell me what that says? 15:26:43

12 A. DOJ guidance regarding the use of race.

13 Q. All right. Is that something that you were taught by ICE
14 during your 287(g) certified training?

15 A. Yes. 15:27:00

16 Q. Okay. Now I'm going to turn to a different document, which
17 is Exhibit 68 in evidence, and it should be at the next page
18 when I pull it up on the screen here.

19 Do you recognize where this page is taken from, sir?

20 A. It appears to be out of a page from the workbook that ICE
21 would have handed us. 15:27:28

22 Q. Do you remember receiving a workbook when you went through
23 287(g) training?

24 A. Yes, I did.

25 Q. And I'll just have you -- I'll just have you assume for the 15:27:43

1 sake of my questions this is part of that workbook, and what
2 I'd like to do is have you look at the items that I'm going to
3 enlarge for your use.

4 This says interim training objections -- training
5 performance objectives. Does this fairly and accurately
6 describe the types of training that was provided about how to
7 comply with the law?

15:28:05

8 A. Yes.

9 Q. Was that a part of the actual instruction given to you by
10 the federal officials?

15:28:26

11 A. Yes.

12 Q. All right. Thank you, sir.

13 I'm now going to turn to same Exhibit 68 in evidence,
14 and it's going to be actually page 19 of that exhibit.

15 THE COURT: I'm sorry, it's page 19 of which exhibit?

15:28:43

16 MR. CASEY: It's Exhibit 68, Your Honor.

17 THE COURT: Okay. Thank you.

18 MR. CASEY: You're most welcome.

19 BY MR. CASEY:

20 Q. And I'm going to blow up this section out of the workbook.

15:28:52

21 Is this particular section out of the ICE workbook, is
22 that also something that you were trained on?

23 A. Yes, sir.

24 Q. Now, I'm going to go to the next page of Exhibit 68.

25 Would you tell us what section C reads, sir.

15:29:25

1 A. Section C, just the bolded?

2 Q. Yes, sir.

3 A. Consequences of the failure of a LEA officer to honor the
4 Fourteenth Amendment.

5 Q. What is a LEA officer?

15:29:39

6 A. L-E-A, LEA. Law enforcement agency.

7 Q. All right. Describe for me generally, if you'd just take a
8 moment to look at this, what is this intending to convey to the
9 students, the trainees undergoing the instruction?

10 A. It's intended to con --

15:30:00

11 MS. WANG: Objection as to what the intent of the
12 author was.

13 THE COURT: Sustained.

14 BY MR. CASEY:

15 Q. Okay, I'm going to ask you, what do you understand was
16 being taught with this section by the ICE officials?

15:30:09

17 A. What could result if you violate the Fourteenth Amendment.

18 Q. And would you tell us what you were taught by the ICE
19 officials.

20 A. Just as it's listed here, sir: that you could undergo
21 suppression of evidence in the case, suppression of statements
22 made during the traffic stop or after arrest, and possibly
23 criminal prosecution.

15:30:23

24 Q. There's another section, civil liability, isn't there?

25 A. Yes, sir, there is.

15:30:38

1 Q. And it mentions a particular statute 42 U.S.C. 1983?

2 A. Yes, sir.

3 Q. Okay. Based on what you learn -- well, first of all, what
4 do you believe about racial profiling?

5 A. I believe racial profiling is wrong and unethical and
6 should not be done. 15:30:54

7 Q. Okay. Why shouldn't it be done?

8 A. 'Cause it violates people's rights and it's -- it's an
9 unethical treatment of individuals.

10 Q. Looking at the risks of civil exposure and looking at
11 criminal, potential criminal prosecution, based on your
12 experience in HSU and as an MCSO deputy, does it make, in your
13 mind's eye, your judgment, any sense to run the risk of ever
14 using race? 15:31:07

15 A. No, sir. 15:31:27

16 Q. For the very types of factors that we see here in this
17 exhibit, 68?

18 A. Correct, in terms of using race for racial profiling,
19 correct, yes.

20 Q. All right. Now, let me turn to the next exhibit. This is
21 Exhibit 69 that's already in evidence, and this a particular --
22 particular page, and I'm going to blow this up. 15:31:36

23 Sir, what do you understand -- your understanding of
24 what this course was about, based on this manual, this portion?

25 Do you need me to rephrase the question? 15:32:24

1 A. No, sir. I was just reviewing the document.

2 My understanding of what was being taught with
3 particular respect to this document?

4 Q. Yes, sir. What were you taught by ICE?

5 A. ICE -- ICE in the 287(g) academy taught us that race could 15:32:37
6 be a factor, among others, but standing alone and by itself was
7 not a factor for contact.

8 Q. Did MCSO, other than the human smuggling load vehicles, did
9 the MCSO ever adopt a different policy?

10 A. Yes. 15:32:54

11 Q. And what was that policy?

12 A. That we would not be racially profiling, would not use that
13 race -- we would not use race in determining whether or not to
14 make a contact or to initiate an investigation, absent any
15 other -- any other probable cause to that effect. 15:33:12

16 Q. All right. Let's turn to a different thing.

17 Did you plan -- strike that.

18 Did you determine where to go for saturation patrols?

19 A. No, I did not.

20 Q. Okay. When an MCSO saturation patrol was to occur, I'd 15:33:24
21 like to talk to you about the briefings. What type of
22 information was given to others participating in the operation
23 before it started?

24 A. The details of the operation, the scope of it; boundaries;
25 what was expected of them; that it was a zero tolerance patrol; 15:33:47

1 how to undergo the report-writing process, the booking process,
2 as well as the fact that we do not racially profile, and that
3 was stressed heavily at these briefings.

4 Q. Who would give these briefings?

5 A. Lieutenant Sousa administered many of them. I myself
6 administered several of them. Sergeant Madrid administered
7 several of them. And there was also a document, operations
8 plan, that they were told they needed to read verbatim from
9 front page to back page. And that also covered the fact that
10 we do not racially profile.

15:34:04

15:34:26

11 Q. In addition to operations plan, orally you told them --

12 A. Yes.

13 Q. -- about racial profiling?

14 A. That we do not do it; it will not be tolerated; that no
15 deputy is to pull over a vehicle or initiate contact with an
16 individual based upon the color of their skin, suspicion of
17 their religion, or an understanding of what their race was.

15:34:38

18 Q. Now, let's look at what I have on the screen right here,
19 which is Exhibit 102 already admitted into evidence. This is
20 page 1 of that document.

15:34:57

21 Do you recognize that document just generally, sir?

22 A. Honestly, no, but I can -- seems to reference the Sun City
23 operation.

24 Q. All right. Let me turn to the next page, which is Exhibit
25 102, page 2 of that exhibit.

15:35:12

1 Do you recognize that document in general?

2 A. Yes.

3 Q. What is it?

4 A. It's an operations plan for a saturation patrol.

5 Q. Okay. And who prepares operations plans?

15:35:22

6 A. Many times that was my assigned task in human smuggling.

7 Q. Okay. And what was the purpose of an operation patrol?

8 A. Purpose of an operation plan or patrol?

9 Q. I'm sorry, I misspoke. What was the purpose of an

10 operations plan?

15:35:43

11 A. The purpose of an operations plan was to clearly outline

12 what the objectives were, who the command structure was, the

13 dates and times of the operation, scope of the operation, and

14 any other pertinent information, which would have included the

15 fact that we do not racially profile and that it's not

15:36:00

16 tolerated.

17 Q. All right. Now, I'm going to call out this particular

18 section and move this up.

19 Primary objective. What does that indicate to the

20 reader? What did you intend when you wrote those sort of

15:36:11

21 things, what did you intend to convey?

22 A. That's what is expected of all the deputies patrolling on

23 the operation, is that that's the primary objective, that they

24 are expected to make traffic stops with a zero tolerance

25 mindset, and that as stated there, that if you have a criminal

15:36:27

1 violation, be it misdemeanor, if that's the case, would not be
2 cited and released; that person would be booked for the
3 misdemeanor crime.

4 Q. All right. Now, let's turn to I believe it's the next page
5 on this. I'm going to -- do you see the section entitled
6 Conducting Traffic Stops on Saturation Patrol?

15:36:43

7 A. Yes, sir.

8 Q. What is that section about or for?

9 A. That's basically instructing individuals specifically --
10 it's redundant, because everybody should know this, but it's
11 instructing them on how the traffic stops will be conducted;
12 that they'll do it in accordance with MCSO policy and in
13 accordance with training that they've received at the basic
14 academy level.

15:37:07

15 Q. You see the part that I've highlighted there?

15:37:18

16 A. Yes, I do.

17 Q. Was that a standard -- when an operations plan was prepared
18 by HSU, was that a standard written instruction included in
19 there?

20 A. Yes.

15:37:32

21 Q. Was that type of instruction orally given to deputies?

22 A. Yes.

23 Q. Why give them both ways?

24 A. Again, redundancy, to hammer home the idea that it's not
25 tolerated, and we will not perform that action.

15:37:45

1 Q. All right. Now, I'm going to highlight or pull out this
2 next section, if I can get this right.

3 Can you tell me what that particular section's in
4 reference to, sir?

5 A. It's instructing the deputies on the patrol, on the 15:38:09
6 saturation patrol, on how to conduct themselves when they
7 believe they have reasonable suspicion that an occupant in the
8 vehicle that they -- or a person they'd be contacting is
9 unlawfully present within the United States.

10 Q. Now, I'm going to highlight this last, at least part of the 15:38:38
11 last sentence. Why did you include that phrase in there, at no
12 time will a deputy call for a 287(g) certified deputy based
13 just on race?

14 A. I included that, again, for redundancy. And it was
15 approved by Lieutenant Sousa that it needed to be in there to 15:38:55
16 hammer home the idea that we do not racial profile, and that it
17 will not be tolerated.

18 Q. All right. Now, let's turn to a different subject, sir,
19 and that is, there was a hotline or a tip line that the MCSO
20 had? 15:39:11

21 A. Yes.

22 Q. Did you ever operate or man that?

23 A. I personally did not.

24 Q. Okay. Did you ever take calls?

25 A. I have taken calls, yes, from people reporting illegal 15:39:20

1 immigration violations to --

2 Q. Do you know how, generally, calls and information were
3 handled or received?

4 A. If it was an insistent individual, I would probably jump on
5 the phone right away with them. Otherwise, they would leave a
6 message into a recording box. That box would be checked by an
7 administrative assistant of the unit, of the human smuggling
8 unit, and when they pulled that information down they would put
9 it onto a sheet of paper, handwritten out, and place it in
10 either Sergeant Madrid's box or my box for follow-up.

15:39:38

15:39:55

11 Q. And did you make a decision whether there was any --
12 anything to be done about those tips after you received them?

13 A. Yes.

14 Q. What would you do, generally, if you received information
15 that just said, There's a group of these people standing on the
16 corner and I don't like it, and there's a mention of race.

15:40:10

17 How would you generally handle those?

18 A. As a matter of professional courtesy, if there -- and
19 customer service, if there was a phone number present I would
20 call that individual in every case and attempt to have a
21 conversation or a dialog with them, and ascertain if there was
22 any criminal matter that they have not stated in the -- in the
23 tip.

15:40:28

24 Oftentimes there was not criminal matter, and if there
25 wasn't any criminal matter present at the location they're

15:40:45

1 describing I had no problem telling individuals that what they
2 were providing to me amounted to racial profiling. I told
3 individuals multiple times that they were providing me with
4 racial profiling information, and that we would not be doing
5 anything in regards to their tip information.

15:41:00

6 Q. Were there times that you actually said that?

7 A. Yes, plenty of times.

8 Q. And how did they react in hearing that they were advocating
9 something that was, in your words, wrong and illegal?

10 A. In those instances, they fell into two categories. You had
11 the one category where they would be completely compliant and
12 understanding, it's like, you know what? I didn't think about
13 that. Okay, I understand. And other ones would yell, scream,
14 and swear at me.

15:41:16

15 Q. Part of the job?

15:41:31

16 A. Yes.

17 Q. What about calls that mentioned race? For example, we
18 heard some testimony yesterday about someone saying there are
19 Mexicans hanging out on the corner.

20 What about someone who says something about that and
21 then mentions something that may indicate crime? What do you
22 do when you have a mixture of those two?

15:41:44

23 A. I disregard anything that has to do with racial profiling.
24 If they can articulate to me the reasonable likelihood that a
25 crime may be occurring at that location, if I can place an

15:42:01

1 example, they may call in and ask, tell me that they have a
2 bunch of people that appear to be of Hispanic descent that
3 speak Spanish only living in a house at a certain location in
4 Phoenix.

5 On the surface, that sounds like racial profiling to 15:42:19
6 me and nothing that I would move my team on. However, upon
7 contact -- and this happened a few times -- eliciting
8 information from them, they would provide details that would
9 lead me to believe that reasonably a crime of human smuggling
10 may be occurring at that residence. 15:42:39

11 And those extra details would oftentimes be the fact
12 that one individual is constantly outside looking around. That
13 would -- that would constitute a guard. That vehicles are
14 constantly pulling around the back of the property. That would
15 be an in -- an indicator. That the vehicles were not small Geo 15:42:53
16 Metros, but large-capacity SUVs and vans. That would be an
17 indicator. Overgrown yards. Trash not being taken out. And
18 the fact that people being moved at odd hours of the day or
19 night.

20 Q. Thank you, sir. Let's turn to a different subject. 15:43:11

21 At the MCSO what is something called the briefing
22 board?

23 A. The briefing board is a means by which MCSO disseminates
24 new policies, new procedures, and information that they feel is
25 critical for dissemination to the whole Sheriff's Office. 15:43:28

1 Q. Does it also include reminders about policy?

2 A. Yes, it does.

3 Q. Okay. I'm going to show you what's been marked into
4 evidence as Exhibit 92, and specifically I'm going to show you
5 page 5 of that exhibit. Do you recognize generally that on
6 your screen?

15:43:42

7 Let me rephrase the question. It's too -- too poor.

8 Does it appear to be a page out of a briefing board?

9 A. Yes, it does.

10 Q. Okay. Now, specifically I'm going to show you, and
11 hopefully successfully do a call-out on this, would you read
12 that into the record, please, what it says on the call-out.

15:44:01

13 A. Conducting traffic stops on saturation patrol/interdiction
14 patrol. Sworn personnel will conduct traffic stops as
15 specified in office policy and procedures, as well as in
16 accordance with the training received at the basic training
17 academy. At no time will sworn personnel stop a vehicle based
18 on the race of any subject in a vehicle. Racial profiling is
19 prohibited and will not be tolerated, the last part having been
20 bolded and underlined.

15:44:22

15:44:41

21 Q. All right. And let me click that, and would you please
22 read into the record the date of this particular briefing
23 board.

24 A. October 21st, 2008.

25 Q. Would you just give me an overview of the frequency that an

15:44:53

1 HSU detective and people participating in human -- excuse me,
2 participating in saturation patrols would receive warnings
3 about not using race.

4 A. I'm sorry sir. One more time.

5 Q. I should get an objection sustained.

15:45:14

6 How often would MCSO deputies get warned not to use
7 race?

8 A. On saturation patrols, or in general?

9 Q. In general.

10 A. In general, I can't speak for the sergeants of other
11 districts, but me and Sergeant Madrid would perform that task
12 regularly in the course of our regular duties.

15:45:30

13 Q. What about HSU and members participating in saturation
14 patrols? How frequently were they told, No racial profiling?

15 A. Every day of the operation. If the operation was a
16 three-day operation, each of the three days there would be a
17 briefing and they would be required, each of the three days, to
18 read that operations plan, which denotes that there's no racial
19 profiling, and they would receive the same instruction again
20 from whoever was providing the briefing, Lieutenant Sousa,
21 myself, or Sergeant Madrid.

15:45:49

22 MR. CASEY: Okay. Those are the questions I have for
23 you. Thank you, sir.

15:46:02

24 THE COURT: Ms. Wang?

25 MS. WANG: Thank you, Your Honor. I have a brief

15:46:16

1 redirect.

2 THE COURT: I'm sorry, we need just a moment.

3 MS. WANG: Oh, I'm sorry. You have questions.

4 THE COURT: We're going to take a break for a few
5 minutes while we correct a problem. 15:47:58

6 MS. WANG: Yes, Your Honor.

7 (Recess taken.)

8 THE COURT: Ms. Wang, redirect?

9 MS. WANG: Thank you, Your Honor.

10 REDIRECT EXAMINATION 15:56:22

11 BY MS. WANG:

12 Q. Good afternoon again, Sergeant.

13 A. Good afternoon, ma'am.

14 Q. Mr. Casey was asking you questions about your supervision
15 of deputies in the Human Smuggling Unit. 15:56:32

16 You remember that?

17 A. Yes.

18 Q. And you testified, I believe, that you read as many arrest
19 reports for black, Asiatic, white males as for Hispanic males.

20 Is that your testimony today? 15:56:46

21 A. I don't have statistics, but I would venture to say that,
22 yes, I believe I do.

23 Q. You must be talking about your overall experience at MCSO,
24 not limited to the Human Smuggling Unit, isn't that right?

25 A. No, because the deputies working in human smuggling also 15:56:59

1 work at off-duty jobs and they make arrests at off-duty jobs,
2 and they make arrests to and from coming into work on traffic
3 stops. Those arrests range from DUI to criminal speeding to
4 drug possession.

5 Q. Sir, isn't it fair to say that in your capacity as a 15:57:19
6 supervisor at HSU, the majority of arrest reports you read were
7 for Hispanic males?

8 A. In HSU?

9 Q. Yes.

10 A. Correct, in connection with human smuggling crimes. 15:57:29

11 Q. Okay. In connection with HSU arrests, right?

12 A. In connection with human smuggling crimes. An HSU arrest
13 may not necessarily be a human smuggling crime.

14 Q. But in work that HSU deputies did, the majority of arrests
15 would be for Hispanic males, is that right? 15:57:43

16 A. Yes.

17 Q. Sergeant, you tes -- Mr. Casey asked you about your
18 interactions with deputies under your supervision at HSU.

19 You remember that?

20 A. Yes. 15:57:59

21 Q. And you talked about how well you know them, is that right?

22 A. Yes.

23 Q. Some of them you socialize with after-hours?

24 A. Yes.

25 Q. And based on knowing them socially and knowing them as well 15:58:06

1 as you do, you feel you understand whether they engage in
2 racial profiling? That's your testimony?

3 A. Yes.

4 Q. And you were asked, sir, about some deposition testimony
5 you gave about that, is that right? 15:58:22

6 A. Yes.

7 Q. Let me just reread that, so that we can make sure we
8 understand the testimony. This is in deposition 1, starting at
9 line -- page 77, line 22.

10 You were asked: You're not aware that there are in 15:58:40
11 any -- let me start over.

12 "QUESTION: You're not aware that there are any in the
13 MCSO who ever uses racial animus as one of their motivations?

14 "ANSWER: I'm not aware of it, and I do not believe it
15 occurs. 15:58:59

16 "QUESTION: And how do you know it doesn't occur?

17 "ANSWER: Quite frankly, sir, I know my brothers, and
18 we abide by the law."

19 That was your testimony in your deposition, correct?

20 A. Yes. 15:59:09

21 Q. And that was based on how well you know your deputies
22 through social interactions, as well as on-the-job
23 interactions?

24 A. Yes.

25 Q. And then you continued on in your testimony: 15:59:17

1 "QUESTION: And how can the department or you as a
2 supervisor check whether it occurs or not?"

3 I take that to mean "it" meaning racial profiling, is
4 that how you read that?

5 A. Yes, that's my interpretation. 15:59:30

6 Q. Okay. So the question was: How can the department or you
7 as a supervisor check whether it occurs or not? What if one
8 particular person in fact always finds a reason in terms of
9 some infraction, some traffic infraction, but is actually
10 stopping only people of color? How would you find that out? 15:59:45

11 "ANSWER: I'm not aware of -- I'm not aware of how I
12 would find out, sir. I don't believe it occurs."

13 That was your testimony?

14 A. Yes.

15 Q. And again, your -- the point you were making is that you 15:59:56
16 know your deputies and you trust them not to racially profile,
17 correct?

18 A. Yes.

19 Q. And you don't check to see whether they're doing it.

20 A. There's -- I don't have a system in place for me to check 16:00:07
21 through statistical, not that that's necessarily reliable,
22 anyhow.

23 Q. Thank you, Sergeant.

24 Sir, Mr. Casey showed you Exhibit 102, which is in
25 evidence, and this was concerning a saturation patrol in 16:00:27

1 Sun City and Sun City West, correct?

2 A. I'm sorry, ma'am. Which exhibit are you referring to?

3 Q. It's on your screen. It's Exhibit 102, I believe.

4 A. Actually, it's not on my screen.

5 MS. WANG: Oh, I'm sorry.

16:00:44

6 Can we show that to the witness as well?

7 THE COURT: He has it.

8 MS. WANG: Okay.

9 BY MS. WANG:

10 Q. So you were asked during -- by your lawyer about this
11 saturation patrol document collection for Sun City and Sun City
12 West, correct --

16:00:49

13 A. Yes.

14 Q. -- August 13th and 14th, 2008?

15 A. Yes.

16:01:02

16 Q. This saturation patrol occurred after this lawsuit was
17 filed, correct?

18 A. I don't know when the date of the lawsuit was.

19 Q. Fair enough.

20 Let's turn to page MCSO 001972. I believe Mr. Casey
21 asked you some questions about this page.

16:01:15

22 Can we enlarge the paragraph that starts Conducting
23 traffic stops.

24 Mr. Casey asked you about the second sentence that
25 says: Note: At no time will MCSO personnel stop a vehicle

16:01:45

1 based on the race of the subjects in the vehicle. Racial
2 profiling is prohibited.

3 Do you see that?

4 A. Yes, ma'am.

5 Q. It instructs that there shall be no stops based on race,
6 correct? 16:01:58

7 A. Yes.

8 Q. This document does not tell deputies they cannot use race
9 in deciding when to initiate an immigration investigation once
10 a stop is already underway, isn't that right? 16:02:10

11 A. Yes.

12 Q. It's correct, right?

13 A. Yes.

14 Q. The document does not contain such a statement or
15 prohibition? 16:02:22

16 A. That's correct.

17 Q. And let's highlight, I believe, the next paragraph after
18 that. Mr. Casey asked you about the last sentence, which
19 reads: Example. The violator does not have valid
20 identification and does not speak English. At no time will a
21 deputy call for a 287(g) certified deputy based just on race. 16:02:38

22 Do you see that?

23 A. Yes.

24 Q. Says "based just on race," correct?

25 A. Yes. 16:02:49

1 Q. This sentence does not exclude the possibility that a
2 deputy could call based on race plus other factors?

3 A. That would be a correct assessment.

4 Q. Okay. Let's turn now to Exhibit 92, which is in evidence.
5 Mr. Casey asked you about this, too. This was the briefing
6 board from October 28, 2008.

16:03:05

7 You see that? Let's turn to --

8 A. Ma'am, I'm sorry. You said the briefing board? I have a
9 shift summary on my screen.

10 Q. Oh, sorry. Which -- maybe Mr. Casey can help me out.

16:03:22

11 Oh, it's on page 3 of this exhibit. There we go.

12 So this -- within Exhibit 92 is an MCSO briefing
13 board, correct?

14 A. Yes.

15 Q. And Mr. Casey was asking you about this particular briefing
16 board dated October 21, 2008?

16:03:36

17 A. Yes.

18 Q. Let's turn to, I believe the next page.

19 Sorry. Bear with me. I don't have a paper copy of
20 this. I'm not sure where Mr. Casey was reading from.

16:04:06

21 MR. CASEY: To the extent it helps the Court and
22 counsel, I began at page 5 of Exhibit 92.

23 MS. WANG: Thank you, Mr. Casey.

24 MR. CASEY: You're most welcome.

25 MS. WANG: Can we go to that page, please? Page 5.

16:04:18

1 MR. CASEY: Bates label 14953.

2 MS. WANG: Two pages from here. Sorry.

3 Okay. That's correct.

4 Highlight the second paragraph, please, that starts,
5 Conducting traffic stops on saturation patrol. 16:04:42

6 BY MS. WANG:

7 Q. Mr. Casey asked you about the second-to-last sentence: At
8 no time will sworn personnel stop a vehicle based on the race
9 of any subject in a vehicle.

10 You see that? 16:04:54

11 A. Yes.

12 Q. And then it says racial profiling is prohibited and will
13 not be tolerated, correct?

14 A. Yes.

15 Q. Once again, this document tells deputies they cannot stop a 16:05:00
16 vehicle based on the race of any subject, is that right?

17 A. Yes.

18 Q. This document does not say that deputies may not initiate
19 an immigration investigation based on the race of any subject
20 in a vehicle, isn't that right? 16:05:15

21 A. Correct.

22 MS. WANG: Thank you. I have no further questions.

23 THE COURT: You may step down. Thank you, Sergeant.

24 THE WITNESS: Thank you.

25 MR. YOUNG: Your Honor, plaintiffs call Chief Brian 16:05:37

1 Sands.

2 (Pause in proceedings.)

3 THE CLERK: Right up here, sir.

4 Could you please state and spell your full name for
5 the record. 16:06:25

6 MR. SANDS: Brian L. Sands. That's B-r-i-a-n, L as in
7 Lincoln, S-a-n-d-s.

8 THE CLERK: Thank you. Please raise your right hand.

9 (Brian L. Sands was duly sworn as a witness.)

10 THE COURT: Mr. Young. 16:07:11

11 MR. YOUNG: Thank you, Your Honor.

12 BRIAN L. SANDS,

13 called as a witness herein, having been duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION 16:07:14

16 BY MR. YOUNG:

17 Q. Good afternoon, Chief Sands.

18 A. Good afternoon.

19 Q. You're chief of enforcement within the Maricopa County
20 Sheriff's Office? 16:07:18

21 A. Correct.

22 Q. Your responsibilities include illegal immigration
23 enforcement efforts, true?

24 A. That's one of them, yes.

25 Q. That includes saturation patrols, is that correct? 16:07:25

1 A. Correct.

2 Q. That also includes overseeing the Human Smuggling Unit,
3 right?

4 A. Correct.

5 Q. Your responsibilities include carrying out Sheriff Arpaio's 16:07:36
6 policies with respect to saturation patrols, is that right?

7 A. I do carry out those duties, yes.

8 Q. One of the goals of saturation patrols is to impact illegal
9 immigration, correct?

10 A. Not necessarily. 16:07:59

11 Q. You remember we had a deposition on November 15, 2010? And
12 I'm going to read to you from page 203, starting at line 20.

13 Every saturation --

14 "QUESTION: Every saturation patrol that you do has an
15 effect with respect to illegal immigration; is that right? 16:08:25

16 "ANSWER: I would hope so.

17 "QUESTION: Okay. That's their purpose, correct?

18 "ANSWER: That's one of their purposes, yeah."

19 By the way, I have a binder with your deposition
20 transcripts if you'd like to see it, but -- which I would 16:08:43
21 request that the Court allow me to bring to the witness.

22 THE COURT: You may do so.

23 MR. YOUNG: And actually, we have another binder for
24 Your Honor and also for Mr. Casey. So with Your Honor's
25 permission, I'll give one to your clerk for Your Honor as well. 16:09:00

1 THE COURT: That would be fine.

2 MR. YOUNG: Thank you.

3 MR. CASEY: Thank you very much.

4 BY MR. YOUNG:

5 Q. So, Chief Sands, is it correct that one of the purposes of 16:09:28
6 the saturation patrols is to impact illegal immigration?

7 A. Like I said before, that's one of the purposes, yes, but
8 not necessarily the sole purpose.

9 Q. In July 2007 the sheriff announced a crackdown on illegal
10 immigration, is that right? 16:09:48

11 A. I believe you're correct.

12 Q. And that crackdown included the use of saturation patrols,
13 is that right?

14 A. I believe that might be correct, yes.

15 Q. In deciding where to do saturation patrols -- 16:10:05

16 And, actually, you're responsible for deciding where
17 to do saturation patrols, is that right?

18 A. Correct.

19 Q. In making those decisions, you typically do not do a
20 comparative analysis of crime across different areas, is that 16:10:26
21 correct?

22 A. Not typically, but we do a comparison of different
23 statistics from different perspectives.

24 Q. Okay. Please answer my question, which was: In deciding
25 where to do saturation patrols, you typically do not do a 16:10:47

1 comparative analysis of crime across different areas, is that
2 correct?

3 A. That's correct, yeah.

4 Q. Thank you.

5 An increase in crime is not necessarily used for
6 determining whether and where to have a saturation patrol, is
7 that right?

16:11:04

8 A. Not necessarily.

9 Q. Chief Sands, you did another deposition on December 14,
10 2009, and at page 106 of that deposition, starting at line 12,
11 you testified as follows:

16:11:21

12 "Did you conduct some sort of analysis of crime data
13 that led you to believe that there had been some sort of
14 increase in crime in that area?

15 "ANSWER: I wouldn't necessarily use an increase in
16 crime to always critique whether or not to have a suppression."

16:11:44

17 Was that answer correct at the time that you gave it?

18 A. I believe my an -- last one was in line with that statement
19 you just made.

20 Q. Okay. So you -- you stand by your deposition testimony
21 that I just read to you?

16:12:03

22 A. Can you -- can you ask me that question again, please?

23 Q. Well, here -- here's what -- I'll tell you, my question is:

24 Do you stand by your earlier testimony, and the testimony is
25 this, from your earlier deposition on December 14, 2009, page

16:12:25

1 106, starting at line 8:

2 "Did you conduct some sort of analysis of crime data
3 that led you to believe that there had been some sort of
4 increase in crime in that area?

5 "ANSWER: I wouldn't necessarily use an increase in
6 crime to always critique whether or not to have a suppression."

16:12:38

7 A. That sounds familiar, yes.

8 Q. Do you stand by that testimony?

9 A. Yes.

10 Q. Any crime analysis that you do use in saturation patrol
11 planning would be attached to the saturation patrol operation
12 plan, is that correct?

16:12:55

13 A. Normally, yes.

14 Q. A spike in crime -- strike that.

15 You don't recall whether a spike in crime is a
16 criterion for having a saturation patrol, correct?

16:13:20

17 A. Are you talking about a certain area, or any -- any time
18 we're about to use --

19 Q. In a particular area. You don't really recall spikes in
20 crime in particular areas as being a criterion for having a
21 saturation patrol, is that right?

16:13:46

22 A. That's correct, yes.

23 Q. You have launched saturation patrols based on complaints
24 from citizens, including businesses, about day laborers, is
25 that right?

16:14:08

1 A. About crimes related to people that perhaps were acting as
2 day laborers.

3 Q. Well, we can talk about crimes, but let's sort that -- or
4 set that aside for the moment.

5 You have launched saturation patrols based on
6 complaints from citizens about day laborers, is that right?

16:14:32

7 A. I believe it was -- it's more involved than that. We've
8 had several instances where we've had small saturation patrols
9 when it came to issues involving what might have been day
10 laborers.

16:15:01

11 Q. At page 200 of your February [sic] 14, 2009, deposition,
12 you were asked these questions and you gave these answers:

13 Question, starting line 2 of page 200: "Do you view
14 day laborers as the source of a nuisance to local businesses?

15 "ANSWER: Those are the complaints that we get
16 frequently from citizens.

16:15:27

17 "QUESTION: And you have launched several of the
18 sweeps we discussed today based on complaints from citizens
19 about day laborers?

20 "ANSWER: Some of those cases, yes."

16:15:45

21 Do you stand by that testimony today?

22 A. I'm sorry, that was page 200?

23 Q. It was page 200 of your -- and there are three depositions
24 in that binder, so you'll need to look at the one for December
25 14, 2009, at page 200, and the question is:

16:16:01

1 "Do you view day laborers as the source of a nuisance
2 to local businesses?"

3 Do you see that? It's actually on your screen now,
4 Chief. You can look at it there.

5 Now, please let's look on the screen from line 2 down 16:16:22
6 to line 10. Do you stand by that testimony?

7 A. Those -- that those are the complaints that we received? I
8 believe we have received those complaints, yes.

9 Q. My question is: Do you stand by your earlier testimony?

10 It's a simple question, Chief. 16:16:52

11 A. Yes.

12 MR. CASEY: Excuse me, Judge. Move to strike the last
13 comment as argumentative.

14 MR. YOUNG: I'll withdraw it. And my apologies.

15 BY MR. YOUNG: 16:17:04

16 Q. Now, Chief Sands, if you get a citizen complaint that is
17 racially motivated, and the racial motivation is clear on the
18 face of the complaint, but you think that that citizen
19 complaint also involves or could involve a possible crime, you
20 would go ahead and act on that complaint, is that right? 16:17:32

21 A. If there was a crime involved, yes, I would at least look
22 into the validity of the information.

23 Q. Let's take a look at several of the operations, starting
24 with Queen Creek. Let's look at Exhibit 126, which has been
25 admitted. 16:18:07

1 And do you see there the subject line is Cave Creek
2 day laborer and tip line?

3 A. Yes, I see that.

4 Q. This was an illegal immigrant operation that the Human
5 Smuggling Unit conducted in response to complaints about day
6 laborers, is that correct?

16:18:26

7 A. Yes, it appears that way.

8 Q. The operation was in response, at least in part, to citizen
9 hotline complaints about day laborers, is that right?

10 A. It says Cave Creek day labors and tip line.

16:18:53

11 Q. Now, there were no criminal charges for the day laborers
12 who were investigated in this instant. There were no criminal
13 charges relating to loitering, is that correct?

14 A. I don't remember any.

15 Q. Well, in fact, according to your earlier deposition -- and
16 again, it's December 14, 2009 -- page 100. Let's bring up that
17 page. 100, starting at line 13.

16:19:38

18 "QUESTION: So none of the day laborers who were
19 investigated in this operation were charged with loitering,
20 correct?

16:20:08

21 "ANSWER: Correct.

22 "QUESTION: Or with any other infractions having to do
23 with disrupting traffic in Cave Creek, correct?

24 "ANSWER: Correct.

25 "QUESTION: Instead, they were asserted for suspicion

16:20:21

1 of being in the country unlawfully, correct?

2 "ANSWER: I believe there were some arrests made for
3 that, yes."

4 Do you stand by that testimony today?

5 A. Yes. 16:20:35

6 Q. Now let's move to 32nd and 36th Streets at Thomas, P --
7 Exhibit 202, which has been admitted. That's an e-mail chain
8 dated November 19, 2007. It's from a Dr. J. You see that in
9 the subject line? Or "from" line, rather, of the bottom
10 e-mail. 16:21:10

11 A. I do see -- I do see it, yes.

12 Q. Okay. And you see the note that the sheriff wrote to you
13 forwarding a copy on paper of this e-mail?

14 A. I see it.

15 Q. You know the author of the bottom e-mail, correct? 16:21:23

16 A. I'm not sure I do, sir.

17 Q. Well, are you sure you haven't met her?

18 What if --

19 A. Oh, okay. Yes. All right. As I read down further in the
20 context of the e-mail I see her last name. 16:21:52

21 Q. Okay. So you've met her and you do know who she is, right?

22 A. I do know who she is, yes.

23 Q. Her complaint -- well, just look at the -- the e-mail. She
24 talks about an unpermit mariachi band, and how illegal

25 activists are putting on a freak show. 16:22:15

1 Do you see that?

2 A. I see it.

3 Q. You did, or your department, did a sweep at 36th and Thomas
4 based in part on her complaints, is that correct?

5 A. I remember her making some complaints, yes. 16:22:38

6 Q. And based on her complaints, including the e-mail that
7 you're looking at, Exhibit 202, you decided to do a sweep, a
8 saturation patrol, a crime suppression operation, at 36th and
9 Thomas, is that correct?

10 A. No, there's no -- there's no violation of law that I see 16:22:59
11 there, unless it's a -- some kind of city code violation that
12 we wouldn't entertain, normally.

13 Q. Well, let's look at your deposition from November 15, 2010,
14 at line 149. Page 149, rather, at line 10.

15 "QUESTION: Well, you did do crime suppression 16:23:34
16 operations at that location. Is it fair to say that the
17 requests from business people in that area had something to do
18 with causing the sheriff's office to do those operations?

19 "ANSWER: I remember that, yes."

20 Then let's go down a little bit further. 16:23:52

21 "QUESTION: And you did those operations because of
22 demands from business owners in that area, correct?

23 "ANSWER: Correct, yeah."

24 Now, I'm not going to say the name of the person here,
25 but -- 16:24:07

1 "And Dr. J is one of those people?

2 "ANSWER: I believe she is one of those people, yes."

3 You stand by that testimony?

4 A. I can't really answer that yes or no.

5 Q. Do you think that your testimony that you gave back in 16:24:27
6 December -- rather, November -- no, December -- November 2010
7 was accurate at the time you gave it?

8 A. Oh, I do. And it was accurate in the statement right above
9 that on the -- what you're talking about mariachi bands and
10 that type activity. 16:24:51

11 Q. So it's accurate that Dr. J's complaints, including what we
12 see in Exhibit 202, was a reason that you decided to do a sweep
13 at 36th Street and Thomas, is that right?

14 A. Not the -- excuse me, sir, but not the one you asked me
15 about. 16:25:08

16 Q. Were there other complaints that -- from Dr. J that were
17 the cause?

18 A. I believe there were, but ones about mariachi bands playing
19 in the street would not be a reason for us to act. And at that
20 time I testified with the same response, if you look above what 16:25:30
21 you zeroed in on the -- on my deposition.

22 Q. The operation at that location was prompted by members of
23 the business community who complained about day laborers, is
24 that right?

25 A. I believe you're correct. It started with that, yes. 16:25:48

1 Q. And there were various complaints about the day laborers,
2 including that they were urinating and et cetera, is that
3 right?

4 A. That sounds familiar, yes.

5 Q. But in fact, when you did the operation at that location 16:26:05
6 you didn't arrest any of those people for urinating or doing
7 those other things, is that right?

8 A. I don't recall any day laborers being arrested that I know
9 of.

10 Q. My question is: Did you arrest any of them for urinating? 16:26:22

11 And I think your answer is that you don't know of
12 anyone during that operation who was arrested for urinating in
13 public, is that right?

14 A. I believe so, yes. I believe that's a correct statement,
15 yes. 16:26:40

16 Q. And you don't know of any day laborers who were cited for
17 engaging in any other of the activities that led to the
18 complaints from the business owners in that area, is that
19 right?

20 A. I believe you're correct in that statement, yes. 16:26:51

21 Q. Now, about a week later you did another operation a little
22 bit north at Cave Creek and Bell Road.

23 Do you recall that? Late March, 2008?

24 A. Quite a ways north, yes.

25 Q. I'm sorry? 16:27:09

1 A. That's quite a ways north.

2 Q. It is quite a ways north? And you have to forgive me
3 because I don't know Phoenix geography as well as you do, but
4 it is -- I've got it right, it is north, correct?

5 A. Correct. 16:27:21

6 Q. All right. And in late March -- let's put up Exhibit 311,
7 which has been admitted. And it states that Arpaio's crime
8 suppression operation migrates north to Bell Road. And it
9 talks about the request of certain business owners for this
10 operation. The sheriff suggested doing this operation based on 16:27:45
11 a written request by 10 business owners, is that right?

12 A. I'm sorry, I didn't see that in there.

13 Q. All right. Well, my question is a factual question. I put
14 the press release up just to give a reference point.

15 But my question is, as a matter of your memory of what 16:28:34
16 happened: Is it true that the sheriff suggested this operation
17 at Cave Creek and Bell Road based on a written request by 10
18 business owners?

19 A. I recall something like that. I don't remember exactly how
20 many business people. 16:28:57

21 Q. But it was a written request from some business people,
22 correct?

23 A. I believe you're correct, yes, sir.

24 Q. Based on that request, the sheriff suggested that you do an
25 operation at Cave Creek and Bell Road, is that right? 16:29:06

1 A. I believe you're correct, yeah.

2 Q. You're not sure that any effort was made to verify the
3 basis for that request, is that right?

4 A. I'm not sure. I don't even recall what the complaints were
5 at this time. 16:29:29

6 Q. You did not interview any of those business owners
7 yourself, correct?

8 A. No, I don't remember doing that, no.

9 Q. And you don't know that anybody else from your office did
10 either, is that right? 16:29:44

11 A. I'm not sure that they did, no.

12 Q. You're not sure if any effort was made to check out the
13 source of that letter that prompted that operation, is that
14 correct?

15 A. That's -- I don't recall doing it, no. 16:29:55

16 Q. Okay. Now let's move to Fountain Hills, and let's pull up
17 Exhibit 108. That operation occurred May 6th and 7, 2008. And
18 actually, you have not been here, I believe, but we looked at
19 this earlier. Let's turn to the -- the third page of that
20 exhibit, and you'll see a number of names there and you'll see 16:30:23
21 that nine out of ten of them appear to be Hispanic.

22 You see that?

23 A. Yes.

24 Q. And let's go to the fifth page of the exhibit.

25 By the way, the third page is a summary of the first 16:30:43

1 day of the operation. The second day is summarized in the
2 fifth page.

3 Let's blow that up a little bit so the chief can read
4 it.

5 You see that list of names? 16:30:55

6 A. Yes, I do.

7 Q. Eight of the ten of those names appear to be Hispanic,
8 correct?

9 A. They appear to be, yes.

10 Q. Fountain Hills is not a Hispanic neighborhood, correct? 16:31:09

11 A. The city of Fountain Hills is a city of about 30,000
12 people. I'm not sure of the demographic breakdown.

13 Q. You would agree with me that Fountain Hills has a high
14 population of non-blacks and non-Hispanics, correct?

15 A. I would agree with that statement, yes. 16:31:41

16 Q. Notwithstanding that fact, the numbers that we see in this
17 exhibit do not cause any concern for you with respect to the
18 issue of racial profiling, is that right?

19 A. No.

20 Q. It's not right, you do have a concern? 16:32:05

21 A. I'm -- I'm saying I don't.

22 Q. You do not have a concern. You don't have -- the numbers
23 that we looked at, the eight of 10, the nine of 10, they don't
24 cause you any concern about possible racial profiling, is that
25 correct? 16:32:18

1 A. No, not on the face of what you just described, a list of
2 names. I'd have to look into what the traffic stops were and
3 what led to it.

4 Q. Do you see a concern with those numbers?

5 A. What I'm looking at right now is saturation patrol. 16:32:37

6 There's three subjects with suspended license charges,
7 indicating they were stopped and found to have suspended
8 licenses. That would indicate to me that someone stopped them
9 and it was determined that their licenses were suspended and
10 they shouldn't have been driving. 16:32:59

11 Q. Chief, let's move on to Mesa. You did some operations in
12 Mesa, correct?

13 A. Correct.

14 Q. Let's -- and you did those in June and July 2008.

15 Actually, the parties have stipulated to that, so I'm just 16:33:18
16 telling you that to give you a reminder.

17 Let's pull up Exhibit 223, which has been admitted.

18 Now, the sheriff has testified, I'll tell you, that he
19 sent this to you with a little mark on the bottom of the first
20 paragraph. You believe that this letter was relevant to your 16:33:41
21 job in connection with saturation patrols, is that right?

22 A. By topic, I haven't read the letter. I mean, I'm sure I've
23 read it in the past, but you're --

24 Q. Well, we read it in your deposition, and you -- do you
25 receive things when the sheriff sends them to you with little 16:34:11

1 handwritten notes like this?

2 A. Yes.

3 Q. Okay. Do you believe that this letter is relevant to your
4 job in connection with saturation patrols?

5 A. I'd have to read it, if you don't mind. 16:34:24

6 Q. Well, I'll tell you you did read it in your deposition at
7 November 15, 2010 --

8 MR. CASEY: Excuse me, Your Honor.

9 May the witness be allowed to refresh his memory?

10 THE COURT: I'll allow the witness to read the letter. 16:34:41

11 THE WITNESS: Thank you, Your Honor.

12 MR. YOUNG: And I apologize. I didn't mean to say
13 that he could not read the letter. It is there on the screen
14 and he's free to read it if he wants to to answer the question.

15 (Pause in proceedings.) 16:34:56

16 MR. YOUNG: Let us know when you want to go to the
17 next page, Chief.

18 THE WITNESS: Okay. I'm ready for the second page.

19 Please, can you ask me that question again now that
20 I've read it? 16:35:59

21 BY MR. YOUNG:

22 Q. You believe that this letter which the sheriff sent you is
23 relevant to your job in connection with saturation patrols,
24 correct?

25 A. It's -- it's relative to an immigration issue that's 16:36:07

1 actually what appears to be largely political.

2 Q. Let's pull up Exhibit 243, which has also been admitted.

3 This is another letter about Mesa that the sheriff
4 sent to you, correct?

5 A. Yes. 16:36:29

6 Q. Now, in the paragraph -- and I'll just tell you the sheriff
7 has told us that he marked the paragraph on the left side of
8 the page that refers to the head of Mesa's police union being a
9 Hispanic.

10 Do you see that language? 16:36:55

11 A. Yes.

12 Q. You believe that that's a reference to George Gascón, who
13 was chief of the Mesa Police Department at that time, correct?

14 A. No, I don't.

15 Q. Well, let's look at your November 15, 2010, deposition at 16:37:11
16 page 128, line 1 -- starting at line 1.

17 No, I'm sorry. Page 131, starting at line 15 and
18 let's go to the 132 at line 7.

19 There you testified that you thought that the letter
20 was referring to Chief Gascón, correct? 16:37:59

21 A. Actually, yeah, at that time the question was submitted to
22 me differently than you just submitted to me, and you were
23 speaking in reference to the leader of the Mesa police union.
24 It was not George Gascón.

25 Q. Okay. Well, with respect to to the letter, taking into 16:38:19

1 account that the author of the letter may have confused the
2 police union with the police department, you said, and I'll
3 just start reading to you from line 20:

4 "Chief Gascón, right?

5 "ANSWER: Right.

16:38:43

6 "QUESTION: That's the person you think is being
7 referred to in this letter?

8 "ANSWER: I'm sure of that, yeah, from the time period
9 we're talking about. There is another Hispanic police chief
10 over there, though, but I imagine he's talking about Gascón."

16:38:56

11 You stand by that testimony today?

12 A. Yes.

13 Q. You believe that the author of this letter, Exhibit 223,
14 thinks that dark-complected people are illegal aliens, is that
15 right?

16:39:21

16 A. I believe he's talking about Hispanic people and he's using
17 the same language referring to the union president and the
18 police chief as being such, so I -- I'm assuming that he's
19 talking about Hispanics, yes.

20 Q. And you're assuming that he's talking about dark-complected
21 Hispanic people, correct?

16:40:11

22 A. He -- he may be.

23 Q. And the reason you think he may be referring to
24 dark-complected Hispanic people is that he's visually seeing
25 them and likely has not talked to them, but, nonetheless,

16:40:33

1 believes that they're illegal aliens, is that correct?

2 A. I believe he doesn't have a basis for his -- his complaint.

3 Q. And for that reason you think that he is making a
4 conclusion based on the color of their skin, is that right?

5 A. I would believe it's implied in his message. 16:40:56

6 Q. Other than actually talking to them, in your view, there
7 wouldn't be any other way to really know that they're illegal
8 aliens other than by the fact that they're dark-skinned
9 Hispanic people, correct?

10 A. I wouldn't draw that conclusion myself. 16:41:28

11 Q. Well, let's take a look -- and actually, we'll listen to
12 your testimony on November 15, 2010. It's clip number 2. Page
13 142, from line 18.

14 No, actually 142 -- yes. Okay. 142, line 18. Go
15 ahead. 16:41:58

16 Well, maybe I'll read it here.

17 "QUESTION: Well, I actually didn't make an assumption
18 about his perceiving --"

19 This is my question.

20 "-- I didn't make an assumption about his perceiving
21 dark-skinned people as illegals. I think that's your
22 assumption about what he's saying. 16:42:15

23 "My question to you is, where do you get that
24 assumption about what he is saying?

25 "ANSWER: Because he is talking about illegal aliens 16:42:29

1 and viewing them and visually seeing them. So it would be a
2 safe bet to say he's drawn some kind of conclusion, unless he's
3 gone up there and individually talked to every one of these
4 people that he's talking about and verified the fact that they
5 were they're illegally. 16:42:49

6 "What else am I supposed to think is that the guy is
7 just guessing that they're illegals?"

8 You did an operation in Sun City as well, correct?

9 A. Yes, we have.

10 Q. Let's pull up Exhibit 236, which has previously been marked 16:43:12
11 and admitted, and let's blow up the text of the letter.

12 See the letter there about people speaking Spanish at
13 McDonald's?

14 A. Yeah, I do see a statement like that.

15 Q. You think that the author of this letter is alleging that 16:43:43
16 there are illegal aliens working at that McDonald's, correct?

17 A. That's what I assume her perception probably was.

18 Q. And that's based on the fact that she says there are people
19 who don't speak English as a first language and who are

20 speaking Spanish at the McDonald's, your conclusion is that 16:44:22

21 she's alleging that there are illegal aliens at that

22 McDonald's, correct?

23 A. If you read it in context with the first paragraph where

24 she's -- seems to be concerned about pro-illegals

25 organizations, I believe she's talking about her own perception 16:44:48

1 of illegal immigration.

2 Q. You also believe the sheriff may have forwarded this letter
3 to you for your employer sanction people, is that right?

4 A. I'm not sure.

5 Q. I'll tell you, at page 107 of your deposition, lines 12 and 16:45:09
6 13, that's what you told me.

7 Do you stand by that?

8 A. I said that at -- he sent that to me because of that?

9 Q. You said at line 12 of page 107, quote:

10 "He may have been conveying this off to me for our 16:45:30
11 employer sanction people. I don't know. Those are operations,
12 too, that we have."

13 Do you stand by that testimony?

14 A. That he may have been sending something to me with that
15 thought? Okay. 16:45:44

16 Q. The sheriff may have told you that you should do a Sun City
17 operation, correct?

18 A. He may have said that, yes.

19 Q. The sheriff was involved in the Sun City operation, is that
20 right? 16:46:06

21 A. Yes, he was.

22 Q. You briefed him on what you were going to do operationally?

23 A. I usually do, yes.

24 Q. Now, you see the note at the top on the right-hand side?

25 Let's pull it back up again. 16:46:24

1 You see where in parentheses the sheriff writes to you
2 that it's, quote, for our operation?

3 A. Yes, I see that.

4 Q. You think he may have been responding to perceptions about
5 illegal immigrants in the community, is that correct? 16:46:47

6 A. I'm not exactly sure what he was thinking when he sent it
7 to me, but I can tell you what I would do.

8 Q. What would you do?

9 A. Nothing.

10 Q. Well, in fact, you did do a saturation patrol less than two 16:47:08
11 weeks after the date of this letter in Sun City, is that right?

12 A. I can't remember exactly the date of. However --

13 Q. August 13 and 14, 2008.

14 A. Okay.

15 Q. And I'll tell you that that's what the parties have agreed. 16:47:26

16 Let's pull up Exhibit 235. This is an August 8
17 letter. And you'll see there that -- and I'll tell you again
18 it's the sheriff that did that mark.

19 The author says that they would love to see an
20 immigrant sweep conducted in Surprise. And I'll tell you the 16:47:52
21 parties have agreed that on October 16 and 17, 2009, the MCSO
22 conducted a large-scale saturation patrol in Surprise and the
23 northwest valley.

24 A. I'm sorry. Could you give me that date again?

25 Q. Yes. October 16-17, 2009. 16:48:14

1 A. Okay. Okay.

2 Q. Do you recall that operation in Surprise in the northwest
3 valley?

4 A. Yes, I do.

5 Q. Now, between August 8, 2008, which is the date of this
6 letter, and October 2009, is sufficient time for your
7 department to plan a large-scale saturation patrol, correct?

16:48:27

8 A. It could be.

9 Q. The sheriff wrote a note on this saying that his staff
10 should send a thank you note. You think it's appropriate for
11 the sheriff to do so, correct?

16:48:56

12 A. I believe the sheriff can respond to his constituents how
13 he feels he should.

14 Q. The sheriff is a political person. You agree with that?

15 A. Very true.

16:49:15

16 Q. The sheriff gets elected to office, is that right?

17 A. I'm sorry -- okay. I thought you were making a statement.
18 Yes, he does get elected to office, yes.

19 Q. I'm not from Phoenix so I really do need to ask you these
20 questions.

16:49:33

21 A. No problem.

22 Q. The sheriff has to be responsive to his constituents, is
23 that right?

24 A. Yes.

25 Q. And that responsiveness includes responding to letters from

16:49:43

1 constituents asking for him to perform operations in particular
2 areas, is that right?

3 A. The way he responds to his constituents isn't necessarily
4 the way I deal with it. I don't normally have to deal with a
5 lot of that, so it's not fair for me to put words into his
6 mouth. 16:50:11

7 Q. All right. Well, you don't see a problem with him
8 responding to this particular letter, is that correct?

9 A. No, if he wants to respond to it, he's the officeholder.

10 Q. The sheriff receives a lot of public support for his
11 illegal immigration policies. Do you agree with that? 16:50:42

12 A. I believe you're correct.

13 Q. The crime suppression patrols that you oversee are part of
14 his response to citizen complaints, is that right?

15 A. Historically speaking, that's true. 16:50:58

16 Q. In fact, the public expects a response from the Sheriff's
17 Office, including in the form of crime suppression patrols,
18 correct?

19 A. I believe that's one of their expectations, yes.

20 Q. The sheriff suggests saturation patrol sites to you,
21 correct? 16:51:18

22 A. We have discussions about them, yes.

23 Q. And the sheriff's recommendations or discussions with you
24 about locations for saturation patrols is in response to at
25 least some types of calls from members of the public, correct? 16:51:42

1 A. It could be, yes.

2 Q. And you follow his suggestions, correct?

3 A. Yes.

4 Q. More generally, Sheriff Arpaio is the final decision maker
5 in your office. Do you agree with that?

16:52:05

6 A. Yes, he is obviously the official in charge as the sheriff.

7 Q. You follow his directives, correct?

8 A. Yes, but he gives me great latitude in performance of my
9 duties.

10 Q. He, the sheriff, expects you to be responsive to the
11 citizen complaints that he sends to you, correct?

16:52:26

12 A. If there's some validity to it. We don't have great
13 discussion about those complaints.

14 Q. Let's play clip 3, which is from your November 15, 2010,
15 deposition, line -- page 115, line 122.

16:52:54

16 All right. I will read it aloud.

17 MR. CASEY: Sorry. Could you repeat the page number,
18 please?

19 MR. YOUNG: Yes. Page 115 at line 22.

20 MR. CASEY: Thank you, sir.

16:53:22

21 BY MR. YOUNG:

22 "QUESTION: So what is Sheriff Arpaio telling you when
23 he says, 'Brian, for our operations'?

24 "ANSWER: I don't know. I don't know. He is passing
25 me off information about a citizen's complaint. He expects me

16:53:33

1 to do whatever I can about a citizen's complaint."

2 You stand by that testimony?

3 A. Emphasis on the "can," yes, I do.

4 Q. You often get notes from the sheriff about complaints, or
5 containing complaints from citizens where he annotates
6 something and sends it to you, is that right?

16:53:58

7 Let me clarify the question. You often get notes from
8 the sheriff in which he has annotated something that he has
9 received from someone else and sent to you, is that right?

10 A. That's correct.

16:54:21

11 Q. I'm sorry? Did you --

12 A. I said that's correct, yes.

13 Q. The sheriff sometimes sends you opinions of people that he
14 receives, correct?

15 A. Yes.

16:54:31

16 Q. And the sheriff has sent you things that you believe he
17 agrees with, is that right?

18 A. I'm sure of that, yes.

19 Q. You're sure that the sheriff has sent you things that he
20 has received from other people, and that are about illegal
21 immigration, and that you know he agrees with, is that right?

16:54:50

22 A. I believe he agrees with some of it, yes.

23 Q. The sheriff has forwarded to you statements and e-mails and
24 articles from what you call closed border activists, is that
25 right?

16:55:14

1 A. I believe he has, yeah.

2 Q. But you cannot think of anything that the sheriff has ever
3 sent you that you know that he disagrees with, is that correct?

4 A. Everything he sends to me I don't have a discussion with
5 him, so I'm not quite certain how to answer that question, sir. 16:55:36

6 Q. Well, the question is pretty simple. You can't think of
7 anything that the sheriff has ever sent you that you know that
8 he disagrees with, is that right?

9 A. Well, he sends me so -- so much that I'd be speculating on
10 what his thoughts were about what the content of the subject 16:56:01
11 matter was.

12 Q. Okay. Well, you gave a slightly different answer on
13 November 15, 2010, and I'm going to read that to you.

14 Page 218, starting at line 18.

15 "QUESTION: Has the sheriff ever, to your memory, 16:56:19
16 forwarded to you, for your information, any statements that you
17 know the sheriff disagrees with?

18 "ANSWER: I can't think of any right offhand."

19 A. Yeah, okay, I can't think of any, no, I --

20 Q. You stand by that testimony? 16:56:40

21 A. Well, and I think that was my testimony now. I don't have
22 discussion with him about these matters on every incident that
23 he sends to me, so I can't, no.

24 Q. So your earlier testimony was correct?

25 A. Yeah, yes. 16:56:57

1 Q. When you do get copies of documents from the sheriff, you
2 read them and you may distribute them for action, or you may
3 draw a line through it and dispose of it, is that right?

4 A. That's correct.

5 Q. If there is a letter that you get from a citizen that has
6 some information in it that you deem warrants some kind of
7 action, you will forward it to a subordinate, is that correct?

16:57:16

8 A. Yes.

9 Q. If there were a letter from a citizen suggesting that you
10 need to do a crime suppression operation in a particular area,
11 you could pass that letter along to a subordinate for action,
12 is that right?

16:57:33

13 A. Depending on what the content was. People just don't get
14 crime suppression operations just because they request one.

15 Q. Well, there are some where you do pass them along for
16 action, though, right?

16:57:53

17 A. There's some involving reports of crimes that I pass along,
18 or I'll get to the appropriate agency.

19 Q. If the citizen letter related to a crime suppression
20 operation, one of the subordinates that you could send the
21 letter to would be Joe Sousa, is that right?

16:58:13

22 A. That's correct in the past, yes.

23 Q. He was the head of the Human Smuggling Unit?

24 A. Correct.

25 Q. Is he still the head of the Human Smuggling Unit?

16:58:27

1 A. No, sir.

2 Q. In making decisions about where to do crime --

3 THE COURT: Mr. Young, I'm looking for a good place to
4 break for the day. We're getting very close to the end of the
5 day.

16:58:44

6 MR. YOUNG: How about two more questions?

7 THE COURT: All right.

8 BY MR. YOUNG:

9 Q. Chief Sands, in making your decisions about where to do
10 crime suppression patrols, you have considered citizen and
11 public comments that the sheriff has forwarded to you, correct?

16:58:52

12 A. I have looked at them, yes, I have, yeah.

13 Q. Not only have you looked at them, but you've considered
14 them, is that right?

15 A. Dependent on what their content was.

16:59:06

16 Q. And you are sure that you have decided the locations of at
17 least some saturation patrols based on correspondence that the
18 sheriff has received from a member of the public and has
19 forwarded to you, is that correct?

20 A. Not in every case, no.

16:59:33

21 Q. I didn't ask in every case. My question was: You're sure
22 that you have decided the locations of at least some saturation
23 patrols based on correspondence that the sheriff has received
24 from members of the public and forwarded to you, is that right?

25 A. Yes, but it wouldn't have been solely based on anything

17:00:01

1 other than crime-related activities.

2 MR. YOUNG: Thank you very much, Chief.

3 Your Honor, we'll need to continue with Chief Sands
4 tomorrow. But I'm at a breaking point now.

5 THE COURT: All right. Thank you. 17:00:15

6 You may step down for the day. We'll see you back
7 tomorrow.

8 THE COURT: Is there anything that the parties want to
9 raise at this time?

10 MR. YOUNG: Plaintiffs have nothing at this time, Your 17:00:33
11 Honor.

12 MR. CASEY: Defendants have nothing, Your Honor.

13 THE COURT: All right. We'll see you tomorrow.

14 (Proceedings recessed at 5:00 p.m.)

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2 C E R T I F I C A T E
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7 I, GARY MOLL, do hereby certify that I am duly
8 appointed and qualified to act as Official Court Reporter for
9 the United States District Court for the District of Arizona.

10 I FURTHER CERTIFY that the foregoing pages constitute
11 a full, true, and accurate transcript of all of that portion of
12 the proceedings contained herein, had in the above-entitled
13 cause on the date specified therein, and that said transcript
14 was prepared under my direction and control.

15
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17 DATED at Phoenix, Arizona, this 25th day of July,
18 2012.

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21 s/Gary Moll
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)	
Melendres, et al.,)	
)	
Plaintiffs,)	CV 07-2513-PHX-GMS
)	
vs.)	Phoenix, Arizona
)	July 26, 2012
Joseph M. Arpaio, et al.,)	8:33 a.m.
)	
Defendants.)	
)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(BENCH TRIAL DAY 4 - Pages 817-1093)

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23
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25

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I N D E X

	<u>Witness:</u>	<u>Page</u>
1		
2		
3	BRIAN L. SANDS	
4	Direct Examination Continued by Mr. Young	823
	Cross-Examination by Mr. Casey	837
5	Examination by The Court	879
	Redirect Examination by Mr. Young	890
6		
7	CARLOS RANGEL	
8	Direct Examination by Ms. Gallagher	897
	Cross-Examination by Mr. Liddy	916
9	Examination by The Court	942
	Cross-Examination Continued by Mr. Liddy	954
10	Redirect Examination by Ms. Gallagher	956
11		
12	DIONA SOLIS	
13	Direct Examination by Mr. Segura	960
14		
15	LORENA S. ESCAMILLA	
16	Direct Examination by Ms. Ramirez	965
17	Cross-Examination by Mr. Liddy	981
18		
19	JOSEPH SOUSA	
20	Direct Examination by Mr. Byrnes	988
21	Cross-Examination by Mr. Casey	1026
22	Redirect Examination by Mr. Byrnes	1074
23		
24		
25		

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
14	Report attached to June 11, 2009 email from Joya to Rangel (Carveout MCSO 0002221-22)	907
63	MCSO CAD Incident History, Incident # MA09163575 (MCSO CAD Database)	978
454	Impeachment exhibit	1083
1093	Draft copy of a response to the U.S. House Inquiry dated 02/12/09 (ICE BS 10760-66, Ex. 40 to J. Kidd Depo)	914
1122A	Bates No. Melendres MCSO 016040 (Page 8 of Exhibit 1122)	1041

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P R O C E E D I N G S

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2
3 THE COURT: Thank you. Please be seated. The parties
4 have anything to raise?

5 MR. YOUNG: Yes, Your Honor. 08:33:08

6 THE COURT: All right. What do you need?

7 MR. YOUNG: Thank you.

8 Your Honor, may I approach the witness and hand him an
9 exhibit?

10 THE COURT: Are we going to start with testimony? 08:33:17

11 MR. YOUNG: Yes.

12 THE COURT: Okay.

13 Is there anything that you need to raise, Mr. Casey?

14 MR. CASEY: There is not, Your Honor. Thank you.

15 THE COURT: All right. I'm just going to give you my 08:33:24
16 calculation, as I promised to do at the beginning of every day.

17 Plaintiffs have used 10 hours and 35 minutes.

18 Defendants have used six hours and 25 minutes.

19 Mr. Young, if you're ready to proceed, you may do so.

20 MR. YOUNG: Thank you, Your Honor. 08:33:40

21 Your Honor, I'd like to hand the witness Exhibit 158
22 for identification. May I?

23 THE COURT: You may.
24
25

1 BRIAN L. SANDS,
2 recalled as a witness herein, having been previously duly
3 sworn, was examined and testified further as follows:

4 DIRECT EXAMINATION CONTINUED

5 BY MR. YOUNG:

08:34:08

6 Q. Chief Sands, good morning.

7 A. Good morning.

8 Q. I've handed you Exhibit 158. Before I have you look at
9 that, the MCSO receives federal funding, correct?

10 MR. CASEY: Objection, Your Honor. It's irrelevant.
11 We've stipulated already to federal funding being received by
12 the MCSO.

08:34:21

13 MR. YOUNG: Then I'll withdraw the question.

14 THE COURT: All right.

15 BY MR. YOUNG:

08:34:29

16 Q. Do you recognize Exhibit 158 as a list of federal grants to
17 the Maricopa County Sheriff's Office?

18 A. It appears to be.

19 MR. YOUNG: Your Honor, I move for the admission of
20 Exhibit 158.

08:34:53

21 MR. CASEY: Your Honor, I'd like to note on the
22 objection that it's irrelevant because of the stipulation the
23 parties have reached into -- reached already in the pretrial
24 statement.

25 THE COURT: Mr. Young?

08:35:06

1 MR. YOUNG: Well, I was going to ask some questions
2 about specific use of the funding. And actually, if Mr. Casey
3 would be so kind as to remind me of the paragraph, I would take
4 a look at that.

5 MR. CASEY: I'm sorry, we have a 300-page pretrial and 08:35:19
6 I don't remember. I do know that we've stipulated to that.

7 THE COURT: All right. If you stipulated to federal
8 funding, I guess I'm going to ask, Mr. Young, what is the
9 relevance of asking about individual programs?

10 MR. YOUNG: Well, if counsel will stipulate that that 08:35:34
11 satisfies the requirements of our Title VI cause of action,
12 then I'll move on.

13 MR. CASEY: I stipulate.

14 THE COURT: All right.

15 MR. YOUNG: Okay. Thank you. 08:35:42

16 BY MR. YOUNG:

17 Q. Let's pull up Exhibit 187, and I want to focus,
18 Chief Sands, on a note that Sheriff Arpaio wrote to you in the
19 upper right-hand corner of the first page of that exhibit.

20 Can we focus on that? 08:36:04

21 You see there the sheriff has written to you a note
22 that says: Have someone handle?

23 A. Yes.

24 Q. Now, when you get a note like that from Sheriff Arpaio, you
25 understand that you're either supposed to do something, or the 08:36:25

1 sheriff wants you to do something to resolve the problem that
2 the member of the public who has written the letter on which
3 the sheriff has attached this note has presented, is that
4 correct?

5 A. In a broad sense, yes, but it's -- the determination of how 08:36:43
6 it's handled is left up to me.

7 Q. You said in a broad sense, yes, that's correct, is that
8 right?

9 A. Well, apparently he's giving me some kind of information,
10 which I'm not sure what is contained there, and asking me to 08:37:06
11 look into it or handle it. That -- that's a very broad term,
12 and he leaves it up to me how to do that.

13 Q. When you get a request like that from the sheriff, Have
14 someone handle that, you act in accordance with that request
15 from the sheriff, correct? 08:37:32

16 A. I review it.

17 Q. I'm going to read to you from your deposition of November
18 15, 2010, at line 2 on page 100.

19 "QUESTION: Well, when Sheriff Arpaio sends you
20 something and tells you, 'Have someone handle that,' is it your 08:37:56
21 understanding that you're supposed to do something or that he
22 wants you to do something to resolve the problem that the
23 member of the public has presented?

24 "ANSWER: I should hope so.

25 "QUESTION: And do you act in accordance with that 08:38:14

1 request from the sheriff?

2 "ANSWER: Yes."

3 Was that testimony accurate when you gave it?

4 A. I'm trying to follow you, sir. I got caught in --

5 Q. Sure. It's at page 100, starting at line 2. Do you have 08:38:37
6 that page in front of you?

7 A. Yes.

8 Q. Please take your time to read it if you'd like to do that.

9 (Pause in proceedings.)

10 THE WITNESS: I'm having trouble finding it here in 08:39:32
11 the notebook. Could you maybe expand it on the screen so I can
12 see it?

13 MR. YOUNG: Oh, sure.

14 Mr. Braun?

15 BY MR. YOUNG: 08:39:42

16 Q. Do you want the whole page 100?

17 A. Yes, please.

18 All right, that -- those -- that questioning was
19 relative to a particular situation that was going on at
20 29th Street and Greenway, and there may have been something of 08:40:19
21 substance there that I may have passed on at the time, I'm not
22 quite sure what it was. It seems like it was a -- something
23 about shooting in public.

24 Q. Actually, my question, Chief Sands, was whether the
25 testimony that you gave on page 100 of your November 15, 2010, 08:40:43

1 deposition, from lines 2 to 13, which I just read to you, was
2 correct.

3 A. Yes. If there was some criminal activity there, yes, I
4 would -- I would submit it for -- for someone to either look
5 into, or perhaps I would communicate it to -- to another agency
6 if that was necessary. 08:41:05

7 Q. You don't recall anyone from your office doing anything to
8 deal with possible gunshots at 29th Street and Greenway
9 Parkway, correct?

10 A. I don't recall it, no. 08:41:28

11 Q. Let's go to Exhibit 206.

12 This is an e-mail on paper the sheriff forwarded to
13 you, and I'd like you to focus, actually, on the sixth
14 paragraph that begins -- well, I'll just read it to you.

15 Says: What our open border crowd calls racial 08:41:57
16 profiling is what I call reasonable suspicion and probable
17 cause, both of which are legal grounds for further action. If
18 it walks like a duck and quacks like a duck.

19 You see that language?

20 A. Yes. 08:42:15

21 Q. It walks like a duck and quacks like a duck is an old-time
22 police term, correct?

23 A. I've heard that term before, yes.

24 Q. Okay. It's the sort of term you hear when you're dealing
25 with gang members. If they look like gang members, they must 08:42:32

1 be gang members, correct?

2 A. I've heard it in that context, yes.

3 Q. Let's go to Exhibit 228.

4 MR. CASEY: Sorry, 228?

5 MR. YOUNG: Yes.

08:42:52

6 MR. CASEY: Thank you, sir.

7 BY MR. YOUNG:

8 Q. This is a log of calls to the front desk that the sheriff
9 forwarded to you, correct?

10 A. It appears that way, yes.

08:43:07

11 Q. Let's go to the second page. I want to focus on the entry
12 from Joyce F.

13 Actually, let's go to the third page.

14 I'm sorry, the second page, the bottom item, Kerrie R.

15 You see there, Chief Sands, where it says: Please
16 make another immigrant sweep at Cave Creek and Bell Road?

08:43:36

17 A. Yes, I see that.

18 Q. When you get something like that from the sheriff, you
19 understand that he's telling you things that he wants you to
20 know, is that correct?

08:43:53

21 A. Yes, he's giving me that information, yes.

22 Q. So as you look at that language, the sheriff is telling you
23 to please make another immigrant sweep at Cave Creek and Bell
24 Road, is that right?

25 A. I don't see that written in there anywhere, no, sir.

08:44:18

1 Q. Please go to page 197 of your November 10 deposition, if
2 you'd like to read along. I'll read it to you.

3 It's page 197, starting at line 13.

4 "So he's telling you via this document, among other
5 things, that someone says, Please make another immigrant sweep
6 at Cave Creek and Bell Road.

08:44:40

7 "Would you agree with me on that?

8 "ANSWER: It's written down there, yes."

9 A. I haven't read this in its total context, but I believe I'm
10 talking about the person that called in and gave the message,
11 not the sheriff.

08:44:59

12 Q. You're familiar with the MCSO zero tolerance policy, is
13 that correct?

14 A. I am aware of -- of that terminology being used, yes.

15 Q. When you hear that term, you believe that it means that you
16 arrest everybody that you have warrants for or that you have
17 probable cause that they committed a chargeable offense, is
18 that right?

08:45:16

19 A. Of course we're going to arrest everybody that has a
20 warrant, and typically that's implied to arrest people that
21 we're taking into custody for charging with a crime, yes.

08:45:31

22 Q. Your understanding is that it also means that you arrest
23 everyone that you have probable cause for that they committed a
24 chargeable offense, correct?

25 A. That's the normal practice in a saturation patrol, yes.

08:45:52

1 Q. You don't do any analysis to determine whether a zero
2 tolerance policy is actually followed during saturation
3 patrols, is that correct?

4 A. Typically I don't, no.

5 Q. The zero tolerance policy does not apply to traffic stops
6 or traffic tickets, correct? 08:46:12

7 A. I'm -- I'm not quite clear on your question.

8 Are people stopped with zero tolerance in mind, or are
9 they -- please clarify that for me a little.

10 Q. You would agree with me that your officers cannot stop
11 every single driver that they observe exceeding the speed
12 limit. 08:46:38

13 Do you agree with that?

14 A. Usually it's not feasible.

15 Q. So, therefore, you do not send officers out to write
16 tickets for every traffic violation that they encounter, is
17 that right? 08:46:51

18 A. I've never emphasized that.

19 Q. There is no hard and fast rule during saturation patrols
20 that officers stop every traffic violator that they see, is
21 that right? 08:47:23

22 A. Correct.

23 Q. The zero tolerance concept, as used in the context of
24 anti-illegal immigration saturation patrols, is rhetoric used
25 by Lieutenant Sousa, is that correct? 08:47:47

1 A. It is a phrase and rhetoric used by Lieutenant Sousa.
2 However, that is the common practice during all saturation
3 patrols, regardless of what the goals and objectives or the
4 outcome of it are.

5 Q. But it's not true as to traffic violations and traffic
6 tickets, correct?

08:48:08

7 A. I've never emphasized writing everyone a traffic ticket or
8 stopping everybody for a traffic violation.

9 Q. You told a New York Times reporter in September 2008 that
10 most of your deputies, quote, Can make a quick recognition on
11 somebody's accent, how they're dressed, end quote, correct?

08:48:34

12 A. I made a statement relative to that. I'm not sure of the
13 accuracy of the reporter's reporting on it. He even got my
14 name wrong, so I'm not sure how accurate he was.

15 Q. Well, he called you Bruce, but in fact, you're pretty sure
16 that it was you, Brian Sands, that he was talking to, correct?

08:49:01

17 A. Yes, I just question his reporting.

18 Q. Whatever you said to him is similar to what he quoted and
19 which I just read, correct?

20 A. Yeah, there was conversation along that line. Yes, I do
21 remember something like that.

08:49:21

22 Q. And you said something similar to what I just read to you,
23 is that right?

24 A. There was a conversation about language and that type of
25 thing, yes.

08:49:35

1 Q. And you said something like what I just read, is that
2 right?

3 A. I'm not exactly sure what I said at the time.

4 Q. In your deposition from December 14, 2009, page 89, start
5 at line 17, you were asked this question with respect to that
6 article.

08:49:59

7 "And it says most sheriff's deputies, quote, can make
8 a quick recognition on somebody's accent, how they're dressed,
9 end quote. Do you see that?

10 "ANSWER: Yes?

08:50:19

11 "QUESTION: Do you agree with that statement?

12 "ANSWER: I think it is taken -- obviously it is out
13 of context, but it may have been something similar to what I
14 said, yes."

15 Was that testimony accurate when you gave it?

08:50:32

16 A. It's as accurate as I just gave you now.

17 Q. Your office does not collect data to see whether or not
18 racial profiling is occurring, correct?

19 A. No.

20 Q. Well, let's go back to your December 14, 2009, deposition
21 at page 149.

08:50:59

22 THE COURT: Let me interrupt. When you said "no,"
23 Chief Sands, did you mean no, you don't collect data, or no,
24 Mr. Young's statement that you don't collect data was
25 incorrect? Which of those two did you mean?

08:51:21

1 THE WITNESS: We collect -- I'm sorry, Your Honor.

2 We collect data relative to a person's race at the
3 time of booking, and there's several other forms that we
4 collect it on, but it's basically for the purpose of suspect --
5 suspect description.

08:51:43

6 THE COURT: All right. So you don't collect data for
7 purposes of determining whether racial profiling has occurred?

8 THE WITNESS: No, sir.

9 THE COURT: Thank you.

10 MR. YOUNG: Thank you.

08:51:56

11 BY MR. YOUNG:

12 Q. After saturation patrols take place, you typically do not
13 collect statistics on the effects of that saturation patrol, is
14 that right?

15 A. We collect the arrest statistics and the statistics
16 relative to the number of contacts, that type of thing.

08:52:13

17 Q. How about crime statistics, though? Do you typically
18 collect crime statistics for the area of the saturation patrol
19 after the saturation patrol has taken place to determine
20 whether the saturation patrol had any effects?

08:52:38

21 A. I normally don't analyze that, but there may be -- it may
22 be done in follow-up when we go back or review it.

23 Q. You usually do not conduct such an analysis, though,
24 correct?

25 A. Personally, I don't, no.

08:53:00

1 Q. In your twenty year -- six years, your 26 years of
2 experience from 1983 to 2009, your office never disciplined
3 anyone for racial profiling, correct?

4 A. Not that I can recall.

5 Q. Your office has no interest in adopting further safeguards
6 to protect against racial profiling, is that correct? 08:53:19

7 A. I wouldn't go so far as to make a comment like that, no,
8 sir.

9 Q. You believe that your office does not have an issue with
10 racial profiling, right? 08:54:02

11 A. I believe our office does not have that culture, nor is
12 there anything within the system that would reward someone or
13 promote that kind of activity.

14 Q. Do you think that your office needs to do anything further
15 to safeguard against the possibility of racial profiling? 08:54:29

16 A. I'm never opposed to any kind of training that might
17 enhance issues out there -- or not enhance issues, but correct
18 a problem.

19 Q. That wasn't my question, Chief Sands.

20 Do you believe that your office should adopt any
21 further safeguards to protect against the possibility of racial
22 profiling? 08:54:46

23 A. I really don't believe that we have that culture or problem
24 out there. However, I would look at those types of training
25 and safeguards. 08:55:08

1 Q. So do you think that your office does need to adopt further
2 safeguards to protect -- to protect against the possibility of
3 racial profiling?

4 A. No, I don't believe that -- that we have a problem, sir.

5 Q. So you do not believe that you need to adopt any further
6 safeguards or procedures, is that right? 08:55:22

7 A. I'd have to -- I'd have to review exactly what you're
8 talking about, sir.

9 Q. Well, I'm talking about any further safeguards or
10 procedures, any changes. Do you think you need to do anything
11 more in your office to protect against the possibility of
12 racial profiling? 08:55:35

13 A. That's very ambiguous, sir. I really have to review what
14 you're talking about.

15 Q. Well, I'm really talking about any changes at all. 08:55:49

16 Are you able to answer the question of whether you
17 think you need to make any changes at all to protect -- to
18 protect against the possibility of racial profiling in your
19 office?

20 A. I don't think we have a problem, again, like I'm saying,
21 and anything that we do for training to prevent problems, I'm
22 not opposed to it. 08:56:02

23 You're putting out something very broad-based and not
24 giving me anything to -- to really analyze.

25 Q. So you're saying you're not opposed to any additional or 08:56:23

1 new safeguards or protections that might be put in place in the
2 future to protect against racial profiling. Is that what
3 you're saying?

4 A. I'm not opposed to anything that prevents problems, whether
5 it's -- it's vehicle safety use, or gun use, or dealing with 08:56:41
6 the public in general, I'm not opposed to anything that -- that
7 might better the office.

8 Q. That would include changes in the future that could happen
9 that would increase the protections against racial profiling,
10 is that right? 08:57:01

11 A. And there again, if there's a benefit to the community and
12 a benefit to the office, I would be interested in looking at
13 it, yes, sir.

14 Q. After the federal government revoked its 287(g) authority
15 in 2009, nothing in your office changed with respect to its 08:57:24
16 illegal immigration enforcement policies, is that correct?

17 A. I really can't answer that with yes or no. We continue to
18 enforce state laws, and some of those laws are relative to
19 human smuggling, and indirectly workplace issues.

20 Q. At page 169 of your December 14, 2009, deposition, line 2, 08:57:57
21 you were asked these questions and gave these answers:

22 "QUESTION: We talked a little bit earlier today about
23 the sheriff stating that nothing would change even though the
24 287(g) task force agreement was no longer in effect. Do you
25 recall that? 08:58:19

1 "ANSWER: Yes.

2 "QUESTION: Is it your understanding that the Maricopa
3 County Sheriff's Office will continue its crackdown against
4 illegal immigration as described in this press release of July
5 2007?

08:58:30

6 "ANSWER: We are going to continue enforcement of
7 immigration issues, yes."

8 Is that testimony accurate?

9 A. Yes, and relative to the answer that I just gave you that
10 we still have laws to enforce.

08:58:44

11 Q. And that's true today?

12 A. Yes.

13 Q. And you're going to continue to use traffic stops as a
14 means of finding illegal immigrants, is that correct?

15 A. If a traffic stop is used and there's an ability to detain
16 somebody and it's -- it's relevant to whatever broad issue you
17 just submitted out there, yes.

08:59:02

18 MR. YOUNG: Thank you, Chief Sands.

19 Your Honor, no further questions at this time.

20 MR. CASEY: Your Honor, may I have a minute to
21 assemble my computer up there?

08:59:24

22 THE COURT: You may.

23 MR. CASEY: Thank you.

24 CROSS-EXAMINATION

25 BY MR. CASEY:

09:00:24

1 Q. Good morning, Chief. How are you?

2 A. Good morning. Fine, thank you.

3 Q. I think what I may do is go in reverse order Mr. Young had
4 asked you about.

5 You were asked whether or not MCSO was going to
6 continue to use traffic stops to identify illegal aliens. Has
7 the MCSO ever used traffic stops to specifically identify
8 illegal aliens?

09:00:32

9 A. No.

10 Q. Tell me how it is that people that are unlawfully present
11 in the United States are discovered.

09:00:49

12 A. Well, it will be a number of ways. If you're talking
13 relative to a traffic enforcement issue or a traffic stop,
14 generally speaking, it revolves -- or involves a driver that
15 can't identify himself.

09:01:14

16 Q. In the time period particularly 2007, 2008, 2009, could you
17 tell the Court, if traffic stops are conducted by the MCSO
18 anywhere in the boundaries of Maricopa County, what is your
19 experience about whether or not people that happen to be
20 unlawfully in the country are discovered during those stops?

09:01:39

21 A. I'm sorry, I didn't --

22 Q. Okay. I apologize. It was -- it was too long.

23 Maricopa County Sheriff's Office do traffic stops
24 throughout the county. Is that a --

25 A. Yes.

09:01:55

1 Q. All right. What is your experience if you do enough
2 traffic stops in the county, anywhere in the county, whether
3 your deputies are going to discover or learn that there are
4 people in that vehicle that are unlawfully present in the
5 United States?

09:02:09

6 A. That exists, yes.

7 Q. S that just a simple factor -- well, explain for me why
8 that exists.

9 A. Well, it would be like any criminal violation. When a
10 traffic stop occurs, you can oftentimes catch violators
11 involved with either warrants or -- or serious traffic
12 violations, perhaps drug smuggling, human smuggling. Any time
13 a criminal activity is afoot it can be discovered along the
14 roadway.

09:02:26

15 Q. You, as -- let me back up.

09:02:49

16 Who makes the decision to go to a particular area for
17 a saturation patrol?

18 A. I usually do.

19 Q. Okay. When you say you usually do, what do you mean?

20 A. It would depend on the amount of resources being used. My
21 primary job is making sure resources are -- are being used
22 properly, and that there's coordination between commanders to
23 ensure that things are put in place, both logistically and
24 organizationally, to have a positive outcome.

09:03:05

25 Q. Does Sheriff Arpaio make the decision of where a saturation

09:03:30

1 patrol is going to be conducted?

2 A. No, I usually establish that, or one of my subordinates do.

3 Q. Okay. When you say "usually," I want to make sure it's
4 clear for this Court. You're talking about either you or one
5 of your subordinates, not Joe Arpaio?

09:03:51

6 A. Correct.

7 Q. Now, you were asked a series of questions about Joe Arpaio
8 being the elected sheriff and the chief policymaker.

9 Do you remember that?

10 A. Yes, sir.

09:04:06

11 Q. And you were asked questions about him needing to respond
12 to citizen complaints.

13 Do you remember that?

14 A. Correct.

15 Q. Are you under, in your judgment --

09:04:12

16 Well, first of all, how -- back up.

17 Have you ever, since 2007, ever received any type of
18 pressure from Joe Arpaio to go to a particular area to do a
19 saturation patrol?

20 A. No.

09:04:28

21 Q. Have you ever been ordered by Sheriff Arpaio: Go to
22 location A?

23 A. No.

24 Q. At most, what you testified, do I understand correctly, is
25 he may have suggested locations to you?

09:04:43

1 A. Yes.

2 Q. Do you ever remember him suggesting locations to you?

3 A. Not specifics, but I -- I know he has.

4 Q. Okay. So in general he's suggested locations to you?

5 A. Correct.

09:04:56

6 Q. All right. Now, my question for you is this: Even though
7 he is the elected official and sets policy, what if you
8 disagree with him and you don't believe that there can be or
9 should be a patrol in that area? What is your response?

10 A. I would say that it's not -- there's no value to it.

09:05:14

11 Q. And what do you base that decision on, that no value to it?

12 A. That you probably wouldn't have any arrests, or it would
13 just -- it would not be worthy of -- of utilization of the
14 resources, I'm sorry.

15 Q. Do you view yourself -- first of all, do I understand it
16 correctly you've been in law enforcement for how long, 26
17 years?

09:05:36

18 A. Longer than that now. That was on record several years
19 ago, so it would be over 28 years now, sir.

20 Q. And was that all with the MCSO?

09:05:52

21 A. Yes.

22 Q. So you have been at the MCSO, regardless of who the elected
23 sheriff is?

24 A. Correct.

25 Q. So your part of permanent professional staff?

09:06:01

1 A. Yes, through four sheriffs now.

2 Q. All right. You've been through four different sheriffs?

3 A. Correct.

4 Q. And I'm going to ask you this question and see if you can
5 help me understand. The sheriff is an elected official. Do
6 you stay? Do you go? Come with the political winds of who's
7 in office?

09:06:13

8 Do you understand my question?

9 A. Yes, I'm -- I'm not what you would say at will. I have a
10 permanent rank that could be reverted back to at any time.

09:06:30

11 Q. Do you view that permanent rank and being separate from the
12 political process as any type of insulation against political
13 pressure?

14 A. Yes, yeah.

15 Q. You believe that that insulation allows you in any way to
16 serve the MCSO better?

09:06:51

17 A. Possibly. I haven't given it much thought, but yes.

18 Q. Well, let me give you a hypothetical.

19 Let's say that the sheriff becomes excited about
20 something and is very, very desirous of taking a particular law
21 enforcement action. How do you respond to that hypothetical if
22 you, as the professional law enforcement officer, say there's
23 no value to it from a law enforcement perspective?

09:07:10

24 A. I have no concern about saying something like that.

25 Q. Have you done that sort of thing before, in general?

09:07:33

1 A. We have had conversations in the past and I have -- I can't
2 really remember what the issue was, but I have suggested other
3 alternatives of enforcement.

4 Q. The plaintiffs' lawyer asked you about something called
5 illegal immigration saturation patrols.

09:07:59

6 Do you remember that?

7 A. Yes.

8 Q. Are there such things as illegal immigration saturation
9 patrols in your office?

10 A. No. We practice crime suppression through our saturation
11 patrols, and it's not geared at any one person or -- or a
12 person of a certain color. Those are typically the end results
13 of saturation patrols.

09:08:12

14 Q. Explain for us --

15 THE COURT: Wait a minute.

09:08:34

16 MR. CASEY: Excuse me.

17 THE COURT: When you say those are the typical results
18 of saturation patrols, what do you mean by that?

19 THE WITNESS: What I mean, sir, is that we don't go
20 out intentionally on a saturation patrol to stop any certain
21 groups of people. If people are arrested, and subsequently
22 they're in the country illegally, that's the -- that's the end
23 result of stopping a certain amount of people, arresting them,
24 and determining they may not be in the country legally.

09:08:48

25 THE COURT: So a typical result of a saturation patrol

09:09:16

1 would be to arrest illegal immigrants?

2 THE WITNESS: It's not a goal in the objective that's
3 put out there, but that is one of the results that occur, yes,
4 sir.

5 THE COURT: Okay. Thank you.

09:09:29

6 BY MR. CASEY:

7 Q. And in follow-up to the Court's question, under what
8 authority, when there was -- before October of 2009, would
9 people in the country unlawfully be detained administratively
10 or arrested?

09:09:43

11 A. You're talking about 287(g)?

12 Q. Yes, sir.

13 A. Yes, sir.

14 Q. Is that the authority?

15 A. It was at the time, yes.

09:09:50

16 Q. What about say right now, we're July 26, 2012, and your
17 deputies pull over a vehicle and -- and let's assume they have
18 reasonable suspicion to believe that one or more occupants is
19 in the country unlawfully.

20 On what grounds are those people held in order to be
21 turned over to ICE?

09:10:12

22 A. It's normally a result of a human smuggling investigation,
23 and it may be someone that can't be charged with a state crime
24 of human smuggling.

25 Q. And a different question, and I'm going to be jumping

09:10:31

1 around here, so please let me know if I'm not being clear or
2 you need me to give you some more background, or what we call
3 foundation, so bear with me, please.

4 THE COURT: Before you ask a question I'm going to ask
5 a few follow-ups to that one. 09:10:48

6 MR. CASEY: Yes, sir.

7 THE COURT: Chief Sands, when you talk about now you
8 use the state human smuggling statute to detain persons and
9 then you hand them over to ICE, is that correct?

10 THE WITNESS: That -- that does happen once in a 09:11:02
11 while, yes, sir.

12 THE COURT: And when you do that, do you do it based
13 on the theory that they are conspiring to violate that law?

14 THE WITNESS: No, then they would be charged with a -- 09:11:17
15 with a state crime. It's the ones that you possibly can't
16 determine there's enough evidence to charge them with the state
17 law, and then you would turn them over to ICE.

18 THE COURT: All right. So if you don't have probable
19 cause to charge them with a state law violation, then you turn
20 them over to ICE if you believe that they're in the country 09:11:38
21 illegally?

22 THE WITNESS: Or at least contact ICE.

23 THE COURT: Thank you.

24 I'm sorry for interrupting.

25 MR. CASEY: No, sir. Please interrupt all you want. 09:11:46

1 BY MR. CASEY:

2 Q. Let me skip to something else.

3 You were asked about what was supposedly a quote of
4 Barry Sands in the New York Times. Do you remember about that?

5 A. I think it was Bruce Sands.

09:12:10

6 Q. Okay, Barry, Bruce Sands. Do you have your deposition in
7 front of you in which that was addressed?

8 A. Yeah, if you can locate it for me again.

9 Q. All right. I -- I believe it was your first deposition
10 from the year 2009. I believe also it was page 89.

09:12:27

11 You were asked basically this question by Mr. Young.
12 And if you would let me know when you're at page 89.

13 MR. YOUNG: Actually, Your Honor, may I correct
14 counsel? It was actually Mr. Kozinets who asked that question.
15 And I'd love to take credit for it, but I really can't.

09:12:51

16 THE COURT: Thank you for the correct attribution.

17 MR. CASEY: All fault or credit goes to Mr. Kozinets.

18 BY MR. CASEY:

19 Q. My question really was to you, I was talking about
20 Mr. Young here today, regardless of who was the original
21 questioner --

09:13:06

22 MR. YOUNG: Apologies, then.

23 MR. CASEY: Nothing like that is necessary.

24 BY MR. CASEY:

25 Q. Mr. Sands, Chief Sands, would you look at page 89 of your

09:13:17

1 December 14, 2009, deposition.

2 All right. You there?

3 A. Yes, I'm there, yes.

4 Q. Okay. Beginning at line 25, at the very bottom, this was
5 the question asked at the deposition, it was very similar to
6 the question asked today, and it continues to page 90, line 2.

09:13:44

7 "QUESTION: You agree that most deputies can, in fact,
8 make a quick recognition of potential immigration violations by
9 considering someone's accent and how they are dressed?" End of
10 question?

09:14:06

11 Do you see that?

12 A. Yes, I do.

13 Q. You were not permitted or whatever reason allowed to
14 provide an explanation. Would you please tell us, read in your
15 answer at page 90, line 3 through 10.

09:14:15

16 A. My answer: "Most deputies that have been trained by ICE --
17 and there is more, I believe, that I said on this than that
18 what has obviously been taken out of context and under the
19 quotes, but if you look below there it also says 'where
20 deputies have received training from Immigration and Customs
21 Enforcement.' I think that there is a lot been left out of
22 this statement, so -- for me to respond to it in that context
23 yes or no."

09:14:37

24 Q. And that's how you answered at the time when you were asked
25 that question about The New York Times quote allegedly from

09:14:57

1 you?

2 A. Yes.

3 Q. All right. Now, sir, I'm going to turn to a different
4 subject, and that is I'm going to pull up on the screen
5 Exhibit 375 that is in evidence already. And I'm going to
6 represent to you that this is a document that was forwarded to
7 you from Joe Arpaio dated September 20th, 2007.

09:15:13

8 You see that?

9 A. It hasn't come up yet, sir.

10 Q. I'm showing it on my screen. I'm showing it on this
11 screen --

09:15:40

12 THE COURT: I'm sorry. You know --

13 MR. CASEY: I'm sorry.

14 THE COURT: Ms. Zoratti has temporarily left the
15 courtroom, and she's the one that commands that kind of stuff.

09:15:50

16 MR. CASEY: Okay. Let me see if I can get a hard copy
17 real quick, Your Honor, to show the witness so we don't delay.

18 May I approach the witness?

19 THE COURT: You may.

20 MR. CASEY: Thank you, Your Honor.

09:16:11

21 BY MR. CASEY:

22 Q. Do you recognize the handwriting in the upper right corner?

23 A. Yes.

24 Q. Whose handwriting do you believe that is?

25 A. It appears to be notes from Sheriff Arpaio.

09:16:31

1 Q. Okay. And are you familiar with his handwriting?

2 A. Fairly, yes.

3 Q. Okay. I'd like to refer you down to the September 20th,
4 2007 caller under Wayne L, and I'd like you to read that for a
5 moment, please.

09:16:54

6 MR. CASEY: May I inquire of the Court whether it's on
7 the Court's screen?

8 THE COURT: Yes.

9 MR. CASEY: All right. Thank you, sir.

10 THE COURT: Although I will say that the one that's on
11 my screen and the one that we're likely to publish when
12 Ms. Zoratti gets back is not redacted, the name is not
13 redacted.

09:17:05

14 MR. CASEY: Yes, Your Honor, I see -- I notice that.
15 The actual --

09:17:18

16 THE COURT: Do we have a redacted version?

17 MR. CASEY: My understanding is the plaintiffs'
18 version is redacted, but this is right out of the --

19 THE COURT: Database?

20 MR. CASEY: Yes. So I will not --

09:17:26

21 THE COURT: Yes.

22 MR. YOUNG: I think we could have -- I think we could
23 have Mr. Braun put it on the screen. I'm looking at a redacted
24 version, and I think --

25 THE COURT: Do you have a redacted version, Mr. Braun?

09:17:37

1 MR. BRAUN: I do.

2 THE COURT: All right. Let's put that one up.

3 MR. CASEY: Okay.

4 BY MR. CASEY:

5 Q. All right. Sir, have you had a chance now to read Wayne
6 L's comment of September 20th, 2007?

09:17:47

7 THE COURT: You can publish it, Kathleen.

8 THE WITNESS: Yes, I have.

9 BY MR. CASEY:

10 Q. All right. Would you tell me --

09:17:57

11 First of all, do you remember receiving this?

12 A. No, not really, no.

13 Q. Do you remember reading it?

14 A. Vaguely, I re -- I see these, so a lot of them sound
15 similar.

09:18:16

16 Q. Well, it was almost, what, eight, nine, ten, 11, 12, almost
17 five years ago.

18 A. Correct.

19 Q. All right. As you read it now, what do you understand this
20 Wayne L to be trying to communicate in this -- this particular
21 comment?

09:18:29

22 A. He -- that we're not responding to his complaints.

23 Q. And what's he complaining about based on that?

24 A. Quote, Mexicans hanging out on Mesa Drive, unquote.

25 Q. Is there any -- in your professional judgment, is Wayne L

09:18:51

1 identifying any criminal activity?

2 A. No.

3 Q. And based on him complaining that he's called the
4 non-emergency and illegal hotlines numerous times and is
5 getting no one to do anything about it, what does that mean to
6 you? 09:19:10

7 A. That --

8 MR. YOUNG: Objection, Your Honor, lack of foundation.
9 He doesn't recall getting this document or reading this note,
10 so I don't think he can testify about this document or what it
11 meant to him at the time. 09:19:20

12 THE COURT: Well, I'm going to allow him to answer.

13 MR. CASEY: And if I -- may I put on something on the
14 record?

15 THE COURT: You may. 09:19:33

16 MR. CASEY: It's asking for his present sense
17 impression on his reading of it right now and what he
18 interprets it now.

19 THE COURT: Well, I don't think you're going to get
20 present sense impression on that. It doesn't matter. I'm
21 going to allow him to answer. 09:19:43

22 MR. CASEY: Okay. Thank you, Your Honor.

23 Could I have Mr. Moll read back my question? I don't
24 remember it.

25 (The record was read by the court reporter.) 09:20:14

1 THE WITNESS: It means that his complaint is not any
2 of our business, and that we're not responding to his being
3 upset about Mexican people, as he quotes it.

4 BY MR. CASEY:

5 Q. Is that something, the handling, assuming that the people 09:20:33
6 in HSU looking at the illegal hotline, if that's the way
7 they're handling this, is that consistent with your
8 expectations as their supervisor?

9 MR. YOUNG: Objection, leading; foundation.

10 THE COURT: I'm going to sustain it on foundational 09:20:49
11 grounds.

12 BY MR. CASEY:

13 Q. Sir, do you train your deputies -- strike that.

14 Do you supervise deputies in the HSU as the chief of
15 enforcement? 09:21:00

16 A. The word "supervision's" a little close, but yeah, they're
17 under my responsibility, yes.

18 Q. Are you familiar with the policies, the protocols, of how
19 HSU members handling illegal hotline tips are to handle those?

20 A. Yes, I do. 09:21:21

21 Q. And how are they to handle those?

22 A. They're not to respond to -- to anything that's racially
23 motivated.

24 Q. With that -- is this complaint consistent with your
25 expectation of how the hotline handlers should handle race-only 09:21:36

1 complaints?

2 A. I've had this conversation a number of times with
3 Lieutenant Sousa, because oftentimes people will call in at a
4 lower level like the hotline, or perhaps the public line down
5 in radio, and they'll have complaints that nobody's responding 09:21:57
6 to them. That complaint will get to me, and it's usually
7 always of this nature, where somebody's not getting what they
8 feel is a proper response to what we believe is what might be
9 racially motivated as a complaint.

10 Q. All right. Thank you, sir. 09:22:21

11 I'd like to turn to a new document. If I could --
12 these are redacted. If I could have my computer back hooked up
13 and published, please.

14 Again, this is Exhibit 228 that is in evidence. And
15 what I'd like to do, do you see the top there that -- do you 09:22:37
16 recognize Sheriff Arpaio's handwriting?

17 A. Yes.

18 Q. Are you -- are you written -- is your name written anywhere
19 in there?

20 A. It appears to be Brian S, yes. 09:22:50

21 Q. And what is the date of this particular note?

22 A. The comment/support date at the top is July 16th, 2008.

23 Q. All right. Now, on Exhibit 228 in evidence, I'm going to
24 turn to the second page. And what I'm going to do, if I can do
25 it successfully, is do a call-out on caller -- or commenter 09:23:09

1 Joyce F.

2 You see that, sir?

3 A. Yes, I do.

4 Q. Okay. Now, my question for you, sir, is: Is this the type
5 of information that would cause you to initiate a saturation
6 patrol? 09:23:37

7 A. No.

8 Q. Do you know one way or the other -- well, let me ask you:
9 Do you know if you ever relied on this to do a saturation
10 patrol near Cave Creek Road or anywhere? 09:23:54

11 MR. YOUNG: Objection, foundation.

12 THE COURT: Overruled.

13 THE WITNESS: There's no indication of criminal
14 activity here. There's no value to it from a police standpoint
15 to -- to entertain a decision. 09:24:08

16 BY MR. CASEY:

17 Q. Well, wait just a second. We've heard testimony that Joe
18 Arpaio has made illegal immigration enforcement a top priority.
19 Joyce F says there are immigrants hanging out on Cave Creek
20 Road on the corner daily. Why is that not important, then? 09:24:24

21 A. When I make police or law enforcement decisions, it's not
22 based on any type of rhetoric that -- that the sheriff might be
23 addressing to the public. I have to deal with it in a
24 perspective of what can and should be done from a -- from a
25 police officer standpoint. 09:24:51

1 Q. Now, before I go on to this document, we had some testimony
2 about Arpaio's statements in the media.

3 Do you -- are you involved on a regular basis in
4 writing press releases that Sheriff Arpaio sends out?

5 A. No.

09:25:10

6 Q. Have there been some times that press releases on
7 saturation patrols have gone out after the fact that you've
8 looked at and wished they were written differently?

9 A. Yes, there's been times. And I'll be in the field and
10 something will go out, and I'll have a -- I'll have a
11 difference of opinion on it.

09:25:26

12 Q. Now, I understand this may -- is a difficult question,
13 because of your -- you know, because the sheriff is the -- the
14 head of the office. But in your opinion, are there times that
15 some public statements of the sheriff are a bit of a disconnect
16 from what's occurring on the operations side?

09:25:41

17 A. Yes, in a sense that -- that the sheriff doesn't typically
18 perceive what -- the individual duties and the training that an
19 individual officer. He'll speak very broadly about situations
20 that -- that don't necessarily get down to the brass tacks of
21 what the police officers may be doing.

09:26:18

22 Q. Have you had occasions after you've observed him, say, on a
23 television program where he's articulated something, have you
24 had occasion where you've talked to him and said, That's not
25 right, boss, and explain to him what was not right?

09:26:41

1 A. We have had conversations about issues, and obviously
2 there's been a lot of discussion about -- in the past on the
3 indicators that our deputies were intentionally trained on
4 287(g). And some of that may have been miscommunicated to the
5 sheriff through not really any fault of his, but he lacks
6 the -- the basic broad training that's very vigorous that
7 the -- that the deputies have been put through.

09:27:03

8 Q. And who provided that ICE training to your deputies that
9 were 287(g) certified?

10 A. It was the basic academy of the Department of Homeland
11 Security through ICE.

09:27:24

12 Q. Federal officials?

13 A. Yes.

14 Q. Okay. Now let's get back to 228, which is in evidence,
15 Exhibit 228. And I'm now going to refer you to another comment
16 of a Kerri R. And let me move this up a bit for you. Sir,
17 just take a moment and read that.

09:27:40

18 Did you ever initiate a saturation patrol at or near
19 Cave Creek and Bell Road based on anything like Kerri R's
20 comments?

09:28:11

21 A. No.

22 Q. Would you do it based on comments like this?

23 A. No.

24 Q. Okay. Why?

25 A. There's not enough information there, nor there -- is there

09:28:16

1 any criminal indicators there that would even require a look
2 into the comment.

3 Q. Thank you, sir.

4 I'm going to turn to another exhibit, and I -- I
5 appreciate your patience, Chief Sands.

09:28:38

6 Do you remember being shown Plaintiffs' Exhibit 187
7 that's in evidence?

8 And I'm going to -- first of all, do you recognize the
9 writing in the upper right?

10 A. Yes, I do, yeah.

09:28:57

11 Q. That's Sheriff Arpaio's?

12 A. It appears.

13 Q. Okay. It says Brian S?

14 A. Yes.

15 Q. What's written underneath that?

09:29:05

16 A. "Have someone handle."

17 Q. Okay. Now, I'm going to turn to the second page so you can
18 see the second page of Exhibit 187. And just to refresh your
19 recollection on that.

20 Sir, did you ever initiate a saturation patrol near
21 29th Street and Greenway in response to Exhibit 187?

09:29:32

22 A. No, I don't believe so, no.

23 Q. Now, yesterday you were asked, I'm going to -- this relates
24 to this. You were asked a question by plaintiffs' counsel

25 about -- and I'm paraphrasing, sir -- Sir, isn't it true that

09:29:52

1 you take action in response to citizen complaints?

2 Do you remember that question?

3 A. Yes.

4 Q. Do you remember whether or not, when you were asked the
5 question, whether any definition was being provided about
6 action, what that meant?

09:30:09

7 A. No.

8 Q. Okay. When you said "yes" to that question, what types of
9 action would you take in response to citizen complaints?

10 A. Well, obviously it would depend on what the -- what the
11 information was contained in it.

09:30:33

12 I vaguely remember this, going over it at the
13 deposition. This is something I typically would pass off to
14 the assistant police chief over at Phoenix or any other
15 jurisdiction.

09:30:54

16 Q. And you're talking about Exhibit 187?

17 A. Yes.

18 Q. And my question, let me make it broader because I think
19 it's important. What are the types -- generally; not just in
20 this letter. But if you get a letter, a citizen letter that
21 you take action on, what are the types of things that you take
22 action on? What are the things you do?

09:31:12

23 A. Normally, it's to look into it and see -- see if there's
24 more information needed on it; if there's a personal contact
25 that needs to be made of the person that sent it. There's --

09:31:33

1 there's a -- a reason why I would give this situation over to
2 Phoenix PD rather than call out a saturation patrol.
3 Saturation patrols have -- have different impact on this kind
4 of a crime.

5 Although this -- this person that sent the letter in 09:31:56
6 makes some comments about people that in general I don't agree
7 with, but she talks about shooting guns off in a neighborhood,
8 and we all know the dangers that are involved in that. If
9 you've lived here for a long enough time you realize that
10 that's been a problem. And that can be best addressed by the 09:32:19
11 local patrol officers that are working that beat, and that
12 would be Phoenix PD.

13 And so those are the kinds of things that -- that I
14 will typically immediately network off to local agencies.

15 Q. Here's a little bit different but related question: Can 09:32:39
16 action that you take, in addition to what you mentioned about
17 following up with a person or talking to local officers, would
18 that also include knock-and-talks, surveillance, things like
19 that, if you deemed it appropriate?

20 A. It could, yes. 09:33:01

21 Q. Now, what -- well, let me just finish up on this.

22 Is it -- is it your testimony that Exhibit 187 had no
23 influence on any law enforcement decision you made?

24 MR. YOUNG: Objection, leading.

25 MR. CASEY: Okay. Let me rephrase the question. 09:33:18

1 BY MR. CASEY:

2 Q. Did Exhibit 187 have any influence on anything you did?

3 A. No, only that I can't remember exactly what I did take
4 on -- the shooting report stands out in my mind, but no, I
5 don't -- I didn't take any action to follow up investigation,
6 nor would I have, as I explained before.

09:33:40

7 Q. Now, let me turn to a different subject.

8 Yesterday you were asked a question out of your
9 deposition, and if you would turn to your second deposition.

10 That was the one that was taken November 15, 2010. If you
11 would just turn to that, please.

09:34:02

12 MR. YOUNG: Your Honor, could we have a page number?

13 MR. CASEY: I apologize. 218.

14 BY MR. CASEY:

15 Q. All right. You were asked this question:

09:34:37

16 "Has the sheriff ever, to your memory, forwarded to
17 you, for your information, any statements that you know the
18 sheriff disagrees with."

19 And then you were asked and shown, actually, this
20 answer you gave: "I can't think of any right offhand."

09:34:51

21 Do you remember that yesterday?

22 A. Yes.

23 Q. Would you tell us what you meant by that answer.

24 A. I just couldn't remember any specifics, and had not given
25 it really a whole lot of thought about what he may agree or

09:35:13

1 disagree with, particularly information coming in from the
2 public.

3 Q. Are you telling the Court that everything that Joe Arpaio
4 sends to you that's from a citizen, he agrees with?

5 A. No, I -- I wouldn't -- I wouldn't make that broad-based
6 statement and believe it. I get articles out of the New Times
7 that I'm sure he doesn't agree with. 09:35:27

8 Q. Okay. Have you ever seen letters from citizens, to the
9 best of your recollection, that were critical of anything that
10 Arpaio, Joe Arpaio, had done that had been circulated to you? 09:35:49

11 A. I've seen -- I've seen some things, yes, come in, yes.

12 Q. All right. That's the end of that area of inquiry, sir.

13 You also were shown from your deposition -- and we
14 don't need to go to it, but it was something about he, Arpaio,
15 expects me to do whatever I can about a citizen complaint. 09:36:14

16 Do you remember that series of questions and answers
17 yesterday?

18 A. Yes.

19 Q. Again, the court record will stand as it is, but my notes,
20 to the extent they're accurate, says something that you said,
21 the emphasis that you answered was the emphasis is on the word
22 "can." 09:36:26

23 You remember that?

24 A. Yes.

25 Q. What did you mean by the emphasis is on the word any -- 09:36:37

1 whatever I can do about a citizen complaint?

2 A. Whatever is reasonable. Oftentimes, the complaints are
3 totally unreasonable, and I'm not going to even respond to such
4 inquiries or admonitions that may come in unless there's
5 some -- some actual complaint. And that's where the word I
6 meant "can" should be. 09:37:04

7 Q. Thank you, sir.

8 I'm now going to turn to Exhibit 235, which is in
9 evidence.

10 Do you remember seeing this document yesterday? 09:37:25

11 Sir, do you remember seeing that yesterday or this
12 morning, perhaps, and being questioned on it?

13 A. I remember seeing it before, yes.

14 Q. What's the date of the letter?

15 A. August 8th, 2008. 09:38:03

16 Q. Okay. Is there anything in Exhibit 235 that would cause
17 you to initiate a saturation patrol at -- in Surprise, Arizona?

18 A. No.

19 Q. Did you initiate or otherwise begin a process of doing a --
20 of planning a saturation patrol in Surprise, Arizona, in any
21 way based on this letter, Exhibit 235? 09:38:34

22 A. No, I can't say that I would activate anything --

23 Q. Now --

24 A. -- as a saturation patrol.

25 Q. Excuse me. I'm sorry, Chief. 09:38:49

1 The evidence that the parties have stipulated to is
2 there was a saturation patrol in Surprise, Arizona, that
3 general area, on October 16 and 17 of the year 2009.

4 How long, generally, does it take to prepare for a
5 large saturation patrol? 09:39:11

6 A. I usually prefer to put together those type of resources if
7 I have a month or -- or two months to plan on it.

8 Q. What about just an HSU operation, since there are about 15,
9 17 members? How much time is needed to initiate, plan, and
10 execute? 09:39:33

11 A. A lot of times it depends on what their -- their current
12 operations that they're working, what their commitments might
13 be. But any time you have a -- a division or smaller, they're
14 more responsive. Or if it's a -- truly an exigent type
15 situation, like a lost person or something, obviously I'm going 09:39:55
16 to pull whatever resources I can out immediately and start
17 minutes after the reports are in.

18 Q. Is -- assuming the parties were correct -- well, it's a
19 fact. It's stipulated that there was an October, mid-October
20 2009 saturation patrol near Surprise. Is there, in your 09:40:13
21 judgment, any connection between this letter dated August 8th,
22 2008, and that Surprise, Arizona, patrol?

23 A. No, there's no -- there's no crime stipulated in this
24 complaint, other than this person's perception of some people
25 that are -- that are trying to flag down motorists that in 09:40:36

1 their perception are day workers.

2 Q. Is there anything in your judgment that is unlawful by the
3 mere fact of being a day laborer?

4 A. No.

5 Q. If someone reports to you "there are day laborers here,"
6 does that cause you any concern whatsoever?

09:41:00

7 A. No.

8 Q. Now, what happens if you get a different scenario where
9 someone says there are day laborers here and they're jumping
10 out in traffic, they're doing this? Does that cause any
11 concern?

09:41:23

12 A. It could, because we're talking about traffic safety issues
13 now, and these are the -- these complaints throughout the
14 valley, ever since I've been with the Sheriff's Office, are
15 common about day laborers. And oftentimes over the -- over the
16 years as they're looked into, just by simple observation, it
17 may or may not be so that the traffic is being impeded or
18 people's safety's at stake, and that's the normal response to
19 something like that, not a saturation patrol.

09:41:43

20 Q. Thank you, sir.

09:42:07

21 Only a few more areas, and then we're going to have
22 you -- I'll be done.

23 I'd like to now turn to Exhibit 236, which is admitted
24 into evidence. And you were shown this letter either yesterday
25 or today. Do you remember that letter?

09:42:30

1 A. Yes.

2 Q. Okay. This is the one where someone's complaining about
3 people only speaking the Spanish language at a McDonald's?

4 A. Yes.

5 Q. First of all, is that Joe Arpaio's handwriting on the upper 09:42:46
6 right?

7 A. Yes.

8 Q. Does it say here: For info. Will look into it"?

9 A. Yes.

10 Q. Do you have -- what is your understanding of what that 09:43:07
11 means to you, if anything?

12 A. It means it appears that -- it's --

13 MR. YOUNG: Your Honor, I'll -- I'll object on
14 foundation. I'm not sure that's the right reading of that
15 handwritten note. 09:43:25

16 MR. CASEY: I just asked him -- I'm sorry.

17 MR. YOUNG: And I can be more specific about my
18 objection if you would like.

19 THE COURT: Did you want to read exactly what it said,
20 Mr. Casey? 09:43:47

21 MR. CASEY: I'll read exactly, and let me -- let me
22 start over. I withdraw the question.

23 BY MR. CASEY:

24 Q. Sir, actually, I'd like you to read in the handwriting in
25 full as you can -- as you can read it. 09:43:57

1 A. Starting from the top, it's letters. Thank you. For info.
2 Will look into it. Cc Brian, parentheses, for our operation,
3 cc sheriff. 8-5-08.

4 Q. What did you understand -- well, first of all, do you
5 remember receiving this letter?

09:44:32

6 A. No, not really.

7 Q. Based on your review of it today, what is your
8 understanding of what you're to do with it?

9 MR. YOUNG: Objection, foundation.

10 THE COURT: Overruled.

09:44:50

11 THE WITNESS: I've had letters such as this that came
12 through the sheriff's administrative assistant, and obviously
13 it -- it even says cc to me. I wouldn't do anything with this.
14 It appears he wants to send the person acknowledgment that he
15 received it.

09:45:20

16 BY MR. CASEY:

17 Q. Separate and apart from anything that Sheriff Arpaio is
18 doing on his end, like a personal acknowledgment, can you tell
19 us whether or not you did anything in response to this copy
20 sent to you by the sheriff?

09:45:34

21 MR. YOUNG: Objection, foundation.

22 THE COURT: Overruled.

23 THE WITNESS: Personally, he probably wouldn't want me
24 to call that person up and talk to him. It probably wouldn't
25 be positive. I -- I don't entertain those kinds of thoughts

09:45:51

1 that this person shares.

2 And like I say, there's -- there's -- no police need
3 to respond to something like that.

4 BY MR. CASEY:

5 Q. Now, the part that says cc Brian and then parenthetical,
6 for our operation, do you have an understanding as you sit here
7 today what that meant? 09:46:07

8 A. Well, I can't tell you exactly what was going on in his --
9 his brain at the time, but it might be just the -- the
10 shuttling of paperwork or transference of what he's doing by
11 subject. 09:46:29

12 Q. As you sit here today -- and I'm not really interested so
13 much in what he meant. I'm trying to understand what -- as you
14 read it today, if you have any understanding of what, if
15 anything, you were to do. 09:46:47

16 A. Oh, I wouldn't -- I would not respond to this person at
17 all.

18 Q. Now let's go to a different area.

19 The date of this letter is what, sir?

20 A. It's August 1, 2008. 09:46:59

21 Q. And the date that the sheriff has dated his handwritten
22 portion is what?

23 A. Looks like August 5th.

24 Q. Okay. And the parties have stipulated that there was a
25 saturation patrol conducted in the Sun City area on August 14, 09:47:16

1 2008. Assuming that, sir, and based on what you told us
2 about -- well, let me ask you this. Strike the question.
3 Excuse me, Mr. Moll.

4 Assuming the stipulation is accurate -- and that is
5 the evidence that we have, sir -- can you tell us whether the 09:47:34
6 saturation patrol conducted in Sun City was what you would
7 consider a large operation or a smaller one?

8 A. I believe it was a large operation.

9 Q. That's just going off your memory?

10 A. Yes. 09:47:55

11 Q. If in fact it was a large one, would that mean it was
12 including deputies outside of the HSU?

13 A. Yes.

14 Q. And you told us it takes, -- you would like to have 30 to
15 60 days to plan a large operation? 09:48:11

16 A. Yes, because I have other issues.

17 Q. Based on that, sir, in your judgment, is there any way that
18 this letter had any role or influence on conducting a
19 saturation patrol in Sun City on August 14, 2008?

20 MR. YOUNG: Objection, leading. 09:48:31

21 THE COURT: Sustained.

22 BY MR. CASEY:

23 Q. Sir, did this letter have any role or influence in
24 conducting a saturation patrol on August 14, 2008?

25 A. No. 09:48:43

1 Q. Why?

2 A. Well, for one thing, back to the -- there's no basis for
3 criminal activity there to substantiate the need for increased
4 patrols, and -- and there is a timing element there.

5 And there again, we're not going to -- to go out and 09:49:02
6 commit those kind of resources because of one person sending a
7 pat-on-the-back-type letter to the sheriff.

8 Q. Now, yesterday the plaintiffs' lawyer asked you that -- a
9 question if Sheriff Arpaio was involved in the Sun City
10 operation. 09:49:25

11 Do you remember that?

12 A. Yes.

13 Q. And again, there wasn't really a definition about
14 involvement.

15 How was Sheriff Arpaio involved in the Sun City 09:49:32
16 operation?

17 A. His involvement would have been coming around to the
18 command post and checking on activity.

19 Q. Was his involvement in selecting the site?

20 A. No. 09:49:51

21 Q. Was his involvement in the planning of the patrol?

22 A. No.

23 Q. Was his involvement in the actual effectuation or execution
24 of the patrol?

25 A. No. 09:50:04

1 Q. I'm going to now turn to Exhibit 243, which is in evidence.
2 And if you would just refresh your recollection by looking at
3 that, sir.

4 A. Yes.

5 Q. Okay. Now, you were asked a question -- you were asked a
6 question about you coming up to the conclusion about
7 dark-skinned people as illegals.

09:50:41

8 Do you remember that?

9 A. Yes.

10 Q. All right. Now, if you would turn to your second
11 deposition that was dated November 15, 2010, and go to page
12 142, please.

09:50:57

13 A. I'm at 142.

14 Q. Okay. Specifically, I'm going to read the question at
15 lines 18 through 23, and then your answer begins at page 143
16 and goes from lines 1 through 10.

09:51:23

17 "QUESTION: Well, I actually didn't make an assumption
18 about his perceiving dark-skinned people as illegals. I think
19 that's your assumption about what he's saying.

20 "My question to you is, where do you get that
21 assumption about what he is saying?"

09:51:48

22 Then the answer begins the next page, lines 1 through
23 10. Would you please read your answer for completeness
24 purposes.

25 A. "Because he is talking about illegal aliens and viewing

09:52:00

1 them and visually seeing them. So it would be a safe bet to
2 say that he's drawn some kind of conclusion, unless he's gone
3 up there and individually talked to every one of these people
4 that he's talking about and verified the fact that they were
5 here illegally.

09:52:21

6 "What else am I supposed to -- to think -- is that the
7 guy is just guessing that they're illegals?"

8 Q. Thank you, sir.

9 Let me go to another section and then we'll finish up
10 here.

09:52:39

11 What are the factors, the criteria that you consider
12 when determining where to go for a saturation patrol?

13 A. The type of crime that's relative to what -- either the
14 discovery of it. It might be complaints. It might be a
15 request from city agencies, local agencies. We have to
16 determine that there's a need to do a saturation patrol.

09:53:07

17 Then again, the number of people to commit to -- to a
18 saturation patrol -- patrol is based on a geographic area that
19 we can cover. Oftentimes, a decision to do these -- these
20 broad-based ones that we were doing several years ago --

09:53:36

21 Q. You mean large scale?

22 A. Large scale, yes, I'm sorry, geographically covering large
23 areas is -- we had a serious drop house problem throughout
24 Maricopa County, particularly in the urban areas of Phoenix,
25 Mesa, Glendale, Surprise. No city was unaffected by this.

09:53:57

1 And in order to have the drop house activity, you had
2 to have movement of smugglers coming from the south
3 transporting people in and out of drop houses. So the
4 opportunity to affect that -- that movement, in my mind, was --
5 was something that needed to be done, when you're talking about 09:54:27
6 in the case of a couple of years having over 300 drop houses in
7 Maricopa County.

8 Q. Thank you, sir.

9 If you get a letter from someone, a business, a group
10 of businessmen, or citizens that mention crime, what do you do 09:54:47
11 in response -- and then they want some sort of saturation
12 patrol, what do you do when you receive that?

13 A. I'll check and see or have my staff look into the facts
14 around it. Is there crime in that general area? Oftentimes,
15 people won't -- won't complain directly about crime; they'll 09:55:11
16 complain about quality of life issues affected by crime. The
17 old -- age-old situation of finding used condoms and needles in
18 your front yard. In itself, that's not a crime, but it's the
19 quality of life issue that's affected by crime in the area,
20 and... 09:55:48

21 So sometimes if you go out and saturate those
22 particular kind of areas, the public sees a response and
23 they'll have confidence in -- in their law enforcement that
24 they're doing something. When you have that type of response,
25 you generally have an impact on all the crime in the -- in the 09:56:02

1 neighborhood or community.

2 Q. And in the process you happen to come across people with
3 outstanding warrants?

4 A. Yes. Those are typically the folks that we want to go
5 after the most. 09:56:23

6 Q. And in the process, do you happen to also come across
7 people that are in the country unlawfully?

8 A. Yes, we have.

9 Q. Okay. Now, I'm going to -- well, let me ask you, there's
10 been some testimony about legislators who wrote in and
11 mentioned crime and wanted a saturation patrol. 09:56:38

12 Why not just trust self-reports of crime?

13 A. Well, in some -- in some extreme cases that is necessary,
14 particularly if you have a series of very serious types of
15 crimes, like murder, homicide, rape, burglaries, that you --
16 you should respond to those kind of reports. 09:57:05

17 But not if they're vague and ambiguous.

18 Q. Does the MCSO, for saturation patrol purposes,
19 independently determine whether there's a criminal basis to
20 conduct a saturation patrol before it does such a patrol? 09:57:34

21 A. I'll have the staff look at all aspects of whether there is
22 crime in the area, quality of life issues in the area, that
23 type of thing.

24 Q. Now, in the -- you know that there are certain things
25 called operations plans? 09:57:49

1 A. Yes, sir.

2 Q. You were asked a series of questions about Mr. Young
3 before -- by Mr. Young, before he stepped down, about what your
4 willingness is to do certain things.

5 Is there additional types of information, for example, 09:58:02
6 through your experience now, that you would include in
7 saturation patrols that you did not historically include in
8 there?

9 A. Yeah, and I think we've evolved over -- over time on being
10 more specific, and -- and I must say, over my time period with 09:58:26
11 the Sheriff's Office of way, way back when I first started,
12 these operations plans weren't even written up or developed.
13 Oftentimes, they were just conducted. And I think we've
14 evolved over the years and -- and I think more specifics could
15 be included in operations plans. 09:58:51

16 Q. Such as including information about the actual criminal
17 data leading to the patrol?

18 A. Yes.

19 Q. Okay. Now, I apologize, I may have asked this of you. But
20 since last December, December 23rd, 2011, have there been any 09:59:10
21 saturation patrols conducted?

22 A. Not other than DUI enforcement, those type of traffic
23 issues. I -- no, we haven't done anything.

24 Q. Any sort of things you would consider saturation patrols
25 related to narcotics, drugs? 09:59:39

1 A. Yes, we've done a number of those operations, particularly
2 south of the I-8 corridor.

3 Q. Now, I'm going to turn to Exhibit 311, which is in
4 evidence. And do you remember being asked questions about this
5 particular exhibit?

09:59:58

6 Would you like me to enlarge it?

7 A. No, that's fine.

8 I do recall it, yes.

9 Q. All right. Now, Exhibit 311, sir, is discuss -- mentioned
10 some business owners requesting some action.

10:00:19

11 Did you ever initiate any saturation patrol at the
12 request of business owners without doing any independent
13 evaluation on crime?

14 A. As I remember, we had our staff look into contacting
15 Phoenix PD and looking at some of their -- their issues that
16 they were having in the -- in the community at the time.

10:00:41

17 Q. All right. Thank you, sir.

18 Next exhibit is Exhibit 202, which is in evidence.
19 And I will blow this up, sir.

20 You remember this was about something occurring near
21 36th Street and Thomas out near Pruitt's Furniture?

10:01:11

22 A. Yes, I remember.

23 Q. Could you tell the Court why there was an HSU operation in
24 that location?

25 A. Yes. It was relative to complaints in the neighborhood

10:01:34

1 about crime, and some of the business people were complaining
2 about those quality of life impact issues on their businesses.

3 Q. Did you independently have your staff at HSU determine
4 whether or not the complaints of crime by the business people
5 were legitimate?

10:02:01

6 A. As I remember, they -- they looked at the issues that
7 Phoenix PD was having in the -- in the community at the time.

8 Q. Okay. Do you remember if they independently also looked at
9 the specific complaints of the crime mentioned by the business?

10 A. I -- I can't remember.

10:02:21

11 Q. Is that something that would have been customary and
12 standard to do?

13 A. Yes.

14 Q. What were the types, if you recall -- and if you don't,
15 please tell the Court -- what were the types of criminal
16 behavior or crimes that were looked at relative to Exhibit 202?

10:02:35

17 A. As I remember, it had nothing to do with what's written in
18 this e-mail. It was about defecating in -- on people's
19 property, that type of situation.

20 Q. Did it also involve, sir, issues relating to the -- any
21 traffic obstructions under Title 28?

10:02:59

22 A. Yeah, I vaguely remember something like that, yeah.

23 Q. What about criminal loitering or harassment of customers?

24 A. Yeah. And there again, sometimes that stuff's hard to
25 verify.

10:03:18

1 Q. All right. This is the last one. Exhibit 126, sir. I'm
2 going to blow this up so we can...

3 You were asked about Exhibit 126, which is in
4 evidence. You were asked about the tip line, and again, you
5 were asked by the plaintiffs' counsel that this led to action. 10:03:48

6 Do you remember that?

7 A. Yes.

8 Q. Okay. What action was -- did it lead to?

9 A. One of the key things on this -- and you have to
10 understand, one of our programs we have on the Internet is a 10:04:07
11 listing of warrants where people can -- citizens can go online
12 and they can identify subjects who have warrants and report to
13 us where they're living so we can go pick them up, and this was
14 a result of that, those knock-and-talks in the Village
15 apartments came in from tips on the hotline relative to the 10:04:40
16 number of warrants that existed at that address.

17 Q. Now, look at the last line here. Let me see if I can
18 adjust this accurately and do a call-out. Bear with me, Chief.

19 All right. Let me move this up a bit here.

20 Can you read that, sir? Out loud. Call out. 10:05:12

21 A. "After all the above was complete, HSU detectives conducted
22 knock-and-talks in the Village apartments based tips from the
23 hot line. The tips from the hotline produced negative
24 results."

25 Q. Explain for me what that means to us who are not law 10:05:33

1 enforcement.

2 A. Means typically that they -- they got no arrests.

3 Q. And help me -- help me understand this. Does it mean there
4 was information about crime coming in, and action was taken in
5 the form of knock-and-talks? 10:05:53

6 A. Yes.

7 Q. And then what was the result of the knocks-and-talks as a
8 result of the tips?

9 A. The suspects weren't there.

10 Q. All right. Thank you. 10:06:03

11 Sir, moving away from this exhibit, you said that it
12 was a typical result -- and I think it was in answer to the
13 judge's question, or perhaps a follow-up -- that illegal
14 immigrants would be arrested during a saturation patrol.

15 My question is: Were there -- was it typical for 10:06:18
16 other people other than unlawfully present persons to also be
17 arrested during saturation patrols?

18 A. Oh, yes.

19 Q. What about U.S. citizens?

20 A. Yes. 10:06:32

21 Q. What about businessmen?

22 A. Yes.

23 Q. What about people that had suspended drive -- driving on
24 suspended license?

25 A. Most assuredly, yes. 10:06:42

1 Q. Okay. What about people that were under the influence of
2 alcohol, DUI?

3 A. Yes.

4 Q. Okay. And arrest warrants?

5 A. Correct.

10:06:51

6 MR. CASEY: Those are all the questions I have for
7 you, sir. Thank you for your time.

8 THE COURT: Chief Sands, I'm going to have just a few
9 questions for you before I'm going to allow Mr. Casey to
10 resume, in case he has any questions in light of mine. I'm
11 sorry, because some of these you may have testified to and I've
12 tried to keep good notes, but I may have just missed it.

10:07:21

13 EXAMINATION

14 BY THE COURT:

15 Q. Did you ever receive 287(g) training?

10:07:34

16 A. No, sir, I didn't.

17 Q. Did you ever review the materials given to your officers in
18 287(g) training?

19 A. I did a little, sir. I relied for most of my information
20 on a program meeting with the command staff or the management
21 staff over at ICE that I worked really close with during
22 opening days of our relationship with the 287(g) program.

10:07:48

23 Q. You talked about, I think, December 23, 2011, being the
24 last saturation patrol in which the MCSO has engaged.

25 Did I understand you correctly?

10:08:20

1 A. Yes, sir.

2 Q. Then I think you said, Well, it was the last saturation
3 patrol except for we've done a D -- we've done DUI sat patrols,
4 we've done narcotic saturation patrols, is that correct?

5 A. Correct. And forgive me, Your Honor, because I get a lot
6 of these saturation patrols mixed up, and there's a number of
7 reasons we do saturation patrols, and --

10:08:35

8 Q. All right. So you have saturation patrols that you do for
9 different reasons?

10 A. Correct.

10:08:51

11 Q. And in any saturation patrol, like a DUI saturation patrol,
12 you'll find somebody with outstanding warrants?

13 A. Correct.

14 Q. And you'll find somebody with outstanding warrants in a
15 narcotics --

10:09:03

16 A. Correct.

17 Q. -- saturation patrol?

18 And presumably you'll arrest them?

19 A. Correct.

20 Q. What was the reason you were doing these saturation patrols
21 that we've been discussing during your testimony?

10:09:07

22 A. Well, there's a number of reasons as far as what the
23 community demand might be. That was a reason that the sheriff
24 might have to respond to the public.

25 Q. Well, let -- let me just ask. When you say "community

10:09:23

1 demand," is that -- and I don't mean to -- was it a community
2 demand to be doing illegal immigration saturation patrols?

3 A. I think that --

4 Q. Your perception?

5 A. I think the perception from my perspective is we did have 10:09:39
6 issues with immigration and the lack of enforcement throughout
7 our community. And my whole perspective of the enforcement to
8 try to -- to correct or change some of that was purely going
9 after drop houses or delaying the operation of drop houses, and
10 at the same time attacking any corridors that smugglers might 10:10:09
11 be operating out of.

12 Q. All right. That would have been effective law enforcement.

13 A. And that's, from my perspective, is what I was attempting
14 to do out there.

15 Q. All right. But it had a -- the saturation patrols had a 10:10:26
16 wider swath than just that, didn't they?

17 A. Yes, sometimes intentionally so, and -- and as has been
18 pointed out with the press releases, there's some inaccuracies
19 that went out. There were things that I did that I wouldn't
20 inform the public relations people that we might be doing so 10:10:51
21 that it doesn't get out to the -- to the media.

22 Q. Do you think your officers are aware of your press
23 releases?

24 A. They -- they might be now. I don't think they were at the
25 time, no. 10:11:09

1 Q. Okay. Do you have any knowledge one way or another whether
2 they were aware?

3 A. No.

4 Q. Do you have any recollection whether sometimes prior to a
5 saturation patrol, for example, the sheriff or somebody else
6 would go on TV and say, We're going to do a saturation patrol
7 in this location at this time?

10:11:18

8 A. I've heard that, yes.

9 Q. Was that something that you were in favor of?

10 A. No, I'd rather -- I'd rather do things without any
11 observation, and I think a lot of police are that way. They'd
12 rather not have a lot of attention drawn to -- to their
13 operations. So my -- my druthers, or what I'd really like to
14 have sometimes, is not have the media there.

10:11:30

15 Q. Okay. Was it standard practice before you did a saturation
16 patrol to have a press release and inform the media that you
17 were going to do a saturation patrol?

10:11:55

18 A. And there again, going back as far as I can remember, even
19 before this debate on immigration, yes, those -- those press
20 releases were going out about saturation patrols.

10:12:20

21 Q. And you still feel like you can conduct saturation patrols;
22 you still have that ability, and you're not here today to tell
23 me you're not going to conduct saturation patrols related to or
24 that may involve concerns about illegal immigration?

25 A. That -- that's true, Your Honor.

10:12:38

1 Q. Let me ask a couple of other things, because as you've gone
2 through the letters, first with Mr. Young, and then with
3 Mr. Casey, the various materials that were forwarded to you
4 from Sheriff Arpaio, you've identified ones that -- and I think
5 that you would have acted on and that you wouldn't have acted
6 on, and you've identified reasons why you wouldn't have acted
7 on them. Is that a -- have I understood your testimony
8 correctly?

10:12:57

9 A. Yes, sir.

10 Q. All right. I want to present for you the hypothetical that
11 you get -- and I -- I'm not sure how hypothetical it is in some
12 instances, but I just want to make sure I understand what I
13 think the gist of your testimony to be.

10:13:07

14 You get a complaint from a citizen that day laborers
15 of Hispanic ancestry appear to be congregating on a particular
16 corner. Is that a basis on which you could or would conduct a
17 saturation patrol?

10:13:30

18 A. No.

19 Q. Would that provide reasonable suspicion to investigate
20 anyone there for committing a crime, whether 287(g) or
21 otherwise?

10:13:48

22 A. No.

23 Q. Would it provide probable cause for believing that a crime
24 had been committed, either pursuant to 287(g) authority or
25 state law?

10:14:03

1 A. No.

2 Q. I just want to understand, because I don't want to lose the
3 ability to ask any other questions that might be important to
4 me before I let you go.

5 What is your role in the planning of any particular
6 saturation patrol? 10:14:22

7 I understand that you've -- if I understand you
8 correctly, and you can correct me if I'm wrong, you've
9 identified yourself as the person, together with your -- with
10 the supervising officers that you -- that report to you, you
11 are the person who selects the locations. 10:14:40

12 Do you have any other role in the operation or
13 planning of a particular saturation patrol?

14 A. The strategies that go along with it, I'm involved in. And
15 there's been a lot of conversation here about what I wouldn't
16 want to have in the media, what I do want to have in the media.
17 And oftentimes I'll start operations that end up as a
18 saturation patrol that may be initiated by our narcotics unit
19 and our warrants unit, where they'll go out without any
20 attention and go out and effect arrests, perhaps in a certain
21 area, or after a certain goal or objective, like -- and I'll
22 point out the Vekol Valley area which is south of the I-8
23 corridor. And there's been a lot of attention given that in
24 the last year or so down there because of the smuggling issues
25 that go on. 10:15:04
10:15:28
10:15:48

1 Q. Right. And is part of that in Maricopa County?

2 A. Most of it is, sir.

3 The issue for us is we go down there surreptitiously
4 in an undercover capacity trying to head off whatever we can,
5 because as soon as they're alerted -- as soon as the smugglers
6 are alerted that we're in the area, they cease operations and
7 wait us out. And so we don't want any fanfare about that.

10:16:08

8 Then we'll come out with a uniform presence, heavy
9 uniform patrol presence in the whole general area to stop
10 whatever we can, to catch what might be pushed through.

10:16:27

11 Q. That will be not an HSU operation; that would be a
12 saturation patrol.

13 A. That's a saturation patrol. However, I have used HSU as a
14 resource, more vehicles out, more deputies' eyes out there.

15 Q. In the what I'm going to call -- and I don't mean to cut
16 off. Was I cutting you off?

10:16:49

17 A. No, sir.

18 Q. What I'll call the more urban saturation patrols that for
19 the most part we've been discussing here, were you involved in
20 the planning of those?

10:17:02

21 A. Yes, sir.

22 Q. Did you have any regular recurring role in the planning of
23 those other than picking out the locations?

24 A. There again, the strategy that was used behind them,
25 because I wouldn't say that we're cookie-cutter, but we have

10:17:15

1 plans and operations that we traditionally use, and strategies
2 that we traditionally use, and so I would be involved in that.

3 And a lot of it is coordination. We are a
4 bureaucracy, and I have commanders that work for me that don't
5 often -- they get along, but it's the bureaucracy effect of the 10:17:37
6 way we do business. And it's my job to make sure the narcotics
7 people are working with the HSU people and, you know,
8 throughout the office, the warrants people.

9 Q. What is a typical strategy for the urban saturation
10 patrols? I understand you've told me it's not cookie-cutter, 10:18:01
11 but there are similar strategies, if I understand.

12 A. Correct. If we're going to do a saturation patrol in an
13 urban area --

14 Q. Yes.

15 A. -- depending -- if we have a specific area where we might 10:18:12
16 have high frequency of drop house operation, it would be
17 approached primarily with heavy surveillance, undercover type
18 of officers in there, nonuniform, and lead up to the location
19 of -- of a drop house.

20 It might be the stopping of a -- a vehicle that's 10:18:38
21 loaded with people that have just recently been smuggled,
22 enough to get us to that location to do a search warrant.

23 Q. All right. Let me tell you that it's been my impression
24 that the saturation patrols that we have discussed in this
25 lawsuit, and I understand that there are all kinds of 10:18:56

1 saturation patrols from what you're telling me, but the
2 saturation patrols that we have discussed in this lawsuit are
3 not ones that involved targeting a drop house.

4 Are there any here that targeted a drop house?

5 A. There were -- and forgive me for -- for being a little 10:19:13
6 redundant here, because during most of this time period
7 discussed, one of the biggest problems that we were facing was
8 large human smuggling loads being transport --

9 Q. I'm quite aware of that.

10 A. All right. And so drop houses were always at the forefront 10:19:35
11 of my mind. If we had -- we had some operations where we
12 specifically were looking for drop house locations based on
13 their frequency.

14 Q. Well, I understand that --

15 A. And some of them may have been in these operations, Your 10:19:51
16 Honor.

17 Q. You just don't recall?

18 A. I don't recall. I can't tell you specifically which ones.

19 Q. And if we were to go through and say was there a drop house
20 operation in this one, this one, this one, you still don't 10:20:04
21 think you'd be able to recall?

22 A. If I sat down with my lieutenant I could probably sort it
23 out, yes, sir.

24 Q. All right. Let me ask you, though, I mean, you indicated
25 that for the most part the sheriff would do a public relations 10:20:14

1 announcement prior to the saturation patrols. Presumably, he's
2 not going to do a public relations announcement before a
3 saturation patrol that involves a drop house.

4 A. Not in any specifics.

5 Q. Yeah. Okay. That helps me. Thank you. 10:20:34

6 A. Because I would be discussing that with him.

7 Q. Let me ask you, there's been some testimony involving
8 MCSO's position about its ability to enforce federal
9 immigration law after 287(g) authority was revoked.

10 Do you -- were you involved in any communications with 10:21:07
11 anyone after, or prior to, once you became aware that you were
12 going to lose 287(g) authority, other than attorneys, about
13 whether or not MCSO would have authority, inherent or
14 otherwise, to continue to enforce federal immigration law?

15 A. I've had discussion with ICE officials on that topic, 10:21:33
16 particularly around that time. Obviously, there was a lot of
17 politics going on at the same time. They have been good
18 partners with this agency, and they have worked with us when
19 we've had issues primarily enforcing the state laws and taking
20 people from us that appeared to be here illegally. 10:22:04

21 Q. Right. So you can refer people to them for prosecution,
22 but you don't prosecute them.

23 A. That's true. I think the question is detention, and how
24 long you can detain people, and not actually the authority to
25 do that, but -- 10:22:27

1 Q. Okay. Yeah. And you're honing in on what my real question
2 is.

3 I understand that you would have had discussions with
4 ICE after your 287(g) authority was revoked about coordinating
5 the transfer of people that you no longer had the authority to
6 prosecute or to arrest to ICE. I presume you would have had
7 such discussions.

10:22:41

8 A. I have, yes.

9 Q. But I'm not really talking about those discussions. I'm
10 talking about discussions about whether or not you had inherent
11 authority, despite the revocation of 287(g), to enforce federal
12 immigration law.

10:22:54

13 Did you ever have any such discussions with anyone,
14 other than an attorney?

15 A. I don't remember specifically having that discussion with
16 anybody other than attorneys. It may have come up in passing
17 conversation with ICE officials.

10:23:11

18 Q. Okay. Did you ever have any discussion with Sergeant
19 Palmer about whether or not MCSO had inherent authority to
20 enforce federal immigration law?

10:23:34

21 A. I don't recall having any.

22 Q. Do you ever remember having any discussion regarding the
23 views of someone named Kris Kobach?

24 A. Yes.

25 Q. And did you have those discussions with anyone other than

10:23:46

1 an attorney?

2 A. No. And Kris Kobach is an attorney, I believe.

3 Q. Well, I'm not asking about --

4 A. Oh, I'm sorry.

5 Q. -- any communications you may have had with Mr. Kobach. 10:24:00

6 I'm just asking about any communications you had with anybody,
7 and you don't recall any.

8 A. I don't recall any, no.

9 THE COURT: All right. Thank you, sir. I think those
10 are all my questions. 10:24:13

11 Mr. Casey.

12 MR. CASEY: Your Honor, I don't have any questions,
13 but if the Court would like, I do have a list of all saturation
14 patrols just by date, geographic area, if the Court was
15 interested in it. It's both large and small scale from 2007 to 10:24:32
16 the end of '09.

17 THE COURT: I do appreciate that, but I don't -- if
18 Mr. Young's interested in pursuing it I'm going to let him do
19 that on his time and not on the Court's time.

20 MR. CASEY: No, no questions, Your Honor. 10:24:46

21 THE COURT: All right.

22 Mr. Young?

23 MR. YOUNG: Yes, I have a few questions, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. YOUNG: 10:24:48

1 Q. Chief Sands, Mr. Casey asked you some questions about
2 Sheriff Arpaio's public statements in the form of press
3 conferences and television interviews. Do you recall those
4 questions?

5 A. I recall questions like that, yes. 10:25:14

6 Q. And I think you said, in answering his questions, that
7 there was a disconnect between the sheriff and your operations.

8 Did I hear that correctly?

9 A. Yeah. Yes.

10 Q. Is it true that some of your lieutenants and sergeants and 10:25:34
11 deputies attend some of the press conferences where Sheriff
12 Arpaio makes those statements?

13 A. There's some, yes.

14 Q. Do some of your lieutenants and sergeants and deputies ever
15 see the sheriff talking on television about your office's 10:26:00
16 immigration operations?

17 MR. CASEY: Objection, foundation, Your Honor.

18 THE COURT: Sustained.

19 BY MR. YOUNG:

20 Q. Chief Sands, have you ever seen the sheriff on television 10:26:14
21 talking about your office's immigration policies?

22 A. I have.

23 Q. Have you ever talked to anyone else in your office who has
24 told you that they have seen the sheriff talking on television
25 about your office's immigration policies? 10:26:32

1 A. I've had discussions. I can't remember if it was specific
2 to what you just addressed as immigration, but I have had those
3 discussions with staff, yeah.

4 Q. You've had discussions about staff who have seen the
5 sheriff talking on television interviews, correct?

10:26:53

6 A. With -- with some of my staff members, yeah. Yes.

7 Q. Are some of those staff members the people who are active
8 in your office's immigration-related activities?

9 A. No.

10 Oh, correction on that, sir. There's some of them
11 that may be in the chain of command of some of those people,
12 but there's others that -- that are not. That are -- and I'm
13 not talking about rank and file staff; I'm talking about
14 command staff.

10:27:16

15 Q. Who are the chain of command people that you just had in
16 mind as you answered my last question?

10:27:31

17 A. The people I typically meet with, we have conversations
18 quite a bit as far as press releases, and what -- or not press
19 releases, but press conferences, and watching the press
20 conference, and what was reported by a certain channel. Those
21 conversations come up.

10:27:53

22 Q. Is Lieutenant Sousa one of those people?

23 A. I usually don't have the opportunity to have those
24 discussions with him.

25 Q. How about Sergeant Palmer?

10:28:03

1 A. Usually never talk to Sergeant Palmer.

2 Q. Has there ever been an internal communication within your
3 office that's gone out to the people who implement your
4 immigration-related policies saying that Sheriff Arpaio's
5 public statements are wrong and do not represent the policy of
6 your office?

10:28:26

7 A. I've never seen anything like that.

8 Q. If the sheriff were -- well, let's go back.

9 Mr. Casey asked you some questions about your actions
10 when you or if you disagree with something that the sheriff has
11 suggested, and you responded to him that you've said certain
12 things and you've discussed certain things.

10:28:54

13 Do you recall that --

14 A. Yes.

15 Q. -- series of questions and answers?

10:29:05

16 If the sheriff disagrees with what you tell him and he
17 tells you to do something -- for example, to conduct an
18 operation or not conduct an operation -- would you be permitted
19 to disobey his instruction?

20 A. It's never come to that level. I do work for him, but like
21 I say, our -- our relationship is such that he takes feed --
22 feedback from me. And we're what I'd call a professional
23 organization, and, you know, certainly he could fire me.
24 There's no doubt about that.

10:29:27

25 But when I say a disconnect, oftentimes he doesn't

10:30:02

1 understand what the rank and file deputies are doing out there,
2 and it becomes right back to this same long story that -- that
3 we had about the indicators, and how the information is used.

4 Q. Let's go back to Exhibit 228. Mr. Casey asked you some
5 questions about that, and I just have one or two more questions
6 about that. 10:30:30

7 There are some comments in this document, and we can
8 flip through, maybe go to the second page.

9 There's some comments in here about activities in
10 Mesa. Do you see those? 10:30:57

11 A. You'll have to point them out to me, sir. I don't have
12 enough mag --

13 Q. Okay. Well, let's take the middle of the second page where
14 it says Ron M. And that says: Happy with your sweeps in Mesa.
15 Keep up the good work. 10:31:15

16 Do you see that?

17 A. Yes.

18 Q. That's something that you appreciate hearing, that is, that
19 you are getting support from the public, for your -- at least
20 some members of the public, some members of the public, for
21 your activities, is that right? 10:31:34

22 A. Well, any time we get a positive it's better than a
23 negative. However, I'm also a person that's been a police
24 officer for a long time, and I know when my sensitivities have
25 to end and when my job has to begin. 10:31:58

1 And I also know that this is similar to a poll that's
2 conducted by our office staff, and that's -- that's all it is.
3 There's relatively no information about criminal activities.
4 This is just information that rolls in on a daily basis from
5 the public, and... It's no different than reading a poll that
6 Channel 10 puts out on what our standings are. I'm positively
7 reinforced by that, but it doesn't give me the motivation to go
8 out and do my job as a police officer.

10:32:25

9 Q. Sheriff, I'm going to read to you from your November 15,
10 2010, deposition at page 198. No need to display this on the
11 screen. But I'm going to start at line 21.

10:32:58

12 MR. CASEY: I'm sorry, what page, sir?

13 MR. YOUNG: Page 198 of the November 15, 2010,
14 deposition, starting at line 21.

15 BY MR. YOUNG:

10:33:13

16 Q. And you can read along with me, Chief.

17 A. Okay. We're talking about November 15th?

18 Q. Yes.

19 A. Let me catch up. Go ahead, sir.

20 Q. Question -- this is line 21:

10:33:25

21 "QUESTION: You do believe that the sheriff wants you
22 to know about what this barometer is saying, correct?"

23 And it's referring to this exhibit that we've been
24 talking about, 228.

25 "ANSWER: Oh, certainly. Yes. Yes. There's one

10:33:39

1 above there that you're not even mentioning about Mesa and
2 'Keep up the good work.'

3 "QUESTION: Is that the one from Ron M that says,
4 'Happy with your sweeps in Mesa. Keep up the good work,' end
5 quote? 10:34:02

6 "ANSWER: Yes.

7 "QUESTION: Is that something that you appreciated
8 finding out that someone felt that way?

9 "ANSWER: When we can get support from the public,
10 yes." 10:34:15

11 Do you stand by that testimony?

12 A. Yes, and it's similar to the testimony I just gave you.

13 MR. YOUNG: Thank you very much for your time,
14 Chief Sands.

15 THE WITNESS: Thank you. 10:34:27

16 THE COURT: Chief, we thank you for your testimony.
17 You can step down.

18 THE WITNESS: Thank you, sir.

19 THE COURT: We're going to take the morning break. I
20 think I've run my court reporter into the ground. We'll be
21 back at 11 o'clock. 10:34:35

22 MR. CASEY: Did the Court say 11:00?

23 THE COURT: 11:00.

24 MR. CASEY: Thank you, sir.

25 (Recess taken.) 10:34:44

1 THE COURT: Thank you. Please be seated.

2 Next?

3 MS. GALLAGHER: Plaintiffs call Deputy Carlos Rangel.

4 THE CLERK: Right over here, sir.

5 Can you please state and spell your full name. 11:03:05

6 MR. RANGEL: My name is Carlos Rangel.

7 THE COURT: Can you spell it?

8 MR. RANGEL: R-a-n-g-e-l.

9 THE CLERK: Please raise your right hand.

10 (Carlos Rangel was duly sworn as a witness.) 11:03:29

11 THE CLERK: Thank you. Please take our witness stand.

12 THE COURT: Go ahead. Please proceed.

13 CARLOS RANGEL,

14 called as a witness herein, having been duly sworn, was

15 examined and testified as follows: 11:04:08

16 DIRECT EXAMINATION

17 BY MS. GALLAGHER:

18 Q. Good morning, Deputy Rangel.

19 A. Good morning.

20 Q. You went to the police academy in approximately 2000, is 11:04:14
21 that correct?

22 A. Correct.

23 Q. And you've been working for the Sheriff's Office here in
24 Maricopa County ever since?

25 A. Yes. 11:04:23

1 Q. So that's about 13 years?

2 A. Yes.

3 Q. And you're a member of the HSU, or Human Smuggling Unit?

4 A. Yes, I am.

5 Q. You joined the HSU right as it was being formed in 2006,

11:04:30

6 correct?

7 A. That's correct.

8 Q. And in approximately 2007 you became 287(g) certified?

9 A. Yes, I was.

10 Q. Deputy Rangel, you're bilingual, is that correct?

11:04:42

11 A. Yes, I am.

12 Q. English and Spanish?

13 A. Yes.

14 Q. And you spent part of your childhood growing up in Mexico,

15 is that correct?

11:04:49

16 A. Yes.

17 Q. So you consider yourself Latino?

18 A. Yes.

19 Q. And you would agree with me that it's possible for some

20 Latinos to have prejudices against other Latinos, is that

11:04:58

21 correct?

22 A. As to what? I don't understand the question.

23 Q. It's possible that a Latino individual could have

24 prejudices against other Latino individuals?

25 A. Yes.

11:05:14

1 Q. You learned about racial profiling in the academy back in
2 2000, is that correct?

3 A. Yes.

4 Q. In the academy you were taught not to racially profile as
5 part of a course on criminal law, is that correct?

11:05:30

6 A. Correct.

7 Q. And that was about it, as far as you remember, in terms of
8 your training at the academy in terms of racial profiling,
9 isn't that correct?

10 A. Yes.

11:05:42

11 Q. And after the academy you did not receive any ongoing
12 training from the MCSO regarding racial bias or sensitivity, is
13 that correct?

14 A. Correct.

15 Q. Now, at some point in approximately October of 2009 the
16 MCSO lost its authority under 287(g), is that correct?

11:05:51

17 A. Yes.

18 Q. And you were not immediately given any training or
19 direction as to how that impacted what you did on patrol, were
20 you?

11:06:07

21 A. Correct.

22 Q. And when you joined the HSU back in 2006, you did not
23 receive any formal training on the detection and apprehension
24 of criminal aliens, is that correct?

25 A. Correct.

11:06:23

1 Q. In fact, you never received any formal training with
2 respect to the detection and apprehension of criminal aliens,
3 correct?

4 A. Correct.

5 Q. In fact, you never received any training at all after
6 becoming an HSU officer that was specific to your role as an
7 HSU deputy, isn't that correct?

11:06:30

8 A. What was that, again?

9 Q. You never received any training after becoming an HSU
10 officer that was specific to your role as an HSU officer, is
11 that correct?

11:06:47

12 A. As to training for -- for what?

13 Q. That was specific to your role as an HSU deputy as opposed
14 to any -- any aspects of your job that would be similar,
15 whether or not you were HSU.

11:07:05

16 A. Correct.

17 Q. You've been involved in a number of saturation patrols,
18 that's correct?

19 A. Yes.

20 Q. And prior to going out on saturation patrols there's
21 generally a briefing about the saturation patrol?

11:07:16

22 A. Yes.

23 Q. And sometimes Sheriff Arpaio himself gives a speech to the
24 media before saturation patrols?

25 A. I believe so.

11:07:31

1 Q. And you've been present at some of those speeches prior to
2 saturation patrols?

3 A. Yes.

4 Q. Now, as part of the briefing -- and I'm talking now about
5 the briefing you received as officers, and not necessarily the
6 media speech -- as part of that briefing you received prior to
7 saturation patrols you received information about the reasons
8 for the patrol?

11:07:44

9 A. Yes.

10 Q. But you were not made aware of any spikes in crime
11 occurring in the sweep areas, were you?

11:07:55

12 A. Correct.

13 Q. And you were never made aware of a spike in traffic or
14 vehicular violations in a targeted area?

15 A. Correct.

11:08:10

16 Q. You were never told that the local police departments were
17 asking for help in the area?

18 A. That's correct.

19 Q. But you did get information about citizen complaints
20 regarding that area, is that correct?

11:08:27

21 A. Sometimes.

22 Q. Such as day laborers in the area?

23 A. Yes.

24 Q. And businesses complaining about day laborers scaring away
25 their customers?

11:08:39

1 A. Yes.

2 Q. In particular, with respect to an operation that was
3 conducted in Queen Creek, you were informed that it was in
4 response to a citizen complaint mentioning day laborers
5 harassing children nearby?

11:08:52

6 A. I believe so.

7 Q. And you believe that the majority of undocumented
8 immigrants in Maricopa County are Latino, is that correct?

9 A. Yes.

10 Q. And you believe the majority of undocumented immigrants in
11 Maricopa County are from Central or South America?

11:09:02

12 A. Yes.

13 Q. And you believe that most day laborers are here illegally,
14 is that correct?

15 A. Not all of them.

11:09:17

16 Q. Most of them?

17 A. Yes, most of them.

18 Q. Now, on saturation patrols you're familiar with the
19 practice of following a vehicle to -- to develop probable cause
20 to stop the vehicle for a traffic violation?

11:09:30

21 A. Yes.

22 Q. And sometimes that's done for purposes of investigating a
23 different violation than the probable cause that you developed
24 was for?

25 A. For myself, I'm speaking on my behalf?

11:09:40

1 Q. Yes.

2 A. If I'm following a vehicle to develop probable cause it's
3 because of a Title 28 violation: cracked windshield, any
4 equipment violation.

5 Q. But sometimes the reason you're attempting to develop 11:10:01
6 probable cause is because you want to investigate the driver or
7 occupants of the vehicle for another reason, is that correct?

8 A. Like what other reason? I don't understand.

9 Q. So you may try to develop probable cause in order to make
10 contact with the individuals -- 11:10:18

11 A. Yes.

12 Q. -- in the car for a reason other than the probable cause
13 that you developed?

14 A. No, I'll make -- I'll make contact with the vehicle to
15 investigate why they have equipment violation. 11:10:31

16 Q. You've been involved in operations where you've
17 contacted -- been contacted by another officer, told that there
18 is a vehicle of interest, and then developed probable cause to
19 stop that vehicle, is that correct?

20 A. Say that again. 11:10:52

21 Q. You've been involved in -- excuse me. You've been involved
22 in operations where you've been contacted by another officer,
23 told that there was a vehicle of interest to that officer, and
24 then have developed probable cause to stop that vehicle, the
25 vehicle of interest to the other officer? 11:11:10

1 A. I quite don't understand your question.

2 Q. Has there ever been an instance on a saturation patrol or
3 other operation where you've got a call-out from a ra -- on the
4 radio from another officer informing you of a vehicle that they
5 want to have stopped, and you've then followed the vehicle in
6 order to find probable cause to stop that vehicle? 11:11:33

7 A. Yes.

8 MS. GALLAGHER: Your Honor, permission to approach the
9 witness with Exhibit 14?

10 THE COURT: Yes. 11:12:02

11 MS. GALLAGHER: Can also put 14 on the screen for
12 counsel and the witness.

13 MR. LIDDY: Excuse me, Your Honor.

14 MS. GALLAGHER: Should be on your screen as well.

15 MR. LIDDY: Your Honor, I'd like to inquire as to
16 whether this exhibit's been admitted. 11:12:22

17 MS. GALLAGHER: No, this has not been admitted, so
18 just on the screens for counsel.

19 MR. LIDDY: Yeah, but not for the Court.

20 THE COURT: I get it on my screen always. 11:12:34

21 MR. LIDDY: Okay.

22 BY MS. GALLAGHER:

23 Q. Deputy Rangel, have you had a moment to look at that
24 document?

25 A. No, not yet. 11:12:53

1 Q. Excuse me?

2 A. No, I haven't yet.

3 Q. Okay. Let me know when you've had a moment.

4 (Pause in proceedings.)

5 THE WITNESS: Okay.

11:13:48

6 BY MS. GALLAGHER:

7 Q. Thank you.

8 You've seen this report before?

9 A. I'm not sure if I've seen it before.

10 Q. On the beginning of paragraph 2, while on patrol, Detective
11 Rangel, number 1528, is that yourself?

11:14:05

12 A. Yes, it is.

13 Q. So this is about a stop that you conducted?

14 A. Yes.

15 Q. Okay. And this is a report that is commonly completed
16 after a load vehicle is apprehended, is that correct?

11:14:18

17 A. Correct.

18 Q. And part of this report is created from a template that you
19 would use to help fill out the narrative, is that correct?

20 A. Yes.

11:14:35

21 Q. HSU deputies, including yourself, regularly use this
22 template for convenience purposes, is that correct?

23 A. Correct.

24 Q. And in fact, you've used this form, for the most part,
25 every time that you filled out a report regarding a load

11:14:49

1 vehicle, is that correct?

2 A. Yes, I believe so.

3 Q. You still use this form today?

4 A. Yes.

5 Q. And if we go towards the very bottom, the last paragraph of 11:14:57
6 this document, you see there's some gray boxes, the first one
7 having Subject Name, do you see that?

8 A. Yes.

9 Q. And so here you would use a pre-prepared narrative and fill
10 in these gray boxes with the details of the specific stop being 11:15:15
11 reported on?

12 A. Correct.

13 Q. If we can go to the next page.

14 The second paragraph, you see it says Subject, who is
15 originally from Mexican Hometown? 11:15:35

16 A. Yes.

17 Q. And then Mexican Hometown is a square that you would fill
18 in?

19 A. Yes.

20 Q. With the town in Mexico where you believe the individual 11:15:40
21 was from?

22 A. Yes.

23 Q. And if we can go now to the next paragraph. At the top it
24 says Subject said He/She met an unknown Hispanic male.

25 Do you see that? 11:16:07

1 A. Yes.

2 Q. So Hispanic male is part of the form, is that correct?

3 A. Correct.

4 Q. And that's not a box that you would typically change?

5 A. For the most part, no.

11:16:15

6 Q. In fact, you've never changed the language when filling out
7 that form, have you?

8 A. Correct.

9 MS. GALLAGHER: Your Honor, at this time I move to
10 admit Exhibit 14 into evidence.

11:16:27

11 MR. LIDDY: Without objection, Your Honor.

12 THE COURT: Exhibit 14's admitted.

13 (Exhibit No. 14 is admitted into evidence.)

14 BY MS. GALLAGHER:

15 Q. Deputy Rangel, I'd like to shift your attention now to a
16 saturation patrol or an operation that you were involved in in
17 Cave Creek in September of 2007.

11:16:39

18 Do you remember that patrol?

19 A. Yes.

20 Q. And the operation was based on citizen complaints about day
21 laborers hanging around a church, is that correct?

11:16:52

22 A. Yes, and I believe also a drop house nearby.

23 Q. The church was Good Shepherd of the Hills church, is that
24 correct?

25 A. Yes.

11:17:07

1 Q. And you had conducted the -- had been part of the
2 operation -- excuse me. Strike that.

3 The goal of the operation that was conducted on
4 September 27th, 2007, was to rid the area of day laborers, is
5 that correct? 11:17:17

6 A. I'm not sure about getting rid of the day laborers. It was
7 to enforce the -- the laws within the town.

8 Q. The goal was to make sure that the businesses were not
9 having day laborers hanging around in front of their
10 businesses, is that correct? 11:17:45

11 A. Correct.

12 Q. And a few days before that operation, on September 24th,
13 you did an undercover operation at that same church, Good
14 Shepherd of the Hills?

15 A. I personally did not. 11:17:57

16 Q. You were not involved in that operation --

17 A. No, I -- I was involved, but not undercover.

18 Q. You were not undercover, but you were involved in the
19 undercover operation?

20 A. Yes. 11:18:09

21 Q. And as part of that investigation you determined that most
22 of the day laborers in that area were living in apartments
23 nearby?

24 A. Correct.

25 Q. Just south of the church there? 11:18:20

1 A. Either south or east, I'm not sure.

2 Q. And then on September 27, three days later, you did an
3 operation in that area?

4 A. Yes.

5 Q. And as part of that operation, MCSO officers did some
6 knock-and-talks?

7 A. Yes.

8 Q. And that was at the same apartments that you had determined
9 on the 24th were where a number of the day laborers had been
10 living?

11 A. Correct.

12 Q. Now, as part of that operation you responded to a call by
13 Deputy DiPietro for a 287(g) officer, is that correct?

14 A. That is correct.

15 Q. And you were the first officer to arrive on the scene
16 besides Deputy DiPietro, is that correct?

17 A. Yes.

18 Q. Deputy DiPietro informed you that the passengers spoke
19 Spanish and no English?

20 A. Correct.

21 Q. And that he had pulled the vehicle over for speeding?

22 A. Yes.

23 Q. He then asked you to speak to the passengers?

24 A. Yes.

25 Q. And at that point he had not told you anything else about

11:18:32

11:18:47

11:19:00

11:19:13

11:19:20

1 the traffic stop or the passengers, is that correct?

2 A. Correct.

3 Q. And you had no reason to believe that the passengers had
4 violated any state law, is that correct?

5 A. Correct.

11:19:32

6 Q. So then you proceeded to speak with the passengers?

7 A. Yes.

8 Q. But you did not speak with the driver of the vehicle, is
9 that correct?

10 A. That is correct.

11:19:41

11 Q. In fact, you made no contact with the driver whatsoever?

12 A. Yes.

13 Q. And you didn't consider it to be HSU's job to clear the
14 driver?

15 A. I didn't make the stop.

11:19:53

16 Q. So you did not consider it HSU's job to clear the driver,
17 is that correct?

18 A. Correct.

19 Q. You asked for identification from the passengers?

20 A. Yes.

11:20:08

21 Q. And Mr. Melendres provided you with a B-1/B-2 visa, is that
22 correct?

23 A. That's correct.

24 Q. And he also provided you with his I-94?

25 A. No, he did not.

11:20:18

1 Q. He stated that he had it in his wallet, correct?

2 A. No, he did not.

3 MS. GALLAGHER: Your Honor, permission to approach the
4 witness with a copy of Exhibit 1093.

5 THE COURT: You may have it. 11:20:39

6 MS. GALLAGHER: And for the record, I believe this is
7 an exhibit that was ex -- excuse me, that was submitted by
8 defendants. The clerk should have a copy. However, we have
9 learned that this exhibit is under protective order. We have
10 contacted the government and gotten permission to use a 11:20:54
11 slightly more redacted version of the document. So if it is
12 admitted into evidence at a later point, I have an extra copy
13 for the clerk with the extra redaction that I'm going to be
14 giving to the witness.

15 THE COURT: All right. 11:21:11

16 Have you given a copy to defense counsel?

17 MS. GALLAGHER: I have one for them.

18 MR. LIDDY: Thank you.

19 BY MS. GALLAGHER:

20 Q. Deputy Rangel, I'd like you to turn to the third page of 11:21:34
21 this document. On the top it has an indication, a Bates label
22 that says ICE BS 10762.

23 A. Okay.

24 Q. And we're going to focus on the last paragraph of -- excuse
25 me, of 1093 on page 10762. I'm going to read this out loud, if 11:21:59

1 you can read along?

2 MR. LIDDY: Objection, Your Honor, foundation and
3 hearsay.

4 MS. GALLAGHER: Your Honor, this exhibit was submitted
5 by defendants, so -- 11:22:13

6 THE COURT: That doesn't solve anything.

7 MS. GALLAGHER: So they would have no objection in the
8 pretrial order to the -- to the exhibit itself as they
9 submitted it. And as I understand, the pretrial order governs
10 objections. 11:22:31

11 THE COURT: Any objection to 1093?

12 MS. GALLAGHER: I believe we did, Your Honor.

13 THE COURT: And you're waiving that?

14 MS. GALLAGHER: Yes, Your Honor.

15 THE COURT: Mr. Liddy, did you preserve any objection
16 to 1093? 11:22:36

17 MR. CASEY: Your Honor, I can speak to that. We did
18 not state an objection to it. We listed it. It's not been
19 stipulated into evidence, and I still believe, Your Honor, that
20 we have the ability to pre -- if we list it, we didn't list an
21 objection, but I think we can still at this point make those
22 objections here. 11:22:53

23 I know what the Court's order says --

24 THE COURT: And the Court's order says you're going to
25 have to convince me that there's a manifest injustice to 11:23:07

1 preserve a late objection not in the pretrial order. So I'll
2 give you your shot. What's the manifest injustice?

3 MR. CASEY: Your Honor, the manifest injustice in this
4 is you have -- she's not shown him the first page here. We
5 don't know who the author is. We don't know who it was sent 11:23:26
6 to. It appears to be an ICE inquiry in answering allegations
7 that congressional members of the House Judiciary Committee had
8 about this particular stop, and it appears to articulate
9 conclusions that some unknown person set forth. And it is
10 improper cross now -- 11:23:46

11 THE COURT: Now I've given you the opportunity --

12 MR. CASEY: Sorry.

13 THE COURT: I've given you the opportunity to set the
14 context for the document as the defense sees it. You still
15 haven't established, I don't think, manifest injustice, so I'm 11:23:55
16 going to allow you to proceed.

17 BY MS. GALLAGHER:

18 Q. So I'll direct your attention to the last paragraph of the
19 page labeled 10762. It says there: The DRO acting supervisory
20 immigration enforcement agent, or SIEA, on duty at the ICE 11:24:15
21 detention facility remembers the MCSO deputy bringing in
22 Ortega Melendres and showing him the BCC. The MCSO deputy
23 stated he arrested Ortega Melendres for working and violating
24 his B-2 visa. Ortega Melendres did have his I-94 in his
25 wallet -- and I'm going to skip the rest of that sentence 11:24:37

1 because it's highly redacted. It has to do with a query into a
2 database.

3 The record showed Ortega Melendres was admitted
4 through 2008 for six months. The SIEA asked Ortega Melendres
5 if he was working, and Ortega Melendres stated that he was not. 11:24:49

6 Did you read that paragraph?

7 A. Yes.

8 Q. Does that refresh your recollection as to whether
9 Mr. Melendres had the I-94 in his wallet --

10 A. No. 11:25:04

11 Q. -- when you stopped him that day?

12 A. No.

13 MS. GALLAGHER: Your Honor, plaintiffs at this time
14 move 1093 into evidence.

15 MR. LIDDY: No objection, Your Honor. 11:25:11

16 THE COURT: The exhibit's admitted.

17 (Exhibit No. 1093 is admitted into evidence.)

18 BY MS. GALLAGHER:

19 Q. And yet you detained Mr. Melendres on September 27th, 2007,
20 is that correct? 11:25:21

21 A. Yes.

22 Q. You placed him in handcuffed -- in handcuffs?

23 A. He was arrested.

24 Q. He was placed in handcuffs?

25 A. Yes, I believe so. 11:25:32

1 Q. He was searched?

2 A. Yes.

3 Q. He was taken to an ICE facility?

4 A. Yes.

5 Q. In fact, all -- excuse me. In fact, all four passengers
6 were handcuffed, searched, and taken to ICE, correct?

11:25:39

7 A. I believe so.

8 Q. And all four passengers were Hispanic, is that correct?

9 A. Yes.

10 Q. The driver on the stop was not searched?

11:25:50

11 A. I don't know.

12 Q. While you were at the stop the driver was not searched?

13 A. I don't know.

14 Q. You didn't see the driver being searched?

15 A. No, I did not.

11:26:06

16 Q. You didn't see the driver being handcuffed?

17 A. No.

18 Q. And the driver was Caucasian, is that correct?

19 A. Yes.

20 MS. GALLAGHER: Thank you, Deputy Rangel.

11:26:24

21 Your Honor, plaintiffs have no further questions at
22 this time.

23 THE COURT: Cross-examination.

24 MS. GALLAGHER: Your Honor, with permission, I would

25 like to give the clerk a copy of 1093 with the additional

11:26:36

1 redaction.

2 THE COURT: Yes.

3 MS. GALLAGHER: Thank you.

4 THE COURT: Mr. Liddy, please proceed.

5 MR. LIDDY: Thank you, Your Honor.

11:26:58

6 CROSS-EXAMINATION

7 BY MR. LIDDY:

8 Q. Good morning, Deputy Rangel.

9 A. Good morning.

10 Q. Are you 287(g) trained?

11:27:08

11 A. Yes.

12 Q. So you operated for a time as 287(g) qualified officer?

13 A. That is correct.

14 Q. Would you tell the Court what the difference was between
15 using your 287(g) authority in your operations versus when you
16 did not use your 287(g) authority.

11:27:25

17 A. Well, basically 287 -- 287(g) authority gave authority to
18 determine alienage on a person that you suspected of being in
19 the country illegally.

20 Q. For what purpose would you need to determine alienage of
21 someone who was encountered in your operation?

11:27:48

22 A. To determine?

23 Q. Yeah. For what purpose would you want to determine
24 alienage while using your 287(g) authority?

25 A. If the -- if they were involved in human smuggling.

11:28:04

1 Q. What is human smuggling?

2 A. It's the practice that they bring people from another
3 country into the United States illegally.

4 Q. Is that a common crime that occurs in Maricopa County?

5 A. Yes. 11:28:26

6 Q. Are there smuggling organizations that commit that crime on
7 a fairly regular basis?

8 A. Yes.

9 Q. Do they use roads and highways in Maricopa County as
10 corridors for the smuggling operations? 11:28:39

11 A. Yes, they do.

12 Q. Are those the same corridors that, on your experience, that
13 drug smugglers use in their operations?

14 A. Correct.

15 Q. In your experience, are the criminal syndicates that
16 smuggle human beings often the same syndicates that smuggle
17 drugs? 11:28:51

18 A. Yes.

19 Q. In your experience, are those individuals that commit those
20 crimes dangerous? 11:29:03

21 A. Oh, yes.

22 Q. Do they -- in your experience, do they frequently carry
23 weapons?

24 A. Yes.

25 Q. Do they commit violent acts? 11:29:12

1 A. Yes, they do.

2 Q. In your experience, who are most often the victims of the
3 violence perpetrated by human smugglers?

4 A. The smugglees.

5 Q. And by smugglees you mean whom, precisely?

11:29:25

6 A. The persons that's being smuggled into the country.

7 Q. And those persons, by definition, would not be United
8 States citizens?

9 A. Correct.

10 Q. In your experience, are they more often Hispanic than not
11 Hispanic?

11:29:34

12 A. Yes.

13 Q. Would it be fair to characterize your job as, in part,
14 protecting Hispanics that are not from the United States?

15 A. Correct.

11:29:48

16 Q. Have you ever risked your life to protect the life of a
17 Hispanic in this country without legal documents?

18 A. Yes.

19 Q. Would you tell us about that incident.

20 A. I believe it was back in 2008. ICE requested our
21 assistance on a kidnapping for ransom investigation.

11:30:04

22 Q. What was the nature of the assistance that they
23 specifically requested you to do?

24 A. They wanted one of our detectives to act as a relative and
25 communicate with the -- the smugglers to make the ransom

11:30:29

1 exchange.

2 Q. A relative of the kidnap victim?

3 A. Yes.

4 Q. And was that kidnap victim a citizen of the United States?

5 A. No.

11:30:40

6 Q. Was that kidnap victim an Hispanic?

7 A. Yes.

8 Q. So did ICE want an Hispanic officer to pose as the
9 relative?

10 A. Yes.

11:30:48

11 Q. Why didn't ICE use one of their own officers?

12 A. I don't know.

13 Q. And whom did MCSO select to take on that risky operation?

14 A. They selected me.

15 Q. Did you volunteer to do it?

11:31:00

16 A. Yes.

17 Q. Why'd you do that?

18 A. A life was at stake.

19 Q. Whose life?

20 A. The smugglee's.

11:31:09

21 Q. That's the non-U.S. citizen Hispanic we've been referring
22 to, is that correct?

23 A. Correct.

24 Q. What did you have to do to carry out that operation to
25 rescue that kidnap victim whose life was in danger?

11:31:19

1 A. I started making phone calls to the smugglers, trying to
2 make out a deal.

3 Q. Did you get their contact information from the federal
4 government?

5 A. Yes. 11:31:32

6 Q. What information did you learn from those phone
7 conversations with the smugglers?

8 A. That they had a person kidnapped, and that they wanted, I
9 believe, \$2200 for his release.

10 Q. So what did you do next? 11:31:52

11 A. In the process of communicating with the smugglers, I
12 decided to pick a place where to -- where to meet the
13 smugglers.

14 Q. Was that a public place or a place where there wasn't a
15 whole lot of activity? 11:32:06

16 MS. GALLAGHER: Objection, Your Honor, as to the
17 relevance of this line of questioning. I don't think the
18 details of this particular incident are relevant to the matters
19 at hand.

20 THE COURT: You know, I said I don't like speaking
21 objections. 11:32:13

22 MS. GALLAGHER: Excuse me, Your Honor.

23 THE COURT: I'm going to give him a little bit more
24 leeway because frankly, you're the one who raised the issue of
25 whether or not this witness was prejudiced against Hispanics. 11:32:23

1 So I don't think we have to go a whole lot further,
2 Mr. Liddy, but I am going to allow you to pursue this a little
3 bit further.

4 MS. GALLAGHER: Thank you, Your Honor.

5 MR. LIDDY: Thank you, Your Honor.

11:32:34

6 BY MR. LIDDY:

7 Q. Let me withdraw that question.

8 The area that was selected for you to encounter these
9 kidnappers and smugglers, would you consider that, in your
10 professional experience, a safe area, or not?

11:32:43

11 A. No.

12 Q. What did you do when you arrived in this dangerous area
13 where these dan -- with these violent people?

14 A. Made contact with the smugglers. They showed up in an SUV.
15 I approached the driver's side. As soon as I approached the
16 driver's side the passenger had a -- a weapon pointed at me,
17 and the driver said if I had the money.

11:32:58

18 Q. Then did you hand over the money?

19 A. At that time the signal for the takedown was to take my hat
20 off.

11:33:18

21 Q. So you made a signal to other members of the Human
22 Smuggling Unit?

23 A. Yes.

24 Q. By taking off your hat?

25 A. Yes. I took off my hat and I started counting the money in

11:33:24

1 front of the smugglers.

2 Q. Why did you count the money in front of the smuggler?

3 A. To kill time, to make up time for HSU to -- to show up and
4 take down the --

5 Q. And to save the Court some time, what was the end result of 11:33:38
6 that rescue operation?

7 A. They were arrested eventually.

8 Q. And what happened to the kidnap victim?

9 A. He was turned over to his family members and he was saved.

10 Q. He was safe when he was turned over to his family members? 11:33:53

11 Are you an anti-Hispanic bigot?

12 A. No, I'm not.

13 Q. When you received your 287(g) training, who provided that
14 training?

15 A. ICE. 11:34:12

16 Q. When you say ICE, do you mean Immigration and Customs
17 Enforcement from the Department of Homeland Security?

18 A. Correct.

19 Q. The federal government?

20 A. Correct. 11:34:22

21 Q. How many instructors carried out that training on behalf of
22 you and your fellow students?

23 A. It was quite a few.

24 Q. Would you say more than 10?

25 A. Close. 11:34:34

1 Q. And how long was that period of 287(g) instruction?

2 A. I believe it was five weeks.

3 Q. And how many days per week?

4 A. Monday through Friday.

5 Q. Were there written materials provided to go along with the
6 classroom instruction?

11:34:48

7 A. Yes.

8 Q. I'm going to ask you some questions about use of your
9 287(g) authority in the field.

10 Have you conducted traffic stops?

11:35:10

11 A. Yes.

12 Q. Typically, what do you do first when you conduct a traffic
13 stop?

14 A. Look for indicators of human smuggling.

15 Q. So when -- when you're answering my question about traffic
16 stops, you're specifically referring to human smuggling
17 investigations?

11:35:24

18 A. Correct.

19 Q. Is that because your job is to enforce laws against human
20 smugglers?

11:35:41

21 A. Yes.

22 Q. But have you ever in your career encountered traffic stops
23 that were not involved in targeting human smugglers?

24 A. Yes.

25 Q. When you operate in saturation patrols in Maricopa County,

11:35:47

1 are you targeting human smugglers?

2 A. Yes.

3 Q. When you operate in saturation patrols in Maricopa County,
4 do you ever target drop houses?

5 A. Yes.

11:36:00

6 Q. Known drop houses?

7 A. Yes.

8 Q. Suspected drop houses?

9 A. Yes.

10 Q. Is it ever one of your goals to flush out human smugglers
11 and their human smuggling loads from their drop houses and stop
12 them on the roads through a traffic stop in the course of a
13 saturation patrol?

11:36:05

14 A. Correct.

15 Q. Is that a regular objective of human smuggling officers
16 conducting saturation patrols?

11:36:21

17 A. Yes.

18 Q. Approximately how many of those saturation patrols have you
19 participated in?

20 A. I don't have an exact number, but quite a few.

11:36:31

21 Q. Quite a few. Would you say more than 13?

22 A. Probably.

23 Q. A lot more than 13?

24 A. Yes.

25 Q. And human smuggling has always been the focus of your law

11:36:45

1 enforcement operations during those saturation patrols?

2 A. Yes.

3 Q. Okay. Back to our traffic stop. You said the first thing
4 you're going to do is check the license plate?

5 A. Yes.

11:37:05

6 Q. To determine what?

7 A. When I suspect a vehicle's involved in human smuggling,
8 I'll check the license plate. Checking the license plate in my
9 computer, in the car, I can determine if the vehicle's
10 registered to a -- to a person -- a real person.

11:37:22

11 Q. By "a real person," you mean an actual human being that
12 exists on this earth?

13 A. Yes.

14 Q. As opposed to a fictitious creation of a criminal for the
15 purpose of perpetrating a fraud?

11:37:36

16 A. Yes.

17 Q. In your experience, do some criminals create fictitious
18 people for the purpose of registering vehicles illegally?

19 A. Always.

20 Q. Why do they do that, in your experience?

11:37:50

21 A. That's kind of a -- a dead-end paper trail for our
22 investigation, and that's the reason they do it.

23 Q. Back to our traffic stop. You've checked the license
24 plate. Let's say in this instance, hypothetically, that you've
25 determined from your check of the license plate that it is

11:38:07

1 registered to a person that does not exist.

2 What does that tell you as a law enforcement
3 officer that's focusing on human smuggling?

4 A. That it's possibly involved in human smuggling.

5 Q. What do you do next?

11:38:19

6 A. After all -- all the -- find probable cause to do a traffic
7 stop, and then I'll conduct a traffic stop.

8 Q. Let me back up a little bit. Before you pull over a car,
9 are there any indicia, any indicators on that vehicle that

10 cause an interest to arise in you as a law enforcement

11:38:40

11 officer as to why you want to check that license plate in the
12 first place?

13 A. Yes.

14 Q. What are those indicators?

15 A. Besides the checking of the -- of the license plate, I'll
16 check for the vehicle being weighted down very heavily.

11:38:47

17 Q. You mean carrying more weight than its suspension is
18 intended to carry?

19 A. Correct.

20 Q. And how can you detect that?

11:39:03

21 A. Visually you can see -- you can see the vehicle. Like I
22 said, it looks weighted down.

23 Q. Okay.

24 A. Very dark-tinted windows --

25 Q. Okay.

11:39:13

1 A. -- that -- that you can't even see the silhouette. And
2 that's about it.

3 Q. Well, don't you look to see if the individuals in the
4 heavily loaded vehicle with dark-tinted windows are of a
5 specific nationality or race? 11:39:36

6 MS. GALLAGHER: Objection, Your Honor, leading.

7 THE COURT: I'll sustain that.

8 BY MR. LIDDY:

9 Q. Officer Rangel, when you look inside a vehicle that you
10 suspect may be used in a human smuggling load, can you see the 11:39:57
11 race of the individuals in that vehicle?

12 A. No.

13 Q. Why?

14 A. Because they tint the windows very dark.

15 Q. What if they didn't tint the windows dark and you were 11:40:11
16 behind them? Would the headrests cause a problem to determine
17 race or nationality?

18 A. Yes.

19 Q. What if you were operating at night, might the lack of
20 light be an impediment to determine the race or nationality? 11:40:24

21 A. Yes.

22 Q. Does it bother you that you wouldn't be able to determine
23 the race or nationality of individuals in a vehicle?

24 A. No.

25 Q. Why? 11:40:33

1 A. Race has nothing to do with this.

2 Q. You mentioned earlier on direct examination that from time
3 to time you would develop probable cause to pull over a
4 vehicle.

5 A. Yes. 11:40:55

6 Q. Do you recall that testimony?

7 A. Yes.

8 Q. And you mentioned perhaps it would be a cracked windshield,
9 perhaps a broken taillight. Do you recall that testimony?

10 A. Yes. 11:41:06

11 Q. Are there any other moving violations or equipment
12 violations that you've used in the past to develop probable
13 cause to make a traffic stop of a suspected human smuggling
14 vehicle?

15 A. Yes. 11:41:18

16 Q. Would you describe some of those for us, please.

17 A. Speeding. Weaving. Not stopping at a stoplight. Title 28
18 violations in general.

19 Q. Once you have observed one or more of these indicators and
20 after you've checked the license plate and determined that it's
21 been registered to an individual that does not exist, what do
22 you do next? 11:41:42

23 A. I conduct a traffic stop.

24 Q. And how do you do that? Do you turn on the lights?

25 A. Yes. 11:41:54

1 Q. Do you typically turn on the siren?

2 A. Sometimes I do; sometimes I don't.

3 Q. After you turn on the lights does the vehicle typically
4 pull over and stop?

5 A. Sometimes when you asked me if I'd use my siren or not, the 11:42:09
6 times that I use my siren is when the vehicle's taking a little
7 bit more time to pull over. That's when I'll use my siren
8 to -- to do the traffic stop. But if the vehicle right off the
9 bat pulls over to the side of the road, then I don't use my
10 siren. 11:42:33

11 Q. Once the vehicle pulls over to the side of the road do you
12 pull in behind that vehicle?

13 A. Yes.

14 Q. What do you do next?

15 A. I'll make contact with the driver. 11:42:39

16 Q. Do you do that by exiting the vehicle?

17 A. Yes.

18 Q. You approach the vehicle physically?

19 A. Yes, I do.

20 Q. Do you remain behind the vehicle or do you walk all the way 11:42:47
21 up to the driver's side window?

22 A. I'll walk to the passenger side window, for officer safety.

23 Q. And will you speak to the driver through the passenger side
24 window?

25 A. Yes. 11:43:04

1 Q. And what would you say, typically, to the driver?

2 A. I would ask for driver's license, registration, insurance.

3 Q. On a vehicle that you've suspected of being a human
4 smuggling load vehicle, have you ever had occasion where the
5 driver did not have a valid driver's license?

11:43:23

6 A. Yes.

7 Q. Have you ever had occasion where the driver did not have
8 proof of insurance?

9 A. Yes.

10 Q. Have you ever had an instance where the driver did not have
11 a vehicle registration?

11:43:31

12 A. Yes.

13 Q. Does this happen often?

14 A. It happens.

15 Q. What do you do when you encounter a driver that doesn't
16 have a driver's license?

11:43:46

17 A. I ask him why doesn't he have a driver's license.

18 Q. Why?

19 A. 'Cause you need a driver's license to drive a vehicle in
20 the state of Arizona.

11:44:01

21 Q. So are you asking them, just for my clarification, whether
22 they have it physically on their person, or whether they've
23 ever obtained one legally?

24 A. Both.

25 Q. Do you ever speak to the passengers in the vehicle?

11:44:10

1 A. Yes.

2 Q. Do you always speak to the passengers in the vehicle?

3 A. Yes.

4 Q. Why?

5 A. I ask for identification as well.

11:44:19

6 Q. And why do you want to know the identity of the individuals
7 in the vehicle, the passengers?

8 A. I just want to know who I'm dealing with on a traffic stop.

9 Q. And why is that?

10 A. Officer safety. I don't know who I'm dealing with.

11:44:32

11 Q. Do you make that decision based on the race or nationality
12 of the passengers?

13 A. No.

14 Q. Have you, on occasion, encountered a driver who is a
15 non-English speaker?

11:44:51

16 A. Yes.

17 Q. What does that mean to you? From a law enforcement
18 perspective.

19 A. He doesn't speak English.

20 Q. And have you encountered drivers that don't speak English,
21 but that are able to communicate in a foreign language?

11:45:05

22 A. Yes.

23 Q. And what languages have those been?

24 A. Spanish.

25 Q. Any other languages?

11:45:15

1 A. No, not --

2 Q. And I think you've previously testified that you are a
3 Spanish-speaker?

4 A. Yes.

5 Q. So then do you conduct your interview with the driver in
6 Spanish? 11:45:24

7 A. Yes.

8 Q. And you're a native Spanish-speaker?

9 A. Yes.

10 Q. So it doesn't delay -- it doesn't lengthen the stop at all
11 when you speak Spanish to a Spanish-speaker, does it? 11:45:33

12 A. No.

13 Q. Do you make an effort to determine whether the passengers
14 are able to communicate to you in -- in English or Spanish?

15 A. Yes. 11:45:51

16 Q. Do you ask the passengers if they know the driver?

17 A. Yes.

18 Q. Typically, do they know the driver or do they not?

19 A. No.

20 Q. And what does that mean to you from a law enforcement
21 perspective? 11:46:03

22 A. Possibly human smuggling.

23 Q. And why is that?

24 A. Typically, they don't know anybody that they're traveling
25 with; they don't know the driver's name; they don't know the 11:46:18

1 passengers' names. And --

2 Q. Excuse me. I want you to finish your answer.

3 A. And for someone that is traveling in a vehicle that -- that
4 has a lot of occupants and they don't know each other, that's a
5 major indicator of possible human smuggling. 11:46:40

6 Q. Does an officer have to be 287(g) qualified to ask a driver
7 or passengers about potential indicators of human smuggling?

8 A. No.

9 Q. Have you ever racially profiled anyone while you've been
10 employed by MCSO? 11:47:19

11 A. No.

12 Q. What was your training with regard to racial profiling at
13 the academy?

14 A. Basically, that it was against the law to conduct a traffic
15 stop just based solely on -- on the color of the skin of the
16 person. 11:47:45

17 Q. Can you ever conduct a traffic stop based on the color of a
18 person's skin?

19 A. Can I?

20 Q. Yes. 11:47:57

21 A. Could you rephrase that question again?

22 Q. Let me withdraw that question.

23 Have you ever heard of the term BOLO?

24 A. Yes.

25 Q. What is BOLO, B-O-L-O? 11:48:07

1 A. It's a -- an ATL, an attempt to locate bulletin.

2 Q. Be on the lookout for an individual?

3 A. Yes.

4 Q. Do BOLO bulletins typically include a description of the
5 individual whom law enforcement is on the lookout for?

11:48:24

6 A. Yes.

7 Q. And might that description include race or ethnicity?

8 A. Yes.

9 Q. Have you ever been told by someone in your chain of command
10 that you should use racial profiling as a law enforcement
11 technique?

11:48:44

12 A. No.

13 Q. Are you aware of any MCSO employee who's ever been told to
14 racially profile?

15 A. No.

11:48:59

16 Q. Are you aware of any MCSO policies, written or otherwise,
17 that call for racial profiling?

18 A. No.

19 Q. Typically, prior to a Human Smuggling Unit operation is
20 there a briefing?

11:49:28

21 A. Yes.

22 Q. Does it typically take place on the morning the operation's
23 to begin?

24 A. Yes.

25 Q. Does that include saturation patrol operations in which

11:49:36

1 Human Smuggling Unit participates?

2 A. Yes.

3 Q. Who conducts those briefings?

4 A. The sheriff, or either a sergeant or lieutenant.

5 Q. Is the sheriff typically present during the briefing? 11:50:00

6 A. No.

7 Q. By the lieutenant you mean Lieutenant Sousa?

8 A. Yes.

9 Q. And prior to Lieutenant Sousa, another lieutenant who may
10 have been posted or billeted at the Human Smuggling Unit? 11:50:17

11 A. Yes.

12 Q. Have you ever been trained that day laborers are committing
13 criminal activity simply by seeking labor, seeking work day by
14 day?

15 A. If I've been trained? 11:50:49

16 Q. Yes.

17 A. No.

18 Q. Have you ever encountered day laborers during your
19 operations with the Human Smuggling Unit?

20 A. No. 11:51:01

21 Q. Earlier on direct testimony you testified about your
22 recollection of the Ortega Melendres traffic stop.

23 Do you recall that?

24 A. Yes.

25 Q. I believe you testified that you were not the first 11:51:21

1 officer on the scene of that traffic stop, is that correct?

2 A. Correct.

3 Q. Do you recall who that first officer was?

4 A. DiPietro.

5 Q. Did Officer DiPietro call for assistance during that
6 traffic stop?

11:51:32

7 A. Yes, he did.

8 Q. Did he do so over the radio?

9 A. Yes, he did.

10 Q. Do you recall that radio transmission?

11:51:48

11 A. I believe he requested a 287(g) officer, Spanish speaking
12 officer.

13 Q. To your knowledge, is Officer DiPietro 287(g) trained?

14 A. I believe so.

15 Q. Is he with the Human Smuggling Unit?

11:52:03

16 A. No, he's not.

17 Q. Is he with the K-9 unit?

18 A. Yes, he is.

19 Q. Is he a Spanish-speaker, to your knowledge?

20 A. No, he's not.

11:52:12

21 Q. Did you respond to that call for a Spanish-speaking 287(g)
22 officer?

23 A. Yes, I did.

24 Q. When you arrived on the scene, what did you see?

25 A. Saw the vehicle pulled to the side and DiPietro talking to

11:52:21

1 the -- the driver.

2 Q. Do you recall seeing any passengers in the vehicle?

3 A. Yes.

4 Q. Approximately how many?

5 A. Three or four, I believe.

11:52:37

6 Q. Did Officer DiPietro ask for your assistance in the
7 investigation by questioning the passengers?

8 A. Yes.

9 Q. Did you do so?

10 A. Yes, I did.

11:52:48

11 Q. Do you recall what you learned from your questioning the
12 passengers?

13 A. What was that, again?

14 Q. I was going to ask you: Do you recall what you learned
15 from the passengers when you were questioning them at the
16 scene, presumably in Spanish?

11:53:00

17 A. Yes.

18 Q. Tell us what you learned.

19 A. That they were headed to work.

20 Q. And I want to be really clear here. When you say "to
21 work," to a specific place of work?

11:53:12

22 A. That's all I can recall, that they were headed to work.

23 Q. Okay.

24 A. I recall Melendres having a B-1/B-2 visa.

25 Q. Okay.

11:53:29

1 A. Requested -- I requested his I-94.

2 Q. Right.

3 A. He did not have it on him, and I believe his pass -- the
4 passengers also had Mexican IDs on them as well.

5 Q. Did Mr. Ortega Melendres have a Mexican ID on him?

11:53:48

6 A. I don't recall if he had besides the B-1/B-2 visa.

7 Q. Do you recall specifically whether Mr. Ortega Melendres
8 told you he was going to work?

9 A. Yes.

10 Q. Did he indicate to you either way whether he knew any of
11 the other passengers in the vehicle?

11:54:05

12 A. I don't recall if he did or not.

13 Q. Did he indicate to you either way whether he knew the
14 driver?

15 A. I don't -- I don't remember.

11:54:19

16 Q. When you arrived on the scene, do you recall whether or not
17 you looked at the chassis to see if it was weighted down?

18 A. No.

19 Q. Did you conclude that that vehicle that was stopped by
20 Officer DiPietro was a load vehicle involved in human
21 smuggling?

11:54:39

22 A. No.

23 Q. Did you inform DiPietro that you had concluded it was not
24 involved in human smuggling?

25 A. Correct.

11:54:52

1 Q. Did you have -- do you recall any reason to believe that
2 the driver of that vehicle was involved in human smuggling?

3 A. No.

4 Q. I think earlier you testified that there was a -- an
5 apartment complex close to the parking lot and near the -- this 11:55:13
6 traffic stop?

7 A. Yes.

8 Q. Do you recall in the briefing whether you were given any
9 information about any suspected activity inside that apartment
10 complex? 11:55:29

11 A. I believe we had gotten some info reference a drop house in
12 that apartment complex.

13 Q. Not specific to this case, but typically, in your
14 experience, do the coyotes or the smugglers force their
15 smugglees, their human cargo, to do day labor in order to pay 11:55:47
16 off fees?

17 A. Yes.

18 Q. Typically, are those day laborers or those smugglees
19 victims of crime by the human smugglers?

20 A. Yes. 11:56:07

21 Q. What are some of the crimes that you have experienced of
22 human smugglers at the hands -- excuse me, human smugglees at
23 the hands of smugglers?

24 A. The common ones are extortion. They're told a certain
25 amount, and once they're here in the United States the amount 11:56:22

1 gets increased.

2 Q. Just so I'm clear, they'll be told, for example, It's going
3 to cost you \$1500, and we'll get you across the border into the
4 United States legally?

5 A. Correct. 11:56:37

6 Q. But in your experience, once they arrive they're extorted
7 for a higher fee?

8 A. Yes.

9 Q. Do the smugglees typically have that money on their
10 persons? 11:56:49

11 A. No.

12 Q. What do the smugglers make them do in order to get it?

13 A. Usually they have them contact relatives here in the States
14 and have them send the money to -- to the smugglers.

15 Q. Do they ever keep them inside drop houses for a longer
16 period of time than the smugglees had anticipated? 11:57:05

17 A. Yes.

18 Q. Do they ever make them go to work to earn income to pay the
19 extortion fees?

20 A. Yes. 11:57:19

21 Q. Is that why HSU investigates drop houses?

22 A. Yes.

23 Q. Do you recall during that operation whether any evidence
24 was developed to determine that there was in fact a drop house
25 in that apartment complex that was next to the parking lot out 11:57:36

1 of which those day laborers were operating?

2 A. I don't believe so.

3 MR. LIDDY: Just a moment, Your Honor.

4 THE COURT: Sure.

5 (Pause in proceedings.)

11:58:10

6 BY MR. LIDDY:

7 Q. Officer Rangel, have you ever seen a press release that was
8 published by the Maricopa County Sheriff's Office?

9 A. Yes.

10 Q. You read them regularly?

11:58:40

11 A. No, I don't.

12 Q. In your experience, is the information in those press
13 releases accurate with regard to HSU operations?

14 A. No.

15 Q. Is it accurate with regard to human smuggling -- excuse me,
16 with saturation patrols?

11:58:58

17 A. No.

18 Q. Have you ever made a law enforcement decision based upon
19 information published in an MCSO press release?

20 A. No.

11:59:17

21 MR. LIDDY: Your Honor, I have no further questions.

22 THE COURT: All right. Thank you.

23 I think we're going to break for lunch. Please be
24 back at 1:15.

25 (Lunch recess taken.)

11:59:40

1 THE COURT: Thank you. Please be seated.

2 Deputy Rangel, I'm just going to have a few questions
3 for you, if I might.

4 EXAMINATION

5 BY THE COURT:

13:17:06

6 Q. I think you testified, if I understood you, that you're
7 involved in a lot of saturation patrols.

8 A. Yes.

9 Q. Big saturation patrols and little saturation patrols?

10 A. Correct.

13:17:24

11 Q. You also indicated that one of the things that you do in
12 saturation patrols is target drop houses?

13 A. Yes.

14 Q. And by drop houses, I'm assuming you mean houses in which
15 human smugglers have collected large numbers of victims and are
16 collecting them together. Am I understanding you correctly?

13:17:35

17 A. Yes.

18 Q. When you're involved in a saturation patrol that is related
19 to a drop house or drop houses, how big is that patrol?

20 A. Are you talking about the -- all the units involved in the
21 saturation?

13:17:53

22 Q. Yes, I am, thank you.

23 A. We've had a couple units involved in saturation patrols.

24 Q. By "a couple units," how many number of deputies would that
25 actually be?

13:18:12

1 A. Usually in a unit there's either 15 to 20 deputies.

2 Q. Okay. So a couple units would be 30 to 40 deputies?

3 A. Yes.

4 Q. Okay. Is that as large as they tend to be when you're
5 going after a drop house?

13:18:23

6 A. Yeah, pretty much so, that's about it.

7 Q. So -- and then you've been involved in saturation patrols
8 that have been even larger?

9 A. Yes.

10 Q. And what is the purpose of those saturation patrols?

13:18:34

11 A. The larger ones?

12 Q. Yes.

13 A. That we don't have no information of drop houses?

14 Q. Correct.

15 A. I believe those are the ones where we've gotten information
16 from citizens complaining about certain crimes in the area.

13:18:42

17 Q. All right. And how do you proceed when you're in one of
18 those operations?

19 A. It's a zero tolerance. We go out and do patrol and look
20 for Title 8 -- Title 28 violations.

13:19:00

21 Q. Okay. When you say patrol, that means you're going to be
22 either on a motorcycle or in a traffic unit --

23 A. Correct.

24 Q. -- Crown Victoria or whatever you have at the Sheriff's
25 Office?

13:19:16

1 A. Yes.

2 Q. And you're going to be looking for traffic violations?

3 A. Yes.

4 Q. If you see a traffic violation, what are you going to do?

5 A. Do the traffic stop, a issue ticket for the traffic

13:19:21

6 violation.

7 Q. All right. Do you do anything more?

8 A. That's about it.

9 Q. What if you see somebody else in the car?

10 A. What I do is I'll ask everybody in the vehicle for

13:19:36

11 identification.

12 Q. Now, let me ask you, is that just a matter of habit? You

13 always ask everybody you pull over, every passenger in the

14 vehicle, for identification?

15 A. Yes. I've always done that because I've gotten warrants

13:19:53

16 for arrests on passengers.

17 Q. What do you do if a passenger doesn't have identification?

18 A. Ask for their name and date of birth.

19 Q. What do you do if the passenger doesn't have identification

20 and can't speak English? Then do you speak to them in Spanish?

13:20:09

21 A. Yes, I do.

22 Q. And what do you do when they give you their -- when they

23 give you their name and date of birth?

24 A. I run their name through our computer database.

25 Q. And what do you do if you determine that they don't show up

13:20:21

1 as an American citizen?

2 A. Actually, what happens is it will show no record --

3 Q. Okay.

4 A. -- in the computer.

5 Q. All right.

13:20:31

6 A. When that shows up in the computer, then I'll start asking
7 questions: Why don't you have any identification? Why don't
8 you have an ID, at least? If the person has no record in the
9 system here in the state of Arizona.

10 Q. Do you know what it means -- tell me what it means if a
11 person has no record in the system.

13:20:44

12 Do you know what records the system can access?

13 A. The DMV records, their driver license history, and if they
14 have any warrants.

15 Q. Okay. So it'll have if they have outstanding warrants?

13:21:03

16 A. Correct.

17 Q. It'll have if they have an Arizona driver's license?

18 A. Or an ID.

19 Q. Or an ID.

20 A. Yes.

13:21:12

21 Q. Issued by the Department of Motor Vehicles?

22 A. Yes.

23 Q. Will it have record of any other ID?

24 A. No.

25 Q. And will it have -- what else did you say? -- their traffic

13:21:18

1 history?

2 A. Yes.

3 Q. Is that all that will come up on your screen?

4 A. Yes, that's all.

5 Q. So if you have no records, you have a passenger, you will
6 then do what? 13:21:30

7 A. I'll ask them if they have any other form of ID, anything
8 with a picture on it that can tell me your name.

9 Q. And if they don't?

10 A. Then I don't do anything about it 'cause they're a
11 passenger. 13:21:47

12 Q. Okay. You don't arrest them?

13 A. No.

14 Q. You don't turn them over to ICE?

15 A. No. 13:21:57

16 Q. I will tell you that during your examination I looked
17 through a number of the records. We've -- we've been given
18 some records. They've been admitted into evidence, that
19 purport, at least, to list arresting officers in a particular
20 encounter. 13:22:13

21 And just during your cross -- during your examination
22 I was looking through and found several where the records say
23 you were the arresting officer. You arrested the driver for a
24 traffic infraction. Then it says you arrested the passenger
25 for 287(g) violation, and it listed the probable cause for your 13:22:29

1 arrest as the person was a passenger.

2 Now, if I understood what you've just told me, you
3 wouldn't do that.

4 A. Yes. But we're speaking about saturation patrols, crime
5 suppression details. 13:22:45

6 Q. Okay.

7 A. That's when I would do that.

8 Q. Okay. You would operate differently --

9 A. Yes.

10 Q. -- in a crime suppression patrol? 13:22:52

11 A. Yes, because like I said, it's zero tolerance.

12 Q. All right. So in a crime -- tell me what you would do
13 differently in a crime suppression patrol that you -- that is
14 different than what you would normally do.

15 A. What we just talked about right now. 13:23:08

16 Q. Okay.

17 A. The passenger, I wouldn't arrest the passenger.

18 Q. But if it's in a crime suppression patrol you would arrest
19 the passenger?

20 A. Yes. 13:23:18

21 Q. Okay. And you'd arrest them on a 287(g) charge?

22 A. If I was 287(g).

23 Q. Right. And you were 287(g) certified for a while?

24 A. Yes.

25 Q. And did you know for sure when you arrested the passenger 13:23:27

1 whether in fact they were authorized or not authorized to be in
2 the country? Or did you just make the arrest?

3 A. I just made the arrest based on the information that I was
4 given by --

5 Q. I see.

13:23:41

6 A. -- the passenger.

7 Q. All right. Thank you.

8 You talked about your 287(g) training that you
9 actually had that was, I think you said five weeks.

10 A. Yes, correct.

13:23:52

11 Q. Do you remember everything that you were trained on during
12 that five weeks?

13 A. No, I don't.

14 Q. All right. Do you remember -- I think, and I think it may
15 have been Mr. Liddy when he asked you what the gist of your
16 racial profiling training was, you said -- you gave it in a
17 sentence. Do you remember how long they spent with you on the
18 topic of racial profiling?

13:24:01

19 A. I believe it was just a few hours, if I -- if I remember,
20 on that topic itself.

13:24:19

21 Q. Um-hum.

22 A. The rest of the -- the class was recognizing fraud
23 documents and the history of -- of the immigration laws.

24 Q. It was how to be an effective --

25 A. Correct.

13:24:33

1 Q. -- border enforcement officer -- or immigration --

2 A. Yes.

3 Q. -- officer?

4 When you -- well, let me ask a couple of other
5 questions that I forgot to ask earlier.

13:24:47

6 If in fact the target of a saturation patrol is a drop
7 house, then you're not going to be motorized -- well, you might
8 be motorized, but your focus is going to be the drop house,
9 right?

10 A. Yes.

13:25:00

11 Q. You're not on what I think you referred to as patrol?

12 A. Correct.

13 Q. When you are involved in the larger saturation patrol
14 operations in which you are on patrol, do you have any idea
15 whether the people who are with you have been 287(g) trained?
16 Do you know who among them is 287(g) trained and who isn't?

13:25:14

17 A. No, I don't.

18 Q. But since you were 287(g) trained, at least as long as
19 there was a certification, would you ever get special requests
20 to respond to a situation by other officers who weren't 287(g)
21 trained?

13:25:29

22 A. Back when I was 287(g)?

23 Q. Yes.

24 A. Yes.

25 Q. How often would that happen?

13:25:36

1 A. It's happened a couple of times, a few times. I mean, it
2 wasn't something like constantly --

3 Q. Okay. A couple of times during a patrol, or a couple a
4 times during the whole saturation patrols that you were
5 involved in?

13:25:52

6 A. Saturation patrols.

7 Q. Okay. We talked a little bit, or you testified a little
8 bit about the September 2007 incident in which you were
9 operating in Cave Creek and watching day laborers who were
10 operating out of a church parking lot?

13:26:17

11 A. Correct.

12 Q. What was your role during that operation?

13 A. My role was to be on patrol, look for, again, Title 28
14 violations in the immediate area. And whenever undercover
15 detective needed assistance, they would call me and other
16 287(g)s.

13:26:35

17 Q. All right. So was it your impression that the undercover
18 detective was watching the parking lot?

19 A. Correct.

20 Q. So they had eyes on the parking lot, and if they wanted you
21 to develop probable cause as to a particular car, they would
22 identify that car to you?

13:26:46

23 A. Correct.

24 Q. Do you re -- I -- well, I don't want to misstate your
25 testimony so I'm just going to ask you: How is it that you

13:27:00

1 became involved in Deputy DiPietro's stop?

2 A. DiPietro, when he did the traffic stop, he got on the
3 radio -- after doing the contact with the driver, he got on the
4 radio and asked dispatch that he was requesting a 287(g)
5 Spanish speaking deputy. 13:27:24

6 Q. All right. So it was your understanding that Deputy
7 DiPietro did the initial contact with the driver, he came back
8 to the car and he asked for a Spanish speaking 287(g)?

9 A. Well, at the time I was listening to the radio and it came
10 out a blind call, it's called a blind call they put out, any 13:27:37
11 287(g) deputy nearby to assist DiPietro.

12 Q. Okay. And that came from dispatch, not from DiPietro
13 directly?

14 A. Correct.

15 Q. And did dispatch say why DiPietro needed a 287(g)? 13:27:50

16 A. No, I don't believe so.

17 Q. Okay. This was an HSU operation, right?

18 A. Yes.

19 Q. The purpose of the operation wasn't to write traffic
20 tickets? 13:28:01

21 A. Correct.

22 Q. How long after you got that dispatch did it take you to
23 arrive at the scene?

24 A. I got there within a few minutes.

25 Q. Five? 13:28:13

1 A. Yeah, something.

2 Q. 'Cause you were in the general area.

3 A. Yes.

4 Q. All right. How long then -- well, do you recall how long
5 the driver stayed on the scene?

13:28:26

6 A. I would have to say approximately 30, 40 minutes.

7 Q. After you got on the scene.

8 A. Oh, after I got on the scene?

9 Q. Yeah. No, after you arrived, how long was the driver
10 there?

13:28:53

11 A. Oh. Yeah, I'd say about 30 minutes.

12 Q. So you think he was there 30 minutes after you were there?

13 A. Yes.

14 Q. You never spoke to him?

15 A. No, I did not.

13:29:03

16 Q. Okay. Now, you indicated that you had no reason to believe
17 that the driver was involved in human smuggling?

18 A. Correct.

19 Q. Can I ask you, in your training as an HSU officer, have you
20 ever looked at the human smuggling statute?

13:29:17

21 A. The state statute?

22 Q. Yes.

23 A. Yes.

24 Q. Have you ever been provided training on that statute?

25 A. No, I have not.

13:29:24

1 Q. But you have looked at it.

2 A. Yes.

3 Q. And you just sort looked at it on your own?

4 A. Yes.

5 Q. Okay. Let me ask you, if you observed a driver pull up in
6 a day laboring location and take on somebody who was there who
7 you had reason to believe was in the country illegally, would
8 that give you probable cause to believe that the driver had
9 violated the human smuggling -- the -- the human smuggling
10 statute?

13:29:30

13:29:53

11 A. No.

12 Q. Why not?

13 A. Because the vehicle that was used on DiPietro's stop was, I
14 believe, kind of like a construction vehicle, that it appeared
15 that the driver was going to work --

13:30:14

16 Q. Okay.

17 A. -- not that he was smuggling.

18 Q. But it was your understanding -- well, I don't know. Did
19 you have an understanding of why he was picking up those other
20 passengers?

13:30:23

21 A. I believe to work.

22 Q. All right. So you think that if somebody picked up
23 passengers and he was taking them to work for him and he had
24 reason to believe that they weren't in the country legally,
25 that still wouldn't constitute a violation of the Arizona human

13:30:39

1 smuggling statute?

2 A. No.

3 THE COURT: No? Thank you very much. I think those
4 are all my questions.

5 THE WITNESS: Thank you. 13:30:58

6 THE COURT: All right. Do you have any follow-up,
7 Mr. Liddy?

8 MR. LIDDY: Yes, Your Honor.

9 CROSS-EXAMINATION CONTINUED

10 BY MR. LIDDY: 13:31:11

11 Q. Officer Rangel, just some brief questions for
12 clarification.

13 Regarding your working on large saturation patrols,
14 that would be saturation patrols in excess of 40 officers being
15 involved in it, the HSU officers that are part of that large
16 saturation patrol working to solve crime related to load
17 vehicles during that saturation patrol? 13:31:23

18 A. Correct.

19 Q. And that would involve human smuggling?

20 A. Yes. 13:31:43

21 Q. And that would involve potential drop houses?

22 A. Yes.

23 Q. Or perhaps finding locations of drop houses?

24 A. Yes.

25 Q. Or perhaps picking up load vehicles that are fleeing -- 13:31:54

1 attempting to flee the saturation patrol area?

2 A. Yes.

3 MS. GALLAGHER: Objection, Your Honor, this is
4 leading.

5 THE COURT: Sustained. 13:32:06

6 MS. GALLAGHER: Move to strike the testimony.

7 THE COURT: I'm going to allow -- I will strike the
8 last answer. As to your unobjected to answers, they're going
9 to stand.

10 BY MR. LIDDY: 13:32:16

11 Q. Officer Rangel, in your experience working in large
12 saturation patrols, have you ever encountered load vehicles
13 involved in human smuggling attempting to flee the area of a
14 large saturation patrol?

15 A. I don't recall ever seeing a vehicle -- I mean pulling over 13:32:45
16 a vehicle of an area that we're patrolling during a saturation
17 patrol, but we have done vehicles during a saturation patrol
18 that are leaving the county that are involved in human
19 smuggling.

20 Q. They could have moved outside the area of the saturation 13:32:58
21 patrol? Is that your testimony?

22 A. Perhaps, but not -- not that I knew specifically that.
23 They came out of that area.

24 Q. Thank you.

25 If you execute a traffic stop during a saturation 13:33:18

1 patrol after finding probable cause for a Title 28 violation
2 and you observe evidence of criminal activity not in any way
3 related to Title 28, would you investigate that potential
4 criminal activity?

5 A. Of course.

13:33:43

6 MR. LIDDY: I have no further questions.

7 THE COURT: Redirect?

8 MS. GALLAGHER: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. GALLAGHER:

13:34:06

11 Q. 287(g) gave you the authority to detain individuals to
12 determine alienage, is that correct?

13 A. Yes.

14 Q. Were there -- and there were circumstances other than human
15 smuggling for which you used your 287(g) authority, is that
16 correct?

13:34:25

17 A. As to what? I don't understand.

18 Q. Was there any circumstance in which you used your 287(g)
19 authority, but in which you did not suspect human smuggling?

20 A. Correct.

13:34:37

21 Q. Correct, there were those situations?

22 A. Yes.

23 Q. And you're no longer 287(g) certified, is that correct?

24 A. I'm -- no, I'm not.

25 Q. You testified earlier today about a number of factors that

13:34:45

1 you use to establish reasonable suspicion of a human smuggling
2 load vehicle?

3 A. Yes.

4 Q. And you still use those factors today?

5 A. Yes.

13:34:57

6 Q. Has every vehicle that you've ever suspected of human
7 smuggling had dark tint on the windows?

8 A. Yes.

9 Q. You've never stopped a vehicle with suspicion of human
10 smuggling that did not have dark tint on the windows?

13:35:11

11 A. That did not?

12 Q. Yes.

13 A. No.

14 MS. GALLAGHER: Your Honor, I'd like to show on the
15 screens Exhibit 180, which has been admitted into evidence.

13:35:23

16 BY MS. GALLAGHER:

17 Q. Deputy Rangel, I can represent to you that your counsel has
18 identified this document as relating to a saturation patrol
19 that occurred on November 16th to 18th, 2009.

20 You participated in that patrol?

13:35:52

21 A. Yes.

22 Q. And you see on this document, starting with line number 6,
23 the arresting deputy, Rangel. That's yourself?

24 A. Yes.

25 Q. And continuing down actually through the rest of the page

13:36:10

1 each -- each entry there is Rangel. That's you?

2 A. Yeah.

3 Q. And each one of the traffic stops was made for a probable
4 cause of speeding, is that correct?

5 A. Correct.

13:36:24

6 Q. And the first two stops -- or the first two individuals
7 listed there on 6 and 7, it says Turned over to LEAR. That's
8 ICE, that's correct?

9 A. Yes.

10 Q. We go to the next page. On 15 through 18, once again it
11 says Rangel. That's you?

13:36:38

12 A. Yes.

13 Q. Once again the probable cause is speeding --

14 A. Correct.

15 Q. -- for each one of those?

13:36:55

16 A. Yes.

17 Q. None of the stops you made that day were for suspicion of
18 human smuggling, were they?

19 A. No.

20 Q. None of the arrests were made under human smuggling state
21 law?

13:37:11

22 A. No.

23 Q. Now that you no longer have 287(g) authority, if you
24 contact an individual that you suspect is an illegal immigrant
25 but for which you do not have probable cause of a state crime,

13:37:28

1 you would turn them over to ICE, is that correct?

2 A. Yes.

3 Q. And that individual would be taken into MCSO custody
4 initially?

5 A. Yes. 13:37:40

6 Q. While waiting to be transferred to ICE custody?

7 A. Correct.

8 Q. And that individual would be detained by the MCSO until the
9 MCSO re -- excuse me, receives a response from ICE as to
10 whether ICE wants the individual or wants them to be released? 13:37:54

11 A. Correct.

12 Q. And just to be clear, this would be an individual that was
13 being detained for no state charges, correct?

14 A. Correct.

15 MS. GALLAGHER: No further questions, Your Honor. 13:38:07

16 THE COURT: Thank you, Deputy Rangel. You're through.

17 THE WITNESS: Thank you.

18 THE COURT: You may step down.

19 Next witness.

20 MR. SEGURA: Plaintiffs call Diona Solis. 13:38:20

21 THE CLERK: Can you please state and spell your name
22 for the record.

23 MS. SOLIS: Diona Solis, D-i-o-n-a, S-o-l-i-s.

24 THE COURT: Thank you. Please raise your right hand.

25 (Diona Solis was duly sworn as a witness.) 13:39:16

1 THE CLERK: Thank you. Please take our witness stand.

2 MR. SEGURA: May I proceed, Your Honor?

3 THE COURT: Please.

4 DIONA SOLIS,

5 called as a witness herein, having been duly sworn, was

13:39:48

6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SEGURA:

9 Q. Good afternoon, Ms. Solis.

10 A. Good afternoon.

13:39:53

11 Q. Ms. Solis, where do you live?

12 A. I currently live in Pompano Beach, Florida.

13 Q. And how long have you lived there for?

14 A. About two years.

15 Q. And where did you live before that?

13:40:01

16 A. Arizona.

17 Q. In what part of Arizona?

18 A. I lived in Laveen, which is in Maricopa County.

19 Q. Okay. And how long have you lived in Maricopa County?

20 A. I lived in Maricopa County for about 25 years. I lived in

13:40:12

21 Pinal County for about two of those years.

22 Q. Okay. And do you have any children?

23 A. I have two boys. Caleb's 11, he's in the Boy Scouts, and

24 Giovanni just turned one.

25 Q. And why did you move to Florida?

13:40:26

1 A. My sister was in medical school. She recently finished and
2 is doing her residency there, and she asked us if we wanted to
3 come out there for a while, so we decided to move to Florida.

4 Q. And before this trip, when was the last time that you were
5 in Phoenix? 13:40:42

6 A. In March 2012.

7 Q. Okay. And how often -- do you come back to Phoenix often?

8 A. I try to come back three to four times a year.

9 Q. Okay. Have you ever been stopped by a Maricopa County
10 sheriff deputy? 13:40:56

11 A. Yes, I have.

12 Q. And when was that?

13 A. That was in March of 2009.

14 Q. And where were you traveling from when you were stopped?

15 A. We were traveling back from the Grand Canyon. We were on a
16 Boy Scout troop trip. 13:41:05

17 Q. And were there others in the vehicle with you?

18 A. Yes. It was myself in the passenger seat, Jaime Flores
19 Sanchez was driving, my son Caleb was in the car, his son was
20 in the car, and two other Boy Scouts. 13:41:21

21 Q. And what ethnicity is Jaime?

22 A. He's Hispanic.

23 Q. Okay. And his son?

24 A. Hispanic as well.

25 Q. And how about your son? 13:41:30

1 A. Hispanic.

2 Q. Okay. And where did this stop occur?

3 A. It occurred on the U.S. 60, Grand Avenue.

4 Q. Tell me what happened when you were stopped.

5 A. We were traveling in the right-hand lane and we saw the
6 patrol lights come on behind us, so we pulled over.

13:41:46

7 Q. Okay. And then what happened?

8 A. The officer approached the vehicle and asked Jaime for his
9 driver's license, registration, and insurance card. Jaime's
10 English isn't very good, so I was translating for him. And at
11 that time the officer questioned if he was a citizen.

13:42:07

12 Q. And did Jaime say anything?

13 A. He said that he was a resident. And then the
14 officer turned to me and said: You? And you? And I told him
15 that I was a citizen.

13:42:26

16 Q. Okay. And what happened after that?

17 A. After that he started questioning where we were coming
18 from, what we were doing. And I explained that we were coming
19 back from a camping trip with the Boy Scouts from the Grand
20 Canyon.

13:42:40

21 Q. Okay. And what happened after that?

22 A. The officer acted like he didn't believe what we were
23 saying and he continued to question us about where we were
24 coming from and what we were doing.

25 And then he started asking the boys for their

13:42:53

1 identifications as well, if they had IDs. And which I said:
2 They're minors. They don't have IDs.

3 Q. How old were the boys?

4 A. The boys ranged in age from, like, eight to eleven.

5 Q. And what was your reaction to the officer asking the boys
6 for IDs? 13:43:11

7 A. I thought it was unreasonable, because they're not of age
8 to have IDs. They hadn't done anything wrong.

9 Q. Did the deputy tell you why he stopped the vehicle?

10 A. He did only after he continually questioned us. He said
11 that we were going 75 in a 65. 13:43:25

12 Q. And did Jaime say anything in response?

13 A. He said that the last sign that he saw, he thought it said
14 75. And at that point the officer said, Don't you have eyes?
15 Can't you see? 13:43:51

16 Q. Do you have an understanding of how fast the vehicle was
17 driving when it was stopped?

18 A. I wasn't looking at the speedometer, but we were traveling
19 in the right-hand lane. And we had children in the vehicle so
20 we were traveling with care, and several cars had passed us on
21 the left-hand side. 13:44:02

22 Q. Do you think it was fair that you were pulled over?

23 A. No, because all the other cars that had passed us that were
24 going faster than we were weren't pulled over.

25 Q. Okay. So what happened after the officer explained why he 13:44:17

1 had pulled the car over?

2 A. After that, he had taken the IDs and gone back to his
3 patrol car to run the checks, and then he came back and issued
4 the citation.

5 Q. Do you think the stop lasted a normal amount of time? 13:44:36

6 A. No, it would have been sufficient just to, you know, pull
7 us over, let us know what we had done wrong. But he
8 continually questioned us about where we were coming from, like
9 he didn't believe us.

10 Q. And how did the stop make you feel? 13:44:53

11 A. It made me feel uncomfortable like he was treating us
12 different upon hearing me translate for Jaime speaking Spanish.
13 And it bothered our boys as well. They felt -- they felt
14 scared. They were, like, What -- what did we do wrong?

15 Q. What -- what is it that made you feel as though you were 13:45:12
16 treated differently?

17 A. The way he -- his tone. The way he spoke to us. He was
18 rude to us. He was mocking Jaime.

19 MR. SEGURA: I have no further questions, Your Honor.

20 THE COURT: Cross-examination? 13:45:31

21 MR. LIDDY: Your Honor, we have no questions for this
22 witness.

23 THE COURT: Ma'am, thank you. You may step down.

24 Next witness.

25 MS. RAMIREZ: Plaintiffs call Lorena Escamilla. 13:45:44

1 THE CLERK: Right up here, ma'am.

2 Can you please state and spell your full name.

3 MS. ESCAMILLA: Lorena Escamilla. L-o-r-e-n-a; middle
4 initial S; last name Escamilla, E-s-c-a-m-i-l-l-a.

5 THE CLERK: Thank you. Please raise your right hand. 13:46:37

6 (Laura S. Escamilla was duly sworn as a witness.)

7 THE CLERK: Thank you. Please take our witness stand.

8 LORENA S. ESCAMILLA,

9 called as a witness herein, having been duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. RAMIREZ:

13 Q. Good afternoon, Ms. Escamilla.

14 A. Good afternoon.

15 Q. How old are you? 13:47:09

16 A. I'm 33.

17 Q. And where do you live?

18 A. In Laveen, Arizona.

19 Q. How long have you lived in Laveen?

20 A. Almost all my life. 13:47:17

21 Q. What is your occupation?

22 A. A customer service represent for QBE Insurance.

23 Q. And what is your educational background?

24 A. I'm currently working on my degree in the bachelor's of
25 psychology and human resources. 13:47:30

1 Q. Where do you attend school?

2 A. University of Phoenix.

3 Q. When will you be graduating?

4 A. In the next six to nine months.

5 Q. Do you have a family?

13:47:40

6 A. I do.

7 Q. Are you married?

8 A. I'm married.

9 Q. How many children?

10 A. I have three boys.

13:47:45

11 Q. What is your ethnicity?

12 A. I'm Hispanic.

13 Q. I'd like to turn your attention now to the incident that

14 occurred on September 2, 2009. Were you stopped by the

15 Maricopa County Sheriff's Office on September 2, 2009?

13:47:59

16 A. Yes.

17 Q. Where did your trip begin?

18 A. At the University of Phoenix.

19 Q. What was your designation?

20 A. I was going home.

13:48:09

21 Q. What time were you heading home?

22 A. It was close to 10:00 p.m.

23 Q. What was the weather like at this time?

24 A. It was really hot, so I rolled my windows down.

25 Q. I'm sorry, I couldn't hear that last part.

13:48:22

1 A. Oh, I'm sorry. It was really hot, I remember, 'cause I
2 rolled my windows down.

3 Q. Were you alone?

4 A. Yes.

5 Q. What kind of car were you driving? 13:48:29

6 A. A Mitsubishi Galant 2002.

7 Q. Where were you when you first noticed the MCSO vehicle that
8 pulled you over?

9 A. I was about 300 yards from my house and I saw him. He was
10 in front of me heading eastbound, I was heading southbound. 13:48:48

11 Q. And did the MCSO vehicle pass you?

12 A. I -- I thought he was, but right when we met he looked at
13 me and made a U-turn, followed me.

14 Q. And what happened after he made the U-turn?

15 A. He followed me for about 200 -- I'm sorry, for about 20
16 yards, it seemed like. 13:49:05

17 Q. And did he activate his emergency lights?

18 A. He did.

19 Q. How far away from your home were you when he activated his
20 emergency lights? 13:49:22

21 A. I was a house away from my house.

22 Q. Where did you pull over?

23 A. In my carport.

24 Q. Had you been driving the speed limit?

25 A. Yes. 13:49:28

1 Q. Had you obeyed all traffic signs?

2 A. Yes.

3 Q. Was your car operating correctly?

4 A. Yes.

5 Q. What happened when the officer approached you?

13:49:35

6 A. He asked me for my license, my registration, and my
7 insurance.

8 Q. Did you provide him with those items that he asked for?

9 A. Yes, all but my insurance.

10 Q. Why didn't you provide him with your insurance?

13:49:48

11 A. I was changing insurance companies and had just done the
12 transaction, so I didn't have the paper yet.

13 Q. Did you say anything to him?

14 A. Yes.

15 Q. What did you say to him?

13:50:02

16 A. I asked him what I was being pulled over for.

17 Q. And how did he respond to you?

18 A. There was no response. He just turned around and walked
19 back to his patrol unit.

20 Q. Did he return your documents?

13:50:12

21 A. When he returned, yes.

22 Q. Did you say anything to him when he returned your
23 documents?

24 A. I did. I asked him what he was pulling me over for.

25 Q. And what did he respond to that?

13:50:24

1 A. He said that he had reasonable belief that I had drugs,
2 alcohol, and weapons in my car.

3 Q. And what did you tell him?

4 A. I said, No, I'm pregnant. I'm on my way home from school.

5 Q. Did you notice the officer's name? 13:50:40

6 A. I did.

7 Q. And what was his name?

8 A. F. Gamboa.

9 Q. How did you notice his name?

10 A. It's on his badge, on his uniform. 13:50:48

11 Q. How tall was Officer Gamboa?

12 A. About five and a half feet.

13 Q. So when you say five and a half feet, do you mean five feet
14 half inch, or what do you mean by five and a half?

15 A. Almost six feet. He looked a lot taller than me. 13:51:06

16 Q. Did you notice anything else about his physical appearance?

17 A. Yes, he -- he was bulgy, big biceps man with a lot of
18 tattoos on his biceps.

19 Q. What happened after you told him you were pregnant and
20 didn't have any drugs in your car? 13:51:25

21 A. He said, It doesn't matter. People still do drugs when
22 they're pregnant. I said, Well, not me.

23 Q. Did he request anything further from you?

24 A. He demanded to search my vehicle.

25 Q. And what did you tell him? 13:51:38

1 A. I said absolutely not. I do not give you consent. You
2 have no reason to.

3 Q. Did you feel threatened by his behavior toward you?

4 A. Yes, I did. He was being very unprofessional, unethical,
5 and he didn't tell me why he was pulling me over. 13:51:54

6 Q. Did you do anything to act on your fears?

7 A. I did. I reached -- I had my cellphone, so I was prepping
8 to dial for law enforcement to come.

9 Q. And were you able to dial for law enforcement to come?

10 A. No. He reached into my car and took my cellphone from me. 13:52:12

11 Q. What did you do when he reached in to take your cellphone
12 from you?

13 A. I feared for my safety, so I honked -- I put my hands on my
14 horn like this and I just held it down until my neighbors'
15 lights turned on and my husband came out. 13:52:30

16 Q. So your husband came outside of the house?

17 A. Yes, he opened the garage door and saw.

18 Q. And were there any other officers at the scene?

19 A. Yes, there was.

20 Q. Can you tell us who -- what other officers were there, how
21 many other officers were there? 13:52:42

22 A. There -- at that moment, it was the Sheriff Gamboa, and to
23 my right side was Cherches, Posse Member Cherches.

24 Q. And how did you know his name was Posse Member Cherches?

25 A. He and I had had a civil conversation prior to that, and he 13:53:04

1 gave me his name and I saw it also on his badge.

2 Q. Did Officer Gamboa ask you to do any tests? Did he ask you
3 to do anything while you were --

4 A. Yes. He demanded me to sit down on my hot hood of my car.

5 Q. Let's step back for a second.

13:53:25

6 Were you in your car or did you exit your car?

7 A. Well, my husband -- when my husband came out I then, you
8 know, stepped out of the vehicle and I was, you know, telling

9 him what happened, and, you know, I was starting to feel a

10 little scared and I wanted him to call someone. So we -- I was

13:53:39

11 standing in the front part of my car.

12 Q. When you were outside of your car did Officer Gamboa ask
13 you to -- to do any type of test?

14 A. Yes. He asked me to put my hands out, put my head back,
15 close my eyes, and allow Officer Cherches to run a little light
16 by my eyes.

13:53:55

17 Q. And did you pass that test?

18 A. Yes, of course.

19 Q. Did he ask you to do anything else?

20 A. He demanded I sit on my car.

13:54:08

21 Q. And did you sit on your car?

22 A. No. It was just really hot.

23 Q. So what happened after you did not sit on your car as he
24 had requested?

25 A. I told him, you know, it's really hot, and my hips hurt,

13:54:23

1 and I'm pregnant I've been sitting all day. I need to get my
2 blood flowing. And he said, Well, I can be an asshole if you
3 want to be a bitch.

4 Q. Did he do anything else after he said that to you?

5 A. Yes, he -- he attacked me. He grabbed my hands and he put
6 them behind me as if he was gonna arrest me, and then he moved
7 me from where I was.

13:54:42

8 Q. Can you describe how he moved you from where you were?

9 A. He dragged me backwards towards the side view of my car,
10 and he slammed me back and forth with my stomach on my car, and
11 he -- that's what he did.

13:55:06

12 Q. So when he said he -- he slammed you back and forth, are
13 you saying that he slammed you with your belly first?

14 A. He --

15 MR. LIDDY: Objection, Your Honor. The question calls
16 for evidence about use of force. There's no excessive force
17 charged in this litigation. It's irrelevant.

13:55:29

18 THE COURT: Overruled.

19 THE WITNESS: I'm sorry.

20 BY MS. RAMIREZ:

13:55:38

21 Q. Go ahead and answer the question.

22 A. I thought he was going to arrest me, is what I thought, and
23 instead he slammed me.

24 Q. Okay. And my question is: Which part of your body hit the
25 car first?

13:55:50

1 A. My pregnant belly.

2 Q. And how many times did he slam you against the car?

3 A. Three to four times.

4 Q. Did it hurt?

5 A. A lot.

13:55:58

6 Q. Can you describe where it hurt?

7 A. My entire abdomen on the top, on the bottom, my hips, my --

8 Q. Did you say anything?

9 A. Yes, I said: Stop. Stop. What are you doing? I told you

10 I was pregnant.

13:56:12

11 Q. What was his response?

12 A. There was no response.

13 Q. What part of your body was he holding onto as he slammed
14 you into the car?

15 A. My wrists.

13:56:24

16 Q. And you mentioned that he slammed you into the side of the
17 car?

18 A. Where the rearview mirror is.

19 Q. Are you talking about the rearview mirror or are you
20 talking about --

13:56:33

21 A. I'm sorry, the side -- sorry, the side-view mirror, you
22 know, where the little words say, you know, things are larger
23 than they appear, side view on the outside of the car.

24 Q. And then where did he drag you to?

25 A. He dragged me backwards to his patrol unit.

13:56:46

1 Q. And what happened when he got you to his patrol unit?

2 A. He -- he remained keeping hold of my hand, and then he
3 opened the unit, the car door, and threw me in the back seat of
4 his car, yelling at me.

5 Q. And when you say he threw you in the back seat of his car, 13:57:07
6 how -- with how much force did he throw you in the back seat?

7 A. I hit the center where the little square is that's, like,
8 up, and I bounced in there and I hit the edge of that and then
9 I fell on the -- on the actual seat.

10 Q. Now, you -- you mention that you bounced. Is there a 13:57:26
11 cushion in the back seat of a patrol car?

12 A. No.

13 Q. And where did he have his hands as he shoved you into the
14 patrol car, on your body?

15 A. On my wrists still. 13:57:41

16 Q. How far into your pregnancy were you?

17 A. Five months.

18 Q. Had you told Officer Gamboa that you were pregnant before
19 he slammed you into the car?

20 A. Several times. 13:57:51

21 Q. Can you describe the size of your belly at that time?

22 A. May I stand up?

23 Q. Yes, you may.

24 A. I was to about here, so about eight inches.

25 Q. How were you feeling at this time? 13:58:11

1 A. I felt myself pass out a little bit. I had a lot of
2 shortness of breath, and I had felt my baby flutter and then
3 stop.

4 Q. What did Officer Gamboa do after he threw you into the
5 patrol car? 13:58:30

6 A. He yelled at me and told me: You did this to yourself.
7 You did this to yourself.

8 Q. Did he get back into the patrol car with you?

9 A. No, he walked back to my vehicle.

10 Q. How long were you seated in the back of the patrol car? 13:58:41

11 A. Probably about 30 minutes.

12 Q. And were the windows up or down in the patrol car?

13 A. My door was open about four inches, maybe.

14 Q. Your door or --

15 A. My window, my side door was about four inches. 13:58:58

16 Q. Was it hot in the patrol car?

17 A. Yes.

18 Q. Were you uncomfortable?

19 A. Yes.

20 Q. Did anyone come to assist you? 13:59:07

21 A. Yes, Posse Member Cherches came.

22 Q. And what did Posse Member Cherches do?

23 A. He offered me medical attention.

24 Q. And did you accept the medical attention?

25 A. Yes. 13:59:24

1 Q. And who came to attend to you?

2 A. The fire department, Engine 58.

3 Q. What did the fire department do to you?

4 A. They took my vitals, iron test, they checked my belly, make
5 sure I wasn't, you know, bleeding. And had me try to control
6 my breathing again. 13:59:39

7 Q. Did they offer to take you to the hospital?

8 A. They did.

9 Q. Did you accept?

10 A. I was extremely tired. I did not go. 13:59:50

11 Q. Did they offer you any medication?

12 A. No.

13 Q. How long were you attended to by the fire department?

14 A. Twenty to thirty minutes.

15 Q. What did you observe happening to your car during this
16 time? 14:00:02

17 A. I observed the Phoenix Police Department arrive with the
18 K-9 unit, and he made a couple of turns around my vehicle and
19 then he allowed the K-9 to go in the front seat of -- through
20 the front, the entire front part of the car. 14:00:24

21 Q. Had you provided your consent for them to search your car?

22 A. Absolutely not.

23 Q. Did they find any evidence of drugs?

24 A. No.

25 Q. Weapons? 14:00:34

1 A. No.

2 Q. Did you receive a citation from Officer Gamboa?

3 A. Yes.

4 Q. What was the citation for?

5 A. Failure to provide ID and no insurance.

14:00:42

6 Q. Had you provide -- provided identification?

7 A. Several times.

8 Q. Had you provided proof of insurance?

9 A. No, I didn't, until the following day.

10 Q. How long were you detained by Officer Gamboa?

14:00:56

11 A. Over an hour and a half.

12 MS. RAMIREZ: I have what is marked as Plaintiffs'
13 Exhibit 63. It's a CAD incident report.

14 Your Honor, may I approach the witness?

15 THE COURT: You may.

14:01:11

16 BY MS. RAMIREZ:

17 Q. This is a CAD incident history for MA 09163575. This is a
18 document that's generated by MCSO computer dispatch system.

19 Do you see the second line in the Comment section
20 about halfway down the page where it says: At 391LKK?

14:01:41

21 A. Yes.

22 Q. Is that -- is that the license plate number of the vehicle
23 you were driving that evening?

24 A. Yes, I see that. That is my license plate.

25 Q. And a couple of lines down from there it says: Saucedo,

14:01:53

1 Lorena S. Is that your name?

2 A. Yes.

3 Q. Next to that it says 09261978. Is that your date of birth?

4 A. Yes.

5 Q. And can you go back to the line that has your car's license
6 plate number, and can you tell me the name that appears next to
7 that license plate number?

14:02:10

8 A. Number S1924 Gamboa III, Frank.

9 MS. RAMIREZ: Your Honor, I move into evidence
10 Plaintiffs' Exhibit 63.

14:02:30

11 MR. LIDDY: Without objection, Your Honor.

12 THE COURT: Exhibit 63 is admitted.

13 (Exhibit No. 63 is admitted into evidence.)

14 BY MS. RAMIREZ:

15 Q. How was your health with regard to your baby following the
16 incident?

14:02:36

17 A. I was traumatized, sore, and I couldn't eat for a few days,
18 like three or four days. I didn't really feel any activity of
19 my baby. And that's all I could just think of the entire
20 incident for weeks.

14:02:54

21 Q. Was your baby okay?

22 A. I did follow-up with my doctor and he seemed -- he said
23 everything seemed okay at the time.

24 Q. Did you have any bruising?

25 A. I did.

14:03:03

1 Q. Can you tell us where you had bruising?

2 A. Yes. I had bruising on my wrist right here and on my butt
3 bone.

4 Q. And can you tell us how the bruising looked on your wrist?

5 A. I had fingerprint marks still on me. 14:03:17

6 Q. Did you take any action regarding Officer Gamboa's behavior
7 toward you?

8 A. Yes, I did.

9 Q. What did you do?

10 A. I made several attempts to call the non-emergency
11 number that they have to make an official complaint. 14:03:27

12 Q. And were you able to make an official complaint with MCSO?

13 A. No.

14 Q. Why is that?

15 A. No one ever took me seriously or called me back, or they
16 told me to call back, depending on which -- I tried, like,
17 three or four times to make an official complaint, and I
18 finally spoke with Megan, who's a dispatcher, and she referred
19 me to another supervisor. 14:03:42

20 Q. And did you speak to that supervisor? 14:04:04

21 A. I was able to leave a message, but he never returned my
22 call.

23 Q. Were you able to successfully lodge a complaint against the
24 Maricopa County sheriff's officer?

25 A. Yes, I did, finally. 14:04:19

1 Q. And where did you lodge that complaint?

2 A. Phoenix Police Department. I filed assault charges.

3 Q. And when did you file that complaint?

4 A. January of this year.

5 Q. And why did you file a complaint with the Phoenix Police
6 Department?

14:04:28

7 A. They were the only credible law enforcement that were
8 taking me seriously and would take the crime that I felt was
9 committed against me.

10 Q. Can you tell us what happened to the citation that you
11 received from Officer Gamboa?

14:04:38

12 A. It was dismissed.

13 Q. Why was that?

14 A. He crossed out "failure to provide ID" and he initialed it.
15 I asked the courthouse -- I called the courthouse to see what
16 date I had to go --

14:04:52

17 MR. LIDDY: Objection, Your Honor, hearsay.

18 THE COURT: I haven't heard any hearsay yet.

19 You can sit down, Mr. Liddy.

20 MR. LIDDY: Your Honor, I think she was saying -- she
21 was about to testify as to what another person said, an out of
22 court --

14:05:05

23 THE COURT: She may have been, but she hasn't done
24 that yet.

25 THE WITNESS: The courthouse faxed me the document to

14:05:15

1 show me where he crossed out his name, that I didn't have to go
2 to court.

3 BY MS. RAMIREZ:

4 Q. And did you have any other further charges on that
5 citation?

14:05:24

6 A. No, because I faxed my proof of insurance that same day to
7 them.

8 Q. After your incident with Officer Gamboa are you fearful of
9 being pulled over by the Maricopa County Sheriff's Office?

10 A. Yes.

14:05:37

11 Q. And have you taken any actions, acted upon that fear?

12 A. Yes, I've -- I've changed my route that I normally take on
13 my school nights from the shortcut to a well-lit area, to make
14 sure I'm in a public area in case anything happens. And I
15 carry my cellphone, and if I see a patrol unit, MCSO, I just
16 911 it in case I have to press -- press it, in case it's Gamboa
17 or someone else.

14:05:55

18 MS. RAMIREZ: I have no further questions. Thank you.

19 THE COURT: Mr. Liddy, cross-examination?

20 CROSS-EXAMINATION

14:06:09

21 BY MR. LIDDY:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. To address you, is it -- is your name Escamilla or Saucedo?

25 A. I'm married, so it's Escamilla now.

14:06:30

1 Q. Escamilla.

2 A. Yes, it used to be Saucedo.

3 Q. Thank you.

4 Ms. Escamilla, I believe you testified that you filed
5 a complaint arising out of this incident with the Phoenix
6 Police Department, is that correct?

14:06:42

7 A. Yes.

8 Q. And when did you file that complaint?

9 A. I filed it this year in January.

10 Q. Is that approximately three years after the incident?

14:06:50

11 A. About, yes.

12 Q. Would you tell us why you waited three years to file the
13 complaint?

14 A. I hadn't moved from where the incident happened, and I felt
15 like he would retaliate against me. And I was traumatized, I
16 just had a baby, I needed time to heal.

14:07:04

17 Q. And was your child born without incident?

18 A. He's healthy.

19 Q. Thank you. That's good to hear.

20 I believe you testified that when the deputy passed
21 you, you saw him execute a U-turn?

14:07:21

22 A. Yeah, he looked me -- right at me.

23 Q. But he wasn't looking right at you when he executed the
24 U-turn --

25 A. Yes.

14:07:36

1 Q. -- was he?

2 A. Yes, he did.

3 Q. Did he execute the U-turn on the side of the street or
4 behind your vehicle?

5 A. I was heading -- we were, I want to say head-on, if you
6 will, so I'm heading southbound and he's heading northbound.
7 And there's a streetlight right next to me, and right at that
8 mark he -- we both had our windows rolled down and he flipped a
9 U-turn and followed me at that moment.

14:07:41

10 Q. Well, if he had flipped the U-turn -- and excuse me, I'm
11 just trying to understand this -- when he was directly next to
12 you, he would have collided with your vehicle, wouldn't he
13 have?

14:08:04

14 A. He's on his side of the street on his right side and I'm on
15 my right side of the street.

14:08:15

16 Q. So I guess my question is, did he pass --

17 A. No, he never passed me.

18 Q. Well, let me finish my question.

19 A. Oh, I'm sorry.

20 Q. Did he pass behind you and flip a U-turn and come in behind
21 you?

14:08:22

22 A. No.

23 Q. Well, please explain to me how he can execute a U-turn
24 without going behind you.

25 A. Well, he was eye to eye, even as you are to me, in his car,

14:08:31

1 and as soon as we made eye contact he made the U-turn on the
2 spot.

3 Q. Okay. At the end of his U-turn where was his vehicle in
4 relation to yours?

5 A. After his U-turn he was right behind me. 14:08:45

6 Q. Did there come a time during his execution of the U-turn
7 that he was behind you?

8 A. I'm sorry, I don't understand your question.

9 Q. Did there come a time during the execution of the U-turn
10 that he was behind you? 14:08:57

11 A. Well, after he made the U-turn he was behind me.

12 Q. So your testimony today is he did not start the U-turn
13 after he had already cleared your vehicle and was behind you?

14 A. He was right next to my car and made a U-turn. I don't
15 know how to explain that any different. 14:09:14

16 Q. Okay. I believe you testified that after he first spoke to
17 you and you inquired as to why you were pulled over, you got no
18 response and he went back to his vehicle, is that correct?

19 A. Correct.

20 Q. Were you able to see him in his vehicle? 14:09:32

21 A. Yeah, I was able to turn my head and see him.

22 Q. What was he doing while he was in the vehicle?

23 A. It looked like he was just sitting in his vehicle.

24 Q. Was he talking on the radio?

25 A. I couldn't tell from where I was. 14:09:45

1 Q. Could you see whether or not he had an onboard computer?

2 A. When I was in the back of the patrol unit I did see his
3 onboard computer.

4 Q. When you were watching him could you see him operating the
5 onboard computer before he came back to speak to you again?

14:09:57

6 A. No.

7 Q. I believe you testified that when you sat in the back of
8 the police cruiser there was no cushion in the seating, is that
9 correct?

10 A. That's correct.

14:10:15

11 Q. Do you recall what the seat was made of? Was it leather --

12 A. Hard plastic.

13 Q. Hard plastic?

14 A. Yes.

15 Q. Was there any foam rubber underneath the hard plastic and
16 above the frame of the vehicle?

14:10:22

17 A. No, not that I recall.

18 Q. Was the temperature of the hard plastic on the surface of
19 the chair cooler than the hood of your car where you did not
20 want to sit?

14:10:38

21 A. Yes, it was cooler.

22 Q. This incident occurred at night, is that correct?

23 A. Yes.

24 Q. Approximately 10:00 p.m.?

25 A. About. It was around that time, yeah.

14:11:04

1 Q. Did you take any photographs of the bruises on your wrist?

2 A. Unfortunately, not.

3 Q. Was the light on the back of your vehicle intended to
4 illuminate your license plate broken?

5 A. Not that I'm aware of. 14:11:46

6 Q. Did you ever contact the Civil Rights Division of the
7 Department of Justice?

8 A. The -- the civil -- I'm sorry.

9 Q. Are you aware -- are you aware that the Department of
10 Justice, United States Department of Justice, has a Civil
11 Rights Division? 14:12:13

12 A. Oh, yes.

13 Q. Did you contact them and complain about this incident?

14 A. I eventually did, yes.

15 Q. And when was that? 14:12:21

16 A. After I had the baby.

17 Q. And what's -- what is the day or the month of the birth of
18 your baby?

19 A. He was born January 23rd of 2010, so about six or seven
20 weeks after that. 14:12:35

21 Q. Thank you.

22 Did you write them a letter or did you call them?

23 A. I ended up speaking with someone over the phone.

24 Q. Did you file a notice of claim against Maricopa County for
25 an excessive force? 14:13:00

1 A. Well, I filed my complaint with the Phoenix Police
2 Department.

3 Q. And your complaint against the Phoenix Police Department,
4 do you have a paper record of that complaint?

5 A. I do have one. I just don't have it with me right now. 14:13:17

6 Q. Have you provided it to counsel?

7 A. I believe I showed her the little yellow booklet that they
8 give us.

9 MR. LIDDY: I have no further questions. Thank you.

10 THE COURT: Thank you, Mr. Liddy. 14:13:29

11 Redirect?

12 MS. RAMIREZ: No further questions, Your Honor.

13 THE COURT: Ms. Escamilla, you can step down. Thank
14 you.

15 THE WITNESS: Thank you. 14:13:38

16 THE COURT: Next witness.

17 MR. BYRNES: Your Honor, plaintiffs call Lieutenant
18 Joe Sousa.

19 THE CLERK: Right up here, sir.

20 Can you please state and spell your full name. 14:14:29

21 MR. SOUSA: Joseph Sousa. J-o-s-e-p-h; Sousa,
22 S-o-u-s-a.

23 THE CLERK: Thank you. Please raise your right hand.

24 (Joseph Sousa was duly sworn as a witness.)

25 THE CLERK: Thank you. Please take our witness stand. 14:14:54

1 JOSEPH SOUSA,
2 called as a witness herein, having been duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BYRNES:

14:15:22

6 Q. Good afternoon, Lieutenant Sousa.

7 A. Good afternoon, sir.

8 Q. Lieutenant Sousa, you've served under Sheriff Arpaio since
9 1997, isn't that right?

10 A. Yes, sir.

14:15:30

11 Q. And you have been -- strike that.

12 Starting in September of 2007 you were the unit
13 commander of the Human Smuggling Unit, correct?

14 A. That sounds right, sir.

15 Q. You're no longer the unit commander of the Human Smuggling
16 Unit, is that right?

14:15:44

17 A. No, sir.

18 Q. When did you stop being the unit commander?

19 A. I left the unit completely as of April 1st of this year,
20 sir.

14:15:57

21 Q. Were you the unit commander of the HSU when you left on
22 April 1st of this year?

23 A. That was my first day on my new assignment.

24 Q. During the entire time you were with the Human Smuggling
25 Unit were you the unit commander?

14:16:12

1 A. I was the unit commander for the first two or three years.
2 Then I became the division commander. They made human
3 smuggling a division.

4 Q. Did anyone succeed you as the unit commander of the HSU?

5 A. Yes, sir.

14:16:28

6 Q. And who is that?

7 A. Lieutenant Jackavinich (phonetic).

8 Q. Can you please spell the lieutenant's last name?

9 A. I'm not sure on spelling, sir. Sorry. I wouldn't pass
10 that spelling bee.

14:16:38

11 Q. That's okay. It's not a spelling test.

12 And what is your current role, Lieutenant?

13 A. I'm the executive officer for the SWAT division.

14 Q. Focusing on the HSU for a moment, the Human Smuggling
15 Unit's -- and let's just clarify nomenclature. When I say HSU,
16 you understand that it's Human Smuggling Unit, correct?

14:17:01

17 A. Yes, sir.

18 Q. The HSU's primary job is to enforce state immigration laws,
19 including the human smuggling law, isn't that right?

20 A. Primary job is to enforce the state human smuggling law,
21 sir.

14:17:14

22 Q. Another job of HSU is to investigate and arrest illegal
23 aliens, correct?

24 A. No, sir.

25 Q. I just want to make sure I understand your testimony. Your

14:17:28

1 testimony is that one job of HSU is not investigating and
2 arresting illegal aliens?

3 A. Our primary job is enforcing the state human smuggling law.
4 And our deputy sheriffs at the time back in 2007, 2008, early
5 2009, were 287(g), and that was a secondary, if they came
6 across contact with folks in the course of our duties as deputy
7 sheriffs, then they could use that training. But it's not a
8 primary function.

14:17:46

9 MR. BYRNES: Your Honor, the response was
10 nonresponsive. Move to strike.

14:18:07

11 THE COURT: Overruled.

12 BY MR. BYRNES:

13 Q. Let me ask the question again, Lieutenant Sousa. One job
14 of the HSU is investigating and arresting illegal aliens, isn't
15 that correct?

14:18:13

16 A. For the human smuggling statute.

17 Q. Lieutenant Sousa, I'm going to show you the transcript for
18 your first deposition in this matter. It's taken on December
19 10th, 2009.

20 MR. BYRNES: Your Honor, may I approach?

14:18:39

21 THE COURT: You may.

22 BY MR. BYRNES:

23 Q. Lieutenant Sousa, I want to direct your attention to
24 page 38 of that deposition. And before I ask you this
25 question, I just want to confirm you were under oath when you

14:19:16

1 gave this deposition --

2 A. Yes, sir.

3 Q. -- is that right?

4 Let's focus in on lines 6 through 20.

5 "QUESTION: So as part of enforcing that law --" 14:19:32

6 That's referring to the human smuggling law.

7 "-- your deputies would have to investigate and -- and
8 arrest people who are not in the country lawfully?

9 "ANSWER: But it's the secondary -- it's not the
10 primary focus. Once again, our main focus is to enforce the 14:19:47
11 state charges. If I put state charges on somebody, we don't
12 even -- all we are doing is putting a detainer at the jail.
13 They are being booked on state charges for human smuggling.

14 "Now, if there's people that we come across that we
15 can't make state charges or we don't reach the probable cause, 14:20:00
16 then the guys would go into their 287(g) training and -- and
17 process them that way. But once again, it's secondary to
18 enforcing the state laws in the course of our duties."

19 You see that, Lieutenant Sousa?

20 A. Yes, sir. 14:20:15

21 Q. And do you stand by that testimony today?

22 A. Yes, sir. It's not our primary job. It's a secondary.

23 Q. Lieutenant Sousa, the majority of people that the HSU comes
24 across being smuggled speak Spanish and not English, isn't that
25 correct? 14:20:24

1 A. In my experience, yes, sir.

2 Q. And the majority of people the HSU comes across are from
3 Latin America, am I correct?

4 A. In my experience, yes, sir.

5 Q. Lieutenant Sousa, Sheriff Joe Arpaio is the commander in
6 chief of the Sheriff's Office, isn't he? 14:20:39

7 A. Yes, sir.

8 Q. And you understand that he is the ultimate authority over
9 law enforcement matters at the MCSO, isn't he?

10 A. Yes, sir. 14:20:53

11 Q. And in general, you follow the policy that the sheriff
12 sets, isn't that correct?

13 A. In general, yes, sir.

14 Q. Okay. And in the course of doing so you follow the
15 sheriff's directives that come down through the chain of
16 command, right? 14:21:02

17 A. If they're lawful, yes, sir.

18 Q. Do you recall a directive from the sheriff that was
19 unlawful?

20 A. No, sir. That came down the chain of command, no, sir. 14:21:15

21 Q. So in the MCSO the buck stops with Sheriff Arpaio, isn't
22 that right?

23 A. In general, yes.

24 Q. Your role as the unit commander of the HSU was to make sure
25 that your sergeants adhered to the sheriff's policies and law, 14:21:36

1 correct?

2 A. In general, yes, sir.

3 Q. Do you recall an instance in which you failed to make sure
4 that the sergeants adhered to the sheriff's policies and law?

5 A. I don't know of any incidents intentionally, sir. 14:21:51

6 Q. One of those sergeants in the HSU is Manuel Madrid,
7 correct?

8 A. Yes, sir.

9 Q. And until several months ago, Brett Palmer was also one of
10 the sergeants? 14:22:05

11 A. Yes, sir.

12 Q. Do you know who Mr. Palmer's successor is as one of the HSU
13 sergeants?

14 A. I believe it's Matthew Summers.

15 Q. Lieutenant Sousa, the HSU works on saturation patrols,
16 correct? 14:22:15

17 A. Yes, we have.

18 Q. And during your time with the HSU you were incident or
19 operations commander for numerous saturation patrols, is that
20 right? 14:22:28

21 A. Operations, yes, sir.

22 Q. The MCSO usually picks the area for saturation patrols
23 based on citizen complaints, correct?

24 A. I believe the ones that come down the chain of command to
25 me were based on citizens' complaints reference criminal 14:22:45

1 activity or criminal nuisance activity, that kind of stuff.

2 Q. The average manpower of a saturation patrol in which you
3 were involved ranged from 80 to a hundred deputies, isn't that
4 right?

5 A. Not deputies. I would say total 80, but we're talking 14:23:02
6 reserve deputies and posse making that up, sir.

7 Q. Lieutenant Sousa, you typically conducted briefings to
8 supervise your deputies prior to saturation patrols, correct?

9 A. Yes, sir.

10 Q. And those briefings occurred at the command post? 14:23:33

11 A. Yes, sir.

12 Q. Operation plans were drafted before saturation patrols were
13 launched, is that right?

14 A. Yes, sir.

15 Q. And for at least certain saturation patrols, you yourself 14:23:41
16 drafted the operations plans?

17 A. I would say the operation plan, sir, when I took over,
18 evolved. The first few of those crime saturation patrols it
19 was Lieutenant Chuck Siemens, and over time those evolved. And
20 I believe the first couple when I took over I did, and then I 14:24:02
21 turned that over, I believe, to Sergeant Palmer. I believe
22 Sergeant Madrid did a couple, too. But I would sign off on
23 those.

24 Q. So after lieutenant Siemens?

25 A. Lieutenant Chuck Siemens, yes, sir. 14:24:19

1 Q. Lieutenant Chuck Siemens. Once you took over from
2 Lieutenant Chuck Siemens, the operations plans, starting in
3 2008, were drafted by you or Sergeant Madrid or
4 Sergeant Palmer, is that right?

5 A. Yes, sir. 14:24:32

6 Q. And those plans were distributed up the chain of command
7 through Chief Trombi and on upward?

8 A. Yes, sir.

9 Q. Deputies were required to read the operations plan before
10 they signed in for the saturation patrol, correct? 14:24:45

11 A. Yes, sir.

12 Q. The plans were not, however, distributed to all the
13 deputies who participated --

14 A. Yes, sir.

15 Q. -- correct? 14:24:56

16 At some point --

17 THE COURT: I want to understand that last question.
18 You said yes, sir. Does that mean that the plans were not
19 distributed, but people had to read them when they signed in?

20 THE WITNESS: Correct, sir. We did not distribute 14:25:10
21 them. They had to read them and sign in.

22 THE COURT: Okay. So when they signed in they read a
23 copy of the operation plan?

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you. 14:25:18

1 THE WITNESS: You're welcome, sir.

2 BY MR. BYRNES:

3 Q. Lieutenant Sousa, at some time operations plans started
4 instructing deputies that they should, quote, arrest people on
5 arrestable offenses, isn't that correct?

14:25:28

6 A. Yes, sir.

7 Q. You did not instruct deputies to investigate any specific
8 people or suspects in the context of a saturation patrol,
9 correct?

10 A. No, sir, no specifics.

14:25:41

11 Q. In the briefings that you conducted prior to the saturation
12 patrols, deputies were told to have zero tolerance of any
13 criminal activity, correct?

14 A. Yes, sir.

15 Q. The first couple of saturation patrols were not zero
16 tolerance, though, correct?

14:25:53

17 A. No, sir, correct.

18 Q. Zero tolerance means that everyone who is stopped will
19 receive a citation or go to jail if there is a criminal
20 offense, correct?

14:26:08

21 A. Zero tolerance, the way I put it in place, was if we made
22 a -- a lawful traffic stop, and you had a criminal defendant
23 with an arrestable charge, they would get booked. And whoever
24 we stopped, we would write a citation for the probable cause
25 for the stop.

14:26:26

1 Q. The Sheriff's Office adopted a zero tolerance policy to
2 avoid the perception of racial profiling --

3 THE COURT: I'm sorry. I'm sorry. I want stop you.
4 Hold your question.

5 Would you repeat that answer again? Zero tolerance 14:26:37
6 meant that you would arrest somebody if there was an arrestable
7 offense, and then something about a citation if there was
8 probable cause for the stop?

9 THE WITNESS: If -- no. Any time we arrested anybody
10 out of a vehicle on a state charge, we wanted them to -- they 14:26:50
11 didn't have discretion on writing a citation, 'cause usually on
12 a traffic stop, deputies had discretion whether to write a
13 citation or not write a citation.

14 THE COURT: All right.

15 THE WITNESS: We took away that discretion. We wanted 14:27:01
16 them to write citations if they arrest somebody out of a
17 vehicle.

18 THE COURT: All right. And does that mean you --
19 they -- you wanted a citation if it was criminal traffic, if it
20 was civil traffic, whatever it was? 14:27:11

21 THE WITNESS: No, sir. Criminal, any arrestable
22 offense.

23 THE COURT: Okay.

24 THE WITNESS: Then we would write that civil citation
25 for that, whatever the PC, the probable cause was for the stop. 14:27:18

1 THE COURT: All right.

2 MR. BYRNES: May I proceed, Your Honor?

3 THE COURT: You may. I'm sorry for interrupting.

4 BY MR. BYRNES:

5 Q. Lieutenant Sousa, the MCSO adopted its zero tolerance
6 policy to avoid the perception of racial profiling that
7 deputies' discretion was exercised based on race, correct?

14:27:28

8 A. I believe the conversation was I didn't want discretion, I
9 wanted -- I wanted to take away the discretion when it came to
10 making arrests. I wanted everyone arrested and booked.

14:27:48

11 Q. You were concerned that there would be a perception of
12 racial profiling, correct?

13 A. Yes. I didn't want it to be a perception.

14 Q. And it was your concern about that perception of racial
15 profiling that led to the MCSO's adopting the zero tolerance
16 policy, correct?

14:28:01

17 A. It was all the media reports, and I wanted to be proactive.

18 Q. There was no zero tolerance policy, however, as to whether
19 someone would be stopped in the first instance, correct?

20 A. No, there was no zero policy that you would make every
21 single traffic stop, due to the fact that would be impossible.

14:28:16

22 Q. And because it would be impossible to stop every vehicle,
23 deputies would have to use discretion to determine who to stop,
24 correct?

25 A. They would have to use discretion.

14:28:31

1 Q. Now, even under the MCSO's zero tolerance policy, officers
2 have the discretion regarding whether to question passengers in
3 a vehicle, correct?

4 A. I'm sorry, sir. Can you repeat that?

5 Q. Sure. Officers in the MCSO have the discretion to question 14:28:50
6 passengers in vehicles they stop, correct?

7 A. Yes, sir.

8 MR. BYRNES: Your Honor, I'm going to hand
9 Lieutenant Sousa PX 82, which has been admitted.

10 May I approach? 14:29:09

11 THE COURT: You may.

12 MR. BYRNES: And may we publish?

13 THE COURT: Yes.

14 BY MR. BYRNES:

15 Q. Lieutenant Sousa, I've handed you -- and you can see it's 14:29:34
16 on the second page of the document is the title page. The
17 first page has -- is for the Court's purposes.

18 I've handed you a document that concerns a saturation
19 patrol conducted on March 27th and 28th of 2008 between 19th
20 Avenue to 40th Street and from Thunderbird to Pinnacle Peak in 14:29:57
21 Phoenix. You can see that on page labeled 1845 in the lower
22 right.

23 Lieutenant Sousa, looking at page 1845, you notice at
24 the top there's a title which includes the words "incident
25 action plan." Do you see that? 14:30:20

1 A. Yes, sir.

2 Q. Is an incident action plan essentially the same thing as an
3 operations plan?

4 A. Correct, sir.

5 Q. And for this particular saturation patrol, looking a few
6 lines down, you were one of the incident commanders, correct?

14:30:29

7 A. Yes, sir.

8 Q. Do you know how many deputies and posse members
9 participated in this particular saturation patrol?

10 A. I don't recall. I'd have to look if we have a sign-in
11 sheet.

14:30:44

12 Q. Of the individuals listed on this page, including
13 yourself -- and by that I mean Captain Ray Jones, you,
14 Lieutenant Chuck Siemens, and Sergeant Lupe Rios -- where were
15 you four located during the saturation patrol, physically?

14:31:03

16 A. Usually it would be at this command post, sir. I -- I
17 can't say with 100 percent certainty, but usually we'd be at
18 that command post.

19 Q. Were there supervisors for this saturation patrol who were
20 not located at the command post?

14:31:22

21 A. I believe during all the saturation patrols we tried to
22 bring enough sergeants out to be out on the road.

23 Q. Were those sergeants out on the road also responsible for
24 making traffic stops?

25 A. Yes, sir.

14:31:36

1 Q. Were there any MCSO personnel responsible for supervision
2 out on the road not making traffic stops, but supervising?

3 A. Normally at MCSO, sergeants are in a supervisory role, but
4 they also work, but they don't -- but they manage their time.

5 Q. Roughly how many sergeants were out on the road during this 14:31:56
6 saturation patrol referred to in Exhibit 82?

7 A. Can I look at the sign-in sheet?

8 Q. Absolutely.

9 (Pause in proceedings.)

10 THE WITNESS: Well, looking at this, sir, I don't 14:33:01
11 recognize a lot of the names on here, but I do see I believe
12 it's Lieutenant Skinner on here, if that's Lieutenant Skinner.

13 BY MR. BYRNES:

14 Q. Was there a mandated ratio between the sergeants out on the
15 road and the deputies who were making stops? 14:33:18

16 A. No, we didn't have a mandated ratio, sir.

17 Q. I'd like to turn your attention back, to the extent you've
18 looked elsewhere, on page 1845 where we began.

19 You notice in the middle there's a section titled
20 Incident Objectives, and the last several sentences read: The 14:33:38
21 detail will involve proactive criminal and traffic patrol
22 activity. All criminal violations encountered will be dealt
23 with appropriately. Contacts will only be made with valid PC.

24 Do you see that?

25 A. Yes, sir. 14:33:56

1 Q. PC means probable cause, correct?

2 A. Yes, sir.

3 Q. Was the information that I just read delivered verbally
4 during your briefing prior to the saturation patrol?

5 A. I don't recall, sir. This ops plan is one of Chuck
6 Siemens'. Chances are he would have took lead. 14:34:07

7 Q. I'm sorry, what did you say?

8 A. This ops plan is Chuck Siemens's. He would have took lead.

9 Q. Took lead. And by "took lead" you mean delivered the
10 briefing? 14:34:27

11 A. Took lead with this operation.

12 Q. I see.

13 A. I don't recall who gave the briefing for this one, sir.

14 Q. I'd like you to turn to page 1851. And again, I'm
15 referring to the pages in the lower right-hand corner. 14:34:37

16 A. Yes, sir.

17 Q. This is -- and actually look -- note this page and also the
18 next page, 1852.

19 Lieutenant Sousa, these are arrest lists, correct?

20 A. Yes, sir. 14:34:50

21 Q. Now, most, if not all, arrests during saturation patrols
22 were of Hispanics, correct?

23 A. Well, if we're going by surnames in looking at this one, I
24 see a lot of surnames that could be Hispanic, that would be
25 Hispanic. 14:35:15

1 Q. Looking not simply at this particular arrest list but at
2 saturation patrols in general, most, if not all arrests during
3 saturation patrols were of Hispanics, correct?

4 A. I would say a lot of them, the arrest lists I looked at, I
5 would say the majority of the saturation patrols. 14:35:44

6 THE COURT: Could you repeat your answer, please?

7 THE WITNESS: What was the question, sir?

8 MR. BYRNES: Can you please read the question back,
9 Mr. Moll?

10 (The record was read by the court reporter.) 14:36:06

11 THE WITNESS: I would say the majority of the arrest
12 lists that I reviewed had a large amount Hispanic surnames on
13 it.

14 BY MR. BYRNES:

15 Q. Is your testimony today that most, if not all arrests 14:36:17
16 during saturation patrols were not Hispanic?

17 A. No. My testimony is that the majority of the arrest lists
18 that I looked at had a lot of Hispanic surnames on them.

19 Q. So your testimony today is a lot of Hispanics were
20 arrested, but you're not willing to testify that most, if not 14:36:33
21 all of the arrests were of Hispanics?

22 A. Well, I'd have to look at all the lists, sir.

23 Q. Please take -- direct your attention to page 123 of your
24 deposition in front of you.

25 A. Yes, sir. 14:36:48

1 Q. In particular, lines 2 through 5, please.

2 A. 123?

3 Q. That's correct.

4 Do you see that page, Lieutenant Sousa?

5 A. Yes, sir.

14:37:03

6 Q. Reading starting at line 2:

7 "QUESTION: In your experience were most, if not all
8 of the people arrested during these operations --" referring to
9 saturation patrols "-- Hispanic?

10 "ANSWER: In my experience, the two years on the unit
11 during these operations, yes, sir."

14:37:15

12 Lieutenant Sousa, do you stand by that testimony
13 today?

14 A. The testimony in my deposition, that would be the freshest
15 in my head, yes, sir.

14:37:26

16 Q. Let's return to the arrest lists. There appear to be a
17 number of column headings at the top of each of these pages.
18 That's page 1851 and 1852.

19 One column is titled PC. Do you see that?

20 A. Yes, sir.

14:37:42

21 Q. That means "probable cause," correct?

22 A. Correct, sir.

23 Q. Two columns to the left there's a column titled Charge. Do
24 you see that?

25 A. Yes, sir.

14:37:52

1 Q. Now, there are no human smuggling charges on either the
2 arrest list on page 1851 or the arrest list on page 1852, isn't
3 that correct?

4 A. Just a sec to review, sir.

5 MR. CASEY: Excuse me. May I have, Your Honor, the
6 exhibit number again, please? 14:38:15

7 THE COURT: Certainly.

8 MR. BYRNES: 82.

9 MR. CASEY: 82. Excuse me.

10 THE WITNESS: No, I don't see any human smuggling
11 charges, sir. 14:38:28

12 BY MR. BYRNES:

13 Q. How are human smuggling charges indicated on arrest lists?

14 A. I'm not sure. It would probably be HSU, or human
15 smuggling, or maybe the statute or the code, but I don't see it
16 here, sir. 14:38:43

17 Q. Do you ever recall seeing a notation for a human smuggling
18 charge on an arrest list for a saturation patrol?

19 A. Yes, I have.

20 Q. You just don't remember sitting here today exactly what the
21 notation might be? 14:38:52

22 A. Yeah, I don't -- I don't remember how we would put the
23 charge. They could actually write human smuggling charge, and
24 they might put the A.R.S. code. I don't recall exactly how we
25 do it. 14:39:04

1 Q. Another of the columns is titled 287(g). It's in the
2 middle.

3 Do you see that?

4 A. Yes, sir.

5 Q. And this is a special column designated for whether a
6 person was turned over to ICE as a suspected undocumented
7 immigrant for administrative processing, isn't that right?

14:39:13

8 A. Yes, sir. That would be a column if we took someone into
9 custody under our federal authority.

10 Q. You are not 287(g) certified, isn't that right?

14:39:31

11 A. No, sir.

12 Q. And over time, deputies who also were not 287(g) certified
13 joined HSU, correct?

14 A. I think on our criminal employment squad we had a couple of
15 deputies that were not 287(g) certified. I'm not sure about
16 the actual human smuggling squads. There could have been one
17 or two. I don't -- I don't recall not having one on those two
18 squads.

14:39:51

19 Q. Since the 287(g) task force authority was withdrawn by the
20 federal government in October 2009, no HSU deputies were 287(g)
21 certified, correct?

14:40:19

22 A. Correct, sir.

23 Q. And since that time, October 2009, nothing changed out in
24 the field for the HSU deputies, correct?

25 A. No, we changed how we do business in the field 'cause we

14:40:32

1 didn't have the 287(g) authority. We had to do -- we change --
2 we -- if I remember correctly, we talked to the county attorney
3 about how to proceed further without detainment, doing more
4 extensive interviews without detainment in the field to develop
5 probable cause for the human smuggling arrests.

14:40:51

6 Q. But it's your view that those that had been 287(g) couldn't
7 turn off their training regarding how to make a determination
8 as to whether someone was in the country unlawfully, correct?

9 A. Correct. They still had the training, so they would
10 definitely know the indicators to make that phone call to ICE
11 if they didn't have the state charge.

14:41:07

12 Q. Since December of last year, 2011, the MCSO's 287 authority
13 with regard to its jail was terminated as well, correct?

14 A. I don't remember the date, but it was terminated.

15 Q. I'd like to turn your attention, staying with the same
16 exhibit, 82, to page 1848. And this is the stat sheet for the
17 saturation patrol we've been discussing, correct?

14:41:36

18 A. I'm trying to find it. 1848?

19 Q. Yes.

20 A. Looks like the total, sir.

14:42:04

21 Q. And these are the totals for both -- in the handwriting, at
22 least, the totals for both March 27th and March 28th, 2008,
23 correct?

24 A. That's what I'm assuming, sir.

25 Q. Now, at the end of each day of a saturation patrol, a

14:42:17

1 sergeant at the command post would collect the individual stat
2 sheets from deputies involved in the patrol, and those would be
3 compiled into shift summaries like this one, correct?

4 A. It would be compiled into a file report like this one.

5 Q. And this particular summary reflects that there were 270
6 contacts on both days combined, is that right?

14:42:39

7 A. That's what I'm assuming, sir. I didn't fill this out.

8 Q. Were you -- sitting here today, you recall seeing forms of
9 this nature, right?

10 A. Yeah, similar, sir.

14:43:01

11 Q. There's also a -- a row on the right side that states:

12 State charges with ICE detainers.

13 You see that? And 13 people?

14 A. Yes, sir.

15 Q. That indicates that 13 people were arrested for state
16 charges and booked into the jail with an immigration detainer,
17 correct?

14:43:14

18 A. Yes, sir.

19 Q. And immediately below that there's a row that reads:

20 287(g) arrests, and then parentheses, no state charges, and
21 then 14 people fell into that category, is that right?

14:43:25

22 A. Yes, sir.

23 Q. And those 14 people were turned over to ICE for
24 administrative processing but were not arrested on state
25 charges, correct?

14:43:38

1 A. Those 14 people were arrested by 287(g) deputies that were
2 federal officers that made the arrests and processed them, and
3 just turned them over to ICE, DRO, detention and removal
4 center.

5 Q. And the 287(g) officers to which you've just referred, 14:43:52
6 those were MCSO employed individuals, correct?

7 A. Yes. They were trained part-time federal agents.

8 Q. At some point you changed the stat sheet to include the
9 number of total traffic stops, isn't that right?

10 A. Yes, sir. 14:44:13

11 Q. And your intent to do -- in doing that was not to see the
12 individual officers' traffic stops, but rather to see the
13 overall numbers of traffic stops for an entire operation,
14 correct?

15 A. That is correct, sir. 14:44:26

16 Q. And in fact, all of your concern has always been about just
17 those overall numbers, correct?

18 A. The stat sheet purpose was for a final product for overall
19 numbers, sir.

20 Q. And you and your team didn't review the individual stat 14:44:39
21 sheets except to compile the totals, right?

22 A. Yes, sir, and to see who was working and who wasn't
23 working.

24 Q. Well, for an individual to have prepared, an individual
25 deputy to have prepared a stat sheet, they must have been 14:44:55

1 working that day, correct?

2 A. Correct.

3 Q. Other than the totals of the individual stat sheets, such
4 as this page 1848 in Exhibit 82, neither you nor anyone else at
5 the MCSO prepared a written report after the saturation patrol,
6 correct? 14:45:14

7 A. We would send -- after each -- I don't know if we did it
8 for this one, but we would send out an e-mail, a briefing of
9 the total numbers breakdowns, and I believe we started adding
10 notes of highlights for the day, whether we -- how many 14:45:33
11 warrants we cleared and that kind of thing, but it wasn't a
12 report; it was more of an e-mail.

13 Q. And did this e-mail evaluate the success of the saturation
14 patrol in achieving its goals?

15 A. Well, depending on the arrests, yes. 14:45:48

16 Q. I'm asking a different question. Did the e-mail about
17 which you just testified evaluate the success of the patrol as
18 a whole in achieving its goals, for example, the goals
19 identified in this operations plan?

20 A. No, I don't recall that kind of analysis, if that's what
21 you're talking about. 14:46:12

22 Q. Nor was there any report or e-mail or any other written
23 documentation identifying possible improvements in the
24 operation that should be considered in the future, isn't that
25 right? 14:46:27

1 A. There was no written report, but we did verbally debrief on
2 how we could better do these operations.

3 Q. There's no other source of information beside an -- besides
4 an individual officer's stat sheet that would record the
5 number of contacts per officer per shift, correct? 14:46:52

6 A. Outside the arrests, it would be the individual stat sheets
7 for all contacts.

8 Q. And the stat sheets, the individual stat sheets, don't
9 allow a comparison of deputies' activities, correct?

10 A. They don't allow a comparison? 14:47:16

11 Q. Do not. Isn't that right?

12 A. Are you talking quantitative information, or...

13 Q. Well, looking at the individual stat sheets without talking
14 to the deputies, you couldn't determine -- you couldn't compare
15 their activity, correct? 14:47:33

16 A. I'm -- I'm still not following you. Are you -- are you
17 talking about using quantitative data to find out who's working
18 or who's not working, or --

19 Q. Let's -- let's take that. So with regard to quantitative
20 data, individual stat sheets, without speaking with the 14:47:51
21 deputies, does not allow you to compare the activity of those
22 deputies, isn't that right?

23 A. Not necessarily, 'cause it would be depending on what they
24 were assigned to do during that particular patrol. If you
25 had -- if we had a specialized unit out, auto theft, they might 14:48:10

1 be working straight auto theft and be doing something
2 different.

3 Q. And you cannot assess how deputies use their time during a
4 shift based on those individual stat sheets, correct?

5 A. No, I cannot account for their -- all their time based on
6 those stat sheets. 14:48:25

7 Q. In fact, regardless of the individual stat sheets, you
8 could not, when you were in charge of HSU, assess how deputies
9 use their time during a shift, correct?

10 A. Our deputies, our HSU deputies, were being supervised by
11 our sergeants, and they had a good feel for who's doing what.
12 But on these saturation patrols with this many people, I can't
13 account for all their time. 14:48:40

14 Q. And no one could account for all their time, correct?
15 Except themselves, presumably. 14:48:59

16 A. That would be impossible, sir.

17 Q. Lieutenant Sousa, you do not review citations or other
18 documents to determine whether racial profiling was occurring
19 in your human smuggling unit because you believe it's a
20 nonissue, correct? 14:49:15

21 A. Yeah, I believe -- I believe it was a nonissue based on the
22 fact I don't get complaints, I haven't got complaints from
23 above me, below me, and I don't think I've ever taken -- I've
24 never taken a citizen's complaint about racial profiling.

25 Q. Ask you a few questions about citizen complaints of a 14:49:29

1 different sort.

2 Lieutenant Sousa, the Sheriff's Office receives some
3 complaints through its tip line, correct?

4 A. Yes, sir.

5 Q. And Perla Plata runs that tip line?

14:49:42

6 A. She -- she monitors it, yes, sir.

7 Q. And she files complaints that come in through the tip line?

8 A. Files them?

9 Q. Yes.

10 A. I believe she logs them.

14:49:57

11 Q. There's a tip disposition sheet, correct, that allows -- as
12 a tip comes in, allows it to be categorized, for example, as
13 founded or unfounded?

14 A. I implemented -- we -- at some point I implemented a
15 clearance form, a tip disposition sheet, yes, sir.

14:50:18

16 Q. And following the -- the receipt of a tip and the
17 preparation of a tip disposition sheet, those would be
18 forwarded to Perla Plata, Ms. Plata, to be logged, correct?

19 A. Tips that came in on the tip line, sir, she logged on a
20 log. Letter tips that come in or that got forwarded to me got
21 the disposition form attached to it, I believe is how we were
22 doing it.

14:50:43

23 Q. I see. And were you in -- you were in charge of
24 determining which letter tips Ms. Plata would retain, correct?

25 A. Yes, sir.

14:51:02

1 Q. And you identified on the tip disposition sheet whether a
2 certain tip was founded or unfounded, is that right?

3 A. I didn't do them all, but I did some.

4 Q. And on some tip disposition sheets you indicated in your
5 handwriting that a tip was, quote, for -- sorry, for, quote,
6 info, i-n-f-o, isn't that correct? 14:51:26

7 A. I believe I used that term, yes.

8 Q. And when you marked info, you created the category info and
9 marked it, you didn't mark whether that tip was founded or
10 unfounded, correct? 14:51:47

11 A. Well, the understanding is if I marked it just info, we're
12 just going to save it and not do anything with it.

13 I'm sorry, what was the question again?

14 MR. BYRNES: Can you please read the question back?

15 (The record was read by the court reporter.) 14:52:13

16 THE WITNESS: Correct. When I would mark something
17 that's info only, to me it was just either a citizen -- and in
18 raising or just passing along info. Info means I'm not going
19 to do anything with it.

20 BY MR. BYRNES: 14:52:30

21 Q. And some of the tips that you marked for info were tips
22 that described no criminal activity, correct?

23 A. Correct.

24 Q. And others appeared to be potentially racially motivated,
25 correct? 14:52:42

1 A. Oh, some of them I cleared out, citizen racial profiling.

2 Q. Lieutenant Sousa, racial profiling, in your view, involves
3 using race even as just one factor to make a law enforcement
4 decision, isn't that correct?

5 A. If you -- to make an in -- racial profiling is basing
6 someone's race to make a contact with somebody. 14:52:58

7 Q. And you believe that racial profiling involves using race
8 even as just one factor -- and there may be others -- to make a
9 law enforcement decision, correct?

10 A. To make a law -- to make a law -- to make a law enforcement 14:53:15
11 contact, absolutely not. You can't make contact using race.

12 Q. You believe that racial profiling involves using race even
13 as just one factor in the decision to select a neighborhood,
14 for example, in which to aggressively enforce speeding,
15 traffic, and other public area laws, correct? 14:53:36

16 A. Absolutely not.

17 Q. You also believe that racial profiling involves using race
18 even as just one factor in the decision to stop a car, correct?

19 A. No, sir, to stop a car, absolutely not.

20 Q. I just want to be clear I understand your testimony. You 14:53:48
21 believe that it would be racial profiling to stop a car using
22 race even as just one factor, correct?

23 A. To stop a car, yes, sir.

24 Q. You also believe that racial profiling involves using race
25 even as just one factor in a law enforcement decision to extend 14:54:03

1 a detention to question a driver or passenger, isn't that
2 correct?

3 A. I -- I believe that under the ICE training, if I remember
4 correctly, I believe under the ICE training, when making an
5 alienage determination, they taught that you can use ethnicity
6 as long as it's one amongst a bunch of other indicators. 14:54:22

7 Q. You didn't have ICE training, did you?

8 A. No, I didn't have ICE training.

9 Q. Lieutenant Sousa, you believe that racial profiling
10 involves using race even as just one factor to make a law
11 enforcement decision to issue a citation, correct? 14:54:40

12 A. Using racial profiling to issue a citation? Of course not.

13 Q. And it would be racial profiling to make an arrest using
14 race even as -- even as just one factor in the decision to make
15 that arrest, correct? 14:55:00

16 A. Well, my understanding under the federal authority they
17 taught these deputies, that determining an alienage, as long as
18 it was one amongst several indicators, that you could use it to
19 determine that alienage. But I'm not 287(g), that's my
20 understanding. 14:55:23

21 Q. And just to make sure I understand, many of your HSU
22 deputies were 287(g) certified during the time where MCSO had
23 that certification, correct?

24 A. On human smuggling, the two squads, yes, sir.

25 Q. They had had the 287(g) certified -- strike that. 14:55:40

1 They had had the 287(g) training that, as you've
2 testified, indicated that ethnicity could be used as one factor
3 in determining alienage, right?

4 A. That was the training they had had.

5 Q. Right. And they -- they can't turn off that training, even 14:55:55
6 though MCSO no longer has 287(g) authority, right?

7 A. Well, I believe we made a decision. If I remember during
8 my original deposition when that question was asked, I answered
9 the question that -- 'cause I was pretty sure I had that
10 conversation when I first came into the unit, whether we were 14:56:16
11 using that part of the training that ICE gave us, and I was
12 pretty sure we weren't.

13 But during my deposition I think the question was yes
14 or no, are they using it to determine ethnicity, and I'm -- I
15 believe my answer was, I don't know, or no to I don't know. 14:56:35

16 Right after that deposition, I believe I -- I
17 immediately spoke to my sergeants and my deputies and I
18 questioned them, Are we using this part of the 287(g) training?
19 And they said they weren't using that part of that training.

20 Q. You just testified they were not using that part of the 14:56:55
21 training?

22 A. That's what I was told. So after the deposition I was very
23 confident that we were not using that part of the 287(g)
24 training.

25 Q. I see. So that part of the 287(g) training -- and by that 14:57:06

1 I mean that ethnicity can be used as one factor to determine
2 alienage -- was a part of the 287(g) deputies' training that
3 was turned off, is that right?

4 A. After my deposition that's the one thing I needed to
5 clarify on the 2009. That's what I was told when I talked to
6 the sergeants and the deputies. 14:57:26

7 Q. They had told you they had -- something to the effect they
8 had turned off that part of the training?

9 A. That we don't use that indicator.

10 Q. Lieutenant Sousa -- 14:57:39

11 THE COURT: You know what, Mr. Byrnes? I think we
12 need to take a break for the afternoon.

13 MR. BYRNES: Okay. Thank you, Your Honor.

14 THE COURT: Lieutenant Sousa, appreciate that. We're
15 going to take a 20-minute break so that everyone can relax. If
16 you'd be back about 3:20, we'll resume. 14:57:48

17 (Recess taken.)

18 THE COURT: Thank you. Please be seated.

19 You ready to resume, Mr. Byrnes?

20 MR. BYRNES: I am. 15:20:59

21 THE COURT: Please do so.

22 BY MR. BYRNES:

23 Q. Lieutenant Sousa, to clarify the testimony you were giving
24 prior to the break, what you remember your sergeants telling
25 you is that they didn't use that part of the ICE training we 15:21:12

1 were discussing earlier, correct?

2 A. I don't remember the exact conversation, but after my 2009
3 deposition where I wasn't 100 percent sure so I had to answer
4 that question that I don't know if they were, I remember
5 calling and clarifying that up, and I remember being clear that 15:21:30
6 we were not using that part of the training and that particular
7 indicator.

8 Q. And in fact, your understanding was that your sergeants and
9 deputies had never used that indicator, correct?

10 A. That was my understanding when I called to clarify. 15:21:48

11 Q. Thank you.

12 Lieutenant Sousa --

13 THE COURT: You know, I'm sorry, I just want to make
14 sure that I understand what you're saying.

15 So it's your understanding that even when your 15:21:56
16 officers were acting pursuant to their 287(g) authority when
17 they were 287(g) certified, they were not using the training
18 that they got from ICE about what acceptable indicators were,
19 insofar as they would have allowed the use of race as a factor?

20 THE WITNESS: Basically, the training they received -- 15:22:24

21 THE COURT: Let me ask.

22 THE WITNESS: Okay.

23 THE COURT: Did you understand my question --

24 THE WITNESS: Yes.

25 THE COURT: -- or do you want me to rephrase it? 15:22:29

1 THE WITNESS: No, I'm just trying to make sure. They
2 weren't using that one indicator, it was my understanding, that
3 they were trained that they can use amongst other indicators to
4 determine alienage. So that one indicator, ethnicity, they
5 weren't using.

15:22:43

6 THE COURT: Okay. Now I'm going to restate that,
7 because I want to make sure that I understand you.

8 It was your understanding after your 2009 deposition
9 when you talked to your two sergeants --

10 And your two sergeants at the time were Palmer and
11 Madrid, right?

15:22:53

12 THE WITNESS: Yes, sir.

13 THE COURT: And you talked to them after your
14 deposition?

15 THE WITNESS: Yes, sir.

15:23:01

16 THE COURT: And it's your understanding, after your
17 deposition when you talked to them, that they told you they
18 were never using race as -- race or ethnicity as an indicator
19 of any kind, not even one amongst another factor, even when
20 they were acting pursuant to their 287(g) authority?

15:23:16

21 THE WITNESS: Correct. That was my understanding,
22 sir.

23 THE COURT: All right. So it would be your
24 understanding that even though -- well, let me ask you another
25 question.

15:23:26

1 Was it your understanding that in their 287(g)
2 training they were told that they could use race as one factor
3 in determining ethnicity?

4 THE WITNESS: No, they cannot -- they could never use
5 it as one factor. You had to use it as long as you had several 15:23:38
6 factors. I don't know -- I'm not 287(g) trained, but you have
7 to have -- it had to be -- you could use that indicator or that
8 factor amongst several factors.

9 THE COURT: That was -- that was what you understood
10 their ICE training to be. 15:23:53

11 THE WITNESS: Yes, sir.

12 THE COURT: And it was your understanding that they
13 never followed that training.

14 THE WITNESS: They never followed -- they never used
15 that one training when it said you could -- you can use that 15:24:01
16 indicator.

17 THE COURT: Thank you.

18 I'm sorry, I just needed to be clear, Mr. Byrnes.

19 MR. BYRNES: Thank you, Your Honor.

20 BY MR. BYRNES: 15:24:11

21 Q. Lieutenant Sousa, the MCSO doesn't collect data about the
22 race or ethnicity about the people that it stops, correct?

23 A. Correct.

24 Q. The MCSO in fact doesn't make any attempt to determine the
25 race or ethnicity of drivers and passengers in vehicles that 15:24:23

1 are stopped, correct?

2 A. If you're writing a citation it's there, and if it's
3 obvious you'll write it in.

4 From my experience as a deputy sheriff I never would
5 ask, because as soon as you asked, people got really defensive 15:24:39
6 and started asking, Why are you asking, if you didn't know?

7 Q. So other than identifying in the citation race, the race or
8 ethnicity of the driver, MCSO does not make any other attempt
9 to determine the race or ethnicity of drivers and passengers,
10 correct? 15:25:00

11 A. Currently in our automated system, no, sir.

12 Q. In fact, you believe that the MCSO does not track race or
13 ethnicity because racial profiling is a nonissue at the MCSO,
14 correct?

15 A. Correct. In my experience I've never had a citizen 15:25:14
16 complain about anybody racial profiling.

17 Q. You don't conduct, or you didn't when you were the head of
18 the HSU, the unit commander, you don't conduct any sort of
19 analysis of individual deputies' vehicle stops and contacts to
20 determine whether racial profiling might be occurring, correct? 15:25:32

21 A. I never have, sir.

22 Q. Your testimony was "I never asked"?

23 A. I never have, sir.

24 Q. Never have.

25 In fact, you testified in your deposition that you 15:25:48

1 know for a fact that the arrest of Latinos during saturation
2 patrols were not based on race, correct?

3 A. Correct, I believe so.

4 Q. And that's not based on whether you were actually present
5 at the arrest of a Latino during a saturation patrol?

15:26:02

6 A. Whether I was there and watched the arrest?

7 Q. Right. I mean, you know for a fact that the arrests were
8 not based on race, completely independent of whether you were
9 actually at the arrest, correct?

10 A. Yeah, correct.

15:26:19

11 Q. All right. And in fact you were present for few, if any,
12 of the saturation patrol arrests, correct?

13 A. I was at the CP most of the time.

14 Q. The reason -- the reason why you know, when you testified
15 that you know that these arrests were not based on race, is
16 because you trust your people, correct?

15:26:34

17 A. Correct, I trust my people.

18 Q. You believe that racial profiling never occurs in the HSU?

19 A. Absolutely, does not occur.

20 Q. You don't believe it's even possible that racial profiling
21 might be occurring in the HSU, correct?

15:26:48

22 A. Not even possible, sir.

23 Q. You're not aware of the Sheriff's Office ever having
24 disciplined an officer for racial profiling, right?

25 A. I'm not aware of it, sir.

15:27:04

1 Q. Now I'm going to ask you a few questions about your
2 briefings before the saturation patrols. In the briefings that
3 you gave, the first thing you did, first thing you did, is to
4 tell the participants not to racially profile, right?

5 A. It was one of the first things I would do, sir. 15:27:19

6 But let's -- if I can backtrack, remember, this was
7 evolving and it got added in. So I would say from early -- or
8 late 2008 is when -- to be proactive, is when I first actually
9 started addressing that in the briefings. But we were
10 addressing it all the time with HSU as a proactive measure. 15:27:40

11 Q. So in your briefings before saturation patrols starting in
12 roughly late 2008, the first thing that you did was tell
13 your -- the participants in the saturation patrol not to
14 racially profile?

15 A. One of the first things, yes, sir. 15:28:01

16 Q. And in those briefings you told deputies that you trust
17 them?

18 A. No. I told -- I told deputies I'm not -- I'm not briefing
19 on this 'cause I think you racially profile; I'm briefing this
20 to remind you of what people are saying out there and being 15:28:16
21 proactive.

22 Q. You told the deputies as part of this discussion of racial
23 profiling that they were doing their job, right?

24 A. I told the deputies as part of that, don't even look in the
25 vehicles; we don't have to look in the vehicles. 15:28:31

1 Q. But you also told them that they were doing their job?

2 A. Yeah, correct, Go out there and do your job.

3 Q. You trusted them and you believed they were doing their
4 job, right?

5 A. Oh, I believe they were doing their job. 15:28:40

6 Q. And you told them that I know you're not racially
7 profiling. You said that, didn't you?

8 A. Yes, I did.

9 Q. And you also told them that you would sound like a broken
10 record and bring it up anyway, right? 15:28:51

11 A. I probably used that language, yes.

12 Q. In fact, the reason why you told your deputies not to
13 racially profile is so you can come in here and tell me that
14 you're being proactive, isn't that right?

15 A. I was being proactive for everybody, sir, because the 15:29:05
16 perception was out there. But yes, I also wanted to come in
17 here and tell you, sir.

18 Q. And you wanted to come in here and tell the judge that you
19 were being proactive. That's why you briefed on racial
20 profiling, correct? 15:29:17

21 A. No, sir. I wanted to come in here and tell the person
22 asking me the questions.

23 Q. And you knew that you were under oath at this deposition?

24 A. Yes, sir.

25 Q. And you knew that at some point in time there could be a 15:29:26

1 trial in this matter before a judge?

2 A. Yes, sir.

3 Q. And I just want to be clear. So the reason why -- your
4 testimony is that the reason why you told your deputies not to
5 racially profile is so you could come in here and say that to
6 me.

15:29:39

7 A. Being -- being proactive, due to the public perception.

8 MR. BYRNES: No further questions at this time.

9 THE COURT: Who's doing the cross-examination?

10 MR. CASEY: I am, Your Honor.

15:29:59

11 If I may have a moment again, please --

12 THE COURT: You certainly may.

13 MR. CASEY: -- to set up my computer.

14 CROSS-EXAMINATION

15 BY MR. CASEY:

15:30:56

16 Q. Lieutenant, I'm going to jump around here, but I have some
17 questions for you in follow-up to what the lawyers have asked
18 you on the other side.

19 First of all, I'd like to show you an exhibit, 1113,
20 which is not yet into evidence, so I will offer it in a little
21 bit.

15:31:18

22 Is it popped up on your screen, sir?

23 A. Yes, sir.

24 Q. And if you would take a look at it.

25 Sir, Exhibit 1113 -- and let me know after you've read

15:31:34

1 the, reviewed the first page, I'll --

2 A. I can barely make it out on this thing, sir.

3 Q. All right. Let me enlarge this, if I could, please.

4 You see the heading, though?

5 A. I can see the heading, yes, sir. 15:31:52

6 Q. Okay. Let me enlarge that. And let me know after you've
7 reviewed that.

8 A. Yes, sir.

9 (Pause in proceedings.)

10 THE WITNESS: I've reviewed it, sir. 15:32:19

11 BY MR. CASEY:

12 Q. All right. Now, let me turn to the next page, and I'm also
13 going to enlarge this for you so you can also see.

14 And let me know when you complete your review of that
15 document, sir. 15:32:41

16 MR. BYRNES: Your Honor?

17 THE COURT: Yes.

18 MR. BYRNES: This particular exhibit doesn't appear to
19 be in the pretrial order, either in the stipulated section or
20 the section identifying exhibits and objections. 15:33:03

21 THE COURT: I was just noticing that myself.

22 Mr. Casey?

23 MR. CASEY: Your Honor, let me look through here,
24 because it is in -- 1113 is on our list of defendants' exhibit
25 list filed with the Court. 15:33:22

1 THE COURT: I'm not talking about that. I'm talking
2 about the pretrial order.

3 MR. CASEY: May I consult with a member of my staff
4 real quick?

5 THE COURT: You certainly may. 15:33:31

6 (Pause in proceedings.)

7 MR. CASEY: Your Honor, I'm going to move on until we
8 can have an answer for you, because I don't understand why it's
9 here but not in the pretrial. That's what it indicates.

10 BY MR. CASEY: 15:34:04

11 Q. Let me move on and talk to you about the purpose of HSU.

12 You were asked a series of questions about what that
13 role was. Tell us, what is the role of HSU?

14 A. To interdict. Interdict means go out on the road and find
15 human smuggling vehicles, any vehicle being used to smuggle 15:34:23
16 people into the country for profit, or take down drop houses.

17 And we also took the role on as a kidnapping squad.
18 Unfortunately, we became really good at kidnappings, and we
19 actually worked a good handful of kidnapping cases.

20 Q. Was the role of human smuggling to target and go after 15:34:46
21 people in the United States that were present unlawfully?

22 A. No, sir.

23 Q. Now, let's turn just to a different subject, and that is
24 saturation patrols. Well, let me back up and strike that.

25 Tell me how you managed and supervised HSU on general 15:35:09

1 terms.

2 A. On general terms I tried to get out on the road as often as
3 I could, but my administrative duties, unfortunately, took me
4 from that, so I relied heavily on my sergeants in the field. I
5 mostly took care of the administrative duties, the meetings
6 that went on during the day. 15:35:29

7 And then when these lawsuits started I was absolutely
8 bombarded with getting information to the lawyers, Freedom of
9 Information Act. I -- I would say my last couple of years in
10 human smuggling was just nothing, being in the office and
11 looking for paperwork. 15:35:46

12 Q. Is that one of the reasons you're no longer with HSU?

13 A. I am absolutely no longer with HSU 'cause I got tired of
14 dealing with lawyers. To include my own.

15 Q. I do not blame you. Duly noted for the record. 15:36:08

16 A. Yes, sir.

17 Q. Tell us how you supervised people on what has been known
18 during this trial as large-scale saturation patrols, those in
19 which HSU was joined by non-HSU MCSO members.

20 A. I think HSU, our discipline has always been human
21 smuggling. Any time you bring in specialized units to these
22 crime saturation patrols they're going to automatically focus
23 on what their discipline is. If you bring in auto theft, then
24 these guys are going to focus on auto theft. Human smuggling's
25 going to focus on human smuggling. We brought narcotics guys 15:36:30
15:36:50

1 in, they focused on narcotics.

2 Q. I'm sorry, I was talking to my --

3 A. And then also as it evolved we actually took -- I would say
4 middle of 2009, late 2009, we actually took human smuggling out
5 of the op area and actually put them into smuggling corridors,
6 because we were noticing a lot of coyotes were actually trying
7 to move their human loads while the saturation patrols were
8 going on, so we were actually having human smuggling peripheral
9 to the freeways and highways.

15:37:11

10 Q. All right. Please, sir, tell me how would you supervise
11 people if you were in a command post.

15:37:42

12 A. I would supervise them through the sergeants, the pe -- and
13 the folks in the field, and I would listen to the radio as best
14 I could. Most of the time during these operations I was
15 running logistics.

15:38:13

16 MR. CASEY: What I'd like to do now is go back, Your
17 Honor. I think I've figured out the problem. We've removed
18 what I have as Exhibit 1113 as a duplicate of Plaintiffs'
19 Exhibit 137.

20 THE COURT: So it's plaintiffs' 137. Is it already in
21 evidence.

15:38:39

22 MR. CASEY: We usually have this prepared, Your Honor,
23 and I apologize.

24 MR. BYRNES: Your Honor, yes, it is.

25 THE COURT: All right.

15:38:50

1 MR. CASEY: Thank you, Your Honor.

2 And Mr. Byrnes, thank you for your courtesy.

3 BY MR. CASEY:

4 Q. Sir, I'm now going to blow this up again.

5 First of all, would you tell the Court what is
6 Exhibit 137, as a general matter?

15:38:58

7 A. It looks like the ops manual for human smuggling that was
8 effective in 2-19 of '08.

9 Q. And did you have any -- did you prepare this?

10 A. I believe I prepared it or revised it with the help of my
11 sergeants and my deputies.

15:39:13

12 Q. Why did you prepare that?

13 A. We didn't -- when I came to the unit we didn't have a
14 mission statement, we didn't have an SOP. There was nothing
15 there. I felt we needed one.

15:39:32

16 Q. Okay. Now, specifically what I'd like to do is have you go
17 to the mission statement and read that for the record, please.

18 A. The mission of the Maricopa County Sheriff's Office Human
19 Smuggling Unit, HSU, is to interdict human smuggling loads and
20 drop houses and to conduct investigations that result in the
21 successful prosecution of all suspects under A.R.S. 13-2319.A,
22 which would be the human smuggling statute.

15:39:49

23 HSU responds to all calls for service and incidents in
24 Maricopa County that may involve illegal aliens engaged in
25 criminal activity, and deploy a law enforcement strategy

15:40:08

1 accordingly in an effort to reduce the amount of violent crime
2 and peripheral crime associated with human smuggling.

3 MR. CASEY: Your Honor, I'd like to make a record, if
4 I could, and ask the Court for permission. It appears to me
5 that Plaintiffs' Exhibit 137 only contains page 1. Our exhibit 15:40:25
6 1113 contains all the pages of this document, and we made a,
7 what I'd call a flat-out mistake by removing this as
8 duplicative, when in fact it was not duplicative. I would like
9 permission, Your Honor, to use my Exhibit 1113.

10 THE COURT: Mr. Byrnes? 15:40:52

11 MR. BYRNES: Could I review the exhibit?

12 (Pause in proceedings.)

13 MR. BYRNES: No objection, Your Honor.

14 THE COURT: All right. Let me just ask, Mr. Byrnes,
15 if you have no objection can we then, to avoid a lot of 15:41:10
16 confusion, can we replace your Exhibit 137 with this exhibit
17 that has the multiple pages?

18 MR. BYRNES: Yes, Your Honor.

19 THE COURT: All right. We will do that and you can
20 take care of it with Kathleen later. 15:41:23

21 MR. CASEY: May I approach the clerk?

22 THE COURT: You may.

23 MR. CASEY: Your Honor, I apologize for that. I
24 should have been more careful in prescreening the exhibits
25 before they went out. 15:41:41

1 Let me blow that up now.

2 THE COURT: Can I get 137, the first page, blown up
3 while we're waiting?

4 MR. CASEY: Yes.

5 I've cut off a little bit of the first words, Your
6 Honor. 15:42:22

7 THE COURT: That's all right.

8 MR. CASEY: That's the substance of it.

9 BY MR. CASEY:

10 Q. All right. Mr. Sousa, unless -- 15:42:33

11 MR. CASEY: May I proceed, Your Honor?

12 THE COURT: You may.

13 MR. CASEY: All right. Thank you, sir.

14 Okay. Thank you very much. We have everything
15 solved. Thank you for your patience and for your staff's, Your
16 Honor. 15:42:50

17 BY MR. CASEY:

18 Q. Exhibit 1113, which is actually 137 that we've substituted,
19 sir, you've told us that this is something that you in your
20 office prepared in HSU? 15:43:03

21 A. Yes, sir.

22 Q. And tell us generally, what was its intended purpose?

23 A. So we had guidelines to operate under.

24 Q. Was this document, Human Smuggling Unit standard operating
25 procedures, something that was a policy in your HSU? 15:43:18

1 A. Yes, sir. When I sent it out I had every
2 sergeant distribute it to their deputies, and I believe I also
3 wanted the sergeants to have them initial it that they've read
4 it.

5 Q. And when you were going through it before we started the 15:43:34
6 debacle caused by my mistake, did you see anywhere in here
7 where it indicated that the mission of HSU was illegal
8 immigrants, undocumented persons?

9 A. No, sir.

10 Q. Now, what I'd like to do is I've shown you now page -- 15:43:53
11 Exhibit 137, and this is page 2 of it. And I'd like to
12 specifically show you down at the critical note.

13 Do you see the critical note?

14 A. Yes, sir.

15 Q. Would you please read that for the Court for the record. 15:44:15

16 A. You get it a little bigger?

17 Q. I'm going to do my best, sir. Let's try this.

18 A. Read it now, sir?

19 Q. Please.

20 A. At no time will a deputy call for a 287(g) certified deputy 15:44:40
21 based on the race or religion of the violator/suspect they are
22 out with.

23 Q. Why did you include that that as a policy of the HSU?

24 A. I wanted to make sure everybody, all the non-287(g)
25 deputies, were on the same page. 15:44:58

1 Q. Why?

2 A. Just to make sure they weren't calling 287(g) deputies --
3 being proactive, so they're not calling 287(g) deputies over
4 when they're not supposed to.

5 Q. Was that a -- a policy that you had in order to try to
6 alleviate some of the concerns Mr. Byrnes was asking --

15:45:13

7 A. It was once again being proactive, sir.

8 Q. When you say proactive, what do you mean?

9 A. Putting -- putting -- putting things in place so they don't
10 become a problem. So being -- thinking ahead.

15:45:29

11 Q. Okay. Thank you, sir.

12 Now, let me turn to something else, some other
13 policies. And I'm not going to ask you to read through these.
14 We're going to go through some. But could you just tell me,
15 based on your initial review, what is this document,
16 Exhibit 1114? And it my understanding has been stipulated into
17 evidence.

15:45:55

18 A. Traffic law enforcement guidelines.

19 Q. What is it?

20 A. Guidelines on enforcing traffic.

15:46:06

21 Q. Is it a policy and procedure of the MCSO?

22 A. Yes, sir.

23 Q. Do these policies apply to your deputies in their
24 operations?

25 A. Absolutely.

15:46:19

1 Q. Do they apply to non-HSU deputies participating in any
2 special operations?

3 A. They apply to all deputy sheriffs, sir.

4 Q. I'm going to show you the next number. And again,
5 generally this is Exhibit 1115, which is admitted into
6 evidence.

15:46:41

7 What is this document?

8 A. Once again, it's a policy.

9 Q. And what is the -- what is it a policy on?

10 A. Traffic violator contacts and citation -- issue of
11 citations.

15:46:52

12 Q. Is this policy applicable to your members when they're
13 doing anything related to their duties at HSU?

14 A. HSU is not above any MCSO policy. We follow all MCSO
15 policies.

15:47:09

16 Q. So you follow this one, exhibit --

17 A. Yes, sir.

18 Q. You -- I know you know where I'm going, but let me finish.

19 Your people at HSU follow Exhibit 1115, do they not?

20 A. Yes, sir.

15:47:19

21 Q. Okay. Now, let's turn to Exhibit 1116, which has been
22 stipulated into evidence. Would you tell the Court what is
23 this document, Exhibit 1116?

24 A. MCS -- MCSO policy.

25 Q. On what?

15:47:47

1 A. Search and seizure.

2 Q. Does this policy apply to your unit?

3 A. Yes, sir.

4 Q. Does it apply to all MCSO deputies that may work on any
5 special operations with your unit?

15:47:57

6 A. Yes, sir.

7 Q. Now I'm going to show you Exhibit 1117. Would you tell us
8 what that is, please.

9 A. MCSO policy and procedure, sir.

10 Q. Okay. And what is that a policy and procedure on?

15:48:22

11 A. Arrest procedures.

12 Q. Is that also applicable to your unit?

13 A. Yes, sir.

14 Q. Is it applicable to all MCSO deputies that work with you on
15 special patrols?

15:48:32

16 A. Yes, sir.

17 Q. When I say "you," I'm talking HSU.

18 A. Yes, sir.

19 Q. Okay. Now what I'd like to do is shift to something else.

20 You were asked a series of questions about tip lines, hotlines.

15:48:40

21 Do you remember that?

22 A. Yes, sir.

23 Q. Would you tell the Court, generally, how are tips that come
24 in from anyone that may want to call in, how are those

25 handled -- how are those handled?

15:48:53

1 A. Sometimes we just hang up.

2 Q. Okay. I appreciate that. But I need a little bit more
3 detail.

4 A. The tips that would come in on a tip line, Officer Perla
5 Plata just would log them, would -- would log them and would
6 log them on a -- a flow chart or a log she had.

15:49:06

7 Letter tips would usually come to me, and depending on
8 the amount I would take them and divide them up between the
9 sergeants. Those would be read. I would read those. If there
10 was a contact number, I always assigned someone to contact --
11 to make contact, if anything just for a PR contact, and advise
12 people of why we can't take action and give them a lesson in
13 constitutional law. And I've done that personally a couple of
14 times.

15:49:27

15 Q. Have you had experience where people have called in and
16 mentioned nothing but racial characteristics?

15:49:43

17 A. I have, and I've hung up.

18 Q. Have you had circumstances where they've given you a
19 combination of nothing but racial characteristics and then,
20 arguably, crime?

15:50:02

21 A. I remember one very specific person called me was
22 describing some crime but kept using the term anchor baby. I
23 didn't know what that meant. I asked her to explain, she told
24 me, and she told me what -- how she referred it to her, and I
25 told her: Bye. I don't want anything to do with you.

15:50:18

1 Q. Why?

2 A. Because what she was describing wasn't worth listening to
3 her offensive language and how she was describing people.

4 Q. Who else handles the tip line other than yourself?

5 A. The tip line is primarily handled by Officer Perla Plata. 15:50:31

6 She would be the one that would check it. But I'd be also --

7 I -- command staff up on the 19th floor, which would be the

8 Sheriff's Office headquarters, a lot of times they would

9 actually just transfer people to my line, and that's how I got

10 a good sampling of these calls, because I would talk to these 15:50:49

11 people directly.

12 Q. You were asked during your direct examination by

13 plaintiffs' counsel about a tip -- tip disposition sheets.

14 Do you remember those questions?

15 A. Yes, sir. 15:51:02

16 Q. What I'd like to do is show you Exhibit 1122. It's not yet

17 in evidence. Would you please look at this. Particularly --

18 this is Exhibit 1122. It's page 8 of that, for the court

19 record.

20 Would you tell the Court, what is this document? 15:51:17

21 A. It's the -- it's a disposition sheet.

22 Q. Is this the form that you created for use in handling

23 those?

24 A. Now that I think about it, I think I had Sergeant Palmer

25 create it, but I approved the form, but yes. 15:51:31

1 Q. All right. Did you -- did Sergeant Palmer create this form
2 at your request?

3 A. Yes, sir.

4 Q. Does this exhibit, 1122 at page 8, does that fairly and
5 accurately represent the type of form called tip disposition
6 sheet?

15:51:46

7 A. Yes, sir.

8 Q. Is this an MCSO document that you folks at HSU used
9 regularly in the course and scope of your business?

10 A. Since we developed it, it was SOP.

15:51:57

11 MR. CASEY: Okay. Now I'm going to move, Your Honor,
12 move to admit Exhibit 1122, only page 8.

13 MR. BYRNES: Your Honor, plaintiffs object to the
14 admission of this exhibit on several grounds, including, there
15 are multiple documents included in this exhibit and thus should
16 not be submitted as a single exhibit, that those constituent
17 documents are unauthenticated and therefore lack foundation.
18 They're also hearsay.

15:52:13

19 THE COURT: Well, first off, Mr. Casey, are you
20 planning on revising your exhibit?

15:52:36

21 MR. CASEY: Yes, I will do -- in fact, I'm going
22 through several of these, and I'm only asking for the admission
23 of the ones that -- the particular pages. Not all of 1122, and
24 only the ones that I address with him as examples of how
25 matters have been disposed of.

15:52:56

1 THE COURT: Well, under the Remarks section, are you
2 going to review any of that for the truth of the matter
3 asserted in the Remarks section?

4 MR. CASEY: Your Honor, no. What I am going to do is
5 use it with the witness and ask him to -- not that it's
6 truthful information, but that the information is recorded
7 there, and then how it was disposed of in juxtaposition with
8 some other things that were determined to be founded versus
9 unfounded.

15:53:08

10 THE COURT: All right. The objection is overruled.
11 The first page of this -- I mean, we're going to have to
12 re-mark the exhibit now because --

15:53:27

13 MR. CASEY: Yes, sir.

14 THE COURT: -- your --

15 MR. CASEY: And my office, Ms. Henry will work on that
16 and she'll listen to my -- which ones I put in or ask -- move
17 in, and if you admit it, we will do it and work with your
18 clerk.

15:53:33

19 THE COURT: All right.

20 MR. CASEY: All right.

15:53:46

21 (Exhibit No. 1122A is admitted into evidence.)

22 BY MR. CASEY:

23 Q. Now, sir, specifically --

24 (Off-the-record discussion between the clerk and the
25 Court.)

15:53:51

1 THE COURT: I'm going to specify. I'm informed it
2 will be much more -- much easier for recordkeeping, since we've
3 already admitted 1122, we're not going to -- we're not going to
4 revise the admission of 11 -- or, I'm sorry. 1122 has already
5 been marked.

15:54:06

6 MR. CASEY: May we call it --

7 THE COURT: So we're going to call it 1122A.

8 MR. CASEY: Yes, sir. Thank you.

9 All right. Let me make a note.

10 BY MR. CASEY:

15:54:19

11 Q. I'm going to show you, sir, this page that's on the screen
12 will be marked into evidence, and my understanding is the
13 Court's admitted it, 1122A.

14 THE COURT: Correct.

15 MR. CASEY: It's page 8 of 1122.

15:54:30

16 BY MR. CASEY:

17 Q. Sir, let's just go immediately to the disposition. What
18 does it say was done on this case?

19 A. Unfounded.

20 Q. Okay. Now, what I'm going to do, sir, is blow up the
21 remarks. And I'm not asking you whether these are true or
22 false, but just looking at that, you see that there's a remark
23 about someone complaining of people speaking Spanish, roaming
24 and going all the time, a lot of cars.

15:54:39

25 Do you see that?

15:55:03

1 A. Yes, sir.

2 Q. Okay. Would you read just silently to yourself the rest of
3 that?

4 A. If I can make it out.

5 Q. I know -- are you having trouble reading the legibility or 15:55:09
6 the size?

7 A. No, it's the legibility of the print. I'm worse, so I
8 guess I can't complain.

9 MR. BYRNES: Excuse me, Your Honor. May I ask
10 opposing counsel to identify the Bates number to the particular 15:55:23
11 page to which he's referring?

12 MR. CASEY: I will pull it up for you, Counsel.

13 MR. BYRNES: Thank you.

14 MR. CASEY: You're most welcome.

15 Bates label is Melendres MCSO 016040. And this is 15:55:48
16 actually page 8 of Exhibit 1122 marked into evidence as
17 Exhibit 1122A as in Alpha.

18 BY MR. CASEY:

19 Q. Now, let me go back and blow this up for you, Lieutenant,
20 and let me know after you've reviewed it. 15:56:10

21 Have you reviewed it, sir?

22 A. Just a sec, sir.

23 Yes, sir.

24 Q. Is there any mention of crime in this?

25 A. On this one, smells pot, which I'm inferring is slang for 15:56:39

1 marijuana.

2 Q. Other than that is there any basis for determining that
3 just because there's Spanish speaking there's any crime going
4 on?

5 A. No, sir, speaking -- speaking just another language is not
6 a crime. My mother would be in jail if that was the case.

7 Q. You believe, based on your experience at HSU, that the
8 unfounded conclusion for this disposition was the correct one?

15:56:53

9 A. Correct. I believe that there's not enough here to look
10 into this.

15:57:16

11 Q. All right. Now I'm going to show you, sir, also from
12 Exhibit 1122, and it's page 10 --

13 THE COURT: I believe you mean 1122A.

14 MR. CASEY: Yes. I was going to do the full thing.
15 It's -- it will be now 1122A, at page 10.

15:57:33

16 THE COURT: Well, wait a minute. We've only admitted
17 one page as 1122A.

18 MR. CASEY: Yes. And Your Honor -- excuse me. I'd
19 like to -- I thought I was starting it the correct way. I'm
20 going to pull up from 1122. I'm going to try to get it into
21 evidence and see if I can also mark that as 1122B.

15:57:52

22 THE COURT: All right.

23 MR. CASEY: There's -- I have three or four of them.

24 THE COURT: All right.

25 MR. CASEY: Okay. Thank you for your -- I know it's,

15:58:03

1 perhaps, confusing.

2 BY MR. CASEY:

3 Q. All right, sir. What I've pulled up here is a Bates
4 labeled document from Exhibit 1122. It's not -- it's Bates
5 labeled MCSO 16042, and it is not yet admitted.

15:58:36

6 Is this also a tip disposition sheet?

7 A. Yes, sir.

8 Q. Is this something, again, that was regularly used in your
9 office?

10 A. Yes, sir.

15:58:50

11 Q. Does it fairly and accurately represent the types of
12 dispositions of tips received on the hotline?

13 A. Yes, sir.

14 MR. CASEY: Okay. Again, this is from Exhibit 1122.
15 It's page 10. I'd like to mark that, Your Honor, as
16 Exhibit 1122B for identification and then move it into
17 evidence, please.

15:59:06

18 MR. BYRNES: Your Honor, plaintiffs object on the
19 ground of hearsay. There's no foundation for the proximity in
20 time and creation of this exhibit as to its date.

15:59:25

21 THE COURT: Okay. I assume that you're not admitting
22 anything for the truth of the matter asserted?

23 MR. CASEY: That is correct, Your Honor.

24 THE COURT: All right. So I'm going to overrule the
25 hearsay objection, but what about the foundation objection?

15:59:35

1 MR. CASEY: I can lay more foundation --

2 THE COURT: Well, I accept that the ex -- the exhibit
3 is what you say it is, which is a tip sheet. But I don't have
4 any foundation that Lieutenant Sousa had anything to do with
5 filling out the tip sheet. 15:59:50

6 MR. CASEY: Okay. Your Honor, I'm spending more time
7 on this than is probably appropriate.

8 BY MR. CASEY:

9 Q. All right. I'm now going to turn to another subject, and
10 that's the saturation patrols. 16:00:04

11 When you were at the command post, who else was
12 usually with you, sir?

13 A. Usually a series of folks. I could have Officer Perla
14 Plata, who was documenting the arrests as they came in.

15 Usually, I would have a -- one of the sergeants with me,
16 whether it be Sergeant Madrid or Sergeant Palmer. 16:00:24

17 I would also have one of the enforcement support
18 sergeants who were coordinating the logistics out at the scene
19 nearby. I would have other folks that were coordinating the
20 volunteers. 16:00:40

21 Q. After the time period in which the Maricopa County
22 Sheriff's Office entered into a 287(g) agreement with the
23 federal government, after that time period and before its
24 revocation in October of 2009, did any ICE officials receive
25 operations plans before saturation patrols were conducted? 16:01:02

1 A. When we had the agreement with them --

2 Q. Yes.

3 A. -- we copied them on everything.

4 Q. Why?

5 A. Almost everything.

16:01:13

6 Q. Why?

7 A. We wanted them to know full disclosure what we were doing.

8 Q. At any time did you ever receive, either orally, via
9 telephone, or in person, any type of communication indicating
10 any concern with the operations plans that you sent to ICE?

16:01:26

11 A. I don't recall any communications via e-mail or telephone.

12 MR. BYRNES: Objection, Your Honor. This line of
13 questioning counters Your Honor's ruling on the motion in
14 limine concerning ICE. In particular it goes to the alleged
15 approval of ICE of the HSU's activities.

16:01:44

16 THE COURT: Okay. We're going to take a break. I'm
17 going to go review my motion in limine ruling.

18 (Recess taken.)

19 THE COURT: The motion is overruled.

20 The witness may answer the question.

16:07:44

21 MR. CASEY: May the court reporter, Mr. Moll, please
22 read back my last question to the witness.

23 (The record was read by the court reporter.)

24 THE WITNESS: No, sir.

25 BY MR. CASEY:

16:08:15

1 Q. Did you ever receive anything in writing that expressed any
2 concerns or criticisms about your operations plans?

3 MR. BYRNES: Objection, hearsay.

4 THE COURT: Sustained.

5 BY MR. CASEY:

16:08:27

6 Q. Sir, did any officials of the federal government -- in
7 particular ICE -- ever actually attend any saturation patrols?

8 A. Yes, sir.

9 Q. And what was your understanding of why they attended?

10 A. I believe some upper management folks were at one to see
11 how we were operating, and then from time to time we would have
12 some of the ICE agents that were liaison stop by in some of the
13 other operations.

16:08:43

14 Q. And do you remember their names, the ones that stopped by?

15 A. I believe -- I'd be -- I'd be guessing, sir. I can't say
16 with hundred percent certainty which ones.

16:09:00

17 Q. Let me see if I can refresh your recollection. The names
18 Troy Henley. Jason Kidd. Does that sound familiar or not?

19 A. Yeah, those would be higher-ups. I was talking about the
20 ICE liaisons, the lower agents is what I was --

16:09:23

21 Q. Thank you very much.

22 A. You're welcome.

23 Q. When -- how frequently, whether it's one time or a number
24 of times, how frequently would someone from ICE attend a
25 saturation patrol?

16:09:37

1 A. When we were under the 287(g) agreement, I would say
2 50 percent of the time.

3 Q. And where would they be located that you knew that?

4 A. They would come by the command post.

5 Q. Do you know if they did anything else other than come by
6 the command post on 50 percent of the saturation patrols? 16:09:52

7 A. I believe when the higher-ups from D.C., when they did that
8 tour at one of them, I was -- I was busy running and listening
9 to the radio on the operation, but I believe they -- I think
10 one of the chiefs gave them a tour through and was explaining 16:10:11
11 how we were doing business.

12 Q. Now, under -- when those officers that exercised 287(g)
13 authority, were they supervised by MCSO people?

14 A. Alternately, anyone that was 287(g) certified was basically
15 a federal agent and was under the supervision of ICE for those 16:10:33
16 powers.

17 Q. What do you mean, for those powers?

18 A. When it came to the 287(g) program, ICE liaisons would
19 super -- when it came to doing that particular work was
20 ultimately their supervisors. MCSO supervisors would also be 16:10:55
21 there indirect, but anything that came up, any -- any issues
22 with the -- under the 287(g) program, then ICE liaisons would
23 step in.

24 Q. Did any of -- any ICE federal official ever express any
25 concerns about how the MCSO 287(g) authorities were exercising 16:11:13

1 that authority?

2 A. Not to my knowledge.

3 MR. BYRNES: Object, hearsay.

4 THE COURT: Sustained. Stricken.

5 BY MR. CASEY:

16:11:27

6 Q. Were you ever advised, orally or in any way, about any
7 concerns that ICE had about the 287(g) officers exercising that
8 authority?

9 MR. BYRNES: Objection, hearsay.

10 THE COURT: I'm going to sustain it.

16:11:43

11 MR. CASEY: Thank you, Your Honor.

12 BY MR. CASEY:

13 Q. Sir, after saturation patrols were conducted, you indicated
14 that there were some types of documents that were prepared.

15 What were those documents?

16:11:54

16 A. Once a saturation patrol was concluded, we tallied up the
17 individual stat sheets into one stat sheet that compiled all
18 the data, quantitative data for the entire operation, and then
19 we usually would write an e-mail briefing with the notes. And
20 then we would send it up the chain of command and copy the ICE
21 liaisons on it.

16:12:20

22 Q. All right. When you said you'd send it up the chain of
23 command, what do you mean by that?

24 A. I would -- I would e-mail my chief and captains, if I had
25 one at the time, and copy the ICE officials.

16:12:34

1 Q. Now, when you say "ICE officials," why would you copy them
2 on this after-action report?

3 A. We were 287(g), so they knew what we were doing.

4 Q. All right. Thank you, sir. I'm going to turn to a
5 different subject. And fortunately, these are all admitted
6 exhibits. 16:12:49

7 I'm going to show you Exhibit 111. Specifically, I'm
8 going to show you page 8 of admitted -- admitted Exhibit 111.

9 Do you recognize this document, sir?

10 A. Yes, sir. 16:13:10

11 Q. And can you tell us what it is?

12 A. It's an ops plan.

13 Q. All right. And you're familiar with operations plans?

14 A. Yes, sir.

15 Q. And this is something that you've already told the Court is
16 what you would talk to in briefing before operations were
17 conducted? 16:13:20

18 A. Yes, sir.

19 Q. All right. Now, one of the things that I'd like to do, and
20 I'm going to pull up here -- I'm not as good at this as
21 Mr. Braun, but it's going to have to make do. 16:13:33

22 I'm going to -- do you see the call-out?

23 A. Conducting traffic stops on saturation patrol.

24 Q. Is this something that you wrote?

25 A. Either I wrote it or I directed someone to put it in. 16:13:56

1 Q. And would you please read into the record what is contained
2 under the section, Conducting traffic stops on saturation
3 patrol.

4 A. All sworn personnel will conduct all traffic stops in
5 accordance with MCSO policy and procedures, as well as training 16:14:10
6 received at the basic academy level. Note: At no time will
7 MCSO personnel stop a vehicle based on the race of the subjects
8 in the vehicle. Racial profiling is prohibited.

9 Q. Why is that last sentence, the note, in bold?

10 A. Once again, being proactive, we want to make sure everybody 16:14:32
11 sees, everybody reads it.

12 Q. Why is that sentence italicized?

13 A. To get -- to grab everybody's attention, to be proactive,
14 make sure no one's doing it.

15 Q. Now, what -- did you ever do any oral instructions in 16:14:48
16 addition to making these available in writing?

17 A. During the course of the operation I would also talk about:
18 Don't racial profile, don't look into vehicles, and attempt to
19 be proactive.

20 Q. Thank you, sir. 16:15:08

21 I'm now going to turn to admitted Exhibit 127 and
22 we're going to look at the first page of that, sir.

23 You recognize this document?

24 A. Yes, sir.

25 Q. And that's another operations plan but for the southeast 16:15:21

1 valley?

2 A. Yes, sir.

3 Q. And I'm going to turn to the second page, and I'm going to
4 also do the call-out.

5 Is the call-out the same on this plan as the one you
6 just identified, the previous one, Exhibit 111?

16:15:36

7 A. Yes, sir.

8 Q. Again, was that the type -- strike that.

9 You described an evolution of warning of information
10 being given. How did that come about, sir?

16:15:55

11 A. Being proactive. When I originally took over in -- I
12 believe like Chuck Siemens, at the beginning was coordinating
13 it and putting the ops plans together. Once again, once I took
14 over the -- there was that public -- there was that perception
15 out there due to media reports that we're racially profiling,
16 so we decided to be very proactive and address it.

16:16:14

17 Q. I'm going to now show you a third operations plan, and
18 that's Exhibit 164, page 1 of that. That's admitted into
19 evidence.

20 What -- where -- what saturation patrol does this
21 cover?

16:16:31

22 A. West valley, Buckeye, Avondale, Goodyear, Tolleson, Gila
23 Bend, Tonopah, all major thoroughfares within to include I-10,
24 MC-85, SR-85, I-8, Yuma Road, Wickenburg Road, and Van Buren
25 Road.

16:16:57

1 Q. All right. Thank you.

2 And again, I'm going to turn to the second page and
3 I'm going to do a call-out on this section.

4 Is this the same type of no racial profiling warning
5 that was provided in the first two saturation patrol operation 16:17:09
6 plans that we've gone over?

7 A. Yes, sir.

8 Q. Now I'm going to go to the next one, and this is
9 Exhibit 169, already admitted into evidence.

10 Does this appear to you to be an operations plan for a 16:17:39
11 separate saturation patrol?

12 A. Yes, sir.

13 Q. And it says the Durango/35th Avenue corridor?

14 A. Yes, sir.

15 Q. All right. I'm going to turn to the second page now, do 16:17:54
16 the call-out again. Is the call-out the same type of no racial
17 profiling admonition that was in the first three saturation
18 patrol exhibits I've shown you?

19 A. Yes, sir.

20 Q. All right. Thank you, sir. 16:18:10

21 I'm now going to show you Exhibit 174 admitted into
22 evidence.

23 And I'd like to draw your attention to something.

24 This appears to be an operations plan for the northwest valley
25 crime suppression patrol? 16:18:35

1 A. Yes, sir.

2 Q. And would you look at the date and tell me what the date
3 is.

4 A. October 16th and 17th of 2009.

5 Q. Now, the reason I pointed that out to you is you mentioned 16:18:43
6 earlier to plaintiffs' questioning that HSU evolves as things
7 changed.

8 Did I understand your testimony correctly?

9 A. Yes, sir, the ops plans evolved.

10 Q. All right. Do you know when the federal government removed 16:18:58
11 287(g) field authority from the MCSO?

12 A. I believe it was around October of 2009.

13 Q. Okay. Around the -- around the date of this operation
14 plan, was it not?

15 A. Could be. I believe so. 16:19:18

16 Q. All right. Now, the reason why I was going to show you
17 page 2, and I'm then going to first do a call-out up here.

18 That call-out looks like the familiar admonition that
19 you folks had been giving in saturation patrols, doesn't it?

20 A. Yes, sir. 16:19:38

21 Q. All right. Now, there appears to be some additional
22 information down here. What is this new section we see on this
23 date? Says LEAR procedures, critical. What is that?

24 A. Based on losing the 287(g), we had to put in a new SOP --

25 Q. Why did -- 16:20:02

1 A. -- standard operating procedure.

2 Q. Why did you need to put in a new SOP?

3 A. Because we were no longer making federal arrests under
4 federal authority.

5 Q. You no longer had 287(g) authority.

16:20:17

6 A. Correct.

7 Q. All right. Would you read in the first point, that first
8 paragraph, into the record of the critical procedure.

9 A. When a deputy sheriff has indicators as outlined above

10 leading him to believe, reasonable suspicion, a violator or

16:20:30

11 other subject he is in lawful contact with is in fact an

12 illegal alien in the United States, the deputy will call for a

13 field supervisor to respond to his location.

14 Q. Why did you include -- well, first of all, did you write
15 this?

16:20:46

16 A. I don't believe so, sir.

17 Q. Who did?

18 A. I -- it would have been one of my sergeants, sir.

19 Q. That would have either been Sergeant Palmer or Sergeant
20 Manuel Madrid?

16:20:58

21 A. Yes, at my direction.

22 Q. All right. So at your direction?

23 A. Yes, sir.

24 Q. All right. Why did you direct them to include this new
25 evolved information?

16:21:05

1 A. I believe because there was a -- because we -- we were no
2 longer 287(g). I wanted to make sure -- it sounds like I
3 wanted to make sure a supervisor was there, make sure we're
4 playing within the rules and doing everything within the law.

5 Q. All right. Now, I want to em -- I want to go back to that. 16:21:20

6 Why is it important to play within the rules and
7 follow the law?

8 A. Because we don't want to violate anybody's rights.

9 Q. Now, you were asked a question --

10 THE COURT: Mr. Casey, go ahead and ask your question, 16:21:40
11 but can I ask you to put up the whole page again, please.

12 MR. CASEY: Yes, Your Honor. And I can -- I'm not
13 sure I can blow it up much more.

14 THE COURT: That's fine. I can read it.

15 MR. CASEY: Thank you. Do you want me to wait until 16:21:52
16 you're done?

17 THE COURT: No, go ahead.

18 BY MR. CASEY:

19 Q. You were asked a question by Mr. Byrnes about the buck 16:21:59
20 stopping. Do you remember that?

21 A. Yes, sir.

22 Q. And he said the buck stopped with Arpaio?

23 A. Yes.

24 Q. Where does the buck really stop, sir?

25 A. When it comes to enforcing the law in HSU and making sure 16:22:05

1 everything is done in accordance with the law, me.

2 Q. Okay. The buck stops with the law is what you're telling
3 us?

4 A. Yes, sir.

5 Q. All right. Thank you, sir.

16:22:16

6 I'm now going to show you Exhibit 176, which is marked
7 into evidence. You see that this is another operations plan?

8 A. Yes, sir.

9 Q. And do you see the time period there?

10 A. Yes, sir.

16:22:43

11 Q. And that -- what is the time for the date of operation?

12 A. November 16th, 17th, and 18th of 2009.

13 Q. Is that before or after the federal government revoked
14 287(g) field authority?

15 A. If my -- if my belief is correct that it was in October,
16 it's after.

16:22:59

17 Q. All right. Now, I'm going to turn the page 2. Is the same
18 new LEAR critical procedures listed in this saturation patrol
19 document?

20 A. Looks like that, sir.

16:23:17

21 Q. All right. Now, let me just go to a little bit different
22 subject. You testified that during briefings you would make
23 these documents available to your officers that were
24 participating.

25 A. They were available for them to read and they had to read

16:23:30

1 them before they signed in.

2 Q. Why did you not just give them a copy?

3 A. Simple fact is they would leave them all over the place,
4 the media would get ahold of them and I would be getting phone
5 calls.

16:23:43

6 Q. Okay. Now, why is that a problem if we have an open
7 government, we want to have -- I forget -- sunshine. We want
8 sunshine in government. Why is that a problem for the media to
9 get ahold of it?

10 A. Strictly 'cause of the -- just strictly 'cause of the phone
11 numbers. I don't want to take those calls. The PIOs are there
12 to address those -- those issues.

16:23:57

13 Q. Now, let me ask you this. If, let's say, a deputy we
14 clearly know from the evidence actually makes a traffic stop on
15 a day that a saturation patrol occurs, but he doesn't sign in
16 on the sign-in sheet, how do we know whether he actually read
17 or heard anything like this?

16:24:15

18 A. Everyone has to come to the command post first before they
19 go out.

20 Q. If a deputy did not sign in on a sign-in sheet does that
21 necessarily mean he did not attend the meeting?

16:24:34

22 A. No, it does not.

23 Q. Or have there been occasions that for whatever reason
24 people have not signed in, yet attended, in your memory?

25 A. I'm sure people coming in late, coming in late.

16:24:49

1 Q. Okay.

2 A. There's always going to be a few stragglers.

3 Q. Now, let me turn to another exhibit. That's 11 -- 1110,
4 and I'm going to show you the first page. That's -- excuse me.
5 That's not yet admitted into evidence. 16:25:21

6 MR. CASEY: I'm going to withdraw that question, Your
7 Honor.

8 BY MR. CASEY:

9 Q. You were asked during -- well, first of all, there's been
10 evidence here that the plaintiffs have a statistician that has 16:25:43
11 done some work involving 13, or actually I think 11 -- 11
12 saturation patrols.

13 Assuming that's correct, sir, how many saturation
14 patrols, either large or small, were you involved in during
15 your time at HSU? 16:26:05

16 A. Where I was actually involved and coordinating and being
17 there?

18 Q. In any way while you were at HSU.

19 A. I would say large ones with multiple units, divisions,
20 probably 20, 21. And then I would say small ones, I would say 16:26:24
21 maybe the same number. I'm not sure.

22 Q. All right. Thank you, sir.

23 And during what time period did that take place?

24 A. Late 2007 till late 2011, I believe, was our last, sometime
25 in 2011 -- 16:26:48

1 Q. All right.

2 A. -- or 2012. No, it was 2011.

3 Q. Thank you very much, sir.

4 Let me now turn to a different exhibit that is
5 admitted, and that's Exhibit 82, and I'm going to turn to the
6 8th page of that exhibit.

16:26:57

7 Why did that happen?

8 MR. CASEY: Excuse me, Your Honor. I'm hitting the
9 wrong buttons.

10 BY MR. CASEY:

16:27:18

11 Q. Do you remember being asked about -- for clarity, you
12 recognize this as an arrest list?

13 A. Correct. Before we actually formed an actual arrest list
14 this is how we did.

15 Q. And what I'm going to try to do is blow -- this is probably
16 as good as I'm going to get, sir.

16:27:30

17 You were asked about whether or not all, what appeared
18 to be the Hispanic surnames, were a concern to you.

19 Do you remember being asked that question?

20 A. Yes, sir.

16:27:51

21 Q. Would you explain for us what is the abbreviation -- under
22 the charge section of Exhibit 2, page 8, what's "charge" mean?

23 A. The offense.

24 Q. All right. What's DOSL mean?

25 A. Driving on a suspended license.

16:28:05

1 Q. If someone is driving on a suspended license, does that
2 have any bearing whatsoever on their race?

3 A. No, sir.

4 Q. Does it have any bearing whatsoever on their ethnicity?

5 A. No, sir.

16:28:17

6 Q. The next thing I'd like to ask you about is where it talks
7 about failure to ID.

8 Is that required under Title 28, to have ID?

9 A. Yes, sir, if you're driving.

10 Q. All right. And failure to ID, that is what, failure to
11 produce a state-issued license?

16:28:30

12 A. Failure to produce valid identification as recognized by
13 the state of Arizona.

14 Q. So if a car is pulled over and the person doesn't have a
15 Title 28 recognized form of identification, that is something
16 they can be criminally charged with?

16:28:47

17 A. Yes, sir.

18 Q. And does that have any bearing -- if someone doesn't have
19 their ID on them, assuming they have one at all, does that have
20 anything to do with what race they are?

16:29:03

21 A. No, sir.

22 Q. Have anything to do with what ethnicity they are?

23 A. No, sir.

24 Q. Have anything to do with their skin color?

25 A. No, sir.

16:29:11

1 Q. What about DUI, does that have -- if someone's arrested for
2 DUI, does that have anything to do with race?

3 A. No, sir.

4 Q. Now, the other sections that's in here, there's something
5 called disorderly at the very bottom there. That's for an
6 Aaron. What is disorderly?

16:29:20

7 A. Disorderly conduct, you can have several underneath. It --
8 it could be several different type of crimes that fall
9 underneath that statute, whether it could be getting in
10 somebody -- another citizen's face, calling them names, trying
11 to provoke them, that would be disorderly conduct.

16:29:40

12 To charge disorderly conduct, though, you gotta have a
13 victim. The courts usually -- the courts usually expect the
14 police to tolerate some of that behavior.

15 Q. All right. Now, I'm going to turn to the next page that
16 you were shown here. And real quickly, what I'd like to do --
17 and it's hard to tell, but item number 6, the name is what it
18 is, but it says under charge warrant slash something. Can you
19 tell what that is?

16:29:56

20 A. Warrant/failure to appear. Didn't appear for his court
21 date, a warrant was issued.

16:30:21

22 Q. So that means a court at some previous time to the stop had
23 issued an arrest warrant?

24 A. Yes, sir.

25 Q. And that -- does that have anything to do with race,

16:30:32

1 ethnicity, or skin color?

2 A. No, sir.

3 Q. All right. Now, there are -- if we could go back up to the
4 first page there are a number of things characterized as
5 287(g), and the plaintiffs' lawyer asked you about that. 16:30:46

6 What does that indicate?

7 A. That means that they -- during the course of the stop, the
8 287(g) officer had the indicators that someone was in violation
9 of federal statute --

10 Q. Do you -- I'm sorry, I interrupted you. 16:31:01

11 A. Immigration violation.

12 Q. Does that in your view have anything to do with race,
13 ethnicity, or skin color?

14 A. No, sir.

15 Q. What's it have to do with? 16:31:10

16 A. Somebody being here illegally.

17 Q. Okay. Now, does it have -- does it have anything to do
18 with, since we're a border state, and our county goes fairly
19 far south, does it have anything to do with your experience
20 that you've learned that many of the people that are 16:31:24

21 undocumented are from south of the border from the Republic of
22 Mexico?

23 A. In my -- in my experience, my first four years on human
24 smuggling, we had a large flow of coming in, folks being

25 smuggled in, drop houses. We were taking down load vehicles, 16:31:43

1 two or three a night. We were extremely busy.

2 Q. All right. So the 287(g) characteristic accompanying
3 Hispanic surnames is a product of -- of what, our geographic
4 location?

5 A. Yes, sir, could be. 16:31:59

6 Q. Now, if we were -- have you ever worked in the southeastern
7 United States? I know you're from Providence, Rhode Island
8 originally. You ever do law enforcement up there?

9 A. I was a reserve deputy down in Harrison County,
10 Mississippi. 16:32:17

11 Q. So if we had a border, hypothetically, with China, or Haiti
12 across some water, Cuba across water, we might be dealing with
13 different ethnicities falling within unlawful presence.

14 Is that a fair statement?

15 A. That would be the -- 16:32:32

16 MR. BYRNES: Objection, lacks foundation. Calls for
17 speculation.

18 THE COURT: Sustained.

19 BY MR. CASEY:

20 Q. Now, let me turn, sir, to the same exhibit, 82. It's going 16:32:38
21 to be the fifth page. And this was what you described as a
22 stat sheet for the saturation patrol, was it not?

23 A. Yes, sir.

24 Q. And tell us again how many total -- first of all, when it
25 says all contacts, what does that mean? 16:32:58

1 A. All contacts can be -- it can be a traffic stop. They
2 could be somebody you went into Circle K to get a cup of coffee
3 but then that person started talking to you about law
4 enforcement, or something came up about a law enforcement
5 issue. It could be somebody you stopped to talk on the side of 16:33:15
6 the -- on the side of the road to give advice or get intel
7 from.

8 Q. Okay. And out of the 270 people, what does it mean when it
9 says warrant arrest, 8?

10 A. That we made eight warrant arrests out of the 270. 16:33:29

11 Q. So out of 270 contacts, there were eight people that you
12 somehow discovered that had arrest warrants issued for them.

13 A. We cleared eight warrants. Sometimes folks could have
14 multiple warrants.

15 Q. And how many arrests were made for criminal reasons under 16:33:47
16 state law?

17 A. Criminal arrests for adults, we got 37; a juvie, one; and
18 then criminal citations, 25. Criminal citations is in lieu of
19 detention. It's still considered an arrest; we just didn't
20 book. 16:34:06

21 Q. All right. Now, traffic citations, is that for things like
22 when you -- speeding, equipment violations --

23 A. Civil traffic violations that don't meet the criminal.

24 Q. And out of the 270 contacts, how many traffic citations
25 were issued at this particular operation at Cave Creek and Bell 16:34:23

1 in March of 2008?

2 A. 156.

3 Q. Now, out of the 270 stops, can you tell me how many people
4 were determined to be 287(g) or otherwise perhaps unlawfully
5 present in the country?

16:34:43

6 A. Looks like about 27. If you take the state charges with
7 the ICE detainers and the 287(g) arrests, it looks like 27.

8 Q. Now, help me understand. Why the breakup of the 27 between
9 the two categories, one being the state charges with ICE
10 detainers, and the second category being 287(g) arrests, no
11 state charges? I don't understand. Why --

16:35:03

12 A. Under -- under the 287(g) arrests they made a probable
13 cause stop, ended up with the indicators, put their federal hat
14 and actually made the federal arrest, and those folks were
15 transported right to ICE.

16:35:23

16 On state charges with ICE detainers they never put
17 that hat on. They arrested them and just booked them for the
18 state charge, and then at some point later somebody put an ICE
19 detainer on them.

20 Q. All right. So basically people unlawfully in the country
21 are either charged with the state crime or the 287(g)
22 administrative proceedings?

16:35:34

23 A. If you were able to put that training in effect.

24 Q. Okay. And 27, that looks like it's about 10 percent of all
25 the people, all the contacts.

16:35:51

1 A. Looks like that.

2 Q. All right. Now, finally -- and then we're going to finish
3 up, I'll be done -- and that is, you said you trust your
4 people.

5 A. Yes, sir. 16:36:02

6 Q. What is that trust based on?

7 A. Working -- working with them for years. Early on spending
8 a lot of time in the field. Knowing -- knowing them
9 individually.

10 Q. What about -- what about their training? Does that have 16:36:16
11 any role in your trust?

12 A. They were -- they were all -- they were all trained at the
13 basic academy level that you cannot racial profile. The 287(g)
14 training, I'm not 287(g) training but I was told there was a
15 block on racial profiling when they went through 287(g). 16:36:35

16 Also, we were extremely proactive with everything, and
17 especially 2007, 2008, 2009, when they were just all over the
18 media, all the perceptions of what the Sheriff's Office was
19 doing, morale would get down and we'd bring guys in and we'd
20 just reinforce, Hey, look. Our primary concern is us. It's 16:36:54
21 the state charges, that's all we care about.

22 In the course of doing your job enforcing the state
23 charges, you come -- if you come across someone that you can --
24 and you get the indicators that you can put your federal hat on
25 and use your federal authority, I'm not going to tell people 16:37:10

1 not to do it.

2 Q. Let me ask you this, and tell me if you're unable. But
3 because of this lawsuit and press did you folks in HSU feel
4 like you were in a fishbowl being observed?

5 A. No doubt. 16:37:25

6 Q. What effect did that have on keeping you effective in your
7 operations?

8 A. It would -- we had plenty of meetings bringing people in
9 and -- and reinforcing what we do do, and reminding people we
10 don't racially profile. And -- and I think when it comes down 16:37:43
11 to it, the number one thing is that I think everybody forgets
12 is that whether you want to believe it or not, Human Smuggling
13 is a life-saving organization. We save a lot of people that
14 were in violent drop houses. We save -- we recovered a lot of
15 people being held against their will. And that's why I stayed 16:38:01
16 there as long as I stayed.

17 Q. After the federal government terminated or revoked the
18 field authority for MCSO in October of 2009, did there come a
19 time that any additional training of any type was provided to
20 HSU officers and other deputies out on patrol? 16:38:22

21 A. Well, for deputy sheriffs I know a briefing board went out
22 briefing everybody that we no longer had 287(g), to cease all
23 that. Also to stop using the -- the deputy sheriffs could no
24 longer use the ICE computers, the ICE systems, that were linked
25 right to ICE. 16:38:44

1 Also in-house, in Human Smuggling, we did the training
2 with the new LEAR protocol that we talked about here, law
3 enforcement response for ICE.

4 Q. Was that online, did you say?

5 A. No, the briefing -- the -- the training we did was, I
6 believe we met with the county attorney on how we were going to
7 do business since we lost 287(g), which was determined that in
8 the course of our traffic stops we'd do more interviewing in
9 the field before we -- without detention or detainment. Also,
10 the reinforcement.

11 Also, when we changed, we added it to the LEAR
12 protocol. We put that one part in about supervisors going to
13 the scenes, just to make sure things were being done
14 appropriately.

15 Q. At any time was there any online training that you folks
16 were mandatory -- it was required you folks to do?

17 A. Yes. May of 2010 there was mandatory racial profiling
18 training.

19 Q. And tell me a little bit about that. What did it cover?

20 A. I wasn't required to do it, but I did do it. And it just
21 basically covered some of the topics that we've talked about.
22 We don't stop people based on -- on the color of their skin.
23 We don't stop people based on religion. We don't target areas
24 based on the ethnicity or the color of people's skin in that
25 particular area.

1 Q. And when do you believe that that online training began?

2 A. I believe -- I believe it was May of 2010.

3 Q. All right. And who was required to attend that?

4 A. I believe it was the online E-learning training, which was
5 mandatory training. Online E-learning training is mandatory
6 for everybody from sergeant and below.

16:40:31

7 Q. All right. And even though you are a lieutenant, you still
8 took it?

9 A. I still took it, yes, sir.

10 Q. Do you know who prepared that training?

16:40:41

11 A. Our training division did, I believe.

12 Q. All right. Let me -- I lied to you. I do have a couple of
13 additional questions for you.

14 Are you involved in any way in preparing press
15 releases for Sheriff Arpaio on the 19th floor?

16:41:02

16 A. No, sir.

17 Q. Do you see his press releases after the fact?

18 A. In the last six, seven, eight months, they started a new
19 procedure where they actually send the press releases out
20 office-wide now, as like a briefing board, but prior to the
21 last six or seven months, no.

16:41:19

22 Q. Did any public statements while you were -- strike that.

23 While you were at HSU, did any statements by Sheriff
24 Arpaio ever in -- ever influence you in any way about how you
25 were to conduct operations, or supervise, or manage your

16:41:40

1 people?

2 A. Absolutely not. That's why I said at HSU it stops with me.
3 And what I meant by that is that I tell my people, We're going
4 to focus within the rules. We're going to do our jobs. We're
5 not even going to worry about this illegal immigration stuff. 16:41:55
6 We're just going to do our jobs. And if the 287(g) folks did
7 come across people in the course of doing their jobs, I also
8 wasn't going to tell them not to use that training.

9 Q. Now, let me also talk to you a little bit about things on
10 television, since the sheriff appears to be on television a 16:42:10
11 great deal. Is there anything -- have you ever seen him on
12 television commenting, quotings, making statements?

13 A. I've never seen him make a speech, but I've -- I know every
14 time -- I've been around every time he talks. It's a topic
15 that comes up and he does talk about it. 16:42:30

16 Q. Anything that you've ever heard in any comments off the
17 cuff, whatever it might be, that he's made, either on the
18 television or to reporters, has that ever influenced any law
19 enforcement decision, supervision, or management that you have
20 done in HSU? 16:42:46

21 A. Absolutely not.

22 Q. Okay. Now, there was some testimony earlier when Brian
23 Sands was in here that there are some operational details in
24 saturation patrols that are simply not given to the 19th floor
25 public information officer. 16:43:02

1 Were you aware of that?

2 A. Yes. If we have drug units working with us, these guys
3 work undercover; we've had our civil division working warrants
4 during some of these.

5 Q. I think this might be it, Lieutenant. 16:43:16

6 During the course of your career at HSU have you come
7 across load vehicles of non-Hispanics?

8 A. Yes.

9 Q. And would you describe for us what races or ethnicities, to
10 the extent you were able to determine, or nations of origin 16:43:34
11 where these people were from?

12 A. Off the top of my head, the one I can think of was a load
13 of Chinese nationals.

14 Q. Do you remember when that was?

15 A. I'd be guessing, sir. I'm not sure. 16:43:49

16 Q. Okay. Does race or ethnicity play any role whatsoever in
17 any of your decisions as lieutenant of HSU?

18 A. Absolutely not.

19 Q. Has it ever?

20 A. Absolutely not. 16:44:02

21 Q. I know you're not there again -- you're no longer there,
22 but at any time did you have any concerns, given the fishbowl
23 that you were in, that your deputies may be improperly relying
24 on or using race or ethnicity to make law enforcement
25 decisions? 16:44:21

1 A. I have -- I have no reservations whatsoever they did not
2 racially profile.

3 MR. CASEY: All right. Thank you, sir. I have no
4 other questions.

5 Thank you for your patience and the Court's indulgence 16:44:32
6 with my exhibit issues.

7 THE COURT: No problem.

8 Let me ask you, Mr. Byrnes, how long do you think you
9 have on redirect?

10 MR. BYRNES: Yeah, I would say 15 to 20 minutes. 16:44:41

11 THE COURT: Let's go, Mr. Byrnes.

12 MR. BYRNES: Noticing it was 4:44, so...

13 REDIRECT EXAMINATION

14 BY MR. BYRNES:

15 Q. Lieutenant Sousa, can you please direct your attention 16:45:16
16 again to the Exhibit PX 82? In particular, to page 1851 in the
17 lower right.

18 You'll note, if you look at lines 11 and lines 25 that
19 in both those instances the charge is listed as fail or failure
20 to ID. 16:45:55

21 Do you see that?

22 A. Yes, sir.

23 Q. That means that the charge is that the person failed to
24 provide legal identification, correct?

25 A. Yes, sir. 16:46:02

1 Q. And then if you look -- follow those rows over to the PC
2 column, you'll notice that both of them begin with pass, and
3 there's a number, in one case 12 and in one case 24, is that
4 correct?

5 A. Yes, sir. 16:46:18

6 Q. Failure to carry identification as a passenger in a car is
7 not a crime in Arizona, is it?

8 A. Unless you're committing another violation.

9 Q. But the failure to present legal identification is itself
10 not a crime, correct? 16:46:30

11 A. If you're a passenger in a vehicle not in violation, no,
12 sir.

13 Q. Mr. Casey showed you a number of operations plans, and one
14 in particular, the operations plan marked Exhibit 169, and if
15 you'll look at the second page of that, which is labeled 57031. 16:46:55

16 And Mr. Braun, can you please call out the third
17 paragraph.

18 Lieutenant Sousa, do you recall testifying about that
19 second sentence, the note that is in italics?

20 A. Yes, sir. 16:47:21

21 Q. Did you add that line to the -- to this operations plan?

22 A. Did I personally add it?

23 Q. Yes.

24 A. I don't recall, sir.

25 Q. Do you believe that perhaps either Sergeant Madrid or 16:47:38

1 Sergeant Palmer added this line?

2 A. They probably did, but at my direction.

3 Q. There was a point in time where you handed over the
4 creation of the operations plans to your sergeants, is that
5 right?

16:47:51

6 A. Yes, sir.

7 Q. And this addition was in response to public criticism
8 concerning potential racial profiling at the Sheriff's Office,
9 correct?

10 A. Correct, being proactive.

16:48:03

11 Q. Mr. Casey asked you a number of questions toward the end of
12 his cross-examination concerning training, and one you
13 responded concerning in-house HSU training with -- with regard
14 to a LEAR protocol.

15 Do you remember that testimony?

16:48:28

16 A. Yes, sir.

17 Q. Was that LEAR protocol provided by Sergeant Palmer?

18 A. I believe he typed it up, yes, sir.

19 Q. I'd like to -- you also testified concerning ICE, and in
20 particular, the attendance at some aspects of some saturation
21 patrols of a number of ICE agents, one of which was Jason Kidd,
22 is that correct?

16:48:46

23 A. Yes, sir.

24 Q. Who is Mr. Kidd?

25 A. When I first came to the unit he was our agent liaison, and

16:48:58

1 then while I was in the unit I believe he was promoted to ASAC,
2 assistant special agent in charge.

3 Q. Are you aware that Mr. Kidd gave a deposition in this case
4 on October 21st, 2010?

5 A. I think he did, I'm not sure. 16:49:17

6 Q. Are you aware that Mr. Kidd testified that there was no
7 basis, quote, no basis for ICE, quote, to conclude one way or
8 another whether there was racial profiling during saturation
9 patrols?

10 MR. CASEY: Your Honor, this is improper impeachment. 16:49:32

11 THE COURT: I'm going to sustain that.

12 BY MR. BYRNES:

13 Q. Do you recall Mr. Kidd's role concerning the saturation
14 patrols that he did attend?

15 A. No, I don't, sir. 16:49:48

16 Q. But his role was not super -- he was not a supervisor of a
17 saturation patrol, correct?

18 A. No, sir. For MCSO, no, sir; but for federal guys, yes,
19 sir.

20 Q. He stayed near the command post, correct, as you recall? 16:50:03

21 A. I couldn't tell you where he was, sir.

22 Q. Mr. Kidd was not on -- did not observe traffic stops,
23 correct?

24 A. I don't believe he ever went out on patrol, sir.

25 Q. You testified earlier concerning the tip line, and in 16:50:18

1 particular the -- you testified concerning tip disposition
2 sheets.

3 Do you recall that?

4 A. Yes, sir.

5 Q. And during -- when I questioned you earlier you had talked 16:50:37
6 about, with regard to some disposition sheets, you would write
7 in a category in addition to founded and unfounded that was
8 info, and sometimes you would check that, correct?

9 A. Yes, sir.

10 Q. And what did the designation "info" signify, again? 16:50:51

11 A. That signified to me somebody was just giving us
12 information and we weren't going to do anything with it.

13 Q. How, if at all, did that differ from the unfounded
14 disposition designation?

15 A. 'Cause I would get tips where citizens were calling in and 16:51:11
16 just, Hey, have you looked at this, or have you seen this, or
17 have you tried -- giving us advice.

18 Q. That would be -- you would -- you would mark those as info?

19 A. Info only.

20 Q. Info only? 16:51:28

21 A. Also we got tips. I mean, we would get tips: I hate the
22 sheriff. I like the sheriff. Info only.

23 Q. Do you recall ever requesting that Ms. Plata file a tip
24 from a woman Lesli, last name starting with F, in a file under
25 36th Street and Thomas? 16:51:50

1 A. No, I'm not going to be able to recall specifics.

2 Q. Might it refresh your recollection if I informed you of the
3 substance of Ms. F's complaint?

4 A. Yeah, you can. I've read so many of them, sir, but...

5 Q. Okay. So I'm reading this. This is an e-mail -- in fact, 16:52:07
6 let me provide a copy.

7 MR. BYRNES: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 MR. BYRNES: And this is a document that has been
10 marked for identification as Impeachment 560. 16:52:32

11 BY MR. BYRNES:

12 Q. I note that the exhibit that I am showing you is redacted,
13 so this individual's last name cannot be seen, or e-mail.

14 THE COURT: You want to give me the correct number?

15 MR. CASEY: I'd like to get a copy of that. May I, 16:52:57
16 please? I'm not sure I understood, Your Honor, the -- what
17 exhibit number it was. 56B or --

18 THE COURT: Well, if we're marking it as an
19 impeachment -- marking it for purposes of impeachment it is --

20 What's the number, Kathleen? 16:53:15

21 THE CLERK: 454.

22 THE COURT: 454.

23 BY MR. BYRNES:

24 Q. Okay. And first if you could please turn to the second
25 page of Impeachment Exhibit 454. Lesli F writes: Please do 16:53:28

1 something about the, quote, illegals in front of the Wal-Mart
2 slash Home Depot entrance driveway. There must be at least 30
3 of them lining the drive into Wal-Mart slash Home Depot
4 yesterday at approximately 11:30 a.m. I am tired of driving
5 with aliens waving and cat-calling as I drive past them to get 16:53:52
6 to Thomas Road. Another, quote, sweep is in order. Thanks,
7 Lesli F.

8 Do you see that?

9 A. Yes, sir.

10 Q. Does that refresh -- and please turn to the first page of 16:54:01
11 the document.

12 Is that your handwriting, Lieutenant Sousa?

13 A. Yes, sir.

14 Q. And at the bottom under Detective/Supervisor, that's your
15 signature? 16:54:19

16 A. That's my initials, yes, sir.

17 Q. And in the Remarks section of this exhibit it reads:
18 Perla, please file under 36th Street and Thomas fold.

19 Am I reading that correctly?

20 A. Yes, sir. 16:54:34

21 Q. And does fold refer to a folder?

22 A. Oh, I don't know how she was doing it. However she was
23 tracking it.

24 Q. But does reviewing this document refresh your recollection
25 that you marked this, on this tip disposition sheet, info, and 16:54:48

1 then forwarded it to Ms. Plata to file under 36th Street and
2 Thomas?

3 A. Yes, sir.

4 Q. Turn to the second page just real briefly. Nothing in this
5 e-mail refers to a crime, correct?

16:55:06

6 A. Well, not necessarily, sir. You got someone cat-calling
7 somebody. I mean, that could be criminal nuisance. I mean, it
8 could -- I mean, somebody cat-calling, cat-calling can mean a
9 lot of things, and that's probably why I didn't unfound it and
10 just put it in info, 'cause if you get multiple tips -- that's
11 my whole thing. That's why we're not taking any action here.

16:55:22

12 File it under that, because if I get multiple tips about the
13 same type of behavior in the same area, because for 36th Street
14 and Thomas, if I remember correctly, we were getting tips about
15 not just cat-calling, defecating, urinating, stuff like that.

16:55:40

16 So all together.

17 That's why -- it's not -- we're not taking action on
18 this, but based on the fact the woman is saying she's driving
19 by there and to me she's being cat-called, we're gonna -- we're
20 gonna file it just in case we need it.

16:55:59

21 Q. In Arizona cat-calling is not a crime, is it, Lieutenant?

22 A. When you say cat-calling, but I know what that means.

23 Q. You say you do not know what that means?

24 A. I've heard that term before. It's basically a woman
25 walking down the street and people whistling and gawking at

16:56:15

1 her.

2 Q. And in Arizona cat-calling is not a crime, correct?

3 A. That could be disorderly conduct, sir. Cat-calling could
4 fall under disorderly conduct.

5 Q. Lieutenant Sousa, I asked you earlier whether the buck 16:56:30
6 stops with Sheriff Arpaio and you told me that, no, it doesn't.
7 You said that at HSU the buck stops with you and not the
8 sheriff, correct? Or it did until you changed jobs, correct?

9 A. No, it's -- the buck stops with me when it comes to working
10 within the rules. I don't go by press releases. 16:56:51

11 Q. That's not what I asked you. At the Human Smuggling Unit
12 the buck stops with you and not with Sheriff Arpaio, correct?

13 A. The way we do business, it stops with me.

14 Q. If Chief Sands told you when you were the head of the HSU
15 to conduct a saturation patrol, you would do it, wouldn't you? 16:57:10

16 A. I would -- without reason?

17 Q. Has Chief Sands told you to do things without reason in the
18 past?

19 A. No, he hasn't.

20 Q. Okay. So let's say Chief Sands comes to you and tells you 16:57:25
21 to do a saturation patrol, and the reason is he's told you to
22 do a saturation patrol. Would you do it?

23 A. And if I -- a police agency is a paramilitary agency, we
24 have to obey orders. We have policies and procedures. If the
25 orders are lawful and I have no reason to believe they're 16:57:40

1 unlawful, I have to follow them.

2 Q. And similarly --

3 MR. BYRNES: Actually, Your Honor, before I continue,
4 we move the admission of Impeachment 454 as an impeachment
5 exhibit. 16:57:58

6 MR. CASEY: No objection, Your Honor.

7 THE COURT: Okay. 454 is admitted.

8 (Exhibit No. 454 is admitted into evidence.)

9 BY MR. BYRNES:

10 Q. Lieutenant Sousa, if Sheriff Arpaio told you to do a -- 16:58:07
11 perform a saturation patrol and the reason was that he had told
12 you to do a saturation patrol, you would do a saturation
13 patrol, wouldn't you?

14 A. I would not. I would check with my chiefs.

15 Q. So you would -- you take direction -- if there were 16:58:24
16 conflicting direction from Chief Sands and Sheriff Arpaio, you
17 would take direction from Chief Sands, correct?

18 A. I would let the chief deal with it.

19 Q. You would tell Sheriff Arpaio, I'm sorry, Sheriff, I'm not
20 going to take your direction. I'm going to defer to 16:58:43
21 Chief Sands, is that right?

22 A. If I was told to do a saturation patrol by the sheriff,
23 I -- which I never have -- I would go to Chief Sands and say,
24 Hey, this is what I'm being told. Is this -- is this what
25 we're doing? 16:58:56

1 MR. BYRNES: No further questions.

2 THE COURT: Thank you, Lieutenant.

3 THE WITNESS: Thank you, sir.

4 Am I dismissed?

5 THE COURT: You are. 16:59:11

6 Anything we need to raise before the weekend?

7 MR. CASEY: Yes, Your Honor.

8 THE COURT: All right.

9 MR. CASEY: Your Honor, I just want to -- I realize
10 the Court's timing is the one that governs here. I think both 16:59:30
11 sides are probably keeping track of time. By my rough
12 estimate, plaintiffs are at 13 hours and eight minutes, plus or
13 minus --

14 THE COURT: What's your estimate?

15 MR. CASEY: 13 hours, eight minutes of time. Now, 16:59:44
16 again --

17 THE COURT: Total for the day, but I'll check.

18 MR. CASEY: The Court's time is the one that governs,
19 I understand that. So I'm just throwing these things out as an
20 advocate. But nine hours and 24 minutes for defendants. 16:59:56

21 THE COURT: Um-hum.

22 MR. CASEY: I am concerned -- now, I think both
23 parties have worked cooperatively to make sure that we don't
24 call back witnesses again in the defense case. I have
25 Deputy Ratcliffe, Deputy Armendariz, former Deputy Beeks, two 17:00:11

1 ICE officials via deposition Jason Kidd, Alonzo Pena, and two
2 experts, Mr. Click and Mr. Camarota. I also know that there
3 are at least two witnesses, one being an expert for the
4 plaintiffs, that need to go.

5 Next week we are scheduled to go on the 31st, Tuesday, 17:00:30
6 and the 1st. I am very concerned about our ability right now
7 to be able to put on our witnesses and finish it in that time
8 period the way that we're going, and even if you were to extend
9 it, as you said, to the 2nd.

10 I wanted to make that record because I'm very 17:00:51
11 concerned, we have the -- obviously, the Court has said we have
12 the right to bring in people that they don't call in their
13 case.

14 So I'm not asking for the Court to make any ruling,
15 'cause there's nothing to rule on at this point, but I do think 17:01:08
16 the plaintiffs' case needs to come to an end at a reasonable
17 time that allows us within the framework that you're ending
18 5:00 p.m. on August 1st, I think we're entitled to more than a
19 day to present our case, Your Honor.

20 MR. YOUNG: Your Honor, we'll have to confirm the 17:01:27
21 timing, and obviously Your Honor will look at it, too. But it
22 seems to me, based on Mr. Casey's calculations, that we have
23 seven hours left for plaintiffs, roughly. Defendants have
24 roughly 10 hours. That's 17 hours. And if we actually go
25 three days at six hours, or six and a half hours a day, it is 17:01:48

1 possible to fall within that.

2 I certainly share Mr. Casey's concern that we need to
3 look at this. I think over the next few days both parties will
4 look at their cases, and I'm certain that we can confer with
5 each other before we meet again on Tuesday morning and let Your
6 Honor know if we all think there are issues about the overall
7 schedule.

17:02:05

8 We do have on the plaintiffs' side two hours of
9 rebuttal, so I want to get that in there. But I am happy to
10 work with -- or we are happy to work with defense counsel to
11 make sure that we can get this case done in a very efficient
12 way.

17:02:26

13 THE COURT: All right. Well, you've -- you've made
14 your records.

15 Let me just say, and -- and I've said it before, I
16 want to say it again, I have appreciated the professional
17 courtesies that counsel have extended to each other in a case
18 which is both highly disputed and also apparently of some
19 interest to the public, understandably so.

17:02:41

20 I have given you your hours restrictions based on the
21 witnesses that you've set forth, and partly because I wanted to
22 restrict the extent to which this case was going to be tried to
23 the press rather than to me. To some extent that has
24 nonetheless happened, in my judgment, and -- and both sides
25 have participated in it a little bit, at least.

17:03:06

17:03:24

1 That is not by the way of criticism. I understand
2 that the parties have an obligation to their clients to put --
3 to -- to inform the public to the extent they think that it is
4 necessary to do so, but it doesn't mean I'm going to extend
5 your time.

17:03:48

6 If you've used it well and we arrive at the end of
7 this case, I am keeping Thursday open and we will push hard on
8 Monday and Tuesday -- or, I'm sorry, Tuesday-Wednesday. I will
9 look at my calendar. I can probably free up another day fairly
10 quickly if necessary, and we can talk with you about that on
11 Tuesday. But I'm not saying that I'm going to extend past
12 Thursday of next week, depending upon whether the parties use
13 their time wisely.

17:04:03

14 How many witnesses do you have left in your case,
15 Mr. Young?

17:04:17

16 MR. YOUNG: Possibly three, Your Honor.

17 THE COURT: So you have three witnesses left in your
18 case?

19 MR. YOUNG: We are going to -- we are going to look at
20 this based on how things have gone and who's come in and make
21 some assessments about what we do going forward, because we --
22 we do want to try to allow the Court to finish this trial in
23 the time frame that it has set aside.

17:04:28

24 THE COURT: All right. Well, I will -- I will join
25 the parties in looking at what is necessary, if it is

17:04:43

1 necessary, and we can discuss this Tuesday morning next week.

2 But -- and again, I -- I commend you both for behaving
3 with courtesy and professionalism with each other. But that
4 doesn't mean I'm going to open up the floodgates and let
5 this -- let this case go hog wild. I'm not hearing you asking 17:05:03
6 for that, but I'm just advising you.

7 Yes, Mr. Casey.

8 MR. CASEY: Yes, Your Honor. I'm not asking you to
9 extend it. I'm just telling -- sharing, not telling you
10 anything, I'm sharing with you that my assumption was the 2nd 17:05:19
11 had to be earned by the parties, and I've heard what the Court
12 has said about perhaps we've not done that as well as we should
13 have. I realize that was not a criticism.

14 But the concern is that I hear three witnesses, and
15 the way it's going, that would leave us with one day on the 17:05:39
16 1st, and I would strenuously object to that.

17 The other thing, too --

18 THE COURT: Well, hold it. We have what? Let's focus
19 here. I don't have my magic little calendar up here.

20 MR. CASEY: The 31st is Tuesday; the 1st is Wednesday. 17:05:53

21 THE COURT: And I've kept the 2nd open.

22 MR. CASEY: Yes, sir.

23 THE COURT: And I assume all parties have, since I
24 indicated that that would be --

25 MR. CASEY: Yes, sir. 17:06:01

1 THE COURT: All right.

2 MR. CASEY: And I just wanted to -- I don't think we
3 need to go beyond that, but I wanted to remind the Court --

4 THE COURT: You wanted to make sure the 2nd is open?
5 The 2nd is open. 17:06:11

6 MR. CASEY: Yes, sir. But to the extent you were
7 suggesting it go beyond the 2nd, I would object to that only on
8 the grounds that I did mention when you set this, I think in
9 March, I'm representing a 12-year-old in a wrongful death that
10 starts next Tuesday. 17:06:23

11 THE COURT: All right. Well, if we need to we'll
12 get -- I do not want to drive Mr. Moll into the ground. I
13 think it's really important to acknowledge how difficult it is
14 to do his job, but I may line up supplemental court reporters
15 if we need to do seven hours on -- on those days. 17:06:38

16 MR. CASEY: Thank you, Your Honor.

17 THE COURT: And I will also point out, have we
18 discussed -- what do parties want to do by way of closing? I
19 know we discussed this at -- somewhat at the final pretrial
20 conference, but have you considered that? 17:06:51

21 MR. CASEY: My understanding is the Court has ordered
22 that there will be written briefings instead of oral arguments.

23 THE COURT: That was my recollection as well, so we're
24 not going to be spending time doing that, I presume.

25 MR. YOUNG: That's our memory, too, Your Honor. And 17:07:06

1 what I would suggest, and we have not yet had a chance to
2 confer with each other about the timing or structure of that,
3 that we can -- before -- between now and sometime next week we
4 confer with each other and talk about the timing and schedule
5 for that.

17:07:24

6 THE COURT: All right. I will tell you that I will be
7 most interested in a very expeditious briefing schedule. I
8 presume that the parties are just as interested as I am -- as I
9 am in that.

10 MR. YOUNG: Yes, Your Honor.

17:07:33

11 THE COURT: Okay. Mr. Casey, does the defense have
12 any problem with an expeditious, very expeditious briefing
13 schedule by way of written closings?

14 MR. CASEY: Yes. I -- Your Honor, I do. And here --
15 it's two issues. My trial calendar's not important in the
16 stream of all justice, but it's a reality. Everyone at this
17 table will help us work on it.

17:07:49

18 I would suggest that there is, since it would be an
19 opening if we had a jury trial, they go first, and we can
20 respond to their closing, so I would expect -- that sounds
21 presumptuous. I would hope there would a --

17:08:05

22 THE COURT: Well, if it was a jury trial, they'd go
23 first.

24 MR. CASEY: We go second.

25 THE COURT: You'd go next. They'd get the final word.

17:08:15

1 MR. CASEY: And I would hope that there would be
2 briefing along a similar way.

3 I would ask the Court, I am after hours trying to
4 settle my case on the 7th, but I would like to be an active
5 participant in the legal writing for the -- the brief. I'm 17:08:27
6 scheduled to be in that wrongful death trial from August 7th
7 to --

8 THE COURT: All right. I will tell you that I do have
9 my preference, I would like to be quick. But you did raise
10 with me this trial. I do recall that you did so. 17:08:41

11 MR. CASEY: Thank you.

12 THE COURT: I do recognize your right, at least to
13 some extent, to be involved with the writing. You'll keep us
14 apprised as to whether or not you're able to settle your other
15 trial? 17:08:52

16 MR. CASEY: If I settle it tonight it's not an issue.
17 I just wanted to be straightforward with the Court and with
18 plaintiffs' counsel that that's a factor for at least my --

19 THE COURT: I understand that. But why don't -- this
20 is another thing you can discuss. You will have a better idea 17:09:04
21 whether you're going to settle the case and what maybe a
22 briefing schedule might look like, you may be better informed
23 on Tuesday morning. We can take that up then.

24 Anything else?

25 MR. YOUNG: Nothing for plaintiffs, Your Honor. 17:09:17

1 MR. CASEY: Nothing for the defense. Thank you, Your
2 Honor.

3 (Off-the-record discussion between the Court and the
4 clerk.)

5 THE COURT: I need to have you stick around and just
6 review some final exhibits with Kathleen to make sure we have
7 them straight, in light of some of the jockeying we've done in
8 light of impeachment exhibits and tearing apart exhibits and
9 other things. Thank you.

10 (Proceedings concluded at 5:09 p.m.)

17:09:25

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 26th day of July, 2012.

s/Gary Moll

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) July 31, 2012
Joseph M. Arpaio, et al.,) 8:35 a.m.
8)
Defendants.)
9 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE G. MURRAY SNOW
17 (BENCH TRIAL DAY 5 - Pages 1094-1417)

18
19
20
21
22 Court Reporter: Gary Moll
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25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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I N D E X

	<u>Witness:</u>	<u>Page</u>
1		
2		
3	LYDIA GUZMAN	
4	Direct Examination by Ms. Wang	1109
	Cross-Examination by Mr. Liddy	1127
5		
6	MANUEL JOSEPH MADRID	
7	Direct Examination by Ms. Wang	1131
8	Cross-Examination by Mr. Liddy	1183
	Redirect Examination by Ms. Wang	1212
9		
10	STEVEN ANDREW CAMAROTA	
	Direct Examination by Mr. Liddy	1228
	Cross-Examination by Mr. Young	1299
11		
12	MATTHEW RATCLIFFE	
	Direct Examination by Mr. Casey	1354
	Cross-Examination by Ms. Gallagher	1367
	Redirect Examination by Mr. Casey	1375
14		
15	JASON DOUGLAS KIDD	
	(By videotaped deposition)	1380

E X H I B I T S

	<u>No.</u>	<u>Description</u>	<u>Admitted</u>
18			
19	455	E-mail string, Manuel Madrid, Joe Sousa, William Hindman, Ryan Baranyos	1220
20			
21	456	E-mail string, Steven Camarota and Scott Jefferys	1323
22			

M I S C E L L A N E O U S

23		
24	<u>Rule 52(c) Motion</u>	
25	By Mr. Casey	1241

P R O C E E D I N G S

1

THE COURT: Thank you. Please be seated.

2

3

4

THE CLERK: This is CV 07-2513, Melendres v. Arpaio,
on for continuation of bench trial.

08:34:57

6

THE COURT: You ready to call your next witness,
Mr. Young?

7

8

MR. YOUNG: We are, Your Honor. However, before we do
that, I think the parties need your guidance on several issues.
We've had some discussions between the parties about how to
finish the trial, and I think we need your -- your guidance.

10

11

12

We have changed our view on this issue of whether we
should have briefing after the trial. We believe that it would
suffice for the parties to have a half hour each of argument,
closing, whatever you want to call it, on Thursday.

14

15

16

We have decided that we do not need to have one of our
expert witnesses, Mr. Click, testify -- Stewart, Mr. Stewart,
thank you, in our case in chief. We may have him for rebuttal,
but we believe that will save some time, and our interest would
be in having the trial over and the case submitted, and we
think we could do that if we had argument on Thursday.

18

19

20

21

22

THE COURT: All right.

23

Mr. Casey.

24

MR. CASEY: May I approach?

25

THE COURT: Yes.

08:36:06

1 MR. CASEY: Thank you, Your Honor. Good morning.

2 First as an initial matter, in terms of post-trial
3 briefing, I wanted to alert the Court that I advised Mr. Young
4 on Saturday afternoon that I did settle my wrongful death case,
5 so that is not an issue any more, at least for Tim Casey as
6 counsel for defendants in this matter. 08:36:20

7 Since March, Your Honor, the anticipation has been
8 having post-trial briefs, written closings. We oppose
9 plaintiffs' effort now to have any type of oral argument. And
10 we really do so on a number of grounds, but plainly is one, we 08:36:41
11 have 20 hours, and any amount of time that we would have for
12 closing is going to be deducted from that, and so we don't
13 believe it's appropriate. We're entitled to present our case,
14 and we don't want to subtract from it in closing.

15 The other thing, too, Your Honor, as you well know, in 08:37:05
16 a jury trial when you have several days of evidence, you have
17 lay jurors. The idea of closing argument is to be able to
18 remind the jurors of the evidence, to be able to argue to them
19 what that evidence means, and then also to argue to the jury
20 what reasonable inferences can be drawn from that evidence. We 08:37:21
21 don't have that here. We've got a lawyer, a judge, who is the
22 trier of fact. There is not, in my judgment, any utilitarian
23 value for the merits of this case in having closing argument.

24 I would respectfully submit that it's mostly geared, a
25 closing for both sides, if it's done, it's geared for people in 08:37:43

1 the gallery, for public consumption, not for the Court to
2 resolve this on the merits.

3 The other thing, too, Your Honor, is that it would be
4 unfair under the circumstances for us, when we are now in our
5 case, we've got today, we have tomorrow, I think we're going to 08:37:58
6 be able wrap up probably tomorrow. But it is going to be very
7 difficult for me, after doing witnesses and preparing
8 witnesses, to spend the time to prepare an oral closing, since
9 this was sort of a new development since we've been relying on
10 basically what I understood to be the Court's preference for 08:38:21
11 written post-trial briefing.

12 My suggestion to the Court is whatever time you want
13 to put on the post-trial briefings, if you were to continue
14 that route, is the Court's prerogative, but I would suggest
15 something, for example, if the trial were to end on the 2nd, 08:38:38
16 plaintiff submit post-trial briefings within 14 days, we do our
17 response in 14 days, and whatever time period they think for
18 rebuttal. If the Court shortens it, it shortens it. We do
19 oppose that.

20 The other thing that I'd like to ask for the Court's 08:38:53
21 direction is, it's my reading of your order that they have 20
22 hours, defendants have 20 hours, and plaintiffs then have a
23 separate two hours for rebuttal. My reading -- and I -- I hope
24 I'm not prejudicing myself by saying this, but my reading is
25 that any cross-exam we would have in rebuttal is going to come 08:39:12

1 out of our 20 hours. That's how I read the order, although
2 it's not -- it doesn't address that, if I've got additional
3 time on top of my 20.

4 The reason I mention that is because that also factors
5 into closing argument. 08:39:28

6 THE COURT: Well, it seems to me, Mr. Casey, that
7 that's a nonissue. If you think you can end your case by
8 tomorrow, you won't have nearly exhausted your 20 hours.

9 MR. CASEY: I don't think so, but that -- I tend --

10 THE COURT: Let me tell you that if you use your time 08:39:40
11 wisely and you need time for cross-examination and rebuttal,
12 I'll give it to you.

13 MR. CASEY: Thank you, Your Honor.

14 THE COURT: Next witness.

15 I'm going to think about what I'm going to do 08:39:49
16 vis-à-vis closing arguments. I'll let you know either after
17 the break or at noon.

18 MR. CASEY: Thank you, Your Honor.

19 MR. YOUNG: Your Honor, I would have one more comment
20 on that. If Your Honor would prefer briefing -- and obviously 08:39:59
21 if there are issues that Your Honor would like to hear from the
22 parties, we would be happy to brief any particular issues,
23 but --

24 THE COURT: Well, let me tell you that I've got a list
25 of questions. And I haven't decided whether I'm going to tell 08:40:12

1 you what they are or not.

2 MR. YOUNG: I appreciate that. We'll obviously do
3 whatever the Court would like. We do have a -- a sense that if
4 Your Honor would prefer briefing, that we could get it done
5 very quickly, and --

08:40:34

6 THE COURT: Well, how long are you going to tell me
7 that it would take you to file your opening brief?

8 MR. YOUNG: We think that we could -- we would
9 propose, if Your Honor does want to have briefing, that we
10 exchange simultaneous 10-page briefs on August 13, and that we
11 exchange simultaneous five-page responsive briefs by August 20.
12 That would be our alternative. It would allow the parties to
13 brief the case after the evidence is closed, but it would get
14 it done more quickly than under the schedule that Mr. Casey has
15 proposed.

08:40:43

08:41:09

16 THE COURT: So you have August 13 and August 20
17 simultaneous briefing?

18 MR. YOUNG: Yes. And again, because of the very
19 extensive briefing on the law that has taken place previously,
20 we don't think we need very many pages, but obviously if Your
21 Honor has questions, we'll do whatever we need to do.

08:41:20

22 There is one more issue that affects today's schedule
23 which Ms. Gallagher will address, and I think it might be good
24 to address that now since it will affect the schedule today,
25 and that is some deposition testimony that the defendants wish

08:41:35

1 to present, and I'll defer to Ms. Gallagher on this.

2 MS. GALLAGHER: Your Honor, we understand that
3 defendants wish to present the video depositions, or the
4 depositions via video of Mr. Kidd and Mr. Pena, who are two of
5 the ICE members that are not available for trial.

08:41:57

6 A couple of issues on that. One, plaintiffs would
7 submit that the transcript should instead be submitted. I
8 believe Your Honor already has copies of the transcripts
9 highlighted with the designations of both parties, and for the
10 sake of efficiency and so that Mr. Moll doesn't need to
11 retranscribe the entire depositions, we would request that
12 the -- the transcripts simply be submitted as opposed to
13 spending, I think it's about three hours of time on video.

08:42:17

14 In addition, there's a couple specific line item
15 objections that we had raised with Mr. Casey over the weekend
16 that I think if the videos are to be played, we need a ruling
17 on prior to, so that the videos can be appropriately edited if
18 necessary.

08:42:35

19 And finally, we would remind the Court of the ruling
20 on the motion in limine. To the extent the defendants intend
21 to argue that any of the statements should be construed as
22 conclusions that racial profiling was not occurring, Your Honor
23 has already ruled that those conclusions will not be accepted.

08:42:52

24 THE COURT: Right. And I will tell you that to the
25 extent -- because this is a trial to the Court, to the extent

08:43:07

1 they sneak in, I'm going to ignore them and give them
2 absolutely zero credence. So it doesn't matter whether I hear
3 them or not.

4 However, I'm glad to -- is it your desire, Mr. Casey,
5 to present the video deposition testimony today? 08:43:21

6 MR. CASEY: Your Honor, there's no objection as to
7 Jason Kidd. If we have time, since there's no objection to
8 Jason Kidd, it is our intention, defendants' designations are
9 47 minutes after editing. Plaintiffs' are 20 minutes -- 20
10 minutes, 55 seconds. Again, no objection. We have two 08:43:40
11 objections on Pena that we can work with the Court.

12 I will also represent to the Court that we've taken
13 your motion in limine ruling to heart, and we don't -- we
14 believe it's in compliance not only with the letter but with
15 the spirit, and we're not intending to sneak in anything. But 08:43:58
16 that's obviously in the eye of the beholder.

17 Defendant Pena's deposition right now is a little less
18 than an hour 25 minutes for our section, and 25 minutes and 40
19 seconds for the plaintiffs'. We obviously defer to you, since
20 this is -- 08:44:18

21 THE COURT: Well, let me tell you, it's your time.

22 MR. CASEY: Yes.

23 THE COURT: I'm more than happy, if you want me to
24 read it outside of court, I'll read it outside of court. But
25 it's your time, and if you want to play it, as far as I'm 08:44:27

1 concerned you can play it. I'll rule on the objections.

2 MR. CASEY: Okay. The -- let me consult with
3 co-counsel on this. Does the time the Court spends on this
4 count against us if you were to take it back in chambers, for
5 example?

08:44:44

6 THE COURT: You want me to run a stopwatch?

7 MR. CASEY: I just want to know if all of a sudden I
8 have, you know, more time or less time.

9 THE COURT: Well, you clearly have more time, even if
10 I assert against you the time it takes me in chambers to read
11 it.

08:45:00

12 MR. CASEY: Yes. Your Honor, I have no objection to
13 you taking and reading it. The only thing I wanted to offer
14 the Court is we can also provide you the CD, to the extent you
15 think you need to evaluate the witnesses' demeanor,
16 countenance, and all that for credibility.

08:45:15

17 THE COURT: I probably will want to do that, and if I
18 want to do that, we might as well do it right here.

19 MR. CASEY: Yes, sir.

20 THE COURT: All right.

08:45:28

21 MR. CASEY: Thank you, Your Honor.

22 MS. GALLAGHER: Your Honor, there are two specific
23 objections beyond the motion in limine that we had raised with
24 counsel that I would -- if Your Honor would permit, would like
25 to raise now so that they may edit the video.

08:45:37

1 THE COURT: All right.

2 MS. GALLAGHER: There's some testimony -- they're both
3 foundation issues and they both relate to Mr. Pena's testimony.
4 In specific first is at page --

5 MR. CASEY: Excuse me. 08:45:51

6 May I interrupt Your Honor? May we provide the Court
7 with a copy of the transcript so he can follow along?

8 MS. GALLAGHER: Yes, of course.

9 MR. CASEY: Is that -- may I approach?

10 THE COURT: Yes. 08:45:59

11 MR. CASEY: And let the record reflect I'm providing
12 the Court with a copy of the transcript of Alonzo Pena, an ICE
13 witness.

14 THE COURT: On what tab is it? Oh. Is it just
15 exhibits to the deposition? I see. Okay. 08:46:26

16 Go ahead.

17 MS. GALLAGHER: On page 72 of the deposition, at line
18 19, there's a question that refers to "this tactic." We
19 believe there's no foundation for that question and answer, and
20 would ask that it be excluded -- 08:46:44

21 THE COURT: On which lines?

22 MS. GALLAGHER: Lines 19 through 23.

23 THE COURT: Okay. So start me, In your experience,
24 have other law enforcement organizations used this technique?
25 Is that what you're talking about? 08:46:55

1 MS. GALLAGHER: I believe it's actually this tactic
2 was not unique to Maricopa County, and so --

3 THE COURT: Give me the page again.

4 MS. GALLAGHER: Page 72, beginning at line 20.

5 THE COURT: I don't --

08:47:05

6 MS. GALLAGHER: Lines don't match up? I know there
7 was perhaps two versions of this.

8 THE COURT: Okay. I'm with you now. I found it.

9 MS. GALLAGHER: Okay. So our objection would be as to
10 foundation to -- as to "this tactic." We believe the prior
11 testimony indicates that "this tactic" is not -- there's no
12 foundation for what "this tactic" is.

08:47:21

13 MR. CASEY: Your Honor, the foundation begins at
14 page -- I can't tell you specifically, but it certainly begins
15 in the previous two pages. It's discussing the use of
16 saturation patrols, crime suppression operations, and that last
17 question is whether or not it was simply unique to Maricopa
18 County.

08:47:44

19 THE COURT: All right. I'll read it. Just hang on.

20 (Pause in proceedings.)

08:48:00

21 THE COURT: I'm going to overrule the objection. I'll
22 take the testimony for what it's worth.

23 MS. GALLAGHER: Thank you, Your Honor.

24 Just one further objection we'd like to raise, and
25 that begins on page 133, line 4, with the question: Did the

08:49:16

1 Maricopa County Sheriff's Office share their operation plans
2 with ICE, and continues to 134/17, which is the end of a rather
3 lengthy paragraph.

4 Our objection, again, is foundation. This testimony
5 recites what Mr. Pena believes Mr. Kidd did. There's no
6 foundation that he has personal knowledge of this and in fact,
7 we believe Mr. Kidd's testimony, which will also come in, is
8 contradictory. So we would ask that this designation from
9 133/4 to 134/17 be stricken.

08:49:37

10 THE COURT: Mr. Casey.

08:49:55

11 MR. CASEY: Your Honor, the foundation is he said he
12 had a conversation with Jason Kidd as the liaison to Maricopa
13 County and the 287(g) program -- that's at page 133, lines 7
14 through 9 -- and he testifies to his understanding of what
15 Jason did have an opportunity to review. The foundation is in
16 existence and it goes to the weight, not the admissibility,
17 Your Honor.

08:50:08

18 THE COURT: Can you establish foundation by hearsay?

19 MR. CASEY: He's -- I don't think he's testifying to
20 what Jason Kidd has necessarily -- he's not saying Jason Kidd
21 said this. He said: I had a conversation. It's my
22 understanding of this.

08:50:28

23 THE COURT: I want to read it.

24 I'm going to sustain the objection and have that part
25 out.

08:50:48

1 MR. YOUNG: Your Honor, thank you.

2 One more thing, going back to the earlier discussion,
3 another idea.

4 We could, if a closing this week does not suit the
5 defendants, we could have -- come back and have an argument,
6 address any questions the Court may have orally, the week of
7 August 13. And that would be a little faster than a briefing
8 schedule. So I give that to you for your consideration.

08:50:59

9 THE COURT: All right. Thank you.

10 You ready to call your first witness, or your next
11 witness?

08:51:12

12 MS. WANG: Yes, Your Honor. Good morning.

13 THE COURT: Good morning.

14 MS. WANG: Plaintiffs call Lydia Guzman.

15 THE CLERK: Right up here.

08:51:33

16 Could you please state and spell your full name.

17 MS. GUZMAN: Lydia Guzman. L-y-d-i-a, G-u-z-m-a-n.

18 THE CLERK: Thank you. Please raise your right hand.

19 (Lydia Guzman was duly sworn as a witness.)

20 THE CLERK: Thank you. Please take our witness stand.

08:51:53

21 LYDIA GUZMAN,

22 called as a witness herein, having been duly sworn, was

23 examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. WANG:

08:52:33

1 Q. Good morning, Ms. Guzman.

2 A. Good morning.

3 Q. Where do you live?

4 A. I live in Glendale, Arizona, in Maricopa County.

5 Q. How long have you lived in Maricopa County?

08:52:40

6 A. Oh, I've lived there since, like, 1998.

7 Q. What is your occupation?

8 A. I'm a community advocate, and I'm also the director of
9 Respect-Respeto.

10 Q. What is Respect-Respeto?

08:52:54

11 A. Respect-Respeto is a hotline, a hotline for the community.

12 Q. Is it a nonprofit organization?

13 A. We're working on -- on its status, yes.

14 Q. And by that you mean that you're seeking 501(c)(3) status?

15 A. That's correct.

08:53:10

16 Q. Are you also involved with an organization called Somos
17 America?

18 A. Yes, I am.

19 Q. What is your involvement with Somos America?

20 A. I'm on the board of directors. I'm a past president of
21 Somos America, as well as one of the founding officers.

08:53:20

22 Q. And are you still active in Somos America as a member of
23 the board of directors?

24 A. Oh, yes.

25 Q. Are you testifying here today as an authorized

08:53:34

1 representative of Somos America?

2 A. Yes.

3 Q. And is Somos America a plaintiff in this case?

4 A. That's correct, yes.

5 Q. Can you describe for me, what is Somos America?

08:53:43

6 A. Well, Somos America is an organization -- well, actually,
7 it's a coalition of organizations in -- in Arizona, and it's --
8 it's, you know, made up of different -- of different, you know,
9 organizations, individuals, of -- of many times.

10 Q. So Somos America has both organizations and individuals as
11 members?

08:54:10

12 A. That's correct.

13 Q. Can you name for me a few of the organizations that are
14 members of the Somos America coalition?

15 A. Oh, yes. Some of them are, like, Border Action Network,
16 LULAC. We have members of the labor unions, the -- like SEIU,
17 UFCW, and other labor. We also have student-based -- based
18 organizations like ADAC, and also, you know, some of the
19 individuals, you know, like different reverends.

08:54:23

20 Q. And are any of the different members of Somos America
21 Latino?

08:54:57

22 A. Oh, yes.

23 Q. Do any of them live here in Maricopa County?

24 A. Yes, the majority.

25 Q. You mentioned that there are also organizations that are

08:55:04

1 members of Somos America, is that correct?

2 A. That's correct.

3 Q. Are any of their individual members residents of Maricopa
4 County?

5 A. Yes.

08:55:14

6 Q. And are any of the organizational members of Somos America
7 based here in Maricopa County?

8 A. Yes.

9 Q. What is the main mission of Somos America?

10 A. Well, Somos America, we -- we work hard to educate, to
11 inform, and to engage our community with -- with reference to
12 some of the things with, like, CIR. Also, we try to empower
13 the community with activities like voter registration and
14 citizenship fairs.

08:55:26

15 Q. You said "our community." What do you mean by that?

08:55:54

16 A. The Hispanic community.

17 Q. Here in Maricopa County?

18 A. That's correct.

19 Q. Ms. Guzman, is Somos America concerned with the civil
20 rights of Latinos in Maricopa County?

08:56:04

21 A. Oh, yes. Yes.

22 Q. Ms. Guzman, are you familiar with crime saturation patrols
23 conducted by the Maricopa County Sheriff's Office?

24 A. Yes.

25 Q. Do you know those patrols by any other name?

08:56:16

1 A. Yes, immigration sweeps.

2 Q. How did you become familiar with MCSO's immigration sweeps?

3 A. Well, we -- we would hear about them, like, in the news,
4 you know, the -- the news would talk about them. And then
5 also, you know, the sheriffs would -- the sheriff's department 08:56:37
6 would send out their press releases, you know, we would hear
7 about them then. And, of course, the community would also let
8 us know that there's, you know, these sweeps that are taking
9 place.

10 Q. As -- as a representative of Somos America, did you receive 08:56:49
11 complaints from Latino individuals that they had been racially
12 profiled by MCSO deputies during sweeps?

13 A. Yes.

14 Q. And did you receive complaints from Latino individuals that
15 they were stopped by MCSO deputies without justification? 08:57:05

16 A. Yes.

17 Q. Have you received individual complaints about racial
18 profiling by MCSO outside of the immigration sweeps?

19 A. Yes.

20 Q. How have these complaints come to Somos America's 08:57:17
21 attention?

22 A. Well, they came to us through -- through a variety of
23 different ways. Sometimes through the hotline, through the
24 Respect-Respeto hotline, and other times it's right there at
25 the sweeps, different individuals will come up to us and share 08:57:36

1 with us their experience.

2 Q. You mentioned the Respect-Respeto hotline. How was Somos
3 America involved in that hotline?

4 A. Well, Somos America, our -- our volunteers help answer the
5 phones, you know, they help man that line, as well as, you
6 know, we also send volunteers from our coalition, from the
7 organizations, to go out and talk to some of the folks to see
8 how they can best help them. You know, sometimes we need to
9 refer them to, like, lawyers, or, you know, whatever assistance
10 they may need.

08:57:56

08:58:16

11 Q. Thank you.

12 Has anyone reported to Somos America that they tried
13 to make a complaint about racial profiling to the Maricopa
14 County Sheriff's Office, but were not successful in getting a
15 response?

08:58:32

16 A. Yes.

17 Q. Ms. Guzman, does Somos America rely on volunteers to carry
18 out its mission?

19 A. Oh, yes. Yes.

20 Q. How were Somos America's volunteer resources affected by
21 these complaints of racial profiling by MCSO?

08:58:40

22 A. Well, our volunteers are from the different organizations,
23 and many of the organizations already part of the coalition
24 rely on their volunteers, and so we have to tap each other for
25 volunteers.

08:59:01

1 And so the way that we were affected is we -- we've
2 stretched out our volunteer resources so thin that sometimes,
3 you know, it takes a few phone calls before, you know, if we
4 wanted to ask for an activity, we would just make one phone
5 call. Now it's just, you know, a matter of trying to follow up
6 with -- with which volunteer can help us for these issues now.

08:59:17

7 Q. Have complaints about racial profiling by MCSO affected
8 other activities of Somos America?

9 A. Oh, yes.

10 Q. Can you tell me about that.

08:59:31

11 A. Yes. Well, the other activities that were affected are
12 in -- in twofold. One of them was we've had to -- when the
13 sweeps first started, we had to cancel a couple of the events
14 that we already were planning, and we'd scale back on some of
15 the other events that we normally engage in -- you know,
16 because of the volunteers.

08:59:52

17 Going back to what I was saying on the volunteers, our
18 volunteers would normally assist in things like the citizenship
19 fairs, where now, if they become involved in the sweeps, to
20 help us with the sweeps, then they're too tired to participate
21 in things like citizenship fairs or voter registration drives.

09:00:09

22 But the other way that, you know, some of the events
23 that we had to scale back on is, you know, we were planning to
24 do, you know, more, you know, forums out, and we had to scale
25 back on those.

09:00:30

1 Q. You mentioned that your events, Somos America's events,
2 were affected by volunteer resources being stretched too thin.

3 Were events affected in any other way by MCSO's
4 immigration sweeps?

5 A. Oh, yes. Yes. As a matter of fact, during some of the 09:00:46
6 sweeps, because the community was so concerned, we felt a need
7 to do forums in the community so that they knew -- so that the
8 community knew what their rights were, with having lawyers
9 present items like, you know, what their rights are, and how
10 to, you know, how to, you know, you know, act and all that 09:01:08
11 when -- when, you know, stopped by the police and everything.

12 And we've noticed that the forums were very poorly
13 attended. They were poorly attended and, you know, one of the
14 things we do is we -- we found out that people were afraid to
15 come to the forums because they were afraid to drive to the 09:01:27
16 forums for fear that, you know, the sheriffs were going to be
17 there, or they were going to get stopped during, you know, on
18 their way to forums.

19 Q. Ms. Guzman, why did Somos America spend its resources in
20 responding to complaints about the Maricopa County Sheriff's 09:01:44
21 Office sweeps?

22 A. Well, I don't think that there is a way we could not. I
23 mean, you know, when -- when the community is concerned, when
24 we have calls from the community, or even some of the members
25 of our organization say that, you know, their members are very 09:02:06

1 concerned, we can't just turn our back and ignore that this is,
2 you know, these events are happening.

3 So we had to respond and we had to put some of our
4 resources and, you know, by -- whether it's passing the hat to
5 do collections or whatever so that we can -- everything from
6 printing fliers to, you know, you know, doing other activities.
7 That took some resources.

09:02:20

8 Q. Ms. Guzman, have you received any complaints from Latino
9 individual members of Somos America that they were racially
10 profiled by MCSO?

09:02:41

11 A. Yes.

12 Q. And you testified earlier that Somos America has some
13 members that are organizations, correct?

14 A. That's correct.

15 Q. Have you received any complaints from those organizations
16 that are members of Somos America that their individual members
17 were racially profiled by MCSO?

09:02:48

18 A. Yes.

19 Q. Ms. Guzman, have you personally observed any of MCSO's
20 immigration sweeps?

09:03:06

21 A. Oh, yes.

22 Q. And did you do that in your capacity as an officer in Somos
23 America?

24 A. Yes.

25 Q. About how many sweeps have you observed?

09:03:12

1 A. Oh, wow. I want to say 10. I -- you know, I'm not sure on
2 the number. I -- but I think 10, 12, and --

3 Q. Okay.

4 A. I'm sorry.

5 Q. That's fine. Thank you.

09:03:32

6 When you observed the sweeps, where were you
7 physically posted? Where were you?

8 A. Well, during the sweeps I was actually two, you know,
9 sometimes I was in there next to where the sheriff would set up
10 their mobile command center, we would set up our, you know,
11 observation center as well. So we were close there. And I
12 just -- when I was there I wanted to make sure that all of our
13 volunteers were -- you know, they knew exactly what they needed
14 to do.

09:03:50

15 And then at other points during the sweeps I was out,
16 you know, driving around, you know, looking for stops.

09:04:07

17 Q. Did you observe traffic stops during the MCSO immigration
18 sweeps?

19 A. Yes.

20 Q. And you also observed the mobile command center?

09:04:18

21 A. Oh, yes.

22 Q. Can you describe what you observed at the MCSO command
23 center.

24 A. Well, the command center -- the command center was set up
25 in -- in different places. Sometimes it would be, like, in an

09:04:35

1 empty lot, or sometimes it would be, like, in a really big
2 parking lot. Of course, other sometimes it would be at, like,
3 the sheriff's substation.

4 But when they were at the -- in -- in the areas where
5 the public could have access to them, they were mostly there in 09:04:52
6 the heart of the Latino community, the Hispanic community.
7 They were there with really big -- they looked like trailers
8 that had MCSO writing on it.

9 And then there were -- then there were, like, the big
10 RVs, you know, they also had, you know, like, two big RVs, and 09:05:14
11 they put them in kind of like a half circle, kind of like the
12 wagons where -- I'm not sure if I'm describing this right, the
13 wagons, the western where they do the circle, but it was kind
14 of like a half circle, leaving it open for the media, because
15 the media was always allowed to go in. 09:05:32

16 Then there was also tables there so they could process
17 people. And they had some chairs there where people that were
18 being detained were -- were sitting there with handcuffs. You
19 know, not all of them had pink handcuffs, but I noticed the
20 pink handcuffs when the people that were detained, so that the 09:05:50
21 entire public can see.

22 But I also saw that they would put barricades up, and
23 the barricades were right there so that members of the
24 community, of that community, could not cross that barricade.
25 They had, you know, the -- like the stands, and then also 09:06:08

1 yellow tape. And there were also deputies there manning
2 that -- those, like, stations.

3 And members of the community or family members of
4 people that were detained would go, you know, to see their
5 loved ones there in handcuffs for the entire world to see them 09:06:25
6 displayed there, you know, kind of like -- so -- I'm sorry. So
7 they're there, and, you know, for the entire world to see, just
8 in handcuffs.

9 Q. Were you able to see detainees in custody at the MCSO
10 command posts when you observed the sweeps? 09:06:45

11 A. Yes.

12 Q. Can you describe what was the overall racial makeup of that
13 group of detainees?

14 A. All I noticed were Hispanic.

15 Q. Did you see any MCSO personnel wearing balaclavas or ski
16 masks at the command centers? 09:06:57

17 A. Yes, I did.

18 Q. How did that make you feel when you saw those deputies in
19 ski masks?

20 A. Wow. It was -- it was very intimidating. It was 09:07:12
21 intimidating, because not only were they wearing the ski masks,
22 they were also wearing the -- like, the vest, the bullet-proof
23 vest outside of their T-shirts, and on the vest you can see,
24 like, all of the other gear.

25 It was -- I mean, I hate to say this, but it kind of 09:07:31

1 looked like something out of the Taliban or something, I'm
2 sorry, but, you know, that's what it looked like. And it was
3 very scary.

4 Q. Did you ever see the sheriff at any of these sweeps?

5 A. Yes.

09:07:45

6 Q. Did you ever see Chief Deputy Brian Sands at the sweeps?

7 A. Yes.

8 Q. Did you see Lieutenant Sousa at the sweeps?

9 A. Yes.

10 Q. You mentioned before that you also observed traffic stops
11 during the MCSO immigration sweeps. Is that true?

09:07:55

12 A. Yes.

13 Q. Did you observe white and Latino drivers being treated
14 differently during traffic stops by MCSO?

15 A. Yes, I did.

09:08:12

16 Q. Can you describe that.

17 A. Well --

18 MR. LIDDY: Objection, foundation, Your Honor.

19 THE COURT: You know, it would be helpful to me if I
20 could get a little bit more specific idea.

09:08:26

21 MS. WANG: Sure. I'll go ahead and lay a little more
22 foundation, Your Honor.

23 BY MS. WANG:

24 Q. Ms. Guzman, during MCSO immigration sweeps did you have an
25 opportunity to observe numerous traffic stops?

09:08:35

1 A. Yes.

2 Q. And were you able to draw any -- withdrawn.

3 Were you able to make any observations about whether
4 white and Latino drivers were being treated differently by MCSO
5 personnel during those traffic stops?

09:08:50

6 A. Yes.

7 Q. What observations did you make?

8 A. Well, the --

9 MR. LIDDY: Objection, foundation, Your Honor.

10 THE COURT: Overruled.

09:08:59

11 THE WITNESS: During my observation of the different
12 sweeps, I noticed that the -- the Latino drivers, when they
13 were stopped, they were -- they were held much longer than the
14 Anglo drivers. They -- they were questioned longer. They
15 were, you know, just -- just held and -- and, you know,
16 detained longer.

09:09:24

17 BY MS. WANG:

18 Q. Can you think of a specific example of a traffic stop where
19 you noticed a Latino driver being held for a longer period of
20 time?

09:09:34

21 A. Yes. During one of the -- during one of the stops that I
22 observed, the -- the car was -- was pulled over and there were
23 several MCSO deputy vehicles there, I mean several. And the --
24 the deputy, you know, when -- when I -- what I saw is he was
25 holding a document up -- up in the air, and he was looking at

09:10:00

1 it kind of like, you know, it looked like the size of a
2 driver's license, you know, could have been a driver's license,
3 but he was looking at it scrutinizing it, kind of twisting it
4 to see, you know, I don't know what he was looking for, and
5 questioning the driver, and, you know, I mean, it -- it was
6 just for a long period of time.

09:10:16

7 Q. And did you see the outcome of that traffic stop?

8 A. Yes.

9 Q. What happened?

10 A. Well, afterwards, you know, when -- when, you know, she
11 was -- afterwards when she was free to leave, you know, I
12 did -- I was able to catch up with her, and she's a legal
13 permanent resident. She -- I spoke with her. And she told me
14 that the officer was actually stating that, you know --

09:10:28

15 MR. LIDDY: Objection, hearsay, Your Honor.

09:10:50

16 THE COURT: Sustained.

17 BY MS. WANG:

18 Q. Ms. Guzman, so the outcome, was it -- was that driver
19 permitted to leave by MCSO at the end of that traffic stop?

20 A. Yes.

09:11:00

21 Q. You mentioned that you made observations about white --
22 sorry, withdrawn.

23 You made observations about stops of white drivers
24 versus Latino drivers, right?

25 A. That's correct.

09:11:13

1 Q. Can you give us an example of a stop of a white driver that
2 you observed that differed from the one you just described.

3 A. Yes. The -- I saw a deputy that, you know, had just turned
4 on the lights and -- and was going to pull a car over, and I
5 was able to -- we were -- we were coming on different
6 directions, and as I saw this I was able to look inside. And
7 so I was able to quickly manage to pull a U-turn.

09:11:33

8 Inside there were a bunch of Anglo kids, white kids.
9 They looked like they could have been maybe high school,
10 college kids. But the -- the -- as -- as I -- as -- as safely
11 and as quickly as I could, I made a U-turn to get behind the --
12 the MCSO vehicle, and I did notice that the -- that during that
13 time that I was making the U-turn I noticed that the deputy
14 went into the window, he might have maybe crossed a few words,
15 said a few words, I'm not sure what happened, and then he went
16 back into his vehicle and then he took off.

09:11:55

09:12:17

17 Q. The car was allowed to leave?

18 A. The car was allowed to leave. The -- actually, the deputy
19 left before the car.

20 Q. And you actually saw the deputy turn on the lights to
21 signal to the driver to pull over?

09:12:28

22 A. That's correct.

23 Q. How long did it take between that time that the deputy
24 signaled for the car to pull over and the time the car was
25 permitted to leave?

09:12:41

1 A. Wow, it probably took, I mean, less than a minute, you
2 know, it seemed like it took less than a minute.

3 Q. Okay. Did you see any exchange of documents between the
4 driver and the deputy?

5 A. No.

09:12:56

6 Q. Did you have an opportunity to see such an exchange of
7 documents?

8 A. Well, my husband was driving so I wasn't driving, so I had
9 my eyes on that vehicle the whole time because I wanted to make
10 sure that I saw everything.

09:13:08

11 Q. Okay. Ms. Guzman, do you feel that you personally have
12 ever been racially profiled by MCSO?

13 A. Yes.

14 Q. Can you describe that for me.

15 A. During the -- the Buckeye sweep of -- it was -- I believe
16 it was, like, January of 2009. I was pumping gas on a gas
17 station of State Route 85 and Maricopa County 85. There's a
18 gas station. It's, like, rural out there, lots of farm land.

09:13:20

19 And so there was a sweep taking place, and -- but I
20 needed to pump some gas, so I -- I went inside and I saw a
21 deputy inside. But, you know, I -- I gave the clerk \$20 and I
22 told him in Spanish, Give me \$20 on pump, I can't remember what
23 pump number it was, but, you know, pump so and so.

09:13:49

24 And so as I went outside to pump the gas, it didn't
25 take very long for me to pump the gas, it was just \$20, and I

09:14:13

1 noticed the deputy go into his car and he sat in his car. And
2 then as soon as I finished, I closed the cap and I took off in
3 the -- in the Maricopa County Road 85 headed eastbound towards
4 the town of Maricopa, and the -- the deputy vehicle went really
5 close behind me. He was following me very, very close behind
6 me. I could see him through my rearview mirror, and I saw him
7 getting closer, and he was getting closer. And I thought to
8 myself, He's going to stop me, you know, and it was -- it
9 was -- at that moment I knew I'm racially profiled, you know.
10 This -- this is -- this is happening.

09:14:34

09:14:56

11 But my -- but my thoughts at that moment were, Do I
12 know -- okay. My driver's license is in my wallet. I know
13 that everything in my car is functioning, but where is my
14 registration, because my car's a mess. Okay. It's in my glove
15 compartment. My insurance, my insurance information, do I have
16 that? And then a thought came over me. I don't have any
17 proof, I mean, I just have my driver's license, but what proof
18 is that? You know, if I get stopped and questioned.

09:15:14

19 Q. And were you pulled over by the deputy?

20 A. I was -- I'm not sure if I was about to get pulled over,
21 but during that -- that whole, you know, that -- that incident
22 right there, because Maricopa County Road 85 is only one lane
23 going one direction and another lane coming in -- in my
24 direction. I saw a -- a news van, a Spanish news van vehicle
25 coming towards me, and the reporter knew me and he waved to me

09:15:30

09:15:54

1 through the window. You know, we weren't going that fast. And
2 I kind of waved to them kind of like a nervous wave, and I
3 believe that he saw also, you know, the deputy vehicle behind
4 me, so he made a U-turn, you know, 'cause I was still watching
5 everything through the rearview mirror and I saw the vehicle 09:16:13
6 make a U-turn. And as the vehicle -- the news vehicle was
7 approaching, the deputy went to the other lane and then just
8 sped right off.

9 Q. So you were not pulled over?

10 A. I was not pulled over. 09:16:27

11 Q. Ms. Guzman, is Somos America still receiving complaints
12 about racial profiling of Latino residents of Maricopa County?

13 A. Oh, yes.

14 Q. By the MCSO?

15 A. By the MCSO. 09:16:37

16 MS. WANG: Thank you. No further questions.

17 THE WITNESS: Thank you.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. LIDDY: 09:16:55

21 Q. Good morning, Ms. Guzman.

22 A. Good morning.

23 Q. Just so the record is clear, in the incident you just
24 testified about that happened at the gas station and the road
25 at Route 85, did the deputy see you inside the convenience 09:17:07

1 store?

2 A. Yes.

3 Q. And he did not pull you over?

4 A. No.

5 Q. And I believe you testified that this was during a
6 saturation patrol?

09:17:22

7 A. That's correct.

8 Q. Have you ever been pulled over by a Maricopa County
9 Sheriff's Office deputy?

10 A. No.

09:17:34

11 Q. I believe you testified that you did see at a different
12 saturation patrol a vehicle with several young white men pulled
13 over by a Maricopa County Sheriff's Office deputy?

14 A. Yes.

15 Q. And you're sure that they were all Anglo?

09:17:57

16 A. Yes.

17 Q. Is it possible that they may have appeared white to you but
18 been Latino?

19 A. They appeared white to me.

20 Q. Yet they were pulled over by a Maricopa County Sheriff's
21 Office deputy during a crime saturation patrol, that's your
22 testimony?

09:18:13

23 A. That's correct.

24 Q. Have you ever seen a member of the Taliban?

25 A. I seen pictures.

09:18:25

1 Q. On television?

2 A. Yes.

3 Q. And in print media?

4 A. Yes.

5 Q. Have you ever seen a member of the Taliban wearing any type 09:18:31
6 of clothing or apparatus on his head?

7 A. Yes.

8 Q. What color was that?

9 A. Black.

10 Q. And what was it made of? 09:18:45

11 A. I don't know.

12 Q. Was it made of cloth?

13 A. I don't know. I mean, are you asking if it was made of,
14 like, cotton, silk? I wouldn't know.

15 Q. Was it made of Kevlar? 09:18:57

16 A. I don't know.

17 Q. The Taliban that you've seen pictures of, were they wearing
18 utility belts?

19 A. You know, the -- the -- the pictures of the Taliban that
20 I've seen have guns on them on the outside, just like what I'm 09:19:16
21 describing and comparing with the deputies, and masks, and
22 vests.

23 Q. I appreciate you saying that they had vests and masks and
24 guns, but my question was: Did they have utility belts on?

25 A. You mean like construction? I don't -- 09:19:37

1 Q. I mean like the ones that are standard issue for Maricopa
2 County Sheriff's Office deputies that have an ability to put a
3 Taser, a firearm, handcuffs, a flashlight. Have you ever seen
4 one of those utility belts on a member of the Taliban on
5 television or in print media?

09:19:57

6 A. Well, I haven't paid that close attention. I should have
7 probably paid closer attention.

8 MR. LIDDY: I have no further questions, Your Honor.

9 THE COURT: Any redirect?

10 MS. WANG: No, Your Honor. Thank you.

09:20:07

11 Thank you, Ms. Guzman.

12 THE WITNESS: Thank you.

13 THE COURT: You may step down.

14 Next witness.

15 MS. WANG: Your Honor, plaintiffs call Manuel Madrid.

09:20:16

16 (Pause in proceedings.)

17 THE CLERK: Right up here, sir.

18 Can you please state and spell your full name.

19 MR. MADRID: Manuel Joseph Madrid. M-a-n-u-e-l,
20 J-o-s-e-p-h, M-a-d-r-i-d.

09:21:01

21 THE CLERK: Can you please raise your right hand.

22 (Manuel Joseph Madrid was duly sworn as a witness.)

23 THE CLERK: Can you please take our witness stand.

24 MS. WANG: May I proceed, Your Honor?

25 THE COURT: You may.

09:21:43

1 MS. WANG: Thank you.

2 MANUEL JOSEPH MADRID,
3 called as a witness herein, having been duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

09:21:45

6 BY MS. WANG:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. Sir, you're a sergeant at the Maricopa County Sheriff's
10 Office?

09:21:48

11 A. Yes.

12 Q. And at one time you were a supervising sergeant of the
13 Human Smuggling Unit?

14 A. I was.

15 Q. But you're no longer assigned to HSU?

09:21:54

16 A. Correct.

17 Q. Where are you assigned now?

18 A. District 2 Patrol.

19 Q. And when did you move from HSU to District 2 Patrol?

20 A. February of last year.

09:22:04

21 Q. Of 2011?

22 A. Correct.

23 Q. Okay. And so you were a supervisor from the founding of
24 the Human Smuggling Unit, correct?

25 A. Correct.

09:22:14

1 Q. That was in 2007?

2 A. Yes.

3 Q. You did not apply for that supervising position at the
4 Human Smuggling Unit, correct?

5 A. Correct. 09:22:23

6 Q. You were told you were being given that position, right?

7 A. Yes, ma'am.

8 Q. By Chief Brian Sands?

9 A. Yes.

10 Q. And he told you that was a promotion? 09:22:29

11 A. Well, I had been promoted prior to that. My assignment
12 after my promotion ceremony hadn't been given to me; it was
13 given to me shortly afterwards.

14 Q. I see. So you became -- you were tapped to supervise HSU
15 shortly after you became a sergeant? 09:22:43

16 A. Correct.

17 Q. It was your first assignment as a sergeant?

18 A. Correct.

19 Q. Sir, you've personally briefed both the sheriff and
20 Chief Sands about HSU's activities, correct? 09:22:53

21 A. Correct.

22 Q. And you regularly gave information about HSU's activities
23 to MCSO's public information office, correct?

24 A. Correct.

25 Q. They would often disseminate the information that you gave 09:23:04

1 them to the press?

2 A. Correct.

3 Q. And they would often put out press releases about HSU's
4 activities, correct?

5 A. Correct.

09:23:14

6 Q. Sir, you've attended saturation patrols that involved HSU?

7 A. Yes, I have.

8 Q. And you saw the sheriff there?

9 A. Yes.

10 Q. In fact, you would give him progress updates during the
11 course of those patrols?

09:23:22

12 A. I would.

13 Q. And you've briefed the sheriff many times on how many
14 illegal immigrants were arrested during those patrols?

15 A. Correct.

09:23:34

16 Q. And the sheriff himself has held press conferences about
17 those HSU operations, correct?

18 A. Yes.

19 Q. You attended several of them yourself?

20 A. Correct.

09:23:42

21 Q. And in some cases, TV crews have ridden with HSU?

22 A. Yes, ma'am.

23 Q. That was with the sheriff's approval, correct?

24 A. Yes.

25 Q. Now, HSU was formed as part of the sheriff's effort to

09:23:53

1 enforce Arizona's human smuggling law, correct?

2 A. Yes.

3 Q. And also as part of the sheriff's policy of combatting
4 illegal immigration?

5 A. I'm sorry. Say it again?

09:24:05

6 Q. And also, HSU was also formed as partly of the sheriff's
7 policy of combatting illegal immigration, correct?

8 A. I believe so, yeah.

9 Q. And the original name of the Human Smuggling Unit was the
10 Triple I strike team, is that right?

09:24:20

11 A. Yes.

12 Q. That stood for illegal immigration interdiction?

13 A. I couldn't tell you what it stood for.

14 Q. Does that sound about right to you?

15 A. Yeah.

09:24:28

16 Q. Okay. And the sheriff wanted HSU to use routine law
17 enforcement activities to screen individuals for immigration
18 status when there were certain factors present, correct?

19 A. I'm sorry. Say that again?

20 Q. Sure. The sheriff wanted HSU to use routine law
21 enforcement activities to screen individuals for immigration
22 status when certain factors were present --

09:24:43

23 A. Correct.

24 Q. -- correct?

25 And you understood the sheriff wanted investigations

09:24:55

1 into immigration status even in traffic stops that have nothing
2 to do with smuggling load vehicles, correct?

3 A. Correct.

4 Q. Now, I think you already testified that you've been present
5 at many of the saturation patrols that HSU was involved in, is
6 that correct? 09:25:13

7 A. Yes, ma'am.

8 Q. In 2007, when the unit was first formed, HSU did a number
9 of what we might call smaller saturation patrols, is that
10 right? 09:25:26

11 A. Yes, ma'am.

12 Q. There might -- it was mostly HSU personnel at those
13 operations, correct?

14 A. Correct.

15 Q. With maybe a couple of other units involved? 09:25:35

16 A. Yes, ma'am.

17 Q. And at some point HSU began conducting larger scale
18 saturation patrols, right?

19 A. Yes.

20 Q. That would involve maybe a hundred deputies, right? 09:25:44

21 A. Correct.

22 Q. Many other divisions or units of MCSO were involved in
23 those?

24 A. Yes.

25 Q. And while you were assigned to HSU you were present for 09:25:51

1 many of those larger saturation patrols, correct?

2 A. Yes, ma'am.

3 Q. As well as the smaller ones.

4 A. Correct.

5 Q. And you were supervisor at those patrols, correct?

09:26:00

6 A. Yes.

7 Q. Now, MCSO originally announced saturation patrols in
8 mid-2007 in connection with the opening of an immigration
9 hotline, correct?

10 A. Yes, ma'am.

09:26:15

11 Q. And the purpose of HSU's saturation patrols was looking for
12 any and all crime in addition to any illegal immigration that
13 HSU could come up with, correct?

14 A. Correct.

15 Q. And one goal of the saturation patrols was immigration
16 enforcement, correct?

09:26:28

17 A. Correct.

18 Q. One goal of the saturation patrols was to identify and to
19 detain undocumented immigrants, correct?

20 A. In the course of traffic stops, yes.

09:26:43

21 Q. Now, we talked a minute ago about some of the earlier
22 smaller saturation patrols done by HSU. You recall that?

23 A. Yes, ma'am.

24 Q. In 2007 there were a number of those, correct?

25 A. I don't know the number, but yes.

09:27:08

1 Q. The locations for some of those smaller patrols were
2 selected because of complaints about day laborers, isn't that
3 right?

4 A. I believe so, yes.

5 Q. And saturation patrols were -- withdrawn. 09:27:21

6 Saturation patrols by HSU have targeted day laborers
7 even when there's no human smuggling involved, correct?

8 A. Correct.

9 Q. Let's turn to one of the specific patrols.

10 There was a saturation patrol in the town of
11 Cave Creek on September 27th, 2007, is that correct? 09:27:39

12 A. Yes, ma'am.

13 Q. And you were present?

14 A. I believe so, yes.

15 Q. And you described the Cave Creek operation as, quote, a
16 detail addressing the complaints in Cave Creek regarding the
17 day laborers, end quote, correct? 09:27:49

18 A. Correct.

19 Q. That operation involved a church, right?

20 A. Correct. 09:28:07

21 Q. It was the Good Shepherd of the Hills church in Cave Creek?

22 A. I believe that was the name.

23 Q. And that was a known site where day laborers would
24 congregate to be picked up for work, correct?

25 A. I believe so. 09:28:16

1 Q. And prior to the operation HSU sent an undercover
2 detective in to investigate the church, correct?

3 A. I -- I don't recall that.

4 MS. WANG: Okay. Let's show the witness Exhibit 122,
5 which is already in evidence, please.

09:28:32

6 And Your Honor, may I publish exhibits that are in
7 evidence already?

8 THE COURT: You may do so.

9 MS. WANG: Thank you.

10 Let's highlight -- or, sorry. Let's call out the top
11 half of this e-mail so we can see who's sending it.

09:28:50

12 BY MS. WANG:

13 Q. Sir, this is an e-mail string that originated from someone
14 named Sean Ross. Do you see that?

15 A. Yes.

09:28:59

16 Q. He was an MCSO deputy, is that correct?

17 A. Correct.

18 Q. And he sent it to Joseph Sousa, correct?

19 A. Correct.

20 Q. He was your lieutenant at the time, right?

09:29:05

21 A. Yes.

22 Q. And you were cc'd on this e-mail, correct?

23 A. Correct.

24 Q. And then this was forwarded on to counsel.

25 Let's enlarge the bottom half of the e-mail so we can

09:29:14

1 read that.

2 And I'll give you a moment to read that, Sergeant.

3 So the -- the first paragraph here says: On Wednesday
4 9-19-07 we sent Carlos Rangel in UC under the decoy he was a
5 day laborer looking for work.

09:29:47

6 Do you see that?

7 A. Yes, ma'am.

8 Q. Does this refresh your recollection that prior to the Cave
9 Creek operation you sent in an undercover detective to
10 investigate?

09:29:55

11 A. Really, I had no knowledge of this. At the time Sean Ross
12 worked for me. Had I been at this particular operation I would
13 have wrote this. I would have wrote the summary, too. So I'm
14 assuming I was not present for this particular detail.

15 Q. Okay. When you say operation and detail, you mean the
16 earlier undercover investigation, is that right?

09:30:11

17 A. This particular where Carlos has actually went into the --

18 Q. To the church?

19 A. -- to the church, yes.

20 Q. But you were at the saturation patrol that followed this
21 undercover work, is that right?

09:30:24

22 A. Yes.

23 Q. Okay.

24 A. I believe so, yes.

25 Q. But you were -- you were cc'd on this e-mail on September

09:30:29

1 24th, correct?

2 A. Correct, I was.

3 Q. So you were aware that Carlos Rangel was sent in undercover
4 to investigate that church, correct?

5 A. I would assume so. I just -- I don't recall actually
6 reading this, so...

09:30:42

7 Q. Okay. Fair enough.

8 Sir, looking at this document, isn't it true that when
9 Deputy Rangel went into the church he discovered no information
10 pertaining to forced labor?

09:30:59

11 I'll refer your attention down to the last line --

12 A. Okay.

13 Q. -- on both days, there was no information discovered --

14 A. Thank you.

15 Q. -- pertaining to forced labor?

09:31:19

16 A. Correct.

17 Q. And there was no information discovered pertaining to human
18 smuggling, correct?

19 A. Correct.

20 Q. And there was no information discovered pertaining to
21 possible drop houses?

09:31:25

22 A. Correct.

23 Q. And after this undercover investigation, HSU proceeded with
24 the saturation patrol that centered on this church, correct?

25 A. Correct.

09:31:41

1 Q. Now, during the Cave Creek operation, the saturation patrol
2 that followed this undercover investigation, there was a
3 certain procedure that was agreed upon in advance, right?

4 A. I'm sorry. Say that again?

5 Q. For the actual saturation patrol in Cave Creek there was a
6 certain procedure or plan that was put in place beforehand,
7 correct?

09:31:58

8 A. Correct.

9 Q. And the plan was that you would have undercover vehicles
10 surveilling that church, correct?

09:32:08

11 A. Yes.

12 Q. And then there would be marked patrol vehicles that were
13 nearby in the vicinity, correct?

14 A. Correct.

15 Q. And the undercover surveillance vehicles would note when
16 day laborers got into a vehicle and left the church, correct?

09:32:16

17 A. In addition to watching -- there was another reason that I
18 recall being there was the day laborers that were causing the
19 traffic hazards along Cave Creek road there. They would watch
20 the day laborers at the church itself, and then for any other
21 infractions that they observed outside of the church grounds.

09:32:36

22 Q. So you believed that part of the operation was dealing with
23 traffic issues caused by day laborers who were standing in
24 front of the church?

25 A. I don't know necessarily in front of the church, but

09:32:51

1 outside along the roadway.

2 Q. Okay. To your knowledge, no -- no one was arrested that
3 day for impeding traffic, isn't that right?

4 A. Correct, I guess. I don't -- I don't know for sure, but I
5 don't recall it, no. 09:33:05

6 Q. Okay. But part of the plan was, again, that the
7 surveillance vehicles would be watching for day laborers
8 getting into cars at the church, right?

9 A. Correct.

10 Q. And then they would radio a description of the vehicle,
11 which the marked patrol vehicles would then follow up on? 09:33:17

12 A. Correct.

13 Q. And those marked patrol cars were instructed to follow
14 those vehicles that had been identified, correct?

15 A. Correct. 09:33:32

16 Q. And then once they had probable cause to make a stop, they
17 were to stop the vehicle, correct?

18 A. Correct.

19 Q. Okay. During the Cave Creek operation deputies arrested
20 passengers for being illegal immigrants, right? 09:33:45

21 A. Correct.

22 Q. They were turned over to ICE for processing?

23 A. Correct.

24 Q. And not charged with any state crime, correct?

25 A. Not all of them, no. 09:33:55

1 Q. Well, none of them was, isn't that right?

2 A. On this particular, I don't recall. I'd have to see the
3 summary.

4 Q. Okay. Fair enough.

5 And during the Cave Creek operation deputies were
6 instructed to investigate the occupants of the vehicles for
7 immigration violations, correct?

09:34:04

8 A. I don't recall that specifically being briefed.

9 Q. Okay. Can we please show --

10 Well, Sergeant Madrid, you were deposed in this case,
11 correct?

09:34:21

12 A. Correct.

13 Q. Twice?

14 A. Correct.

15 Q. Your first deposition was on October 27, 2009?

09:34:25

16 A. I think so.

17 Q. Something like that.

18 A. Something like that. A while ago.

19 Q. Okay. Let's -- let's show you part of that deposition.

20 Can we please show the first deposition, page 58, line 22, to
21 page 59, line 4.

09:34:35

22 And sir, I can give you a copy of the entire
23 deposition transcript if you like, but I can tell you that at
24 this section you were discussing this Cave Creek operation.

25 So you testified in your deposition:

09:35:07

1 "QUESTION: And then they were to investigate the
2 occupants of the vehicles?

3 "ANSWER: Correct.

4 "QUESTION: And they were to investigate the occupants
5 for immigration violations? 09:35:17

6 "ANSWER: For anything.

7 "QUESTION: Including immigration violations?

8 "ANSWER: Correct."

9 A. Okay.

10 Q. That was your testimony then? 09:35:23

11 A. Sure.

12 Q. And you stand by it now?

13 A. Yeah. My recollection then to now is obviously a little
14 bit deteriorated, so, yeah.

15 Q. Okay. So just to be clear, during the Cave Creek operation 09:35:31
16 deputies were instructed to investigate occupants of vehicles
17 for immigration violations --

18 A. Correct.

19 Q. -- correct?

20 Now, during the Cave Creek operation the patrol 09:35:41
21 deputies who were in the marked cars were making traffic stops,
22 correct?

23 A. Correct.

24 Q. And do you recall that there were two traffic stops made
25 during the course of that operation? 09:35:56

1 A. I don't recall the number.

2 Q. Okay. Sir -- well, why don't we take a look at
3 Exhibit 126, which is already in evidence.

4 And let's enlarge the bottom half of that e-mail
5 string little. 09:36:37

6 So, sir, is this an e-mail that you wrote to Tom Tyo,
7 Brian Sands, Joseph Sousa, and others on September 27, 2007?

8 A. Correct.

9 Q. And the subject is Cave Creek day laborers and tip line --

10 A. Correct. 09:36:54

11 Q. -- correct?

12 So why don't we take a look at this. This is an
13 e-mail you wrote after the operation, correct?

14 A. Yes, ma'am.

15 Q. It's a summary and a report of what happened during the
16 operation? 09:37:00

17 A. Correct.

18 Q. To your chain of command?

19 A. Yes, ma'am.

20 Q. Okay. I'm going to call your attention to the first
21 paragraph. You describe a traffic stop where the first vehicle
22 was stopped for a speed violation for doing 45 in a marked
23 35-mile-an-hour zone, is that correct? 09:37:05

24 A. Yes, ma'am.

25 Q. And then it describes some arrest that Detective Rangel 09:37:37

1 made, correct?

2 A. Yes, ma'am.

3 Q. And then a sentence later it says: On the second stop the
4 probable cause was a broken rear tail lamp.

5 Do you see that?

09:37:51

6 A. Yes, ma'am.

7 Q. Does this refresh your recollection that there were two
8 traffic stops made during this operation?

9 A. Yes.

10 Q. And if you look at the second paragraph it says: According
11 to the UC detectives --

09:37:57

12 That means "undercover," correct?

13 A. Yes, ma'am.

14 Q. So according to them, after the first stop, the U.S.
15 citizen driver went back to the church and appear -- it
16 appeared that he relayed what had just occurred and then left
17 by himself.

09:38:12

18 Do you see that?

19 A. Yes, ma'am.

20 Q. And then you wrote: Shortly after the second stop and
21 taking more people into custody, the church seemed to shut down
22 their operation for the day, correct?

09:38:19

23 A. Correct.

24 Q. And so by that I take it that the church stopped permitting
25 day laborers to congregate there as a pickup spot, correct?

09:38:34

1 A. Correct.

2 Q. And then after that, you ended your operation, correct?

3 A. Yes.

4 Q. Okay. Sir, let's turn to the Queen Creek saturation patrol
5 on October 4th, 2007.

09:38:52

6 Do you re -- do you remember that one?

7 A. Yes.

8 Q. That also involved a known day laborer pickup site,
9 correct?

10 A. Correct.

09:39:02

11 Q. And the location was based on -- sorry.

12 The location was selected based on e-mails from the
13 town council in reference to the day laborers in the city, is
14 that right?

15 A. My recollection of it was that we were there in complaints
16 that revolved around the day laborers harassing school children
17 that were going to school that day.

09:39:13

18 MS. WANG: Well, let's show Plaintiffs' Exhibit -- or,
19 sorry, Exhibit 129, which is already in evidence, and let's
20 blow up the second -- the -- the main e-mail in this.

09:39:36

21 BY MS. WANG:

22 Q. Sir, this was, again, another report that you wrote about
23 the Queen Creek operation to your chain of command, correct?

24 A. Correct.

25 Q. And I'd like to highlight the first sentence.

09:39:48

1 You wrote: On 10-4-07 HSU conducted a detail in the
2 Town of Queen Creek based on e-mails from the town council in
3 reference to the day laborers in their city, correct?

4 A. Correct.

5 Q. You didn't mention anything in your report about complaints 09:40:07
6 about anyone bothering children, right?

7 A. No, I didn't, not in this.

8 Q. Okay. And this Queen Creek operation involved basically
9 the same plan and procedure as the earlier Cave Creek
10 operation, correct? 09:40:26

11 A. To the best of my recollection, yes.

12 Q. There were surveillance vehicles and there were marked
13 patrol cars, correct?

14 A. Correct.

15 Q. And basically they -- the HSU deputies were trying to 09:40:31
16 develop probable cause to stop vehicles that had picked up day
17 laborers, correct?

18 A. Correct.

19 Q. And in the Queen Creek operation, as in the Cave Creek
20 operation, the deputies who made the traffic stop often had a 09:40:51
21 minor traffic violation as the probable cause for the stop,
22 correct?

23 A. Correct.

24 Q. And then the deputies would question the occupants, right?

25 A. Yes. 09:41:03

1 Q. About their immigration status?

2 A. Yes.

3 Q. And ask them for identification, correct?

4 A. Correct.

5 Q. And they would see if there were any indicators that they
6 were illegally in the United States, correct?

09:41:10

7 A. Correct.

8 Q. Sir, let's turn to the saturation patrol at 36th and Thomas
9 on October 15, 2007. Do you recall that one?

10 A. We did several there, so I don't necessarily recall a
11 specific one, but yes, I know we were there.

09:41:26

12 Q. You did several operations in the area of 36th -- 32nd and
13 Thomas, correct?

14 A. Correct.

15 THE COURT: Could I -- could I get you to tell me
16 again the date you're asking about?

09:41:39

17 MS. WANG: Yes, sir. It is October 15, 2007.

18 THE COURT: Thank you.

19 BY MS. WANG:

20 Q. Sir, that area around, you know, 32nd or 36th and Thomas is
21 a predominantly Latino neighborhood, isn't that right?

09:41:52

22 A. I don't know.

23 Q. Okay. Again, that location for the October 15, 2007,
24 saturation patrol was again based on e-mails from local

25 businesses about day laborers, correct?

09:42:10

1 A. That specific one I don't recall. It very well could be.
2 I don't -- again, we were there I don't know how many times.
3 They kind of all mesh together at this point. Now I don't
4 remember one specific one.

5 Q. They were all pretty similar? 09:42:23

6 A. Yes.

7 Q. Okay. Well, maybe I can help you out. Let's show
8 Plaintiffs' Exhibit 131, which is also in evidence.

9 And let's enlarge the bottom half of this.

10 So, Sergeant, this appears to be a report that you 09:42:40
11 wrote to your chain of command on October 15th, 2007, about
12 this operation at 36th and Thomas, is that correct?

13 A. Yes, ma'am.

14 Q. And does this refresh your recollection that the detail was
15 based on e-mails from local businesses in reference to the day 09:42:57
16 laborers in the area?

17 A. Yes.

18 Q. Sir, you don't know whether anyone investigated these
19 e-mail complaints from local businesses before HSU undertook
20 these operations, do you? 09:43:15

21 A. No, I couldn't testify to that, no.

22 Q. And you don't know whose responsibility within MCSO it
23 would have been to check out that e-mail correspondence?

24 A. No.

25 Q. And again, at this 36th Street and Thomas operation, there 09:43:27

1 was basically the same protocol for how stops were to be made,
2 correct?

3 A. Yes.

4 Q. And again, deputies would make stops for traffic
5 violations, correct?

09:43:43

6 A. Correct.

7 Q. And then once the cars were stopped, the deputies would
8 interview the subjects in the vehicles in reference to their
9 legal status to be in the United States, correct?

10 A. Providing that there was reasonable suspicion to believe
11 that they were here illegally, yes.

09:43:53

12 Q. Okay. So let's highlight, please, about in the middle of
13 this paragraph where it says "once the vehicle was stopped,"
14 the next one.

15 So you wrote in your e-mail to the chain of command:
16 Once the vehicle was stopped, HSU detectives would interview
17 the subjects in the vehicles in reference to their legal status
18 to be in the United States, correct?

09:44:07

19 A. Correct.

20 Q. And then you continued on: Once it was determined that
21 they were in the U.S. illegally, they were taken into custody
22 under immigration law, correct?

09:44:19

23 A. Correct.

24 Q. And none of those people was actually arrested for a state
25 crime, correct?

09:44:31

1 A. Correct.

2 Q. They were simply turned over to ICE?

3 A. Yes.

4 Q. Okay. We can take that down.

5 I'd like to ask you now about the Fountain Hills
6 operation on October 22nd, 2027. Were you at that one?

09:44:46

7 A. No, I was never involved with any of the Fountain Hills
8 operations.

9 Q. Okay. But you were familiar with it as a supervisor at
10 HSU?

09:45:00

11 A. Correct, I knew they occurred.

12 Q. And the purpose of that operation was to investigate day
13 laborers for their immigration status, correct?

14 A. I -- correct.

15 Q. Sergeant, would you agree with this statement: That it is
16 racial profiling for deputies to aggressively enforce traffic
17 laws in predominantly Latino neighborhoods because of an
18 assumption that illegal immigrants live or work there?

09:45:09

19 A. I'm sorry, say that again?

20 Q. Do you agree with this statement: That it's racial
21 profiling for deputies to aggressively enforce traffic laws in
22 predominantly Latino neighborhoods because of an assumption
23 that illegal immigrants live or work there?

09:45:29

24 A. I agree with that.

25 Q. I'd like to ask you some questions now more generally about

09:45:45

1 HSU saturation patrols, including both the small ones that
2 center on day laborers and the large ones. Okay?

3 A. Okay.

4 Q. Generally, HSU did not have a postoperation briefing after
5 the saturation patrols, is that right?

09:46:06

6 A. Correct.

7 Q. And there was no formal assessment of whether the operation
8 was successful?

9 A. Correct.

10 Q. And you generally did not assess, after these saturation
11 patrols, whether they met their goals?

09:46:13

12 A. There was really never any goals ever set.

13 Q. And you did shift summaries after many of these operations,
14 correct?

15 A. Yes.

09:46:29

16 Q. You noted the number of illegal immigrants who had been
17 arrested, correct?

18 A. Correct.

19 Q. And you sent those numbers up the chain of command?

20 A. Correct.

09:46:36

21 Q. You were asked by the chain of command to do that, correct?

22 A. Correct.

23 Q. And you don't know what the chain of command did with those
24 statistics that you compiled, correct?

25 A. No, I don't.

09:46:45

1 Q. Let's turn to some of the larger saturation patrols now.

2 You were a supervisor on the scene of a sweep in Mesa
3 on June 26th, 27th, and 28th of 2008, correct?

4 A. Correct.

5 Q. And you were present at the briefing before that operation, 09:47:01
6 correct?

7 A. Correct.

8 Q. The briefing did not cover particular people who were
9 targets of the investigation, correct?

10 A. I don't recall any briefing. Again, this is the same as -- 09:47:14
11 they kind of all run together. I don't remember any specific
12 one any more.

13 Q. Okay. Why don't we show again your first deposition
14 from -- at page 166, lines 12 through 14, please.

15 And you were asked: "Did you receive any specific 09:47:39
16 information about persons to target during that sweep?"

17 "ANSWER: Not that I recall."

18 Is that accurate testimony?

19 A. Sure.

20 Q. And the preoperation briefing for the Mesa sweep in June of 09:47:48
21 2008 also did not cover any particular houses that were under
22 investigation, isn't that correct?

23 A. Correct.

24 Q. Those preoperation briefings in general would happen the
25 morning of the patrol, correct? 09:48:07

1 A. Typically, yeah.

2 Q. It might be the day before in some cases?

3 A. Correct.

4 Q. And you were present at all of the ones where you were
5 involved in the operation?

09:48:19

6 A. Probably, yes.

7 Q. And the briefings did not cover why the locations were
8 selected, is that right?

9 A. Not that I recall.

10 Q. At some of the smaller saturation patrols, deputies were
11 not given specific instructions, but instead were told to
12 basically work the area, is that correct?

09:48:30

13 A. Correct.

14 Q. And I believe at some point MCSO started to instruct
15 deputies on something called a zero tolerance policy for
16 saturation patrols, is that right?

09:48:50

17 A. Yes, ma'am.

18 Q. That was in force during these larger saturation patrols,
19 is that right?

20 A. Yeah, it was implemented on the -- on the larger ones, yes.

09:48:59

21 Q. And according to you, zero tolerance meant that deputies
22 were required to make a stop if they observed any basis for a
23 stop, is that right?

24 A. Correct.

25 Q. So the zero tolerance policy took away the ordinary

09:49:11

1 officer discretion to let something slide.

2 A. Sure.

3 Q. So if you saw someone who was speeding by five miles an
4 hour over the limit, you had to stop them under the zero
5 tolerance policy, correct?

09:49:27

6 A. That's what they were briefed, yeah.

7 Q. Sergeant, you're familiar with 287(g) agreements, right?

8 A. The agreement, no, I -- I didn't ever read that.

9 Q. You know what a 287 --

10 A. Sure, I know what it is, yes.

09:49:41

11 Q. Thank you.

12 And MCSO once had a task force 287(g) agreement,
13 correct?

14 A. I'm sorry?

15 Q. MCSO once had a task force 287(g) agreement with the
16 federal government?

09:49:48

17 A. I don't know.

18 Q. Okay. Well, there's -- there's -- there are 287(g)
19 agreements that cover jails, right?

20 A. Yes.

09:50:00

21 Q. And then there are some --

22 A. I'm sorry, I'm following you now. Yes. Yes, we did.

23 Q. Okay. And in fact, at one point all HSU deputies were
24 287(g) certified, is that right?

25 A. Yes.

09:50:12

1 Q. And MCSO deputies with a 280 -- withdrawn.

2 You yourself were 287(g) certified, is that right?

3 A. Yes.

4 Q. As was Sergeant Palmer?

5 A. I believe he was, yes.

09:50:23

6 Q. Now, you know that the Department of Homeland Security
7 terminated the 287(g) agreement with MCSO in 2009, correct?

8 A. Yes.

9 Q. The termination of the 287(g) agreement did not interfere
10 with the Human Smuggling Unit's work, did it?

09:50:40

11 A. Not really, no.

12 Q. In fact, the termination of the 287(g) agreement did not
13 affect what HSU did during traffic stops, correct?

14 A. On the human smuggling loads.

15 Q. You mean it did affect --

09:50:54

16 A. I'm sorry. Repeat that again.

17 Q. The termination of the 287(g) agreement did not affect what
18 HSU did during traffic stops.

19 A. Not really, no.

20 Q. Sir, you believe that whether someone is an illegal
21 immigrant can be relevant in a human smuggling investigation,
22 correct?

09:51:07

23 A. Yes.

24 Q. And in investigations under Arizona's human smuggling law,
25 MCSO deputies could look into the immigration status of people

09:51:24

1 encountered in traffic stops, right?

2 A. Once there was reason to believe that they were here
3 illegally, yes.

4 Q. And according to you, MCSO does not need 287(g) authority
5 to do that, correct? 09:51:38

6 A. Correct.

7 Q. Sir, outside of saturation patrols, HSU has made stops of
8 smuggling vehicles, correct?

9 A. Correct.

10 Q. And outside of saturation patrols, HSU has busted drop
11 houses, correct? 09:51:48

12 A. Yes.

13 Q. When that happens, HSU often arrests the smugglees,
14 correct?

15 A. Correct. 09:51:59

16 Q. Those were the people who were smuggled?

17 A. Correct.

18 Q. And those people are often booked into the jail for
19 conspiracy to commit alien smuggling under the Arizona law,
20 correct? 09:52:07

21 A. Yes.

22 Q. Sir, it's fair to say that HSU deputies conducted traffic
23 stops during saturation patrols, correct?

24 A. Yes.

25 Q. And they also did traffic stops outside of saturation 09:52:18

1 patrols, correct?

2 A. Yes.

3 Q. And you would occasionally go to the scene of traffic stops
4 to check on your deputies, correct?

5 A. Correct.

09:52:33

6 Q. And in your deposition on October 27, 2009, you described
7 your typical routine when you stopped by a deputy's traffic
8 stop. And I'm going to ask to show that. It's the first
9 deposition, page 53, at lines 17 through 19.

10 Can you enlarge that? Oops.

09:52:58

11 17 through 19.

12 So you testified: "Typically, what I do, I will pull
13 up on a traffic stop: Hey, what is going on? What do you got?
14 This. All right. You good?"

15 Does that accurately describe your procedure for
16 supervising traffic stops?

09:53:17

17 A. Yes.

18 Q. So when you go to a traffic stop by one of your deputies,
19 you just stay briefly, isn't that right?

20 A. Typically, yeah.

09:53:26

21 Q. You don't sit and baby-sit them?

22 A. Unless they need help with something, but typically they
23 don't.

24 Q. And your practice in supervising traffic stops is in line
25 with MCSO policy and practices, right?

09:53:36

1 A. Correct.

2 Q. While you were a supervisor in HSU you were present at most
3 saturation patrols that involved HSU, correct?

4 A. Correct.

5 Q. And you acted as the command post supervisor for much of
6 that time?

09:53:47

7 A. Yeah.

8 Q. You would often stay at the command center, right?

9 A. Yes.

10 Q. Would you say about 80 to 85 percent of your time during
11 saturation patrols was spent at the command post?

09:53:55

12 A. I would probably say more like 95 percent --

13 Q. Okay.

14 A. -- if not more.

15 Q. So you were not generally on the scene of traffic stops
16 during saturation patrols?

09:54:04

17 A. Correct.

18 Q. Sir, when HSU deputies are on patrol, they're looking for
19 human smuggling loads, right?

20 A. On -- I'm sorry. Say that again?

09:54:21

21 Q. When HSU deputies are on patrol, they're looking for
22 smuggling loads?

23 A. During -- during a saturation patrol, or --

24 Q. In general.

25 A. Yes.

09:54:33

1 Q. And HSU's mission, again, is to enforce Arizona's human
2 smuggling statute?

3 A. Correct.

4 Q. As well as looking for illegal immigrants, correct?

5 A. I wouldn't add the second part to it, but it's to enforce
6 the Arizona statute.

09:54:42

7 Q. But if in the course of their work HSU deputies come across
8 people they believe are illegal immigrants, they'll arrest
9 them, correct?

10 A. When we were 287(g), yes.

09:54:56

11 Q. Okay. But that would actually happen after 287(g)
12 authority expired, isn't that right?

13 A. Correct.

14 Q. Because if a deputy came across an illegal immigrant in the
15 course of their work, they wouldn't let them go?

09:55:09

16 A. Well, no, we would make the call to ICE. If there was
17 reasonable suspicion to still believe that they were here
18 illegally, we would make a call to ICE and let them make that
19 determination.

20 Q. So it's fair to say that HSU deputies don't exclusively
21 enforce Arizona's human smuggling statute; they do other
22 things, too, right?

09:55:18

23 A. Sure, they're still deputy sheriffs; they enforce all state
24 laws.

25 Q. And they turn over suspected illegal immigrants to ICE as

09:55:37

1 well?

2 A. Correct.

3 Q. And that continued to be true after there was no 287(g)
4 authority?

5 A. Correct.

09:55:46

6 Q. And HSU deputies can look for indications of immigration
7 violations during traffic stops, right?

8 A. Before or after?

9 Q. Both.

10 A. Before, yeah, we could do it. If -- again, if there was --

09:55:58

11 not necessarily look, but if they were -- reason to believe

12 that there was -- suspicion to believe that they were here

13 illegally, yeah, they would -- they wouldn't let that go, no.

14 They would, in addition, to call ICE and have them make the

15 determination what we were going to do with it, with the

09:56:13

16 people.

17 Q. And to be clear, that's true both before and after the

18 termination of the 287(g) agreement, correct?

19 A. Correct.

20 Q. The only difference is now they need to call ICE in order

09:56:21

21 to have the person picked up, correct?

22 A. Correct.

23 Q. When there are certain indicators present, a deputy can

24 question passengers about immigration status, correct?

25 A. Correct.

09:56:37

1 Q. And you're familiar with those indicators, correct?

2 A. Correct.

3 Q. Some of those indicators include having multiple passengers
4 in a vehicle, correct?

5 A. Correct.

09:56:47

6 Q. Passengers looking disheveled, right?

7 A. Correct.

8 Q. Having a foreign ID?

9 A. Correct.

10 Q. Not speaking English?

09:56:53

11 A. Correct.

12 Q. Or speaking broken English?

13 A. Correct.

14 Q. And Hispanic appearance can be considered as one factor,
15 among others, when deciding when to initiate an immigration
16 investigation once a traffic stop is underway, correct?

09:57:04

17 A. I wouldn't necessarily say initiate it. With the other
18 factors that you've already stated, it was already initiated at
19 that point. I would say the only time that race ever came into
20 play was in the totality at the end. You know, it was never a
21 factor of, Okay, I'm going to do the -- the investigation. All
22 the other ones that were present were typically seen first,
23 and -- and the investigation had already started at that point.

09:57:23

24 Q. Well, sir, a deputy could observe someone's race at the
25 same time they're observing that they're disheveled looking,

09:57:40

1 correct?

2 A. Yes. And all this happens in -- in a second. I mean, you
3 can pretty much go through all that pretty quickly.

4 Q. So deputies are looking at the totality of circumstances in
5 deciding whether someone is suspected of being an undocumented
6 immigrant in a smuggling load? 09:57:52

7 A. I didn't hear that.

8 Q. And race is one of the things they take into account in the
9 totality of circumstances, correct?

10 A. Correct. 09:58:05

11 Q. And that's proper?

12 A. That's what we were trained.

13 Q. Okay. Sir, I'm going to ask that we put up a -- an
14 exhibit. This is not in evidence, and I do not intend to move
15 for its admission, but I want to show it to you. It's -- 09:58:20

16 MR. CASEY: I'm sorry. What was the exhibit?

17 MS. WANG: It's Exhibit 157.

18 MR. CASEY: Thank you.

19 MS. WANG: I'll note for counsel and for the Court we
20 saw a very similar exhibit with Sergeant Palmer. This one's
21 actually different, a different incident. 09:58:30

22 THE COURT: Do you wish it to be shown to the witness
23 and the Court?

24 MS. WANG: Yes, please, Your Honor.

25 THE COURT: All right. It's up on your screen. 09:58:43

1 THE WITNESS: Yes, sir.

2 BY MS. WANG:

3 Q. Sir, this is a -- a form that's used by MCSO, correct?

4 A. Correct.

5 Q. And it's a narrative report, right?

09:58:54

6 A. Yes, ma'am.

7 Q. This is a report for MCSO deputies to document arrests or
8 stops that they make, correct?

9 A. Yes, this is an incident report.

10 Q. And in this case the reporting officer is E.A. Quintero, is
11 that right?

09:59:07

12 A. Correct.

13 Q. That's Ernie Quintero?

14 A. Yes, ma'am.

15 Q. He was one of your HSU deputies under your supervision at
16 this time, correct?

09:59:18

17 A. Yes, he was.

18 Q. And that was February 28, 2008, correct?

19 A. Correct.

20 Q. And this was Deputy Quintero's report on a stop he made
21 on U.S. 93 at milepost 199, correct?

09:59:28

22 A. Correct.

23 Q. Okay. Let's turn to page MCSO 024666, please.

24 By the way, I should ask: You were present on the
25 scene of this stop, correct?

09:59:55

1 A. I don't recall. I'd have to see the portion of the report.

2 Q. Okay. It's on your screen now. This is page MCSO 024666.
3 You're listed as a deputy on the scene, correct?

4 A. Yes.

5 Q. So you would have been there, correct?

10:00:06

6 A. Correct.

7 Q. Let's highlight -- oops.

8 MS. WANG: I apologize, Your Honor. We have some
9 technical difficulties.

10 (Pause in proceedings.)

10:00:35

11 MS. WANG: We'll go to the paper. I'm going to --

12 THE COURT: I'll tell you what we can do if you want.
13 We can take a 20-minute break right now.

14 MS. WANG: Sure.

15 THE COURT: And we'll take the morning break for 20,
16 25 minutes, hopefully 20 minutes. Well, I better give you 25.
17 We'll be back here at 10:25 to resume testimony.

10:00:42

18 MS. WANG: Thank you, Your Honor.

19 (Recess taken.)

20 THE COURT: You ready to resume, Ms. Wang?

10:25:25

21 MS. WANG: Yes, Your Honor. Thank you.

22 THE COURT: Please do so.

23 BY MS. WANG:

24 Q. Hello, Sergeant.

25 A. Hello.

10:25:34

1 Q. Did you speak with anyone about your testimony during our
2 break?

3 A. No.

4 Q. We were looking or trying to look at Exhibit 157. Can I
5 ask that it be put on the screen for the witness. Again, it's
6 not in evidence.

10:25:42

7 And I believe before the break you told me that you
8 were present at the stop, correct?

9 A. Correct.

10 Q. And you were Deputy Quintero's supervisor at this time,
11 correct?

10:25:55

12 A. Correct.

13 Q. And so it would have been your responsibility to review
14 reports by Deputy Quintero?

15 A. Yes.

10:26:08

16 Q. Now, the copy of this report that we have in evidence as
17 Exhibit 157 doesn't show any signature on the "reviewed by"
18 line at the bottom, correct?

19 A. Correct, 'cause there -- there would be sheets prior to
20 this.

10:26:24

21 Q. I see. So you probably did review this report?

22 A. I don't know.

23 Q. But it was your job to review Deputy Quintero's reports,
24 correct?

25 A. In addition to Ryan Baranyos, who was also sergeant at the

10:26:30

1 time. So I don't know if I did this one or not.

2 Q. Okay. But you were there on the scene of the stop?

3 A. Correct.

4 Q. Let's enlarge the paragraph at the bottom of this page,
5 please.

10:26:54

6 I'm sorry, the next one up.

7 So here Deputy Quintero describes his probable cause
8 for the traffic stop, correct?

9 A. Correct.

10 Q. He writes in the middle, and we can highlight this: As
11 this vehicle approached milepost 199, I noticed that the
12 number two lane merged into one lane, the number one lane. As
13 the vehicle merged into my lane of travel, the driver of this
14 vehicle failed to activate the left turn signal to indicate the
15 upcoming lane change.

10:27:13

10:27:34

16 Do you see that?

17 A. Yes, ma'am.

18 Q. So basically one lane of the highway ended here, correct?

19 A. Correct.

20 Q. And the driver failed to signal that he was going to merge
21 into the -- the next lane?

10:27:42

22 A. Correct.

23 Q. And that was the probable cause for the stop?

24 A. Yes.

25 Q. Okay. Now let's go on to the next paragraph. You can just

10:27:49

1 scroll down, please.

2 So Deputy Quintero then reports that he contacted the
3 driver, correct?

4 A. Correct.

5 Q. Who spoke only Spanish --

10:28:06

6 A. Correct.

7 Q. -- correct?

8 And the deputy observed multiple passengers of
9 Hispanic descent within the passenger compartment, correct?

10 A. Correct.

10:28:16

11 Q. Okay. Now let's turn to the next page. We can take this
12 one down.

13 Now, here Deputy Quintero notes that there were some
14 suspicious factors that led him to believe that this was a
15 smuggling load, correct?

10:28:41

16 A. Correct.

17 Q. Including the fact that there were three passengers seated
18 in the rear luggage area of the vehicle?

19 A. Correct.

20 Q. It was an SUV, right?

10:28:48

21 A. I didn't catch that, but --

22 Q. Okay. That's fine.

23 Let's enlarge the paragraph beginning "furthermore."

24 And highlight the last sentence, please.

25 Deputy Quintero wrote in his report: The Hispanic

10:29:09

1 descent of his passengers, the pungent body odor, and the lack
2 of luggage for traveling also contributed to my suspicions.

3 Do you see that?

4 A. Yes, ma'am.

5 Q. So he lists Hispanic descent of the passengers as one of
6 the factors that contributed to his suspicions, correct? 10:29:22

7 A. Correct. And above that he had also talked about others as
8 well.

9 Q. So he talks about Hispanic descent in addition to other
10 factors? 10:29:38

11 A. Correct.

12 Q. But it's clear that Hispanic descent was one of the factors
13 that contributed to his suspicion about this -- these
14 passengers, correct?

15 A. Correct. And at the time we were 287(g), and that's the
16 way we were trained to do so, that it could be used in addition
17 to multiple other indicators. 10:29:44

18 Q. Thank you.

19 Now, you're not sure that you reviewed this report as
20 a supervisor, correct? 10:29:59

21 A. Correct.

22 Q. But if you saw this report while you were a supervisor in
23 HSU, you would not have talked to Deputy Quintero about his
24 mentioning the Hispanic descent?

25 A. No, because at the time I -- I assume I wouldn't have at 10:30:11

1 the time that we were 287(g) and that we were trained that you
2 could use that in addition to other indicators, just never
3 alone by itself.

4 Q. Okay. And this was a human smuggling -- a suspected human
5 smuggling load, correct? 10:30:24

6 A. Correct.

7 Q. And so Deputy Quintero was making -- doing an investigation
8 under state law, correct?

9 A. Correct.

10 Q. Okay. As a supervisor, Sergeant, your view is that you 10:30:32
11 cannot know for sure whether race plays a role in a stop by one
12 of your deputies unless you're actually at the scene of the
13 stop, is that right?

14 A. I couldn't testify that I know for sure, no, I'm not there.
15 We don't train anybody to use race, and I've never heard of any 10:30:55
16 type of training that we -- other than the 287(g) stuff that
17 we -- that the Sheriff's Office actually uses race for
18 anything.

19 Q. And you've never received training in how you, as a
20 supervisor, can detect racial profiling at a stop where you're 10:31:12
21 not present?

22 A. Correct.

23 Q. You don't know whether race played a role in any traffic
24 stops in HSU's large saturation patrols for sure, do you?

25 A. I wasn't there, no, so no. 10:31:23

1 Q. And you have never spoken to one of the deputies under your
2 supervision to find out whether he racially profiled someone
3 during a traffic stop?

4 A. I don't think I'd have to. I don't see why we -- we would.
5 Nobody would. 10:31:37

6 Q. Because you trust them not to racially profile?

7 A. Yes.

8 Q. You generally don't review your deputies' incident reports
9 for the purpose of determining whether they racially profiled
10 someone? 10:31:47

11 A. I'm sorry, say that again?

12 Q. You generally don't review your deputies' incident reports
13 for the purpose of checking whether they're engaged in racial
14 profiling?

15 A. No. 10:31:57

16 Q. Now, you do review incident reports to see if a deputy had
17 probable cause to make a traffic stop, right?

18 A. Probable cause, elements of the crime that he's
19 investigating.

20 Q. And once you're satisfied that a report shows there was
21 probable cause for the traffic stop, your view is that you know
22 there was no racial profiling involved in that stop, isn't that
23 right? 10:32:13

24 A. I wouldn't even suspect it, so, no.

25 Q. Okay. And you do not review any data to monitor whether 10:32:27

1 there are racial disparities in the way that deputies are doing
2 traffic stops, correct?

3 A. I don't think we have such data.

4 Q. Sergeant, you yourself have noted Hispanic race in reports
5 that you've written about HSU work, correct?

10:32:48

6 A. I never wrote any reports.

7 Q. Well, you've written e-mails to your chain of command,
8 correct?

9 A. Those were summaries.

10 Q. And you have noted Hispanic descent of people in those
11 e-mail summaries?

10:32:56

12 A. Correct.

13 Q. And when you write those e-mail summaries to your chain of
14 command, you do your best to convey information that would be
15 important to them, correct?

10:33:08

16 A. Of what they're asking, yes.

17 Q. Sir, you were involved in a large saturation patrol by HSU
18 on March 22nd -- sorry, March 21st to 22nd, 2008, at 32nd
19 Street and Thomas, correct?

20 A. I believe so.

10:33:31

21 Q. Okay. Let's put up Exhibit 79, which is in evidence.

22 Okay. Let's turn to the next page, please.

23 THE CLERK: Counsel, do you want this published?

24 MS. WANG: Yes, please. With the Judge's permission.

25 THE COURT: Yes.

10:33:56

1 BY MS. WANG:

2 Q. And these are documents relating to an operation -- well,
3 here it says 16th Street to 44th Street, McDowell to Indian
4 School Roads in Phoenix, correct?

5 A. Correct.

10:34:13

6 Q. And let's turn to page MCSO 001839.

7 This is your handwriting, right?

8 A. Yeah, appears so.

9 Q. And this is basically a list of people arrested during this
10 operation, is that correct?

10:34:34

11 A. Yes, ma'am.

12 Q. On 3-22-08, correct?

13 A. Correct.

14 Q. And let's turn to the next page.

15 We can leave them both up, actually, if possible,

10:34:48

16 Mr. Braun.

17 So looks like there were two pages of people arrested
18 that you wrote on this document, correct?

19 A. Yes.

20 Q. Both for Saturday, March 22nd, 2008?

10:34:59

21 A. Yes, ma'am.

22 Q. Okay. So it looks like you were there during this
23 operation, correct?

24 A. Yes.

25 Q. Okay. Now, I think you testified before that HSU did a

10:35:07

1 number of saturation patrols in this general area, correct?

2 A. Correct.

3 Q. In 2007 and 2008 at the least, correct?

4 A. Correct.

5 Q. Day laborers tend to gather in part of that neighborhood,
6 right?

10:35:19

7 A. My understanding, yes.

8 Q. And with respect -- with respect to this saturation patrol
9 on March 22nd and 21st, 2008, you were present as a supervisor,
10 correct?

10:35:35

11 A. Correct.

12 Q. And you compiled some summary statistics that we just saw,
13 correct?

14 A. Say that again?

15 Q. You compiled some statistics which we just saw, correct?

10:35:41

16 A. Correct.

17 Q. Let's show both of those pages again, please.

18 A. And let me go back. I don't know that I would call it
19 "statistics." This is just noting who was contacted, or --
20 here, who was arrested for what charges. I don't know if
21 that --

10:35:59

22 Q. Fair to call it an arrest list?

23 A. An arrest list.

24 Q. Okay. Thank you.

25 You see that last column says 287?

10:36:06

1 A. Yes.

2 Q. That shows whether someone was turned over to ICE for
3 deportation purposes, correct?

4 A. It was not necessarily turned over to ICE, but whether they
5 were here legally or illegally. 10:36:19

6 Q. Okay. But that's noted on your arrest list, correct?

7 A. Correct.

8 Q. All right. Let's turn to page MCSO 001838.

9 This looks like it's an arrest list for the previous
10 day of the patrol, Friday, March 21st, 2008, correct? 10:36:51

11 A. Correct.

12 Q. You did not write this one out?

13 A. No.

14 Q. Except for maybe the first --

15 A. Maybe the first -- maybe the first one, correct. 10:37:00

16 Q. Yeah. And this list should reflect all of the arrests made
17 on Saturday, the first day of the operation, correct?

18 A. Yes.

19 Q. Do you see that in the first list it says 287(g) only?

20 A. Correct. 10:37:17

21 Q. That means all these people were arrested for -- under the
22 287(g) power, correct?

23 A. Correct.

24 Q. Nobody on this list was charged with a state crime,
25 correct? 10:37:29

1 A. It's kind of cut off here, but yeah, until it gets down to
2 Friday, state charges and transported, so everything above
3 that, yes.

4 Q. And in the first group it looks like there are 13 names, is
5 that right? 10:37:42

6 A. Correct.

7 Q. And all of those 13 names are Hispanic names, correct?

8 A. Yes.

9 Q. Looking at the second group on the same page, these are
10 people who were arrested on state charges, correct? 10:38:11

11 A. Correct.

12 Q. And there are eight names listed here?

13 A. Yes.

14 Q. And seven of those eight names are Hispanic names, correct?

15 A. Number 4, I don't -- I couldn't tell you what that is. 10:38:27

16 Q. Adolfo Montiel-Nolasco does not sound like a Spanish name
17 to you?

18 A. No, the first part -- the Nolasco does, but the first one
19 doesn't really.

20 Q. Okay. So -- 10:38:44

21 A. It could be, though.

22 Q. It could be?

23 So -- but we think that Peter A. Gresh is probably not
24 a Hispanic name?

25 A. Not a Hispanic name, no. 10:38:51

1 Q. Okay. So on this first day of the operation, it looks like
2 there was a total of 13 plus 8, or 21 people arrested in all?

3 A. Correct.

4 Q. And were -- at least 19 of them had Hispanic names, right?

5 A. Correct.

10:39:11

6 Q. Probably 20?

7 A. Possibly, yes.

8 Q. Let's turn again to the next page. This was the first of
9 two lists of arrestees from the next day, Saturday, March 22nd,
10 2008. And here we have, I believe, 12 names listed, is that
11 right?

10:39:26

12 A. Correct.

13 Q. And all 12 of these names are Hispanic names, correct?

14 A. It could be, yes.

15 Q. Let's turn on the next page, please, the continuation of
16 Saturday's arrests. Here we have 10 names listed, correct?

10:39:55

17 A. Correct.

18 Q. And of the 10 names, every single one is a Hispanic name,
19 correct?

20 A. Could be, yes, correct.

10:40:08

21 Q. So during this two-day saturation patrol we had a total of
22 43 people arrested, and at least 41, possibly 42 of them, had
23 Hispanic names, correct?

24 A. Correct.

25 Q. That did not raise a concern about racial profiling to you?

10:40:30

1 A. A name to me means absolutely nothing.

2 Q. Okay.

3 A. For instance, my wife, she's blond haired, blue eyes, would
4 be considered white, but she's got a Madrid last name. So
5 based on her name, she's got a Latino last name, but she would
6 never in a million years be considered Latino.

10:40:48

7 Q. And that's why it didn't concern you that you had 42 out of
8 your 43 names on your arrest list Hispanic names?

9 A. Race, no.

10 Q. Isn't it true that some people who are Hispanic have Anglo
11 names, too?

10:41:00

12 A. Correct.

13 Q. Some of those people look Hispanic, correct, but they have
14 Anglo names?

15 A. Correct.

10:41:12

16 Q. Sergeant, actually, let me hand you a copy, a paper copy of
17 this exhibit, with the Court's permission.

18 THE COURT: You might want to identify the exhibit for
19 the defendant.

20 MS. WANG: Yes, it's Exhibit 79.

10:41:30

21 THE COURT: Has it been admitted?

22 MS. WANG: May I, Your Honor?

23 THE COURT: Yes.

24 MS. WANG: I'm just giving this to you for your
25 convenience.

10:41:40

1 THE WITNESS: Um-hum.

2 BY MS. WANG:

3 Q. Sir, looking at the three pages of arrestees, isn't it true
4 that not a single person was arrested for human smuggling
5 during this two-day operation? 10:42:04

6 A. The 21st doesn't indicate down here the state charges that
7 they arrested for, that I don't see. The 22nd it indicates the
8 charges, and I don't see anything that says they were for human
9 smuggling.

10 Q. Thank you. 10:42:26

11 I'm going to have you now turn to the last page,
12 MCSO 001840, and we could just put that on the screen.

13 A. Okay.

14 Q. I'm going to call your attention to the line where it looks
15 like Isaias Franco Perez is listed. 10:42:47

16 Do you see that?

17 A. Yes.

18 Q. And in the next column it says PC. That would be the
19 probable cause for the traffic stop, correct?

20 A. Correct. 10:42:59

21 Q. And here it looks like Mr. Franco Perez was arrested for
22 having a cracked -- stop. Sorry, let me withdraw that.

23 Mr. Franco Perez was stopped for having a cracked
24 windshield, correct?

25 A. Correct. 10:43:13

1 Q. And under Charge it says merely 287(g), correct?

2 A. Correct.

3 Q. So Mr. Franco Perez was not arrested on any state charge,
4 correct?

5 A. Correct.

10:43:22

6 Q. He was only arrested for administrative deportation
7 purposes, correct?

8 A. Correct.

9 Q. Let's look at the next two lines. Let's just enlarge that
10 portion.

10:43:35

11 The next two lines list someone named Luis Roberto
12 Olea Contreras.

13 Do you see that?

14 A. Yes, ma'am.

15 Q. And it says, under PC for him, passenger number 19.

10:43:44

16 Do you see that?

17 A. Yes.

18 Q. So it seems that Mr. Contreras was a passenger of
19 Mr. Franco Perez, right?

20 A. Correct.

10:43:56

21 Q. Mr. Contreras was arrested also under 287(g), correct?

22 A. Correct.

23 Q. No state criminal charge, correct?

24 A. Correct.

25 Q. And then the next person listed, Ivan Hernandez Sanchez?

10:44:07

1 A. Correct.

2 Q. He was also a passenger of Mr. Franco Perez, right?

3 A. Correct.

4 Q. He also was arrested under 287(g), correct?

5 A. Yes.

10:44:18

6 Q. So the original cause for this traffic stop was a cracked
7 windshield, correct?

8 A. Correct.

9 Q. Nobody in that car was arrested or charged with any state
10 crime, correct?

10:44:27

11 A. Correct.

12 Q. They were all arrested because of immigration violations
13 only?

14 A. Correct.

15 Q. You did not find any of this to be a problem, Sergeant?

10:44:39

16 A. I don't see a problem here. I mean, I wasn't at the scene.
17 There's many things that we don't know just based off this, so
18 I'm not going to raise a suspicion just off of this, no.

19 Q. And you do not recall ever going back to the arresting
20 deputy on this stop to inquire about that stop?

10:45:00

21 A. No.

22 MS. WANG: Okay. We can take that down.

23 I think those are all the questions I have for you
24 right now. I'll pass the witness.

25 THE WITNESS: Thank you.

10:45:24

1 THE COURT: Mr. Liddy, cross-examination.

2 CROSS-EXAMINATION

3 BY MR. LIDDY:

4 Q. Good morning, Sergeant Madrid.

5 A. Good morning. 10:45:50

6 Q. I think we're going to get right to it.

7 Let's go right back to the exhibit that was just being
8 displayed.

9 Mr. Casey --

10 MR. CASEY: Exhibit 79. 10:46:04

11 MR. LIDDY: Yes, it's Exhibit 79.

12 BY MR. LIDDY:

13 Q. Can you see that up on your screen?

14 A. I don't have it on my screen. I've got it --

15 Q. Oh, you've got it on your hand. Okay. 10:46:15

16 MR. CASEY: I'm operating it from here, with the
17 Court's permission.

18 THE COURT: You may put it up on the screen if you
19 wish, but if you don't wish, you don't have to. Since you're
20 operating. 10:46:27

21 MR. LIDDY: I'd like to, Your Honor.

22 Can you see it now, Your Honor?

23 THE COURT: I can see it.

24 MR. LIDDY: Counsel?

25 MS. WANG: Yes. Thank you. 10:46:35

1 BY MR. LIDDY:

2 Q. I direct your attention to Bates numbered MCSO 001389.

3 Do you have that page available, Sergeant?

4 A. Yes.

5 Q. Third column over it says Charge, handwritten. 10:46:52

6 Do you see that?

7 A. Yes.

8 Q. And would you read for me, please, the first charge that is
9 listed under Reyes, Junior?

10 A. It's DOSL, which stands for driving on a suspended license. 10:47:10

11 Q. Is driving on a suspended license a race-neutral term?

12 A. Yeah.

13 Q. Have you encountered other drivers on suspended licenses in
14 your experience as a deputy for the MCSO?

15 A. Yes. 10:47:28

16 Q. Have some of them been Hispanic?

17 A. Yes.

18 Q. Have some of them been non-Hispanic?

19 A. Yes.

20 Q. Does the MCSO have a policy for only enforcing driving on a
21 suspended license laws against one race and not another? 10:47:34

22 A. No.

23 Q. Would you go down one more on the same column and read that
24 for me for Arias.

25 A. Criminal speed. 10:47:56

1 Q. What does criminal speed indicate to you?

2 A. That they were above the statute 28-701.A, which is normal
3 speeding, they were above and beyond that speed that's in that
4 threshold.

5 Q. Speeding?

10:48:13

6 A. Speeding, correct.

7 Q. Exceeding the speed limit?

8 A. Yeah, which in this case would be criminal versus a civil
9 violation.

10 Q. In your opinion is that a race-neutral term?

10:48:18

11 A. No.

12 Q. Is it race neutral?

13 A. Or, I'm sorry, yes.

14 Q. In your experience, you've enforced that law against
15 Hispanics and non-Hispanics alike?

10:48:31

16 A. Yes.

17 Q. Let me ask you to go down five columns, looks like it's
18 Jesus Corrales.

19 Do you see that?

20 A. Yes.

10:48:49

21 Q. Back to the same column, Charge. Would you read that for
22 me?

23 A. Warrant.

24 Q. What does that indicate to you?

25 A. He was arrested on a warrant out of a court in Arizona.

10:48:53

1 Q. So it was an outstanding warrant?

2 A. Correct.

3 Q. Is that a race-neutral term?

4 A. Yes.

5 Q. Okay. You can set that exhibit aside, thank you.

10:49:08

6 I believe you testified that when you served in the
7 Human Smuggling Unit you were a supervisor, is that correct?

8 A. Correct.

9 Q. And approximately how many deputy sheriffs did you
10 supervise?

10:49:32

11 A. Five to six.

12 Q. Five to six at any one time?

13 A. Correct. The unit had a total anywhere from 10 to 12,
14 either Sergeant Palmer and I, or Sergeant Baranyos at the
15 beginning, would co-supervisor each other's squads. But I had
16 five on paper, five to six under me on paper.

10:49:45

17 Q. And how long were you stationed at the HSU?

18 A. Roughly four and a half years.

19 Q. And was there some turnover during that time period?

20 A. Oh, yes.

10:49:58

21 Q. So what would you estimate would be the total number of
22 deputy sheriffs that you either supervised directly or
23 co-supervised during your term at HSU?

24 A. 25 to 30, maybe.

25 Q. Have you ever seen any evidence of racial profiling on the

10:50:11

1 part of any of those deputy sheriffs?

2 A. No.

3 Q. Have you ever received a complaint about racial profiling
4 on the part of -- levied against any of those deputy sheriffs?

5 A. No.

10:50:28

6 Q. Have you ever instructed any of those deputy sheriffs about
7 MCSO policy for racial profiling?

8 A. I reiterated what Lieutenant Sousa would, but
9 Lieutenant Sousa would hit on it quite a bit.

10 Q. Do you recall what Sousa's instructions were to those
11 deputy sheriffs with regard to racial profiling?

10:50:47

12 A. Pretty much pretty simple: We do not racial profile.

13 Q. You're 287(g) trained, is that correct?

14 A. What's that?

15 Q. You were 287(g) trained, is that correct?

10:51:00

16 A. Yes.

17 Q. And who conducted that training?

18 A. ICE.

19 Q. When you say ICE, you mean Immigration and Customs
20 Enforcement?

10:51:09

21 A. Yes.

22 Q. Were those instructors employed by the federal government?

23 A. Yes.

24 Q. Department of Homeland Security?

25 A. Yes.

10:51:14

1 Q. Approximately how many instructors from ICE executed that
2 training?

3 A. I don't recall. There were several.

4 Q. Where was that training? Where did it occur?

5 A. It held -- it was held at our training facility. 10:51:24

6 Q. You say "our training facility." You mean MCSO's training
7 facility?

8 A. Yes, Maricopa County Sheriff's Office training facility.

9 Q. They have a classroom facility there?

10 A. Yes, sir. 10:51:37

11 Q. And how long did that training last? The period of
12 instruction, how long was it?

13 A. I believe it was four to five weeks.

14 Q. Do you recall during that training there being a period of
15 instruction that involved racial profiling? 10:51:51

16 A. Yes, I recall there being a portion of it.

17 Q. What do you recall the training being with regard to racial
18 profiling, the training provided by ICE?

19 A. I don't recall the specific training. I don't recall what
20 was necessarily in the training. It would cover topics of, you 10:52:09
21 know, prohibition of racial profiling, cultural diversity,
22 maybe. I don't really recall.

23 Q. You've participated in crime saturation patrols, have you
24 not?

25 A. Yes. 10:52:30

1 Q. I believe you testified earlier this morning that at times
2 you were posted at the command post?

3 A. Correct.

4 Q. And at other times you were out in the field where deputies
5 were making stops? 10:52:40

6 A. Not that -- that often. Typically, I was at the command
7 post.

8 Q. And was Sergeant Palmer also at the command post?

9 A. In and out, but typically he was the one on the road.

10 Q. So typically he was out in the field supervising the deputy 10:52:53
11 sheriffs making the stops during the saturation patrols?

12 A. Correct.

13 Q. And typically you maintained a presence at the command
14 post?

15 A. Correct. 10:53:06

16 Q. But from time to time you went out and also supervised?

17 A. From time to time.

18 Q. And from time to time was Sergeant Palmer ever located at
19 the command post?

20 A. Yes. 10:53:13

21 Q. Do you recall what type of perimeter the command post had
22 on any particular saturation patrol?

23 A. Usually it was made up of several vehicles, along with
24 crime scene tape and MCSO personnel.

25 Q. Were there ever any crowd control barriers also used to 10:53:26

1 construct the perimeter of the command post?

2 A. Yes.

3 Q. What would the purpose of the crowd control barriers be?

4 A. Exactly what it said, crowd control to keep them out of our
5 command post. 10:53:41

6 Q. Keep who out of the command post?

7 A. People that came. There was several protesters at pretty
8 much every single one of them.

9 Q. So you'd say that those devices had a security function?

10 A. Yes. 10:53:54

11 Q. And what about the crime control tape that you referred to,
12 what would the purpose of that be?

13 A. Same as the barricade.

14 Q. Typically, what did you do prior to the commencement of a
15 sat -- strike that. 10:54:09

16 Typically, what did you do prior to the commencement
17 of a large saturation patrol?

18 A. Get paperwork ready. Things that would be -- we'd be using
19 during the course of the saturation patrol in the command post.

20 Q. Would you participate in a briefing of the deputies that
21 were going to carry out the crime saturation patrol? 10:54:28

22 A. Yes.

23 Q. Would someone assist you in the briefing?

24 A. I wouldn't give the briefings. Joe Sousa would give the
25 briefings. 10:54:43

1 Q. Were you present during those briefings?

2 A. Most of them, yes.

3 Q. Do you recall any part of those briefings being related to
4 racial profiling?

5 A. Other than what I'd already spoke about, I mean, he -- Joe 10:54:55
6 Sousa's pretty simple about it: We don't racial profile. He'd
7 yell it several times to make sure everybody was clear.

8 Q. So you have a specific recollection of that direction being
9 given by Lieutenant Sousa prior to the commencement of the
10 large saturation patrols? 10:55:11

11 A. Yes.

12 Q. Now, have you ever conducted a traffic stop?

13 A. Yes.

14 Q. Typically, when you conduct a traffic stop, are you in a
15 vehicle behind the vehicle you're -- you're stopping? 10:55:41

16 A. Yes.

17 Q. In your experience, can you see the occupant, the driver of
18 the vehicle?

19 A. Typically, no.

20 Q. Can you see the passengers in the vehicle? 10:55:54

21 A. Just maybe the back of their heads.

22 Q. So you may be able to see how many passengers are in the
23 vehicle?

24 A. Correct.

25 Q. Would you be able, typically, to discern the sex of the 10:56:06

1 individuals in the vehicle?

2 A. Not typically, no. Depending on what their hairdo is. So
3 some yes, some no.

4 Q. What about the race of the individuals?

5 A. No. 10:56:19

6 Q. Would it be your experience that most vehicles on the roads
7 of Maricopa County have some form of tinting on their glass?

8 A. I could agree with that.

9 Q. Would it be your experience that the tinting impedes your
10 ability to see the drivers or passengers of the vehicle? 10:56:37

11 A. It could.

12 Q. What about headrests on the top of seats? Is it your
13 experience that headrests impede the ability of an officer to
14 see the driver, occupants of the vehicle?

15 A. Yes. 10:56:52

16 Q. Sergeant, would you consider yourself Hispanic?

17 A. Yes.

18 Q. Why is that?

19 A. My mother's Hispanic.

20 Q. Were you born in the United States? 10:57:18

21 A. Yes.

22 Q. Was your mother born in the United States?

23 A. Yes.

24 Q. Where's her family from originally?

25 A. New Mexico. 10:57:25

1 Q. Do you have any anti-Hispanic bias?

2 A. No.

3 Q. During your course of enforcing law in Maricopa County,
4 have you ever encountered a day laborer?

5 A. No. Me personally, no.

10:57:57

6 Q. Never.

7 A. No.

8 Q. Is day labor a crime in Arizona?

9 A. No.

10 Q. Have you ever learned of any complaints by citizens about
11 day labor activity?

10:58:15

12 A. Yes.

13 Q. Do you recall any of the details of any of those
14 complaints?

15 A. What I testified to earlier was the Title 28 violations in
16 the city of Cave Creek.

10:58:35

17 Q. What is a Title 28 violation?

18 A. It's a civil violation, could be criminal, but it's
19 typically something that's done on the roadway with -- with a
20 vehicle.

10:58:49

21 Q. Could that be impeding traffic?

22 A. Yes.

23 Q. Are there any other complaints you received from citizens
24 about activities of day laborers?

25 A. Queen Creek, as I mentioned before, the harassment of the

10:59:02

1 school children by the day laborers in the area hooting and
2 hollering, taking pictures, sexual gestures, things like that.

3 Q. Do you recall any other details of conduct by day laborers
4 that you've encountered while you were at HSU from reports of
5 citizens or from deputies?

10:59:22

6 A. Not specifically. I know the other day labor area was
7 32nd Street and Thomas, which there was issues of trespassing,
8 I believe. I believe there was more, but I don't -- I don't
9 recall specific what those crimes were.

10 Q. Do you ever recall MCSO targeting day laborers without any
11 complaints of potential criminal activity?

10:59:38

12 A. No.

13 Q. I believe earlier this morning you testified that you were
14 present during MCSO briefings of the press.

15 Do you recall that testimony?

11:00:10

16 A. Yes.

17 Q. Do you recall ever seeing on television or reading in the
18 newspaper the subsequent press reports of those briefings?

19 A. Yes.

20 Q. In your opinion, were those reports accurate?

11:00:21

21 A. No. I read them when I initially went to the unit and kind
22 of kept up on it, but they were typically so skewed that I just
23 stopped reading it generally, period. And it still kind of
24 sticks with me today, still won't watch the news or read the
25 paper any more because of it.

11:00:42

1 Q. Just so we're clear, your testimony would be that the press
2 accounts of MCSO activity in crime suppression patrols do not
3 comport with what your experience has been in crime suppression
4 patrols?

5 A. Correct.

11:00:56

6 Q. Is it your experience that crime saturation patrols
7 conducted by the Maricopa County Sheriff's Office were
8 targeting all criminal activity?

9 A. Yes.

10 Q. Do you ever recall receiving an instruction to target
11 Latino drivers?

11:01:17

12 A. No.

13 Q. Do you ever recall receiving instruction to target Latino
14 passengers in vehicles?

15 A. No.

11:01:44

16 Q. Not during any crime saturation patrol?

17 A. No.

18 Q. During any other patrols?

19 A. No. I was never given anything like that to target any
20 specific race, no.

11:01:59

21 Q. Do you recall the human smuggling operation around the
22 vicinity of the Good Shepherd church?

23 A. Yes.

24 Q. What part of the valley was that in, what part of Maricopa
25 County?

11:02:25

1 A. Northern part.

2 Q. Do you recall whether or not there was an apartment complex
3 adjacent to that church?

4 A. I don't recall.

5 Q. Do you recall any allegations of drop house activity in the 11:02:34
6 vicinity of the Good Shepherd church?

7 A. Again, the only thing I recall is of -- of the Cave Creek
8 detail was the twenty -- Title 28 violations that were
9 occurring from the people from the Good Shepherd church.

10 Q. When you were in the vicinity of the Good Shepherd church, 11:03:13
11 did you personally observe any traffic violations?

12 A. Not that I recall.

13 Q. Were HSU deputies ever instructed to investigate passengers
14 in vehicles for potential criminal violations?

15 A. Yes. 11:03:50

16 Q. Earlier this morning you testified about the October 15th,
17 2007, operation in the vicinity of 36th and Thomas.

18 Do you recall that?

19 A. Yes.

20 Q. Do you recall any complaints about destruction of property? 11:04:21

21 A. I personally don't recall, no. I typically wouldn't
22 receive -- would have received the complaints.

23 Q. Typically, would you hear of any complaints during a
24 preoperation briefing?

25 A. It's possible, yes. 11:04:40

1 Q. Have you ever been sent to a unit -- excuse me. Let me
2 strike that.

3 Have you ever been sent to an area of Maricopa County
4 to patrol because that area was populated by Latinos?

5 A. No.

11:05:11

6 Q. Have you ever been sent to an area to participate in a
7 saturation patrol because that area was heavily populated with
8 Latinos?

9 A. No.

10 Q. Earlier this morning you testified that you recall a time
11 when the 287(g) authority granted to MCSO by the federal
12 government was withdrawn.

11:05:24

13 Do you recall that?

14 A. Yes.

15 Q. You were working as a sergeant in the Human Smuggling Unit
16 while the 287(g) authority was in effect, is that correct?

11:05:53

17 A. Correct.

18 Q. And you continued working there for a time after the 287(g)
19 was withdrawn?

20 A. Correct.

11:06:14

21 Q. I just want to walk through a stop -- let me back up.

22 Have you ever participated in a traffic stop in which
23 287(g) authority was utilized?

24 A. Yes.

25 Q. And have you participated in a traffic stop subsequent to

11:06:32

1 287(g) authority being withdrawn by the federal government?

2 A. Yes.

3 Q. I want to walk you through each of those.

4 A. Okay.

5 Q. During an operation for the Human Smuggling Unit, do you
6 patrol known corridors of human smuggling?

11:06:47

7 A. Yes.

8 MS. WANG: Your Honor, I'm going to object to this
9 line of questioning. There have been a lot of leading
10 questions.

11:07:09

11 THE COURT: I'll sustain the objection as to the
12 leading question at this point, but to the extent you haven't
13 earlier objected, the testimony's going to stand.

14 MS. WANG: Thank you, Your Honor. Move to strike the
15 last response.

11:07:19

16 THE COURT: It is stricken.

17 BY MR. LIDDY:

18 Q. Sergeant, are you aware of any known human smuggling
19 corridors in Maricopa County?

20 A. Yes.

11:07:29

21 Q. Have you ever patrolled any of them?

22 A. Yes.

23 Q. Could you share with the Court some of those known
24 corridors.

25 A. U.S. 60, U.S. 93, I-17, Highway 87, and U.S. 60 eastbound.

11:07:37

1 Q. Have you conducted HSU operations on those known corridors?

2 A. Yes.

3 Q. Have you ever encountered a human smuggling load vehicle on
4 any of those corridors?

5 A. Yes.

11:07:53

6 Q. Would you tell me what the indicators are of a human
7 smuggling vehicle, in your experience.

8 A. Prior to the stop?

9 Q. Prior to the stop.

10 A. Typically, the vehicle will ride very low. It will have
11 either tinted windows or completely blacked out windows. Their
12 speed is typically well under the posted speed limit. Those
13 are typically the first things that raise our suspicion that we
14 might want to look at that vehicle. And there's -- there's
15 more, of course, but it's been a while.

11:08:08

11:08:31

16 Q. Once your unit looks at the vehicle, what do you look for?

17 A. We look for Title 28 violations.

18 Q. Traffic violations?

19 A. Correct.

20 Q. Could they be moving violations?

11:08:43

21 A. Could be moving or non-moving. Equipment -- non-moving
22 equipment violations.

23 Q. When an HSU deputy develops probable cause to make a stop,
24 what is he referring to when he's developed probable cause?

25 A. He has found a violation of Title 28 which would be --

11:09:07

1 could be speeding, could be cracked windshield, could be broken
2 taillight, a number of things.

3 Q. So once an HSU deputy develops probable cause of a
4 suspected load vehicle, what does he or she do?

5 A. Usually initiates a traffic stop. 11:09:26

6 Q. How is that done?

7 A. Usually over radio he'll identify the vehicle's plate and
8 give his location, he'll turn on his lights and -- and wait for
9 the vehicle to pull over.

10 Q. Once the vehicle pulls over, then what does the deputy do? 11:09:39

11 A. He usually approaches one side or the other. Typically, if
12 it's on the freeway he'll patrol -- excuse me, he'll approach
13 on the passenger side of the vehicle and contact the driver.

14 Q. Does he approach on the passenger side of the vehicle for
15 officer safety? 11:09:56

16 A. Correct.

17 Q. And you said that prior to approaching the vehicle he
18 checks the license plate?

19 MS. WANG: Objection to the leading.

20 MR. LIDDY: Your Honor, I'm just asking about his 11:10:06
21 prior testimony.

22 THE COURT: Even though that is technically a leading
23 question, I don't think it's important enough that I'm not
24 going to allow it, to expedite this a little bit.

25 You may answer. 11:10:19

1 MR. LIDDY: Thank you, Your Honor.

2 THE WITNESS: I'm sorry. Repeat that again. I
3 apologize.

4 THE COURT: Do you want to read it again, Gary?

5 THE WITNESS: I'm sorry. 11:10:25

6 (The record was read by the court reporter.)

7 THE WITNESS: Yes. Sorry.

8 BY MR. LIDDY:

9 Q. So he approaches the vehicle after he's already checked the
10 license plate, is that correct? 11:10:43

11 A. Correct.

12 Q. What is he checking for?

13 A. To see if the vehicle's, number one, first and foremost,
14 officer safety, see if the vehicle's reported stolen or not.

15 That's pretty much -- and then find out if the registration's
16 current or not. 11:10:56

17 Q. Now, up to this point, if this traffic stop is occurring
18 while 287(g) authority is in effect, up to this point has that
19 officer utilized any 287(g) authority?

20 A. No. 11:11:15

21 Q. So the probable cause has already been developed without
22 287(g) authority, is that correct?

23 A. Correct.

24 Q. The stop has already been executed without 287(g)
25 authority, is that correct? 11:11:30

1 A. Correct.

2 Q. The license plate's been checked, correct?

3 A. Correct.

4 Q. And the officer's approached the vehicle on the passenger
5 side without any 287(g) authority, is that correct?

11:11:38

6 A. Correct.

7 MS. WANG: Objection again to the leading, Your Honor.

8 THE COURT: I'm going to sustain that.

9 BY MR. LIDDY:

10 Q. What does the officer do next?

11:11:51

11 A. He typically contacts the driver. He will check his
12 safety, look within the vehicle, any type of hazards, any
13 threats.

14 Q. When he contacts the driver is he using his 287(g)
15 authority?

11:12:11

16 A. No.

17 Q. When he checks inside the vehicle for safety is he using
18 his 287(g) authority?

19 A. No.

20 Q. If he observes a large number of passengers, what would
21 that mean to him?

11:12:18

22 A. It's -- it's an indicator of a possible human smuggling
23 load.

24 Q. Are there any other indicators of possible human smuggling
25 loads that a typical HSU officer may be able to view from that

11:12:40

1 standpoint?

2 A. No. Not at that point, no.

3 Q. What other indicators are there in human smuggling?

4 A. As we said, vehicle overloaded. Loaded with occupants, but
5 no luggage whatsoever. None of the occupants speak English
6 and/or can't produce an ID that's issued by the government of
7 the United States, from any state. Typically, they'll give you
8 a voter registration card that's from Mexico.

11:12:59

9 Q. Will the officer inquire as to whether the passengers know
10 each other?

11:13:25

11 A. Yes.

12 Q. Will the officer inquire whether the driver knows the
13 passengers?

14 A. Yes.

15 Q. Would it be of any interest to an HSU officer to know where
16 the vehicle's coming from?

11:13:31

17 A. In their line of questioning, yes, they'll ask -- there's
18 several questions that they ask, but typically, yeah, the first
19 thing that'll occur is they'll -- they'll pull a passenger out
20 and/or the driver, typically the driver first, and they'll
21 start talking to him and try to get a story of what they're
22 actually doing.

11:13:48

23 Q. While the officer's talking to them, trying to get a story
24 of what they're actually doing, is that officer using 287(g)
25 federal authority?

11:14:00

1 A. No.

2 Q. Help me understand at what point in the process would an
3 officer start to use the 287 authority -- 287(g) authority that
4 had been given to the MCSO.

5 A. Once we've -- we've already talked -- has already occurred, 11:14:17
6 we'll talk to the driver and then start talking to multiple
7 passengers and find conflicts in their story. At that point we
8 believe it's going to be a human smuggling load, and then we
9 would then go into the questioning of their alienage.

10 Q. Now, I don't want to put words in your mouth and I'm not 11:14:33
11 going to lead. I haven't heard anything about race or
12 ethnicity.

13 A. No.

14 Q. Is there any point in time prior to an HSU officer putting
15 on his 287(g) hat that he's looking at the race or ethnicity of 11:14:50
16 the driver or the passengers in the vehicle?

17 A. No.

18 MS. WANG: Your Honor, I would object, because there's
19 no particular stop specified that the witness is testifying
20 about. 11:15:04

21 THE COURT: I'm going to overrule the objection.

22 MR. LIDDY: And I want to make sure I'm being fair to
23 the witness.

24 BY MR. LIDDY:

25 Q. I'm talking about in your experience. 11:15:18

1 A. Correct.

2 Q. So help me understand. When would a deputy sheriff who's
3 been 287(g) qualified put on his 287(g) hat and start to use
4 the 287(g) authority for which he's been trained by the federal
5 government?

11:15:38

6 A. Once we believe -- in a human smuggling, once we believe
7 there was a human smuggling load that we had that, we would
8 then put on that hat and question their alienage to increase
9 our -- the facts to our case.

10 Q. Okay. Now I want to focus your attention on a similar
11 stop, in your experience, after such time that the 287(g)
12 authority was revoked by the federal government. I'm talking
13 about the field authority, not in the Fourth Avenue Jail, the
14 field authority.

11:15:54

15 What would be different in a similar stop as that?

11:16:12

16 A. Basically, everything would be the same up until the point
17 where we would put that hat on. We would stop at that point,
18 and if we believed that it was a human smuggling load we would
19 make a call to ICE themselves and then they would conduct the
20 interviews over the phone with each individual person that was
21 in that -- that vehicle.

11:16:25

22 Q. So after 287(g) authority had been revoked, MCSO officers
23 no longer conduct investigation regarding alienage. Is that
24 your testimony?

25 A. Correct.

11:16:39

1 Q. They would have to call ICE?

2 A. Yes.

3 Q. And ICE either would or would not come out and conduct an
4 investigation?

5 A. They -- well, they wouldn't come out. Typically, they
6 would either tell us that yes, this person or is not -- is or
7 is not in the country illegally. 11:16:47

8 Q. And if the person is not in the country illegally, what
9 would the HSU deputy do then?

10 A. Depending on if he was still part of the human smuggling
11 load, it -- he wouldn't be released. He's still part of our
12 criminal investigation of the smuggling load. 11:17:00

13 Q. Under Arizona state law.

14 A. Correct.

15 Q. What if -- 11:17:13

16 THE COURT: Hold it. Can you repeat that again? I
17 want to make sure I understand it.

18 THE WITNESS: Okay. On a person that -- it's -- it's
19 not -- what we would find that people that weren't here --
20 excuse me, that were here legally were typically part of the
21 organization smuggling the people. And each instance was
22 different, depending on what, you know, came up in interviews. 11:17:25

23 And then typically if -- if they were involved,
24 they -- they got a state charge as well for smuggling the
25 individuals. 11:17:42

1 THE COURT: That's the smuggler?

2 THE WITNESS: Correct, the smuggler.

3 THE COURT: What about the smugglees?

4 THE WITNESS: I don't recall any smugglee every being
5 a U.S. citizen. 11:17:52

6 THE COURT: Was the smugglee nevertheless arrested for
7 violating the state human smuggling statute? Do you recall any
8 such instance?

9 THE WITNESS: No.

10 BY MR. LIDDY: 11:18:03

11 Q. I want to make sure that I understand this. It's your
12 testimony that the smuggler would be arrested on state charges?

13 A. Correct.

14 Q. And do you ever recall a stop where the passenger being
15 smuggled was also arrested for violating the state human
16 smuggling law? 11:18:15

17 A. I'm sorry. Say that again?

18 Q. Do you recall an instance where the passenger being
19 smuggled was also arrested for violating the state human
20 smuggling law? 11:18:31

21 A. Yes, often.

22 Q. At what point in time after 287(g) was revoked would the
23 deputy call ICE?

24 A. At what point in time would he call ICE?

25 Q. Yeah, what point in time during the stop would the trained 11:18:52

1 287(g) officer on the HSU who made the stop, who no longer has
2 287(g) authority, call ICE?

3 A. What I just explained earlier, that once -- once we believe
4 that the vehicle that we were out with was an active smuggling
5 vehicle -- sorry. 11:19:15

6 Q. I want you to complete your answer.

7 A. We would at that time put the ICE hat on to identify their
8 alienage, then at that point that's when the call would be
9 made.

10 Q. But after 287(g) was revoked and there's no ICE hat to put 11:19:26
11 on, would you then call 287(g) -- excuse me, would you then
12 call ICE?

13 A. Yes.

14 Q. And if ICE indicated to you that the individuals were not
15 in the country illegally, what would the deputy do? 11:19:43

16 A. I'm not following what -- I think what you're explaining
17 never occurred. I don't know what you're explaining here.

18 Q. So in your experience, you don't recall a stop where
19 suspicion of human smuggling was present, a call was made to
20 ICE, and ICE said, We've checked the names of these passengers 11:20:07
21 and we believe they're all in the country legally?

22 A. I don't ever recall that occurring.

23 MR. LIDDY: Okay. Your Honor, I'd like -- excuse me.
24 Your Honor, I'd like to use Plaintiffs' Exhibit 126 that was
25 used in the direct examination. If I may use the courtroom 11:20:58

1 document camera for that purpose.

2 THE COURT: Is that admitted into evidence?

3 MR. LIDDY: I believe the exhibit's already admitted
4 into evidence by stipulation, Your Honor.

5 THE COURT: If so, you can publish it, Kathleen. 11:21:18

6 MR. LIDDY: Thank you, Your Honor.

7 THE CLERK: 126?

8 THE COURT: Did you say 126, Mr. Liddy?

9 MR. LIDDY: Yes, Your Honor.

10 THE COURT: I believe this was used during direct, was 11:21:41
11 it not?

12 MR. LIDDY: Yes, that is correct, Your Honor.

13 THE COURT: Go ahead.

14 BY MR. LIDDY:

15 Q. Sergeant Madrid, can you see this document on your screen? 11:21:51

16 A. Yes.

17 Q. Do you recognize it from earlier this morning?

18 A. Yes.

19 Q. I want to direct your attention to the very last sentence,
20 the only sentence in the last paragraph that begins, "after all 11:22:08
21 the above."

22 Do you see that?

23 A. Yes.

24 Q. Would you read along with me: After all the above was
25 complete, HSU detectives conducted knock and talks in the 11:22:17

1 Village Apartments based tips from the hotline. The tips from
2 the hotline produced negative results.

3 Do you see that?

4 A. Yes.

5 Q. Would you explain for me, please, what is a knock and talk? 11:22:30

6 A. Basically, you're doing a consensual stop, whether it be in
7 person, or we call it knock and talk if we're going to a house
8 and actually try and do a consensual talk there.

9 Q. And what is the purpose of a law enforcement
10 officer conducting knock and talks? 11:22:46

11 MS. WANG: Your Honor, I'm going to object on
12 relevance grounds, since this case concerns traffic stops and
13 counsel is asking about a knock and talk at a -- at a house.

14 THE COURT: You know, I'm going to overrule the
15 objection. It is true that the class, the certified class, 11:22:58
16 relates to traffic stops, but I think that I've allowed a
17 sufficient leeway to the plaintiffs to -- to explore how day
18 labor -- suspicions of day laborers who are not yet in cars may
19 lead to traffic stops, and as a result I think this is fair
20 cross-examination. 11:23:19

21 MS. WANG: Thank you, Your Honor.

22 MR. LIDDY: And I apologize.

23 BY MR. LIDDY:

24 Q. The question was: For what purpose would a law enforcement
25 officer conduct a knock and talk? 11:23:28

1 A. It's a tool used to contact the occupants of -- of a house.

2 Q. And what would be the purpose of contacting the occupants
3 of houses?

4 A. To investigate a possible crime.

5 Q. You see in that sentence it says that HSU detectives
6 conducted knock and talks in the Village Apartments?

11:23:41

7 A. Correct.

8 Q. You see that?

9 A. Correct.

10 Q. Does that refresh your recollection at all as to whether
11 there was an apartment complex next to the Good Shepherd
12 church?

11:23:50

13 A. Yes.

14 Q. Yes?

15 A. Yes, it does.

11:24:00

16 Q. Does refresh your recollection?

17 A. Correct.

18 Q. Does it refresh your recollection that you may have -- that
19 you heard at the time that there were complaints about
20 potential criminal activity at the Village Apartments next to
21 the Good Shepherd church?

11:24:15

22 A. Yes.

23 Q. I mean, you see the last sentence says there, the tips from
24 the hotline produced negative results. See that?

25 A. Yes.

11:24:29

1 Q. What does that mean to you?

2 A. The tips that we got, and I don't remember specifically
3 what any of these tips were, but there was nothing that
4 came of -- came of them.

5 Q. You remember that there was nothing that came from them? 11:24:36

6 A. Correct.

7 MR. LIDDY: Thank you, Sergeant. I have no further
8 questions.

9 THE COURT: Any redirect?

10 MS. WANG: Yes, Your Honor. 11:25:41

11 REDIRECT EXAMINATION

12 BY MS. WANG:

13 Q. I'd like to show you, Sergeant, Exhibit 79 again.

14 Mr. Liddy asked you about that.

15 This was the set of documents relating to the 32nd and 11:26:11
16 Thomas saturation patrol on March 21st and 22nd, 2008.

17 You see that?

18 A. Yes.

19 Q. And let's turn to page MCSO 001839, and let's highlight the
20 first line. I believe this is what Mr. Liddy asked you about. 11:27:03

21 A. Yes.

22 Q. So this person, Mr. Reyes, was stopped originally because
23 of a cracked windshield, correct?

24 A. Correct.

25 Q. And he was charged with driving on a suspended license, 11:27:16

1 correct?

2 A. Correct.

3 Q. There's no way for an officer to know before he pulls
4 someone over that they're driving on an suspended license,
5 correct?

11:27:26

6 A. No.

7 Q. And Mr. Liddy asked you some questions generally about what
8 happens when you are patrolling in an MCSO car behind another
9 vehicle.

10 Do you remember those questions?

11:27:42

11 A. Yes.

12 Q. He asked you about whether you can see the race of a person
13 when you're following behind their vehicle.

14 Do you remember that?

15 A. Yes.

11:27:52

16 Q. Officers are not always following behind a vehicle only
17 before they pull someone over, right?

18 A. Correct.

19 Q. It's not your testimony that an MCSO deputy could never see
20 the race of a motorist before pulling them over, right?

11:28:05

21 A. Correct.

22 Q. Sometimes they can see the race of a motorist before they
23 pull them over, correct?

24 A. Yes.

25 Q. Or their gender, right?

11:28:13

1 A. Correct.

2 Q. Mr. Liddy asked you some questions about training.

3 Do you remember that?

4 A. Yes.

5 Q. He asked you about some ICE training that you went through
6 in 2007, correct?

11:28:22

7 A. Correct.

8 Q. And do you recall that there was some coverage of racial
9 profiling issues in that training, correct?

10 A. Correct.

11:28:36

11 Q. But you testified you couldn't recall exactly what that
12 covered, correct?

13 A. No.

14 Q. Now, another point in time when MCSO personnel get training
15 on racial profiling is at basic academy, correct?

11:28:45

16 A. Correct.

17 Q. And do you recall that there is a component on racial
18 profiling at basic academy training?

19 A. I'm sure there was. I don't specifically remember now.

20 Q. You don't specifically remember whether there was or not?

11:28:58

21 A. It's 12 years ago, so I -- I'm sure it was, but I don't
22 remember the class.

23 Q. Okay. And so it's fair to say you don't remember what was
24 covered if there was a component on racial profiling?

25 A. Yes.

11:29:08

1 Q. And Mr. Liddy asked you what training HSU deputies got on
2 racial profiling.

3 Do you recall that?

4 A. Yes.

5 Q. And one of the things you mentioned is that you remembered
6 Lieutenant Sousa yelling: Or don't racially profile during
7 presaturation patrol briefings.

11:29:19

8 A. Correct, in his briefing.

9 Q. And he did not say anything more specific than that about
10 racial profiling, did he?

11:29:35

11 A. Not that I recall.

12 Q. There were no examples given, correct?

13 A. No.

14 Q. No definition of racial profiling was given?

15 A. I believe maybe in -- in one of the ops -- operation plans,
16 but I don't recall him giving, verbally, any definition of it.

11:29:42

17 Q. Okay. And you think there was a definition of racial
18 profiling in an operations plan?

19 A. There may -- there may have been.

20 Q. But you're not sure?

11:29:58

21 A. I don't -- yeah.

22 Q. You saw a lot of those operations plans, correct?

23 A. Several.

24 Q. Sir, let's turn to the Cave Creek saturation patrol.

25 Mr. Liddy also asked you about that, right?

11:30:13

1 A. Yes.

2 Q. Mr. Liddy asked you whether that patrol had been spurred by
3 complaints about traffic issues relating to the day laborers,
4 is that right?

5 A. Correct. 11:30:29

6 Q. And I think you testified on direct that to your knowledge
7 no one was actually arrested that day for impeding traffic,
8 isn't that right?

9 A. Correct.

10 Q. In fact that saturation patrol resulted in an arrest
11 stemming from vehicle stops, correct? 11:30:37

12 A. Correct.

13 Q. All the day laborers who were arrested that day were
14 actually in a car at the time they were arrested, right?

15 A. Yes. 11:30:46

16 Q. They weren't even near the church any more, correct?

17 A. Correct.

18 Q. Mr. Liddy also asked you about another day laborer
19 operation where there was -- he asked you whether there were
20 complaints about harassment of children leading to that patrol,
21 is that right? 11:31:01

22 A. Yes.

23 Q. To your knowledge, no one was arrested for harassing
24 children during that patrol, isn't that right?

25 A. Correct. 11:31:12

1 Q. I think you testified in response to Mr. Liddy's question
2 that you do not recall any MCSO saturation patrols that were
3 based on complaints about day laborers without complaints of
4 criminal activity. Is that your testimony?

5 A. I'm sorry. Say that again? 11:31:31

6 Q. I believe you testified in response to Mr. Liddy's
7 questioning that you do not recall any MCSO complaints --
8 sorry, let me start over.

9 You do not recall any MCSO saturation patrols that
10 were in response to complaints about day laborers without
11 complaints of criminal activity. Is that your testimony? 11:31:48

12 A. Yes, we wouldn't have gone there unless there was criminal
13 complaints.

14 MS. WANG: I'd like to show the witness what has been
15 marked for identification only for now as Plaintiffs'
16 Exhibit 474 and request that the Court give us an exhibit
17 number for that. 11:32:03

18 THE COURT: What will the exhibit number be, Kathleen?

19 THE CLERK: 455.

20 THE COURT: Okay. So it will be marked as
21 Exhibit 455. You may show it to the witness, Kathleen. 11:32:20

22 MS. WANG: And can we please show that to the witness
23 on his screen.

24 THE CLERK: On his screen, or do you want --

25 MS. WANG: On his screen will be fine. 11:32:36

1 Okay. Let's enlarge the top e-mail here.

2 BY MS. WANG:

3 Q. Sir, is this an e-mail that you received from Joe Sousa on
4 February 25th, 2008?

5 A. Yes. 11:33:02

6 Q. And let's blow up the next e-mail in the chain and see what
7 the original one said. The entire thing, please.

8 So Lieutenant Sousa was forwarding you an e-mail from
9 someone named William Hindman, is that right?

10 A. Right. 11:33:24

11 Q. And William Hindman is a sheriff's deputy -- I'm sorry, a
12 captain at MCSO, correct?

13 A. Yes.

14 Q. He is the commander of the District 2 Patrol division?

15 A. Yes. 11:33:31

16 Q. And Captain Hindman writes: Joe, just a reminder about the
17 issue we talked about today regarding the day laborers on
18 Dysart Road south of I-10. They do seem to concentrate on the
19 west side of the road due to the signs on the east side
20 banishing them. Thanks, Bill. 11:33:45

21 Do you see that?

22 A. Yes.

23 Q. Captain Hindman does not mention anything about criminal
24 violations, isn't that right?

25 A. Correct. 11:33:52

1 Q. And then let's go up to the top e-mail. Lieutenant Sousa
2 then forwards Captain Hindman's e-mail to you and to
3 Sergeant Baranyos, correct?

4 A. Correct.

5 Q. The two of you were at that time co-supervisors of HSU,
6 correct? 11:34:02

7 A. Yes.

8 Q. And Lieutenant Sousa wrote: Manny/Ryan, we are going to
9 conduct saturation patrol in the area of Dysart Road south of
10 I-10. Let's have Squad 1 and Squad 2 meet at District 2,
11 et cetera, et cetera. Chief Sands gave the thumbs up on the
12 district's request. Do you see that? 11:34:17

13 A. Yes.

14 Q. So it appears that Captain Hindman was reminding Joe Sousa
15 about a request for this saturation patrol on Dysart Road,
16 correct? 11:34:30

17 A. Yes.

18 Q. He does not mention any criminal activity by day laborers,
19 correct?

20 A. No, he doesn't. 11:34:40

21 Q. And then you did conduct the saturation patrol?

22 A. I believe we did, yes.

23 MS. WANG: Your Honor, I'd move Exhibit 455 into
24 evidence at this time.

25 MR. LIDDY: No objection, Your Honor. 11:34:49

1 THE COURT: Exhibit 455 is admitted.

2 (Exhibit No. 455 is admitted into evidence.)

3 MS. WANG: We can take that down now. Thank you.

4 BY MS. WANG:

5 Q. Sergeant, Mr. Liddy asked you whether anyone has ever sent 11:35:01
6 you to do a saturation patrol in an area because there are
7 Latinos there.

8 Do you recall that?

9 A. Yes.

10 Q. And you said no, right? 11:35:11

11 A. Yes.

12 Q. In fact, you do not know why the locations were selected
13 for saturation patrols, isn't that right?

14 A. Typically, it was based off of criminal activity in that
15 area. I can't speak of specific ones now, but typically it was 11:35:25
16 because of criminal activity.

17 Q. But we just went through some evidence that shows that
18 there wasn't always a complaint of criminal activity leading to
19 a saturation patrol location --

20 A. Correct. 11:35:41

21 Q. -- being selected, correct?

22 A. Correct. That's one e-mail, though. What else occurred in
23 their phone call, I don't know. There could have been the
24 crime there. I don't know.

25 Q. Okay. And -- sorry, I don't want to cut you off. 11:35:49

1 A. The -- the crime could have been talked about there. I --
2 I don't know.

3 Q. Okay. Well, at the presaturation patrol briefings that
4 MCSO had before larger saturation patrols, deputies were not
5 told why the locations were selected, isn't that right?

11:36:04

6 A. Correct.

7 Q. I'll tell you, sir, that your co-supervisor,
8 Sergeant Palmer, testified that he did not know why the
9 locations for those large saturation patrols were selected.

10 Are you telling me that you did know the reasons when

11:36:20

11 Sergeant Palmer did not?

12 A. I'm sorry. Say it again, now.

13 Q. I'm telling you, sir, your co-supervisor, Sergeant Palmer,
14 testified earlier in this trial that he did not know the
15 reasons why locations were selected for large saturation
16 patrols.

11:36:32

17 A. I think that's what I said. Typically, we don't know.
18 However, it typically is based off of some type of crime, but
19 we don't know specifically what -- the reasoning for that
20 choice of location.

11:36:47

21 Q. Okay. So sometimes you were told that there have been
22 complaints about criminal activity with --

23 A. Correct, we talked earlier about like Cave Creek and Queen
24 Creek and things like that.

25 Q. Without being given any specifics?

11:36:58

1 A. Correct.

2 Q. Sometimes you were told there was going to be a large
3 saturation patrol and weren't given any reason, correct?

4 A. Correct.

5 Q. So fair to say that with the smaller patrols that related
6 to day laborers, sometimes you heard generally that there was
7 criminal activity?

11:37:06

8 A. Correct.

9 Q. Sometimes you did not hear that?

10 A. Correct.

11:37:18

11 Q. And for the larger saturation patrols, you did not know why
12 those locations were selected?

13 A. Typically, no.

14 Q. Sergeant, Mr. Liddy asked you about human smuggling
15 corridors in Maricopa County.

11:37:33

16 Do you recall that?

17 A. Yes.

18 Q. And you listed a few of the human smuggling corridors,
19 U.S. 60, U.S. 93, several other highways, correct?

20 A. Yes.

11:37:45

21 Q. Those were all highways, right?

22 A. Correct.

23 Q. That's what you mean when you talk about a human smuggling
24 corridor, correct?

25 A. Correct.

11:37:51

1 Q. Sir, Central Phoenix, the area of 32nd and Thomas, is not a
2 human smuggling corridor, correct?

3 A. Correct.

4 Q. Nor is the Town of Cave Creek?

5 A. Correct.

11:38:02

6 Q. In fact, HSU's saturation patrols that we've been talking
7 about didn't focus on highways, correct?

8 A. Saturation patrols?

9 Q. Correct.

10 A. Towards the latter end they did, yes.

11:38:12

11 Q. But the ones we've discussed in your testimony --

12 A. I'm sorry, yes.

13 Q. -- those all were in areas in -- in Maricopa County not
14 around freeways, correct?

15 A. Correct.

11:38:23

16 Q. Sir, I want to go back to an exhibit that Mr. Liddy asked
17 you about that was Exhibit 126, which is in evidence, and I'll
18 ask that that be displayed on the screen.

19 Please highlight the last paragraph -- well, that's
20 fine. You can highlight the whole thing.

11:38:52

21 Mr. Liddy asked you about the last paragraph, which
22 reads: After all the above was complete, HSU detectives
23 conducted knock and talks in the Village Apartments based on
24 tips from the hotline.

25 Do you see that?

11:39:04

1 A. Yes.

2 Q. He asked you whether that refreshed your recollection that
3 there was discussion of criminal activity before this
4 operation, and you said it did refresh your recollection,
5 correct?

11:39:16

6 A. Correct.

7 Q. Actually, there's no mention of any criminal activity in
8 this paragraph, is there?

9 A. No.

10 Q. And this report that you wrote reflects that the tips from
11 the hotline actually produced negative results in response to
12 those tips, correct?

11:39:22

13 A. Yeah, in my summary.

14 Q. But HSU went ahead and did this operation anyway, correct?

15 A. Well, the knock and talks had already occurred prior to me
16 writing this.

11:39:38

17 Q. Right. And you knew already that the knock and talks
18 produced negative results, correct?

19 A. When I wrote this, yes.

20 Q. And there was no criminal activity discovered as a result
21 of those tips from the hotline, correct?

11:39:49

22 A. Correct.

23 Q. And, yet, the saturation patrol went ahead?

24 A. No, the knock and talks would have probably occurred during
25 or after. I don't --

11:40:04

1 Q. Oh, I see what you're saying.

2 A. Yeah, I'm confused on the timeline there. They were
3 probably during the time we would either have had a saturation
4 patrol running along with the knock and talks. I don't recall
5 the specific day, but it would have kind of happened all at the
6 same time. 11:40:15

7 Q. Understood.

8 So in fact, the tips from the hotline actually were
9 not investigated prior to the saturation patrol, correct?

10 A. I don't know. 11:40:26

11 Q. Well, I think you just testified that the knock and talks
12 were -- that resulted from the tips from the hotline actually
13 occurred during the saturation patrol, correct?

14 A. Correct.

15 Q. No one did knock and talks before the saturation patrol? 11:40:38

16 A. Correct.

17 Q. Sir, Mr. Liddy asked you about what impact the loss of the
18 287(g) authority had on HSU. Do you recall that?

19 A. Yes.

20 Q. And I want to ask you about that again, because I think
21 there were some things you testified about earlier during
22 direct examination I want to clear up. Okay? 11:40:55

23 Sir, both before and after the 287(g) agreement was
24 revoked MCSO deputies might develop suspicion that a person is
25 an illegal immigrant during a traffic stop, right? 11:41:19

1 A. Correct.

2 Q. And that can happen even when you're not dealing with a
3 suspected human smuggling load, correct?

4 A. Correct.

5 Q. The loss of the 287(g) authority does not mean that MCSO
6 now has to let a suspected illegal immigrant go, correct?

11:41:28

7 A. Correct.

8 Q. All it means now is that once the deputy has a suspicion
9 the person is an illegal immigrant, they have to call ICE,
10 correct?

11:41:52

11 A. Correct.

12 Q. They can't arrest the person on their own with 287(g)
13 authority, correct?

14 A. Correct.

15 Q. That's the impact the loss of the 287(g) authority has had,
16 correct?

11:41:57

17 A. Yes.

18 Q. In other respects, HSU has continued to operate in the same
19 way in enforcing immigration laws, correct?

20 A. Well, they weren't enforcing immigration law, but yes, to
21 that point, yes.

11:42:10

22 Q. State immigration laws.

23 A. Correct. Correct.

24 MS. WANG: Now, Your Honor, may I have one moment,
25 please?

11:42:21

1 THE COURT: You may.

2 MS. WANG: Thank you.

3 (Pause in proceedings.)

4 MS. WANG: Thank you.

5 Thank you, Sergeant Madrid. I have nothing further. 11:42:36

6 THE WITNESS: Thank you.

7 THE COURT: Sergeant Madrid, you may step down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Next witness.

10 MS. WANG: Your Honor, plaintiffs rest. 11:42:54

11 THE COURT: All right. Defense have witnesses they
12 want to call?

13 MR. CASEY: Yes, Your Honor. We can -- also I have a
14 Rule 52(c) motion, I can either make it now or at the Court's
15 direction, but I need to put on the record that I do have a
16 Rule 52(c). 11:43:04

17 THE COURT: All right. What I propose to do, I'd like
18 to make the most profit of the time we have. If you have a
19 witness we can begin now, that will be fine, we'll go to lunch,
20 I'll take your motion at that time, and then we can break for
21 lunch. 11:43:18

22 MR. CASEY: All right. And I don't want to be overly
23 pedantic, but that's on the record, so I'm not waiving any Rule
24 52 issues.

25 THE COURT: You are not. 11:43:29

1 MR. CASEY: Thank you, Your Honor.

2 THE COURT: In fact, if you're concerned about that,
3 I'll let you make the motion right now.

4 MR. CASEY: No, Your Honor. I -- I obviously trust
5 the Court. I just --

11:43:37

6 THE COURT: All right.

7 MR. CASEY: I've been caught sometimes in other
8 courtrooms.

9 MR. LIDDY: Your Honor, we call Dr. Steve Camarota.

10 THE COURT: Okay.

11:43:56

11 You need to be right here, be sworn right here.

12 THE CLERK: Please state and spell your full name.

13 MR. CAMAROTA: Steven, S-t-e-v-e-n; Andrew,
14 A-n-d-r-e-w; Camarota, C-a-m-a-r-o-t-a.

15 THE CLERK: Thank you. Please raise your right hand.

11:44:31

16 (Steven Andrew Camarota was duly sworn as a witness.)

17 THE CLERK: Thank you. Please take our witness stand.

18 STEVEN ANDREW CAMAROTA,

19 called as a witness herein, having been duly sworn, was

20 examined and testified as follows:

11:44:41

21 DIRECT EXAMINATION

22 BY MR. LIDDY:

23 Q. Good morning, Doctor.

24 A. Good morning.

25 Q. Would you please state your full name for the record.

11:45:09

1 A. Steven Andrew Camarota.

2 Q. And where are you currently employed?

3 A. I am director of research at the Center for Immigration
4 Studies in Washington, D.C.

5 Q. And how long have you been employed with the center? 11:45:23

6 A. Sixteen years.

7 Q. What are your duties and responsibilities at the center?

8 A. I supervise research there. I do a lot of quantitative
9 analysis of data, a lot of census data, some administrative
10 data as well, put out reports and statistical profiles and that 11:45:40
11 sort of thing.

12 Q. And did you receive a bachelor's degree?

13 A. I did.

14 Q. And what was the subject matter of your -- the area of
15 inquiry? 11:45:54

16 A. Political science.

17 Q. And did you subsequently receive any postgraduate
18 education?

19 A. Yes, I have a master's degree from the University of
20 Pennsylvania in Philadelphia in political science, and then I 11:46:05
21 have a Ph.D. from University of Virginia in Charlottesville in
22 public policy and analysis.

23 Q. Have you ever received any formal education on statistics?

24 A. I have. When I was a graduate student in particular,
25 though I had a little bit when I was an undergrad, I received 11:46:21

1 several semesters of statistics at the University of Virginia,
2 and then additionally I went to the University of Michigan and
3 took some additional statistical training there as well as part
4 of their ICPSR program.

5 Q. And do you use statistics in the normal course of your
6 duties? 11:46:36

7 A. I do.

8 Q. A great deal?

9 A. I would say yes, a great deal.

10 Q. And have any of your academic works been published? 11:46:48

11 A. Yes, by journals such as Social Science Quarterly or The
12 Public Interest. I've also had books, chapters in books
13 published by --

14 Q. I would ask you just slow down a little bit for the court
15 reporter. 11:47:09

16 A. Yes, of course.

17 THE COURT: And for me, for what it's worth.

18 MR. LIDDY: Would you read the question over again,
19 please.

20 (The record was read by the court reporter.) 11:47:26

21 THE WITNESS: Yes, they have. By various journals,
22 such as Social Science Quarterly, Public Interest. I've had
23 book chapters published by Princeton University Press, by
24 foreign relations -- Council on Foreign Relations Press, and of
25 course I've published a lot of publications for the Center for 11:47:42

1 Immigration Studies as well.

2 BY MR. LIDDY:

3 Q. Have you ever been asked by the United States Congress to
4 testify?

5 A. Yes, I've been -- I've testified before Congress 17 times, 11:47:50
6 I believe, in the last 16 years.

7 Q. What were the areas of interest of the United States
8 Congress?

9 A. Oh, a wide variety of interests, House and Senate, some
10 Democratic, some Republican, testifying on socioeconomic data 11:48:04
11 and issues surrounding immigration and immigrants.

12 Q. Can you recall any of the members of Congress who
13 specifically asked you to come to the Hill and testify?

14 A. Sure, Congressman Lamar Smith, Congressman Sensenbrenner,
15 Senator Dianne Feinstein invited me and I testified before her, 11:48:28
16 so kind of a wide range of folks.

17 Q. Has any of your work ever been referenced by the Supreme
18 Court of the United States?

19 A. Yes, a recent -- a recent Supreme Court ruling dealing with
20 SB 1070 cited my research looking at the illegal immigrant 11:48:44
21 population in Maricopa County, and also, you know, comparing
22 that to persons who were felons in this county also. So an
23 analysis of crime of illegal immigrants in Maricopa County was
24 cited in the text of the recent Supreme Court ruling.

25 Q. Did there come a time where anyone from Maricopa County 11:49:06

1 contacted you and asked you for your assistance?

2 A. Yes.

3 Q. Do you recall who that was?

4 A. I think originally it was Clarice McCormick, who works for
5 Maricopa County.

11:49:22

6 Q. And do you recall what time she contacted you?

7 A. It's been awhile. Sometime in 2010, mid-2010. Sometime in
8 mid-2010 was the first time I spoke with her, I think.

9 Q. Do you recall what her interests were at the time?

10 A. Yeah, she contacted me and asked me to explore the question

11:49:43

11 of whether there was evidence that Maricopa County,
12 particularly sheriff's deputies, were engaging in racial
13 profile. Was there evidence of bias? Were they doing
14 something that indicated a bias?

15 Q. What information did you need -- well, let me back up.

11:50:00

16 Excuse me. Strike that.

17 Did you agree to assist Maricopa County in that
18 inquiry?

19 A. Yeah, I told them I'd let them know whatever I found.

20 Q. What information did you need in order to commence your
21 look into that area?

11:50:13

22 A. Yeah, well, this was one of the big challenges. They
23 didn't have much data on the specific area that they talked
24 about was sort of enforcement action, specifically traffic
25 stops or the activities of their sheriff's deputies. They

11:50:31

1 didn't record race or ethnicity in traffic stops or any kind of
2 enforcement, so that created a real challenge, because you
3 would want to have that so that you can look for evidence of
4 bias, but they don't collect it.

5 Q. What information was available for you to examine? 11:50:48

6 A. Yeah. The only thing in my conversations with her was that
7 they had something called CAD data, which is the records of
8 calls that -- that MC -- MCO does track.

9 But that information or that CAD data, they told me
10 explicitly, didn't have any information about race or 11:51:14
11 ethnicity, but in many cases -- though, it turns out quite a
12 lot don't -- they have last names of the person who was
13 arrested or the person who was part of a traffic stop.

14 Q. Did there come a time when another attorney from Maricopa
15 County contacted you on this very same issue? 11:51:32

16 A. Yes, yourself, Tom Liddy came on and began to ask me about
17 these same issues.

18 Q. And did Maricopa County provide you with CAD data?

19 A. They did.

20 Q. Do you recall the universe of CAD data that was provided? 11:51:47

21 A. I think the first thing they sent me was all of the CAD
22 data in Access format, a relational database. So first thing
23 they gave me was this big giant dump -- it was on a CD -- of
24 their CAD data from 2005, I think, to 2009.

25 Q. So when you say all the CAD data, you're limiting that from 11:52:09

1 2005 to 2009?

2 A. Yes.

3 Q. And that arrived in what software?

4 A. Access, Microsoft Access. It arrived in a relational
5 database in Microsoft Access.

11:52:27

6 Q. Did that pose challenges to your inquiry?

7 A. Yes, many, many challenges. The way the data is organized
8 is confusing, it's nonregular. Particularly the challenge with
9 this data is that the last name of the person stopped is not
10 recorded in -- in a set spot. It's in a table. This is the
11 concept of a relational database. There's a primary record,
12 and then there's another table that has comments dealing with
13 the traffic stop, if it was a traffic stop.

11:52:45

14 Q. So the CAD data really comes in two parts?

15 A. You could say that, yes.

11:53:07

16 Q. One primary record?

17 A. Um-hum.

18 Q. And the other comments?

19 A. Comments.

20 MR. YOUNG: Objection, leading.

11:53:12

21 THE COURT: I'm going to allow that question.

22 BY MR. LIDDY:

23 Q. And in which area of the CAD data were the names located?

24 A. Yes. The names are stored in the comments section in the
25 comments table.

11:53:29

1 Q. Did that pose a challenge to your inquiry?

2 A. Yes, a great deal of challenge. One of the things, one of
3 the most frustrating aspects of CAD data is that it is not
4 uniform, particularly the format they use for their comments
5 table.

11:53:41

6 So what happens is that the person gets stopped and
7 their name is in there, but so is a great deal of other
8 information. And sometimes the name is one of the first things
9 in the comments, sometimes the name of the person in there is
10 one of the last things in the comments, and sometimes it's in
11 between. And in between could be other factors that -- that
12 they recorded. Sometimes the officers -- some information
13 about another officer who showed up or something else about the
14 traffic stop.

11:53:58

15 So it's -- the frustrating and the difficulty working
16 with this data I would say is its nonuniformity in the way the
17 names are put into the table.

11:54:15

18 Q. Why is that a problem for a scholar making these inquiries?

19 A. Yeah, the reason it creates a big challenge is that
20 computers are really good at doing the same thing over and over
21 again. But if the columns, or if the place where the names are
22 stored are not uniform across these thousands -- well, over a
23 hundred thousand cases, traffic stops, then you can begin to
24 create problems 'cause you'll start to miss names. You'll
25 think it's an officer name, but it's not. Or the name is in,

11:54:33

11:54:55

1 there but there's so much other stuff around it that whatever
2 kind of algorithm that you create misses the name, and so you
3 think there's no name, but in fact there is a name there.

4 Q. Is it your experience from examining this CAD data that
5 there was always a name of a driver or a passenger in the
6 comments section of the CAD data? 11:55:13

7 A. Oh, no, no. Very large fraction of the time there is not.
8 The -- for -- sometimes a driver's license number is -- is
9 used. So at the very least, you know, 29, 30 percent of the
10 time, going by incidents, there is no -- there is no name of
11 the person who was stopped. 11:55:34

12 Q. Does that pose a concern for a scholar making these
13 inquiries?

14 A. Oh, absolutely, sure. Because now you've got all this
15 missing data. You have all these cases where there's no name. 11:55:49
16 And I don't know if we've explained it yet, but the subsequent
17 analysis, the Hispanic surname analysis, we try to estimate if
18 someone might be Hispanic or not is based on the names. If
19 there's no name, then no determination can be made whether the
20 person is Hispanic and, thus, the case has to be thrown out. 11:56:09
21 You can't use it, at least, you know, for that purpose.

22 Q. So did there come a time when you converted this data out
23 of the Microsoft Access software?

24 THE COURT: I want to --

25 MR. LIDDY: Sorry, Your Honor. 11:56:25

1 THE COURT: What you're saying is that stop would have
2 to be thrown out for purposes of statistical analysis, correct?

3 THE WITNESS: For the Hispanic surname, yes.

4 THE COURT: If you're doing a Hispanic surname
5 analysis and you have no name, then you just simply cannot
6 include that stop as part of the analysis? 11:56:36

7 THE WITNESS: Right. I mean, just so you're clear, it
8 might be -- there are ways in which people try to reconstruct
9 data based on other information. I didn't do that. But the
10 census bureau, if you don't say whether you're Hispanic or not, 11:56:50
11 they'll impute whether you're Hispanic, you know, that kind of
12 thing.

13 So there is a way, maybe, to sort of reconstruct data,
14 but I didn't do that. I just, if there was no name -- and the
15 other experts witness didn't do that, either. Those names 11:57:02
16 are -- those incidents are excluded from the analysis.

17 THE COURT: All right. And they're excluded from the
18 analysis simply because the CAD data doesn't have the name?

19 THE WITNESS: Right.

20 THE COURT: For whatever reason, the officer didn't
21 put the name in the comments. 11:57:14

22 THE WITNESS: Right. So if you're going from, say,
23 traffic stop, there's lots of codes here, but -- I don't want
24 to confuse you, but the -- there's a T as an initial code,
25 should be a traffic stop. That's different than the final 11:57:27

1 disposition or the final code, which can be a T or a 910 or
2 something else as well.

3 But if you go from the Ts as the initial, it's about
4 29.6 percent of all incidents have no name in the comment
5 field.

11:57:44

6 THE COURT: Okay. Thank you.

7 I am still listening, Mr. Liddy, but thank you for the
8 courtesy.

9 MR. LIDDY: Thank you, Your Honor.

10 BY MR. LIDDY:

11:58:03

11 Q. So if there was no name identified in the comment field --

12 A. Right.

13 Q. -- then there was no way to make the inquiry?

14 A. That's right.

15 Q. But if there was a name in the comment field, your
16 professional opinion that the inquiry should be made?

11:58:12

17 A. Yes, oh, yeah, you would want to include it if -- if you
18 could, sure.

19 Q. So you'd have more confidence in an examination of this
20 data if it included all the instances where there were names.

11:58:30

21 A. Yeah, sure. No, that would be right. I mean, it would --
22 I'd have even more confidence if we didn't have to throw out so
23 much data. But if there is a name there and you didn't include
24 it, you know, that is a problem. That can introduce, like,
25 another type of selection bias.

11:58:50

1 Q. Okay. I want to back up just a little bit. Forget about,
2 just for a moment, the instances where there were names that
3 may have been thrown out.

4 I want to know more about the universe of name -- of
5 instances where there were no names --

11:59:05

6 A. Right.

7 Q. -- that were not looked at.

8 A. Right.

9 MR. YOUNG: Objection, lacks foundation.

10 MR. LIDDY: Your Honor, the witness just --

11:59:14

11 THE COURT: Are we talking about this witness's review
12 of another report, or what are we talking about?

13 MR. LIDDY: No, Your Honor. We're talking about this
14 witness's review of the data set he was provided.

15 THE COURT: All right.

11:59:27

16 MR. YOUNG: Your Honor, I was objecting to Mr. Liddy's
17 preface to the question, which I believe is the part that has
18 no foundation.

19 THE COURT: All right. Well, I understand where we're
20 going, and so you can ask the question and answer it.

11:59:38

21 THE WITNESS: Could you ask it again?

22 MR. LIDDY: May I ask that the question be read back?
23 I'm not even sure if I completed the question, but --

24 (The record was read by the court reporter.)

25 BY MR. LIDDY:

12:00:08

1 Q. Okay. So just so we're clear, my question to you is about
2 the instances recorded in the CAD data provided for you from
3 2005 to 2009 for which there were no names associated with
4 those instances in the comments section. Clear?

5 A. Right. 12:00:27

6 Q. How large a percentage of the total universe was that?

7 A. If you go from T as an initial traffic -- a T code, which
8 means it's supposed to be a traffic stop, then that's about
9 30 percent have no name.

10 THE COURT: 29.6 percent, to be precise? 12:00:46

11 THE WITNESS: Yes, 29.6.

12 THE COURT: We're going to break for lunch now.

13 MR. LIDDY: We'll thank the Court. We'll break for
14 lunch on 29.6. Thank you.

15 THE COURT: You can step down, Dr. Camarota. We'll
16 expect you back. We're probably going to start -- 12:00:57

17 Well, let me ask you, you shared with me when we broke
18 on Thursday afternoon your concern about having time to get
19 your case in.

20 MR. CASEY: Yes, Your Honor. 12:01:11

21 THE COURT: I want to make sure you get your case in.
22 Should we be back here at 1 o'clock?

23 MR. CASEY: 1:15 would be acceptable, Your Honor.

24 THE COURT: Well, it would be acceptable to me so long
25 as you can get your case in. If you can't, we'll be back here 12:01:23

1 at 1 o'clock.

2 MR. CASEY: We better start at 1 o'clock, then, Your
3 Honor.

4 THE COURT: All right. We'll see you back at
5 1 o'clock, Dr. Camarota. 12:01:31

6 (Pause in proceedings.)

7 THE COURT: Mr. Casey, you ready to bring -- make your
8 motion?

9 MR. CASEY: Yes, Your Honor. I will be brief.

10 Defendants now at this time make a Rule 52(c) motion 12:03:00
11 for judgment on partial findings. I will break this down
12 between global arguments and specifically.

13 There is no evidence of any Fourth Amendment violation
14 or its state equivalent based on the evidence presented in
15 plaintiffs' case in chief. There is no evidence of intentional 12:03:19
16 discrimination or racial animus as to any plaintiff or class
17 member under state -- under federal or state law.

18 There's been no evidence presented of a policy,
19 pattern, or practice of racial discrimination or racial animus
20 motivated by Sheriff Arpaio or as to any specific deputy that 12:03:35
21 has been presented here at trial.

22 No evidence that plaintiffs have demonstrated a real
23 and immediate threat of future injury, despite being allegedly
24 exposed since 2007 to the defendants' allegedly racially
25 discriminatory policy, custom, or practice. Therefore, they 12:03:54

1 lack standing.

2 The next argument, Your Honor, is they have failed to
3 present a police practices, standard of care, and racial
4 profiling expert in the witness they designated is Robert
5 Stewart, who they said will be a witness at trial. 12:04:08

6 That dovetails into their theory of the case that
7 there are certain components of the policy, pattern, and
8 practice that were allowed to exist because of substandard or
9 unreasonable police practices by the Sheriff's Office. Namely,
10 there is no evidence established by a police practices/
11 standard of care expert of inadequate training leading, or
12 participating, or part of contributing to a prohibited policy,
13 pattern or practice. 12:04:26

14 There is no evidence of inadequate or unreasonable
15 supervision during MCSO saturation patrols, or on nonsaturation
16 patrol days that somehow led to or contributed to a prohibited
17 policy, pattern, or practice. 12:04:45

18 There is no testimony of any inadequate or
19 unreasonable MCSO policies and procedures, either in writing or
20 orally. There's no testimony about inadequate safeguards that
21 somehow led to a prohibited policy, pattern, or practice. 12:05:03

22 There is -- again, without such testimony, Your Honor,
23 the trier of fact cannot reasonably find for the plaintiffs on
24 those elements contributing to or influencing or creating a
25 prohibited policy, pattern, or practice. 12:05:26

1 The next --

2 THE COURT: Let me ask -- let me interrupt you,
3 Mr. Casey.

4 MR. CASEY: Yes, Your Honor.

5 THE COURT: Do the plaintiffs have to present a 12:05:32
6 standard of care expert in this case?

7 MR. CASEY: Yes, Your Honor, they did as to those
8 elements. The Court makes the decision in its own judgment as
9 to whether or not there's a Fourth Amendment violation, and
10 whether or not there's a Fourteenth Amendment violation. 12:05:45

11 As to their components, and one of their issues is a
12 component of a policy, pattern, or practice were certain
13 systemic problems in the MCSO that necessarily indicates
14 standard of care issues. Reasonableness, unreasonableness. It
15 is in their -- 12:06:04

16 THE COURT: And so can't the trier of fact make that
17 determination without an expert, depending upon what the
18 testimony is?

19 MR. CASEY: I would respectfully submit that -- can
20 the trier of fact? 12:06:15

21 THE COURT: Yeah, this is a 52(c) motion.

22 MR. CASEY: Yeah. In candor, yes.

23 THE COURT: All right.

24 MR. CASEY: But I believe that it is a --

25 THE COURT: And so what your tes -- what your argument 12:06:24

1 is is that there has been no such evidence?

2 MR. CASEY: There has been no such evidence, and there
3 also -- a huge glaring hole in the case is the absence of
4 someone who we spent a great deal of time on, presumably to
5 defend against, who was supposedly going to establish that. It 12:06:40
6 doesn't exist.

7 So what you do is you have uncontroverted testimony
8 from the MCSO deputies. That is the record that you have right
9 now.

10 THE COURT: What if I find that the testimony of the 12:06:50
11 MCSO deputies is actually conflicting with each other?

12 MR. CASEY: That is -- that is a resolution the trier
13 of fact has to resolve on its own.

14 THE COURT: Okay.

15 MR. CASEY: Next, Your Honor, as to Mr. Melendres. 12:07:02
16 Mr. Melendres is a named plaintiff. He did not testify at
17 trial, either live or via deposition. Therefore, the testimony
18 here by Carlos Rangel, an MCSO deputy, as to that interaction
19 is that it's undisputed. He did not have his I-94 on him at
20 the time of the stop. 12:07:19

21 It's undisputed that he told Carlos Rangel he was
22 working for compensation while on a tourist visa. It's
23 undisputed, according to Carlos Rangel, that put him out of
24 status, being on a tourist visa.

25 Now, the next issue is that he is not an appropriate 12:07:34

1 class representative, and he should be dismissed as a named
2 plaintiff and as a class representative.

3 Next, as to plaintiff Jessika Rodriguez, she was not
4 here to testify live or via deposition. My memory from the
5 Court's December 23rd, 2011 order was the Court has ruled on 12:07:57
6 the Fourth Amendment claim, but not the Fourteenth. She was
7 not here to establish anything as to this particular stop, so
8 it falls on the policy, pattern, or practice claim.

9 I respectfully submit that she is not a fair class
10 representative based on her failure to appear and testify 12:08:17
11 either live or via deposition, and she should be dismissed as a
12 class representative.

13 Now, as to plaintiffs David Rodriguezes, Manuel Nieto,
14 and Velia Meraz, the evidence shows that those stops were based
15 on probable cause, the detentions were based on probable cause, 12:08:38
16 and were not unreasonably prolonged under the circumstances,
17 and no Fourth Amendment violation.

18 None of those individuals, Rodriguez, Manuel Nieto, or
19 Velia Meraz, are appropriate class representatives. They
20 should be dismissed as class representatives based on the 12:08:55
21 foregoing.

22 In addition, Your Honor, we move the Court to
23 decertify the class based on the evidence that you've heard in
24 the plaintiffs' case in chief. That concludes the Rule 52(c)
25 motion. 12:09:08

1 THE COURT: What do I do about Somos America?

2 MR. CASEY: Somos America is an entity organization,
3 Your Honor. It is a plaintiff. Its corporate representative,
4 its 30(b)(6) representative, Lydia Guzman, testified today.

5 The key testimony beside -- obviously, there was a lot of
6 anecdotal, what I would describe as anecdotal discussion or
7 evidence, but that representative has had no traffic stops at

12:09:22

8 any time during the course of this, and she and her

9 organization is supposedly exposed, since 2007, to the

10 allegedly racially discriminatory policy, custom, or practice.

12:09:43

11 What she did describe is a very subjective fear of
12 being profiled while handing cash while speaking the Spanish
13 language to someone, and being observed by an unknown MCSO
14 deputy. She described being --

15 THE COURT: Didn't she also assert fear in the -- and
16 concern about the members, Somos America members?

12:09:59

17 MR. CASEY: She did. That was the anecdotal evidence,
18 Your Honor. But there is no firsthand information that she
19 relayed that indicated specific instances of there being actual
20 harm done. And under the --

12:10:17

21 THE COURT: Let me -- let me switch topics.

22 MR. CASEY: Sure.

23 THE COURT: I'm going a little quick on you here.

24 MR. CASEY: Yes, Your Honor.

25 THE COURT: What is your assertion that

12:10:26

1 Mr. Ortega Melendres cannot be an appropriate class
2 representative? What is the basis for that?

3 MR. CASEY: That he has not -- well, first of all,
4 he's not been here to testify as to his grounds for the
5 detention, the -- the issue --

12:10:38

6 THE COURT: We have had plenty of testimony about that
7 stop, haven't we?

8 MR. CASEY: But not from him. At most what you have
9 is I think the Court, over objection, allowed in an ICE
10 document that summarized the allegations in Mr. Melendres's
11 complaint.

12:10:52

12 THE COURT: Right.

13 MR. CASEY: That's it.

14 The problem with Mr. Melendres serving as a class
15 representative is that he is not here to establish the
16 essential facts alleged in his complaint, which is basically,
17 Look, I had my I-94 on me, so there was no basis for the
18 detention. I did not tell him -- excuse me, Carlos Rangel
19 being "him" -- I never told him I was being paid to go to work.
20 That is not here under oath. He cannot support his own claim
21 for either a Fourth -- I'm not addressing the Fourteenth right
22 now --

12:11:03

12:11:25

23 THE COURT: Do you believe that if in fact the Court
24 were to accept the allegation that he had no I-94 on him, there
25 is no basis on which, based on the facts that I have received,

12:11:46

1 that there is no basis on which I could find a Fourth or a
2 Fourteenth Amendment violation by the MCSO or by the
3 defendants?

4 MR. CASEY: Correct.

5 THE COURT: Is that your position? 12:11:58

6 MR. CASEY: That is my position.

7 And also, let me, if I may, Your Honor, with your
8 permission, I respectfully submit that you cannot find a Fourth
9 Amendment violation as to the documents in the communications
10 between him and Carlos Rangel. This is not talking about the 12:12:14
11 prolonging of the stop the Court addressed with DiPietro and
12 reasonable suspicion back in December.

13 What I'm saying here is there is no factual basis for
14 you to conclude anything other than the sworn testimony of
15 Carlos Rangel. That Melendres told him, I don't have my I-94 12:12:29
16 on my person, I'm out of status, and I'm working for
17 compensation. There is no other evidence that you have. You
18 have predicates to questions from counsel. You've got the ICE
19 document that summarizes the complaints. But we have
20 undisputed testimony from Carlos Rangel and we don't have 12:12:48
21 anything.

22 THE COURT: All right. I think I understand your
23 argument.

24 MR. CASEY: Thank you very much, Your Honor, for your
25 patience. 12:12:55

1 THE COURT: Thank you.

2 Mr. Young, do you want to be heard?

3 MR. YOUNG: Yes, Your Honor, briefly.

4 I believe that the evidence has been fully sufficient
5 to indicate both Fourth Amendment and Fourteenth Amendment
6 violations. We have direct evidence of racial animus. We have
7 it from the sheriff. We have it from Chief Sands. We have it
8 from Sergeants Palmer and Rangel that they used race in order
9 to determine whether to make inquiries into alienage.

12:13:03

10 We have evidence of effect, which has come in through
11 Dr. Taylor's evidence.

12:13:27

12 Mr. Casey mentioned that we don't have an expert on
13 police practices. That expert testimony could be relevant and
14 would be relevant if it were brought in to support an inference
15 of intentional discrimination. You can say, Well, the
16 practices aren't there; therefore, you can infer that the
17 disparate effect was intended.

12:13:48

18 We believe that the evidence shows directly that there
19 is disparate effect -- intent, that there is discriminatory
20 intent, and therefore, we don't need to have an expert come in
21 to lay the foundation for an argument for an inference of
22 discriminatory intent.

12:14:07

23 With respect to Your Honor's question about whether
24 Your Honor could find as a matter of fact that there was
25 discriminatory intent, we agree with Mr. Casey. Your Honor

12:14:26

1 could find that. And we believe that based on the evidence,
2 Your Honor should find that.

3 With respect to the issue of whether the class
4 representatives should be accepted, or whether the class should
5 be decertified, Mr. Melendres's stop has been the subject of 12:14:43
6 testimony by other witnesses in the case. Mr. Melendres did
7 appear for a deposition. If Mr. Casey had wanted to present
8 Mr. Melendres's testimony under oath, that could be -- could
9 have been done, but he's chosen not to do that.

10 And we therefore contend that he should be an 12:15:03
11 appropriate class representative, and his case actually --
12 first of all, Your Honor's already ruled on summary judgment at
13 a general level with respect to Mr. Ortega Melendres, and we
14 believe that his specific case, and particularly in light of
15 Exhibit 1030 -- 1093, which is the ICE document that was 12:15:22
16 admitted, does actually support the claim with respect to the
17 I-94 and with respect to the stop generally.

18 I want to say that Mr. Casey's description of that
19 document we believe is not quite accurate. It just doesn't
20 summarize his complaint. It summarizes what the ICE 12:15:42
21 officer did and found after Mr. Ortega Melendres was brought in
22 to ICE, and that report is that he had the I-94.

23 Now, we also agree with Your Honor that it's not
24 necessary for him not to have had the I-94 in order for his
25 case to be a good case. Based on the facts that 12:16:00

1 Officers DiPietro and Rangel have testified to, we believe that
2 there's a Fourth Amendment violation and also a Fourteenth
3 Amendment violation.

4 With respect to Jessika Rodriguez, her husband, David
5 Rodriguez, who was in the same car, went through the same stop, 12:16:18
6 testified as to that, and we don't believe we need both of them
7 to come in in order to establish that they are adequate class
8 representatives.

9 As to the others, we believe the facts speak for
10 themselves. The -- the class allegation should stand. We 12:16:32
11 believe Your Honor's earlier class certification order, on the
12 basis of the evidence that has been presented, was proper.

13 The Somos America testimony that Your Honor heard this
14 morning we believe also speaks for itself, both as to standing
15 and as to the underlying allegations. 12:16:54

16 Just a moment.

17 I'm going to yield to my co-counsel here, Ms. Wang, in
18 case she wants to add anything to what I said.

19 MS. WANG: Your Honor, I'm ready to address the
20 organizational and associational standing of Somos America if 12:17:20
21 Your Honor has questions.

22 THE COURT: No, I do appreciate it. I appreciate the
23 argument. I appreciate its organization. And the response. I
24 do think it's going to be appropriate at this time to hear the
25 defense case. I'm not going to grant a Rule 52(c), so it's 12:17:31

1 denied at this time.

2 I'll see you back at 1 o'clock.

3 (Lunch recess taken.)

4 THE COURT: Please be seated.

5 You ready to resume, Mr. Liddy? 13:01:06

6 MR. CASEY: I am, Your Honor.

7 THE COURT: Please do so.

8 BY MR. CASEY:

9 Q. Doctor, last we spoke, we were talking about a large
10 fraction of the universe you were provided that had no names
11 associated with them. Do you recall that? 13:01:17

12 A. Yes, I do.

13 Q. I'm going to ask you about your professional concerns about
14 that large fraction that were -- had no names associated with
15 them. 13:01:34

16 How large was that fraction?

17 A. About 30 percent.

18 Q. And what is your concern with that?

19 A. That we know nothing about those cases. We don't know if
20 they are the same as those that were retained; we don't know if 13:01:43
21 they're very different. We don't know if there's a random
22 distribution of missing data, which means that we don't know
23 what kinds of distortions are in the data. The traffic stops
24 that were excluded may have been very different.

25 So let's take the variable of interest being Hispanic. 13:02:02

1 It could be the case that if we had full data, the fraction of
2 Hispanics would be very different. It could be much higher,
3 could be lower. All those excluded cases just loom out there
4 as a problem, a significant problem, 'cause it's a very large
5 fraction. If it was 1 percent it wouldn't make as much
6 difference.

13:02:19

7 Q. And would that problem give a professional in the field
8 more or less confidence in the outcome of the analysis?

9 A. Whenever you have missing data, you always have less
10 confidence in the analysis. And the more missing data and the
11 less you know about it, that confidence gets even -- that lack
12 of confidence gets even bigger. So the more cases that are
13 missing and the less you know about those cases, the less
14 confidence you have in any kind of analysis you do with the
15 remaining cases.

13:02:36

13:02:52

16 Q. When you say that you know less about the missing data, why
17 is that a problem?

18 A. Well, if we knew, for example, that the missing data looked
19 exactly like the data that we do have information for, then we
20 could at least say that we don't have a selection bias.

13:03:08

21 Selection bias is the idea that you have data that is
22 unrepresentative of the universe that you're interested in, and
23 the universe that we're interested in is traffic stops. But if
24 you're missing 30 percent of them, the remaining 70 percent may
25 give you lots of false information about the whole universe

13:03:28

1 because you're missing all these cases.

2 Q. Regardless of these problems with the data, nevertheless,
3 you undertook an effort to examine the data, is that correct?

4 A. That's true, yes.

5 Q. And what were you looking for?

13:03:43

6 A. I was asked to look for evidence of bias against Hispanics.
7 Are they being stopped at -- are they being targeted for
8 enforcement.

9 Q. And did you produce a report?

10 A. I did.

13:03:59

11 Q. And did that report contain some tables?

12 A. Yes.

13 Q. And figures?

14 A. Yes.

15 MR. LIDDY: Your Honor, at this time I would like to
16 use the court document camera in order to put up one figure
17 from Dr. Camarota's report, which has already been admitted by
18 stipulation as Exhibit 402, and publish it to the witness and
19 the Court.

13:04:22

20 THE COURT: You may do so.

13:04:45

21 BY MR. LIDDY:

22 Q. Doctor, do you see what is labeled there as Figure 1?

23 A. I do.

24 Q. And would you read the title of Figure 1 for us, please.

25 A. Hispanic share of MCSO stops compared to Maricopa County

13:05:01

1 and Arizona.

2 Q. And do you recognize this as a demonstrative figure which
3 you included in your report?

4 A. I do.

5 Q. What were you trying to convey to the readers by your
6 creation of this figure?

7 A. I think there are two important points here.

8 One is if you look at the blue line, that is doing
9 name checks, not incident checks but name checks, what fraction
10 of name checks by MCSO -- and the dates here, by the way, which 13:05:12
11 I think are being cut off at the bottom, are 2005 to 2009,
12 though we don't have complete data for 2009. It's only through
13 October. 13:05:31

14 But in any event, the blue line shows the fraction of
15 stops that are -- have a Hispanic surname using a 70 percent 13:05:45
16 list, or 70 percent threshold. That is, the names in the
17 census 70 percent of the time or more did a person indicate
18 that they were Hispanic who had that last name. So it's a
19 pretty robust measure of Hispanic surnames.

20 And what you see is using that list, that the fraction 13:06:08
21 is somewhat less for most years than is the overall share of
22 Maricopa County or Arizona in terms of Hispanics. Or maybe put
23 it different way, using a 70 percent surname list, Hispanics
24 are being stopped at roughly or maybe slightly less than their
25 share of the overall population. 13:06:33

1 Q. And why is that significant to your inquiry?

2 A. Well, one of the things we would suspect is if Hispanics
3 are being targeted systematically by MCSO, we would expect, for
4 one thing, that they're -- the rate at which they're being
5 stopped relative to their share of the local population or the 13:06:51
6 state would be much higher.

7 THE COURT: Dr. Camarota, just for my placement -- I
8 hope this will facilitate things for you, too, Mr. Liddy --
9 this deals with all the T data?

10 THE WITNESS: Yes. 13:07:06

11 THE COURT: So this is all stops not related to what
12 we've been referring to in this trial as saturation patrols --

13 THE WITNESS: No. Absolutely, yes, sir, this is all
14 stops.

15 THE COURT: Thank you. 13:07:15

16 THE WITNESS: Yes. And it goes back farther than any
17 of the saturation stuff that we've been talking about. This
18 goes back to 2005 forward.

19 THE COURT: Yes, I follow.

20 THE WITNESS: So the share of the population that is 13:07:25
21 Hispanic is not the only thing to think about. Other things
22 can matter. But it's an important part of thinking about this
23 issue of bias or targeted or racial profiling. And what we see
24 here first is that the Hispanic share of stops is simply not
25 out of line with the basic demographics of Maricopa or Arizona. 13:07:47

1 BY MR. LIDDY:

2 Q. But there would be other variables that you would want to
3 inquire about, is that correct?

4 A. Sure, there are other things that would matter. It's not
5 simply that it settles the issue, but it's an important part,
6 it's important information to know how -- what the background
7 demographics are relative to the percentage. 13:08:00

8 Q. And what might some of those other variables be?

9 A. Oh, well, you would want to know, for example, if Hispanics
10 drive a lot less in Maricopa County, or something like that; or 13:08:18
11 are they -- are they much more likely to somehow then come in
12 contact with police, or more likely? So there are other things
13 you'd want to know than just the basic demographics.

14 The other thing, if I could point out one other
15 thing -- 13:08:39

16 Q. Sure.

17 A. -- that I think is important here is that putting aside the
18 issue of demographics, there's no obvious trend in the data.
19 And yet, in Arizona we know that the issue of illegal
20 immigration became much more salient. 13:08:50

21 So if MCSO deputies are targeting Hispanics as a
22 consequence, we would have expected that the share that's
23 Hispanic to go up over time. It doesn't. It roughly stays --
24 it fluctuates a little bit, but it's pretty constant over this
25 time. 13:09:10

1 Q. In your inquiry did you learn of a time when the issue of
2 illegal immigration became more salient in Maricopa County?

3 A. Well, it certainly became more salient over this time
4 period. For example, I think in 2007 is when the HSU unit is
5 created. But the creation of that unit does that appear to
6 have created some trend in the data, at least over these five
7 years of which I had information.

13:09:25

8 Q. And just so we're clear, what information were you looking
9 at in that CAD data from 2005 to 2009 when you drew these
10 conclusions? Or made these observations, excuse me.

13:09:42

11 A. I'm looking at the -- I'm doing a Hispanic surname
12 analysis, a 70 percent threshold, so I'm looking at a Hispanic
13 surname over these five years. So I'm looking at the names in
14 the comments field.

15 Q. And where did you get your Hispanic surname analysis list?

13:09:56

16 A. The list came from the 2000 Census.

17 Q. Thank you.

18 I'd like to direct your attention now to figure 6 from
19 that same report that's been admitted into evidence. Can you
20 see that?

13:10:18

21 A. Yes, I can.

22 Q. And read along with me. It says: Hispanics have
23 dramatically lower socioeconomic status in Maricopa County?

24 A. Yes.

25 Q. What do you mean by that?

13:10:27

1 A. I mean here we just see four measures of -- that typically
2 researchers use when we think about socioeconomic status,
3 though there might be others. We look at poverty. The
4 fraction of Hispanics in Maricopa County who are in poverty is
5 almost two and a half times the share for non-Hispanics.
6 That's the first column, 23 versus 9.7.

13:10:44

7 The second column shows the fraction under 200 percent
8 of poverty, a commonly used measure for a variety of reasons.
9 You might call people below this amount the low-income
10 population. The non-Hispanics are 22.3; the Hispanics are more
11 than twice that at 53.6.

13:11:04

12 This is all from the American community survey. The
13 survey asks people whether they speak English and do they speak
14 it very well. And 48 percent of Hispanics in that survey said
15 that they speak English less than very well, compared to about
16 3 percent of the non-Hispanic population.

13:11:23

17 And this last one is less educated. This is persons
18 who -- who are adults who have not completed high school, and
19 it's almost 43 percent for Hispanics compared to 8 percent for
20 the non-Hispanic populations.

13:11:41

21 So for me, the takeaway point here is something you
22 might know, but it's important, I think, to have the numbers,
23 is that there are enormous differences in the socioeconomic
24 status of Hispanics and non-Hispanics in Maricopa County. The
25 gap between the two groups is extraordinarily large.

13:11:57

1 Q. And when you refer to socioeconomic variables, you're
2 referring to poverty as one?

3 A. Yeah, poverty would be one.

4 Q. And the ability to speak English, quote, very well, end
5 quote, is another? 13:12:12

6 A. Yes.

7 Q. And the education level is a third?

8 A. Yes.

9 Q. Now, tell me, why would these variables be of interest to
10 an academic examining whether or not there may be racial 13:12:23
11 profiling in law enforcement stops in Maricopa County?

12 A. Because they may matter -- they matter to a whole variety
13 of social outcomes and to social phenomenon. In sociological
14 research, the socioeconomic status of the person is almost
15 always included because it can have such a big impact. 13:12:43

16 In the case of traffic stops, let's think of an
17 example. If you have a policy of trying to pull everyone over
18 who has an equipment violation, it's very possible that people
19 with low incomes are going to have more difficulty, you know,
20 meeting the equipment standards of whatever their jurisdictions 13:13:06
21 require, and so they're much more likely to get pulled over.

22 The --

23 Q. Is that be -- I'm sorry. Go ahead and finish.

24 A. I was just going to say 46 states actually provide some
25 assistance to their low-income population to help them to 13:13:18

1 maintain their cars, because they recognize that it's often
2 very difficult for people who have low incomes to maintain
3 their cars.

4 Q. Where did you learn of that statistic, 46 --

5 A. It's in a GAO report, they surveyed the states. 13:13:31

6 Q. What does GAO stand for?

7 A. It used to stand for General Accounting Office; now it
8 stands for Government Accountability Office. They changed the
9 name.

10 Q. So that's a government statistic. 13:13:43

11 A. Yeah. Yes. Yes.

12 Q. And one that someone in your field would normally refer to
13 in examining these sorts of questions about socioeconomic
14 status?

15 MR. YOUNG: Objection, leading. 13:13:52

16 THE COURT: I'm going to overrule the objection.

17 But I'm going to ask what statistic is it we're
18 talking about, the 46 percent of states provide assistance?

19 MR. LIDDY: Would you like me to answer or the
20 witness, Your Honor? 13:14:06

21 THE COURT: I'm going to ask the witness to answer.

22 Is that the statistic?

23 THE WITNESS: I think that's what -- that 46 out of 50
24 states provide assistance to their low-income residents,
25 according to the GAO, to help them maintain their cars. 13:14:15

1 THE COURT: All right. And from that you have drawn
2 the inference that poor folks in Maricopa County have cars in
3 worse repair?

4 THE WITNESS: No. I draw the inference that that's a
5 very real possibility, and it's something you'd want to control 13:14:26
6 for if you -- if you want to compare what's happening on a
7 saturation patrol.

8 THE COURT: But it wouldn't give rise to any
9 particular number. You couldn't use that to arrive at any sort
10 of a number of how many Hispanics have cars that are in less 13:14:36
11 good repair than -- than, say, the non-Hispanic population?

12 THE WITNESS: No, just -- no.

13 THE COURT: It's just a fact.

14 THE WITNESS: Just a fact, right.

15 THE COURT: All right. 13:14:48

16 BY MR. LIDDY:

17 Q. So it's just a fact that you would want to control for when
18 looking at the differences between the rate at which people
19 with Hispanic names are stopped and people with non-Hispanic
20 names are stopped? 13:14:57

21 A. Yes, it's something that you'd want to think a lot about,
22 because socioeconomic status is so highly correlated with being
23 Hispanic. Otherwise, you might get a spurious correlation, a
24 spurious relationship.

25 In statistics, that means something looks like it's 13:15:13

1 being caused by one thing, but it's in fact being caused by
2 something else, because some other variable, some other
3 phenomenon, is so closely connected. And that other factor is
4 said in that context to be confounding your statistical
5 results.

13:15:31

6 I can give you an analogy if you think that would be
7 helpful.

8 Q. Sure. If you think it would help the Court, let's hear
9 your analogy.

10 A. So just for example, and I believe I put this one in the
11 paper, that you could find, doing a statistical analysis, that
12 the larger someone's foot is, the higher their income. And you
13 might conclude well, therefore, foot size has a positive impact
14 on income, increases it.

13:15:39

15 But the problem is foot size is highly correlated with
16 gender. So it's not that people with big feet make more money;
17 it's that in fact, men tend to make more money. But if you
18 don't have men as one of the factors, one of the control
19 variables in your analysis, you might mistakenly conclude that
20 it's foot size, because those two things are so highly
21 correlated.

13:15:54

22 And so that -- and in this case, why this is so
23 relevant is these enormous differences between the two
24 populations at issue, Hispanics and non-Hispanics, as a
25 potential confounding factor.

13:16:13

13:16:27

1 Q. Okay. I want to back up a little bit and talk about the
2 universe of CAD data that you had at your disposal to examine.

3 A. Um-hum.

4 Q. I believe you testified prior to the lunch break that it
5 was difficult data to use.

13:16:43

6 A. Very.

7 Q. When you encountered these difficulties, did you reach out
8 to anyone in particular to try to learn more about the CAD
9 data?

10 A. Yes, Scott Jefferys, the CAD coordinator.

13:16:54

11 Q. CAD coordinator for --

12 A. Maricopa County. That's his -- he supervises; he's the
13 guru, if you will, of this data.

14 Q. Does he work, as far as you know, for the Maricopa County
15 Sheriff's Office?

13:17:10

16 A. I think he is a sheriff's office employee. I'm not a
17 hundred percent sure of that, but I think so.

18 Q. And how did you know to reach out to him if you had
19 questions about this CAD data?

20 A. Oh, when the data was provided to me, they mentioned Scott
21 is the expert, and I think that that -- the CAD data, as I
22 recall, actually gives his phone number in there somewhere, if
23 you can call him.

13:17:19

24 Q. Do scholars in your field -- let me strike that.

25 Is it the normal course and practice for scholars in

13:17:36

1 your field to reach out to people who work with databases on a
2 daily basis for assistance in learning how to make inquiries
3 into that database?

4 A. Sure. If you are working with new data, particularly
5 administrative data, you would want to talk to the person who
6 is the expert in that so that you don't make mistakes.

13:17:54

7 I was a lead -- give you an example very quickly. I
8 was a lead supervisor for work at the census bureau evaluating
9 their data, and many times during the course of that we would
10 contact the people who were responsible for collecting it and
11 collating and so forth to make sure we understood the structure
12 of that data and so forth, because it was complex and it was
13 easy to make mistakes.

13:18:11

14 Q. Now, you've talked about your concern about the large
15 fraction of CAD data with no names associated with them as an
16 area of concern for you.

13:18:25

17 A. Yes.

18 Q. Were there other characteristics of this CAD data that
19 caused you to be concerned?

20 A. Well, there's all kinds of things with the CAD data. Let
21 me give you one example. There's no quality control with CAD
22 data. The officers never review it to see if in fact the --
23 the information that they -- if they made a mistake. No one is
24 in charge of checking with the officer. There's no attempt to
25 verify the accuracy of anything in there. So the CAD data has

13:18:37

13:18:55

1 no quality control.

2 There are other issues. It may surprise -- well, it
3 seems surprising to me not -- there are non-MCSO traffic stops
4 within the CAD data. For example, it's apparently the case
5 that the Park Service uses the dispatch service and they record
6 some of the CAD data is Park Service, it's not MCSO. And I
7 believe it's the Youngtown -- Youngstown Police Department.
8 That data is in here, too, because for whatever reason they
9 dispatch for them. And I don't know what other ones, but
10 they're two that I can recall.

13:19:14

13:19:33

11 So when we're looking at CAD data, not every single
12 case, if you're not careful, anyway, is -- is MCSO.

13 Q. So not every stop is an MCSO stop?

14 A. That's right.

15 Q. There's a large fraction with no names associated with the
16 incident report?

13:19:49

17 A. Yes, that's correct.

18 Q. There's no quality control for the veracity of the
19 information recorded on the CAD data?

20 A. That's correct.

13:19:59

21 Q. Can you think of any other shortcomings of this CAD data?

22 A. The biggest shortcoming is trying to pull out the names,
23 because they're not stored in a regular fashion in the comments
24 field. It's an enormous challenge and an enormous problem.

25 Q. All of these shortcomings combined mean what to a scholar

13:20:17

1 making such an inquiry that you're making?

2 A. Well, I mean, they would impact how much weight you should
3 give any analysis that you do with it, given all these problems
4 with the data that you -- that you'd want to recognize that all
5 these missing cases and all these unknowns, that's an important
6 issue. 13:20:35

7 Q. By weight, what exactly do you mean?

8 A. Well, how -- well, how should I put this? Let me think.

9 When I say how much weight, how -- you know, how --
10 how seriously -- maybe that's another way to put it -- do you
11 take any numbers from something that you have all these
12 problems with. 13:20:54

13 Is that helpful?

14 Q. I'll let the Court decide if it's helpful or not.

15 Did there come a time when you learned that there is
16 another scholar who looked at CAD data making similar inquiries
17 to yours? 13:21:08

18 A. Yes.

19 Q. Who was that?

20 A. Dr. Ralph Taylor. 13:21:22

21 Q. And were you provided with a copy of his report?

22 A. I was.

23 Q. And were you given an opportunity to examine it?

24 A. Yes.

25 Q. Will you tell us what you found of interest in his report. 13:21:33

1 A. Well, he had an original report, and looking at his
2 original data was one of the first things, and one of the first
3 big issues that came up was that he had failed to delete some
4 cases and had also failed to include cases.

5 In other words, there were names available that he
6 didn't use, but he also kept in his first report duplicate
7 names because sometimes an officer has to call in a lot of
8 names. That information is recorded sometimes in the comments
9 field, but then you have to go into the comments field and
10 delete one and keep -- and keep one, and that's a real
11 challenge.

13:21:59

13:22:16

12 So the first report he had a series of data issues,
13 and then he revised that report and significantly reduced the
14 number of cases. But unfortunately, when he did that, he
15 introduced a whole set of new problems.

13:22:38

16 Q. So you examined two separate reports from Dr. Taylor?

17 A. Yes, two separate reports and two separate sets of data.

18 Q. And what were some of the concerns you had with the second
19 report or the rebuttal report?

20 A. Right. In the -- in the second report he missed an
21 enormous number of names for his universe. Now, my universe I
22 was mostly interested in people or I focused on Ts. Okay?
23 People who were traffic stops in the initial code.

13:22:51

24 He went from the final disposition and he looked at
25 T 910s, that's a traffic stop or citation. And so that's what

13:23:14

1 he was using, so that's his universe, right?

2 Q. Did you have concerns with that?

3 A. I -- I do. Would you like me to talk about those first?

4 Q. Yes, please.

5 A. Well, one of the issues is that you have cases, like, for 13:23:27

6 example, there are something like 1344, I believe, suspended

7 licenses where the initial code is a T. The person is pulled

8 over, seemingly using the exact kind of discretion that

9 Dr. Taylor says that he's interested in. But the final

10 disposition code, because it's not a T or 910, it's entirely -- 13:23:47

11 he drops that case from his analysis.

12 So the officer pulls the person over, subsequently

13 learns that, you know, they don't have a valid driver's

14 license, and Dr. Taylor drops them because the final code is

15 not a T or a 910. Yet in his report he states he's interested 13:24:06

16 in traffic stops that involve discretion, that -- which would

17 seem to exactly fit the case I give.

18 I think the number is almost 400 DWIs or felony DWIs

19 that he excludes because the final code, again, is not T or

20 910. 13:24:27

21 Q. So are you referring to incidents recorded in the CAD data

22 for which names were associated --

23 A. Yes.

24 Q. -- that Dr. Taylor intentionally --

25 A. Yes. 13:24:38

1 Q. -- moved out of the universe for his examination?

2 A. Right, because he was so focused on the T 910s. He
3 excluded things like that. And there are some others, I guess
4 felony possession of alcohol, or felony possession of drugs, if
5 someone was wanted on a warrant. There were series of things
6 that seemed to begin as traffic stops, they're coded as Ts
7 initially, and then -- but they're not T 910 as the final
8 disposition, and so Dr. Taylor consciously excludes all those
9 cases.

13:24:51

10 Q. In your examination of Dr. Taylor's rebuttal report did you
11 find any incidents of exclusions that were unintentional?

13:25:07

12 A. Yes. Yes. As I recall, there were 16,804 incidents in
13 which there were names, and they are part of his universe,
14 T 910s, that he excludes.

15 Apparently, he missed them in the comments. The way
16 they were stored there and the algorithm that he wrote missed
17 them.

13:25:35

18 So let me help you understand. So the upshot of that
19 is if you look at all the incidents that are T 910 as a final
20 disposition, exactly his universe, not my universe, his
21 universe, I believe it's 36.7 percent of all those are
22 excluded. And the reason it's higher than that other figure I
23 gave is mainly because there were a bunch of names available
24 and he just missed them.

13:25:55

25 Q. So when you say 37 percent of his universe of Ts and 910s,

13:26:12

1 final disposition were excluded --

2 A. Yeah.

3 Q. -- you're combining the intentional exclusions and the
4 unintentional exclusions?

5 A. I'm combining the -- where there's no name with the names 13:26:24
6 he missed. The names he intentionally excluded, or the cases
7 he intentionally included, which is maybe roughly another 5300,
8 that's a different group.

9 Q. So you would add that 5300 intentionally excluded as -- to
10 the universe of total incidents that were excluded by 13:26:45
11 Dr. Taylor?

12 A. Right, because he says the -- you know, they don't --
13 they're his T 910s or 910 Ts. So there are three separate
14 problems, in my view, with his analysis, or with his data
15 preparation, or maybe I shouldn't talk about -- there's all the 13:27:02
16 cases where there's no name. Then there's all the cases where
17 he missed the name. And then there's all the cases where he
18 consciously excluded. So there's three --

19 Q. So in your professional opinion, in the instances where
20 there were no names, Dr. Taylor had no choice but to exclude 13:27:16
21 them.

22 A. Yes, I would say so.

23 Q. And in the instances where there were names, but they were
24 in the comment data and hard to find --

25 A. Right. 13:27:28

1 Q. -- it --

2 A. It's just a mistake.

3 Q. Or an accident?

4 A. Or an accident, yeah.

5 Q. And then the others in which he intentionally excluded
6 because the final call type was different --

13:27:34

7 A. Yes.

8 Q. -- was intentional?

9 A. Yes, that's correct.

10 Q. And combined, would you say that's a large fraction of the
11 entire universe excluded, or not so large?

13:27:42

12 A. Yeah, it's more than one out of every three cases. One out
13 of every three incidents.

14 Q. Is that problematic from your standpoint?

15 A. Yes, potentially very problematic.

13:27:56

16 Q. Why?

17 A. Because you could introduce a lot of selection bias.

18 Let me give you one example. I can't say -- I can't
19 tell you that much about the cases where there's no names. But
20 let's look at the ones where they were T 910s final
21 disposition, that 1600 -- yeah, 16,804 that he excluded.

13:28:08

22 If you look at those, they don't look exactly in the
23 one way that I was able to measure like the cases that he
24 retained. It looks like in his -- as I recall, I'm doing this
25 from memory, but in his -- in his incident file, 81 percent of

13:28:31

1 incidents are 910s. But in the names that he missed it's
2 64 percent 910s, which suggests that there's some significant
3 difference between all these excluded names or these missed
4 names than -- and it's not exactly the same as the data that he
5 retained.

13:28:55

6 Q. Why is that --

7 MR. YOUNG: Your Honor, I do have to interject an
8 objection. I guess it will be a motion to strike the last
9 answer.

10 This subject and that particular point is not in his
11 expert report and was not disclosed to us prior to the trial.
12 And, therefore, I believe under Rule 26 ought to be excluded.

13:29:04

13 MR. LIDDY: Your Honor, I'm not asking him about his
14 expert report; I'm asking him about his examination of
15 Dr. Taylor's report.

13:29:21

16 THE COURT: Did you depose this witness?

17 MR. YOUNG: Yes, and it was not in his deposition,
18 either.

19 THE COURT: Did you ask him questions that would have
20 led to this testimony?

13:29:34

21 MR. YOUNG: Yes. I asked him, Please tell me all the
22 problems you have with Dr. Taylor's opinions, either in his
23 first or his second report, and I don't think this was part of
24 that answer.

25 THE COURT: All right. What I'm going to do is I'm

13:29:47

1 going to ask you to find that portion of the deposition and
2 show it to me, and I will strike this testimony if I find that
3 you asked the question and you didn't receive this -- this
4 information in your answer.

5 But I'm going to have to allow you to look that up, 13:30:01
6 and so I'm going to conditionally allow the testimony, and then
7 I may strike it later.

8 MR. YOUNG: Thank you, Your Honor.

9 MR. LIDDY: Thank you, Your Honor.

10 BY MR. LIDDY: 13:30:19

11 Q. In your examination of Dr. Taylor's rebuttal report, what
12 were his findings?

13 A. Well, overall he also finds that the fraction of traffic
14 stops that were Hispanic were roughly in line with the basic
15 demographics of Maricopa and Arizona. But then he also is very 13:30:47
16 much focused in -- there's two main areas that he's
17 particularly interested in. One is saturation patrols, and the
18 other is length of traffic stop.

19 And when he -- well, let -- let's put it this way.

20 One of the areas that there is concern in terms of the 13:31:10
21 saturation patrols is that he's not able to find them all. He
22 says that he has to exclude about one-seventh of the major
23 saturation patrols. So he's trying to generalize about the
24 conditions or the possibility of Hispanic -- of Hispanics being
25 targeted in saturation patrols, but he -- he has to exclude, I 13:31:31

1 think he has 11 of 13. So about one-seventh of the saturation
2 patrols he can't identify in the data, or the officers
3 involved.

4 So he -- he just -- he just -- they don't -- they're
5 not part of his saturation patrol. And that's disconcerting, 13:31:53
6 because if you're interested in major saturation patrols, you'd
7 like to have them all, because you'd like to know what those
8 other two were like. Were they similar? Were they different?
9 Would you get the same results if they were in there? So I
10 think that's an important question that he doesn't have in 13:32:07
11 there, so was -- I'm sorry.

12 MR. YOUNG: Your Honor, same objection, but we'll deal
13 with it after the testimony.

14 BY MR. LIDDY:

15 Q. How did Dr. Taylor identify who saturation patrol officers 13:32:20
16 were in his report?

17 A. Yeah, he looked at a roster, he looked at when the
18 saturation patrols were, and then he looked at a roster and he
19 tried to match the officer to the saturation patrol so that he
20 would know which calls were associated with that saturation 13:32:38
21 patrol.

22 Q. And does that cause any concerns for you?

23 A. Well, as I've been told is that not all officers involved
24 in saturation patrols necessarily filled out that roster, so it
25 was the case that it's not complete. 13:32:58

1 Q. But you have no reason to believe that the percentage of
2 officers who work on saturation patrols that did not fill out
3 the roster is a large percentage?

4 A. I don't know the percentage. It's out there. I don't
5 know.

13:33:13

6 Q. What is a goodness of fit statistic?

7 A. A statistic that is used by statisticians when they have a
8 kind of statistical model, and they try to evaluate the overall
9 explanatory power of the model. How much of the variation in
10 something, how much of the dependent variable is explained by
11 these variables that you've put into your equation.

13:33:52

12 So if you've ever -- so, for example, you might think
13 of it as one common goodness to fit statistic is R squared or
14 adjusted R squared in regression. And it tells you, at least
15 in theory it's supposed to tell you, how much of the variation
16 are you accounting for when you include all these statistics or
17 all these variables in your model. So it's an important to
18 evaluate the overall strength of a model.

13:34:14

19 Q. Did you find a goodness of fit statistic in Dr. Taylor's
20 report?

13:34:38

21 A. No. Oddly enough, in a logistic regression there are many
22 different ones that he could have used. He doesn't provide
23 any. So when you're evaluating the overall power of his model,
24 it's not there. Which seems odd to me, because you'd -- the
25 reason a goodness of fit is so important in thinking is: Are

13:34:52

1 there admitted variables? Are there things unaccounted for in
2 this model? The goodness of fit provides insight into that
3 kind of issue, that kind of problem.

4 Q. Does the lack of goodness of fit give you -- statistic give
5 you more or less confidence in Dr. Taylor's findings? 13:35:12

6 A. I'd have more confidence if it was there. The lack of it
7 reduces my confidence in his results.

8 Q. Do you know what statistical software Dr. Taylor used for
9 his inquiry?

10 A. I'm reasonably sure he used Stata. I'm almost certain. 13:35:25

11 Q. Do scholars that use that software have the ability to
12 create a goodness of fit statistic?

13 A. Yeah, there's a command called fit stat that will just give
14 you that when you do a logistic regression, and it spits out, I
15 think, five or six of them, different ones you could report. 13:35:45

16 Q. So there's a command called what?

17 A. Fit stat. F-i-t --

18 Q. Let me ask the question. Did you say fit stat?

19 A. Yes.

20 Q. And that's a command inside that software? 13:36:02

21 A. In Stata, yes.

22 Q. How does one use the fit stat in order to acquire the
23 goodness of fit statistic?

24 A. You type it into a command line as part of your other
25 commands, and then when you run the -- the program, it then 13:36:20

1 puts out the statistics for you.

2 Q. Is it difficult to do?

3 A. No.

4 Q. What was the total number of type T or type 910 final
5 disposition instances in Dr. Taylor's final report?

13:36:40

6 A. Yeah, in his final reprocess data, I think it's 106,804
7 incidents.

8 Q. And how many, in the total universe of type T 910 final
9 dispositions, in the years of his inquiry?

10 A. It's 168,869, I believe. So that -- so that that would
11 mean there's about 37 percent.

13:37:03

12 Q. Did you find any description of the random distribution of
13 the excluded data in Dr. Taylor's rebuttal report?

14 A. No.

15 Q. Did you find that Dr. Taylor examined saturation patrol
16 officers' stops separate from, as he defined, nonsaturation
17 patrol officers?

13:37:27

18 A. Yes, that is part of his analysis.

19 Q. And how did he define a saturation patrol officer?

20 A. I believe he used those rosters and he tried to identify
21 those who were assigned on saturation patrol days to saturation
22 patrols based on the date of the saturation patrol and the
23 roster.

13:37:56

24 Q. Did you have the opportunity to look at the units from
25 which those saturation patrol officers were assigned?

13:38:12

1 A. Yes.

2 Q. What did you find?

3 A. Well, they were overwhelmingly from two units in
4 particular, as far as I could tell, from his data. They were
5 on the HSU and Lake Patrol. I believe the overall percentage
6 is about 70 percent of all the stops that he identifies as a
7 saturation patrol come from those two units.

13:38:26

8 Q. Do you find that significant?

9 A. Well, if you remember, in my report, in table 1, one thing
10 you'll notice is that those are somewhat unusual units. One
11 has a very high Hispanic percentage and one has one of the more
12 lower Hispanic percentages. I guess these things represent,
13 you know, the kinds of work that those two units do.

13:38:45

14 So it would have been a good idea to try to control
15 for the unit involved because when you then compare it when
16 it's on sat patrol or when it's not on sat patrol, it would be
17 nice to know which units, you know, the -- how should I say
18 this? It would be nice to know which units are stopping whom.
19 And that information is in the CAD data, so you could have
20 created a variable that would have identified the unit
21 involved.

13:39:02

13:39:23

22 Q. And if such a variable were created and controlled for,
23 would you have more or less confidence in Dr. Taylor's report?

24 A. I'd have more.

25 Q. Did you inquire about the patrol area of Lake Patrol

13:39:34

1 officers on nonsaturation patrol days?

2 A. I have in my report their general, the -- their stops. So
3 they have a relatively lower Hispanic percentage, I found.

4 Q. On nonsaturation patrol days?

5 A. Just generally they do. They have -- they're on the lower 13:39:56
6 end of the --

7 Q. Earlier you testified that you believed it was significant
8 to know the overall Hispanic population of Maricopa County when
9 making this inquiry. You recall that?

10 A. Yes. 13:40:10

11 Q. Would it be of interest to you to know the overall Hispanic
12 population of the patrol area of Lake Patrol when there are
13 nonsaturation patrol days?

14 A. Yes, that -- that's why in that kind of -- if you had -- if
15 you had controlled for the unit, it would have made -- he would 13:40:28
16 know something like that, or he would have -- he would have
17 taken that into account in his statistical model.

18 Q. So why is it your opinion that it's significant that
19 70 percent of the saturation patrol officers, as defined by
20 Dr. Taylor, were from HSU and Lake Patrol? 13:40:45

21 A. Because it potentially could affect his results, because
22 the way in which he does his analysis is to compare when these
23 officers are assigned to saturation patrols to when they're
24 not. So it's important to think a lot about how these units
25 differ. 13:41:05

1 He also does comparisons in the report between just
2 saturation patrols and everything else as well, so it would be
3 a good idea to put the unit into the -- into the -- into the
4 model. Because -- especially because they're somewhat unusual
5 units.

13:41:20

6 Q. When Dr. Taylor was examining the saturation patrol stops
7 by saturation patrol officers, what's the total number of stops
8 that he was looking at?

9 A. I think it's around, I think, I'm just doing this from
10 memory, around 2,000, something like that, 2,066 names, not
11 incidents, smaller number of incidents. So it's about
12 1.3 percent of the total names that he looked at, I think
13 that's the number, 1.3 percent.

13:41:37

14 Q. Is that size as compared to the total universe of interest
15 to you in your inquiry?

13:41:58

16 A. Whenever you focus in on just one small part of the data
17 you certainly have to be cautious. One of things that raises
18 concerns is we move back to all those excluded cases. If
19 you've excluded tens of thousands of cases because you didn't
20 have information, and because maybe you missed stuff, and the
21 amount of stuff that you've excluded is much larger than the
22 small area of data that you're focused on, then the exclusion
23 of that data could have a big impact, especially if you don't
24 know anything about or very little about all that excluded
25 information, all those excluded cases.

13:42:18

13:42:37

1 So if you're -- if you slice the data very thin in the
2 context of a lot of missing data, you can kind of compound a
3 problem.

4 Q. When examining Dr. Taylor's report, were you able to
5 discern how he categorized stops that had both Hispanics and
6 non-Hispanics in the vehicle? 13:42:57

7 A. When he does his, as I recall, when he does his analysis of
8 length of stop, he -- if there -- if there's any person with a
9 Hispanic surname that he identifies, the whole stop is
10 considered Hispanic. So if there are four people in the car,
11 one with a Hispanic surname and three not, that's a Hispanic
12 stop in the length of analysis, as I recall. 13:43:20

13 Q. Is that a cause of concern for someone in your -- making an
14 inquiry such as yours?

15 A. Well, you'd want to worry about because it's not unam -- 13:43:36
16 it's not unambiguously a Hispanic stop. So -- it's a mixed
17 stop, and so you'd want to think long and hard about that
18 question, and you might want to try to control for that rather
19 than assigning them all as Hispanic.

20 Q. Would you control for that by running them once as Hispanic 13:43:56
21 stops and once as non-Hispanic stops?

22 A. That might be a way to do it, sure.

23 Q. Did you find anywhere in Dr. Taylor's rebuttal report that
24 he did that?

25 A. Yeah, I don't recall him doing that in his rebuttal report. 13:44:07

1 Q. I want to ask you about Hispanic surname analysis.

2 A. Um-hum.

3 Q. I think you testified earlier that to do so you used
4 U.S. census data. Where did you get your Hispanic surname
5 lists to use in your queries on this CAD data from Maricopa
6 County? 13:44:25

7 A. Yes. I ran several different Hispanic surname lists, some
8 provided by other scholars in the field. The list I ultimately
9 used was generated from the 2000 Census, and it used a
10 70 percent threshold. That means that in the 2000 Census that 13:44:45
11 the name -- that 70 percent of the time or more persons with
12 that last name identified as Hispanic. And that list is
13 available at the census bureau's website.

14 Q. And the individuals were asked to self-identify and provide
15 that information to U.S. census workers? 13:45:07

16 A. Right. It's part of -- was part of the census in 2000. So
17 they took everybody and they took names, and then they -- they
18 ran a frequency what -- what fraction of people who had that
19 last name said they were Hispanic. So it's based on
20 self-identification. 13:45:27

21 Q. Did you find anywhere in Dr. Taylor's reports that he
22 inquired as to whether the self-reporting in Maricopa County
23 was the same as the self-reporting done by the U.S. census
24 bureau?

25 A. No, there's no -- no. 13:45:44

1 Q. Would that be significant?

2 A. Well, it's a general, it's -- the list comes from the
3 United States, the whole -- it comes from the whole country.
4 So the -- oh, I'm sorry. Did you want me to stop?

5 MR. YOUNG: It's the same objection. We'll take care 13:45:59
6 of it after the testimony, Your Honor. Thank you.

7 BY MR. LIDDY:

8 Q. Go ahead and continue your answer, please.

9 A. Yes, there's no Hispanic -- the -- the list, the Hispanic
10 surname list has not been tested for this data, if that's what 13:46:12
11 you're asking. And there's no test in there to see if
12 Hispanics in Maricopa County respond the same way as Hispanics
13 across the country. The list is a nationally drawn list.

14 Q. Now, in your inquiry did you choose the 70 percent
15 threshold? 13:46:36

16 A. I did, but I ran several others and I report them in a
17 footnote.

18 Q. Okay. Why did you choose a 70 percent threshold?

19 A. I thought that was a good compromise, 'cause, remember,
20 there are names on that list where nearly a third of the people 13:46:45
21 who have that last name do not say that they're Hispanic. So
22 as you move down that list, let's say you're using a 60 percent
23 list, now you're getting to the point where there are some
24 names on that list where 40 percent of the people who have that
25 last name didn't respond that they were Hispanic in the census, 13:47:03

1 and yet if you use that list, they get considered to be a
2 Hispanic, a Hispanic person.

3 THE COURT: Can I ask a question? Let me just
4 interrupt you.

5 THE WITNESS: Yeah. 13:47:15

6 THE COURT: For your work you used a 70 percent
7 threshold?

8 THE WITNESS: Um-hum.

9 THE COURT: And that was a 70 percent threshold from
10 the U.S. census data? 13:47:20

11 THE WITNESS: Yes.

12 THE COURT: That wasn't 70 percent geared on some sort
13 of Maricopa County self-reporting data?

14 THE WITNESS: Right.

15 THE COURT: So you used -- to the extent you were 13:47:26
16 using thresholds, you were using the same thresholds Dr. Taylor
17 was using?

18 THE WITNESS: Yes, census-based data from the
19 national.

20 BY MR. LIDDY: 13:47:39

21 Q. As a scholar making the inquiry you were making, what are
22 some of the concerns you would have when using Hispanic surname
23 analysis?

24 A. Well, there's an error around it. You know, obviously,
25 no one in this data said they were Hispanic. No one -- there 13:47:55

1 isn't the officer's opinion of whether the person's Hispanic.
2 This is an imputation or an allocation. You are assigning
3 persons whether they're Hispanic or Hispanicity to a person
4 based exclusively on their last name.

5 What that means is obviously if a person, you know, 13:48:16
6 we've actually seen some, you know -- you know, there's
7 examples with -- an obvious example would be a person who is
8 married to someone who's Hispanic and takes their name, or a
9 person who is Hispanic and takes the name of their non-Hispanic
10 spouse, or a person who, say, from the Philippines would be 13:48:34
11 another classic example. There are Portugese names that can be
12 both Portugese and Hispanic. There are a few Italian names.
13 There's error around any Hispanic surname list.

14 Q. So it's not a specific criticism of Dr. Taylor's use of it,
15 it's just an innate weakness of this type of analysis? 13:49:01

16 A. Yes, it's innate problem, innate error around Hispanic
17 surname analysis.

18 MR. LIDDY: Your Honor, I'd like -- I'd like to use
19 the court document camera to publish Exhibit 399I that is
20 already in evidence and has been used previously. 13:49:58

21 May I have permission to do so?

22 THE COURT: Well, you may. I didn't -- it's not my
23 understanding that 399I is itself in evidence.

24 Am I wrong about that?

25 MR. LIDDY: Well, before I do that I think we should 13:50:16

1 clear that up.

2 MR. CASEY: It's a demonstrative.

3 MR. LIDDY: Okay, it's a -- you're correct, Your
4 Honor, it's for demonstrative purposes only.

5 THE COURT: I'm sure Mr. Young would be happy to admit 13:50:24
6 it in evidence if you were to withdraw your objection.

7 MR. LIDDY: I think the silence speaks for itself,
8 Your Honor. I'll use it as a demonstrative.

9 THE COURT: You may publish it.

10 MR. LIDDY: Thank you, Your Honor. 13:50:45

11 MR. YOUNG: Just to clarify, Your Honor, is this
12 exhibit in evidence now based on stipulation, or is it not?

13 THE COURT: Are you stipulating to admitting this
14 exhibit into evidence?

15 MR. LIDDY: No, I'm not, Your Honor. 13:50:53

16 THE COURT: All right. It is not in evidence.
17 It has been used as a demonstrative.

18 BY MR. LIDDY:

19 Q. Dr. Camarota, do you recognize this table from Dr. Taylor's
20 report? 13:51:11

21 A. Yeah, it looks familiar.

22 Q. And I would ask you to direct your attention down where I'm
23 pointing right here, where it says all days saturation patrol
24 days versus others.

25 You see that? 13:51:29

1 A. Yes, I do.

2 Q. And directly below that you see where it says using
3 90 percent probability threshold for Hispanic name?

4 A. Yes.

5 Q. Just below that it says official saturation patrol day.

13:51:40

6 You see that?

7 A. Yes.

8 Q. And then on the second column here it says no.

9 Do you see that?

10 A. Right.

13:51:53

11 Q. What does that "no" mean to you?

12 A. It's not a saturation patrol day.

13 Q. If you'll follow down here to this figure 21.82, see
14 Hispanic, 21.82 percent.

15 You see that?

13:52:10

16 A. Yes.

17 Q. What does that figure mean to you?

18 A. That's the share of persons who had a Hispanic surname
19 using the 90 percent threshold.

20 Q. The share of what?

13:52:23

21 A. Of those stopped on the nonsaturation patrol days.

22 Q. So on a nonsaturation patrol day --

23 A. Oh, no, wait. Wait. Wait. Official saturation. No. So
24 it's the share of people stopped on a nonsaturation patrol day,
25 right.

13:52:39

1 Q. So it would be fair to read that that on a nonsaturation
2 patrol day, 21.82 percent of the stops for which names were
3 available --

4 THE COURT: You know, can I stop you, Mr. Liddy?

5 MR. LIDDY: Yes, Your Honor. 13:52:53

6 THE COURT: I want to make sure that I'm
7 understanding.

8 As I recall Dr. Taylor's testimony, these weren't
9 stops, but these were inquiries about Spanish names after
10 stops. 13:53:02

11 Am I misremembering that?

12 MR. LIDDY: I don't --

13 THE COURT: The number of inquiries about Hispanic
14 names after stops compared to those inquiries on -- both on
15 saturation patrol days and nonsaturation patrol days. 13:53:20

16 In other words, I don't think there's anything in here
17 that reveals numbers of stops, tracks stops. What it does is
18 it compares inquiries about persons who have Hispanic surnames.

19 Isn't that what it does?

20 MR. LIDDY: I believe that's correct, Your Honor, but 13:53:35
21 just so that we're on the same sheet of music, this is CAD
22 data. And CAD data, by its very nature, only records the
23 inquiries that are being made by the police officers that are
24 using the radio dispatch.

25 THE COURT: I understand that. 13:53:51

1 MR. LIDDY: Right. So --

2 THE COURT: But I think that we've already established
3 that there could be stops that are not here, there could be all
4 kinds of stops. But as I recall what Dr. Taylor was doing,
5 maybe, Mr. Young, you can correct me if I'm wrong, was
6 comparing Hispanic -- inquiries on Hispanic surnames.

13:54:02

7 MR. YOUNG: I believe you're right, Your Honor.

8 THE COURT: Okay. I just want to make sure that I'm
9 not missing the boat --

10 MR. LIDDY: I think you're on the boat, Your Honor.

13:54:16

11 THE COURT: All right.

12 BY MR. LIDDY:

13 Q. So Dr. Taylor, this 21.82 figure to you means what?

14 A. That on nonsaturation patrol days, 21.8 percent of those
15 names checked were Hispanic.

13:54:32

16 Q. According to the U.S. census surname 90 percent list.

17 A. Right.

18 Q. And for this time period of the inquiry, what was the share
19 of the Hispanic population of Maricopa County?

20 A. Around 30 percent through this time period, for the three
21 years that he's doing his analysis.

13:54:51

22 Q. And if you'll follow along with me over to the next column,
23 which says yes.

24 Do you see that?

25 A. Yes.

13:55:04

1 Q. And the figure is 25.8 percent.

2 You see that?

3 A. Yes.

4 Q. What does that figure indicate to you?

5 A. That is the share of stops on when it's a saturation patrol 13:55:12
6 day. So 25.8 percent of names checked --

7 THE COURT: Again, I'm sorry for stopping you, it's
8 not stops, is it? It's inquiries about Hispanic names.

9 THE WITNESS: Right. I'm sorry, you're right. Yeah.

10 THE COURT: I'm sorry. I just want to be precise to 13:55:30
11 make sure that I know what we're talking about.

12 THE WITNESS: 25.8 percent of names checked on a
13 saturation patrol day were Hispanic, using the 90 percent
14 threshold.

15 BY MR. LIDDY: 13:55:44

16 Q. Of the universe that Dr. Taylor was observing.

17 A. Yes.

18 Q. So there very well could have been other stops that were
19 not recorded in the CAD data, or were recorded in the CAD data
20 but Dr. Taylor did not look at, is that correct? 13:55:59

21 A. Well, he has 123 -- I mean -- I'm not sure I completely
22 understand the question. Are there lots of data missing, lots
23 of names, lots of incidents missing from CAD data? Absolutely.
24 If that -- you know, if that's what you're asking me, then,
25 sure. And could that have affected these numbers 13:56:19

1 significantly? Sure.

2 Q. But I'm only asking, this figure only represents those
3 which Dr. Taylor looked at.

4 A. Right.

5 Q. Not all those name inquiries made in Maricopa County for
6 that period of time.

13:56:29

7 A. Right. That's my understanding.

8 Q. And would you agree with me that 25.8 is also less than
9 30 percent?

10 A. Yes.

13:56:43

11 Q. And would you agree with me that the difference between
12 21.82 percent and 25.8 percent is approximately 4 percentage
13 points?

14 A. Yes, it -- yes.

15 Q. And if you'll follow all the way over here to the right
16 where it says -- the column, it's total. And there's a figure
17 21.98 percent.

13:57:00

18 Do you see that?

19 A. Yes.

20 Q. What does that figure represent to you?

13:57:12

21 A. I believe that's the total for all stop -- all names that
22 were checked for the period of time that Dr. Taylor was
23 interested in.

24 THE COURT: You know, just let me ask you, Mr. Liddy,
25 do you have any objection, for the Court's ease of access,

13:57:32

1 because I'm pondering this, if I can get a copy of the
2 demonstratives that have been introduced by the plaintiff?

3 MR. LIDDY: No, Your Honor. We would have no
4 objection to that.

5 THE COURT: All right. Thank you.

13:57:47

6 BY MR. LIDDY:

7 Q. Now, for the figures we were just looking at, they
8 represented Dr. Taylor's inquiry using the 90 percent threshold
9 of the U.S. census Hispanic surname analysis, is that correct?

10 A. Yes.

13:58:18

11 Q. And do you recall Dr. Taylor also providing data for a
12 similar inquiry, but for the 60 percent threshold?

13 A. Yes.

14 Q. What would be the purpose of looking at the 60 percent
15 threshold in addition to the 90 percent threshold?

13:58:37

16 A. I assume he wanted to provide, you know, different --
17 different percentages using different, you know, thresholds so
18 he could -- you know, he could see how they differ. That's why
19 he did it.

20 Q. Well, if one were looking for racial profiling, would one
21 expect them to differ?

13:58:53

22 A. Well, the percentage is going to differ if you're using a
23 much lower probability threshold, or percentage threshold,
24 however you want to talk about it, because a lot more names are
25 in the 60 percent list than are in the 90 percent list.

13:59:11

1 What the question is, maybe, or are you asking me:
2 Should the difference between the saturation patrol days and
3 the nonsaturation patrols, should they be more similar
4 regardless of the list that's used? I'm not sure I -- I'm not
5 sure I completely understand the question.

13:59:32

6 Q. Well, let me ask you this. Would you have more confidence
7 in the accuracy of the finding if we were using a 90 percent
8 surname list or a 60 percent surname list?

9 A. Well, if you look at the two you'll see that the more
10 certain that the name is Hispanic, the more certainty that the
11 name is Hispanic, the smaller the difference between the
12 saturation patrol days and the nonsaturation patrol days.

13:59:54

13 Q. And the inverse is true also, is that correct?

14 A. Right. The less sure that it's Hispanic, the difference is
15 bigger. It's like 6 percentage points at the bottom and it's
16 like 4 at the top.

14:00:14

17 Q. Do you recall from your examination of Dr. Taylor's reports
18 whether he controlled for the saturation patrol focus on human
19 smuggling?

20 A. No. As I said, there's no control for the unit. So he
21 could have identified HSU, but he didn't.

14:00:37

22 Q. Are you familiar with the term "zero tolerance"?

23 THE COURT: Let me ask a follow-up question on that.
24 When you say he could have identified HSU but he didn't, that
25 would have required him identifying each officer on each

14:00:55

1 saturation patrol that was a member of the Human Smuggling
2 Unit, would it have not?

3 THE WITNESS: Well, in the CAD data every incident or
4 name --

5 THE COURT: Sorry, but I gotta -- I gotta get my mind 14:01:07
6 around this. So is it a yes or a no? Then you can explain.
7 It would have required him to identify all officers on that
8 saturation patrol who are members of the HSU unit.

9 THE WITNESS: It's in the data, so yes, he could have
10 done that. 14:01:21

11 THE COURT: But he would have had to break out the
12 data by the patrol -- by the unit in which that officer was a
13 member?

14 THE WITNESS: But unit is something that's already in
15 the data. So in Table 1 of my report where I show all the 14:01:32
16 different units --

17 THE COURT: Right.

18 THE WITNESS: -- that was easy. It's already there.

19 THE COURT: And so what we're getting in 399I is when
20 he gives those totals, it's all stops on that day whether or 14:01:44
21 not they were involved in a saturation patrol, period, right?

22 THE WITNESS: I believe that that's what that was,
23 yes.

24 THE COURT: Okay.

25 MR. LIDDY: Your Honor, I'd like to publish figure 4 14:02:07

1 from Dr. Camarota's report, which is already admitted in
2 evidence by stipulation.

3 May I publish, Your Honor?

4 THE COURT: You may. It's already up there.

5 BY MR. CASEY:

14:02:26

6 Q. Dr. Camarota, do you -- do you recognize this figure?

7 A. I do.

8 Q. And it says Hispanic share of stops by district.

9 Is that -- did I read that correctly?

10 A. Yes.

14:02:38

11 Q. 2005 to 2009?

12 A. Um-hum.

13 Q. All the way over here on the right you see the districts
14 broken out?

15 A. Um-hum.

14:02:45

16 Q. Do those districts help identify the unit?

17 A. The districts and units are not exactly the same thing. If
18 you look at Table 1, most of the stops are identified by
19 district because that -- the district is also the unit. But
20 there are specific units, like HSU that we've been talking
21 about, and then there are other kinds of units, you know,
22 Internal Affairs and stuff like that.

14:03:02

23 But these are the main districts. I believe this
24 figure I have did it by geographic area, so that people are
25 recoded back based on their district. So if it's HSU but it's

14:03:24

1 in District 1, then here it's District 1.

2 Q. If it's Lake Patrol and they're in a particular district,
3 that could be identified from the CAD data?

4 A. Yes.

5 Q. What other variables would you want to know about when
6 making an inquiry as to whether or not there was racial
7 profiling that Dr. Taylor did not control for in his reports?

14:03:36

8 A. Well, I think we've touched on the socioeconomic factors,
9 for example. For length of stop, we'd like to know some things
10 about whether the person speaks English very well. It might be
11 very interesting, we don't know this, how well the officer, the
12 deputy, speaks English, because if he only speaks Spanish,
13 because if he's trying to translate information and trying to
14 communicate, so we'd like to know that. That can have a big
15 impact. So you'd like to know things like that.

14:04:13

14:04:29

16 Then you'd also like to know if you're trying to
17 explain to someone what law they violated, or what they have to
18 do to be in compliance, other socioeconomic factors like the
19 educational attainment of a person could be important.

20 So in, say, traffic stops, you'd like to know things
21 like language and educational attainment. Maybe whether the
22 person was foreign born or not. As I recall, 57 percent of
23 adult Hispanics in Maricopa County are foreign born. That
24 would be sort of the -- the legal and the illegal population.

14:04:45

25 So that would be an example for those.

14:05:04

1 And for the saturation patrol it would be very
2 helpful, and -- and very -- and important to know the
3 socioeconomic factors as well, such as the person's income,
4 poverty status, maybe language skills, things like that, given
5 the way sat -- particularly given the way saturation patrols
6 are supposed to work, as I understand it, where they try to
7 stop everyone who has an equipment violation or -- you know,
8 or, you know, a rules-of-the-road violation.

14:05:24

9 Q. What about a variable for hyphenated names, either drivers
10 or passengers --

14:05:43

11 A. Yeah.

12 Q. -- that use two last names?

13 A. The hyphenated name issue is very difficult to deal with.
14 There's a -- anyway, there is evidence that Hispanics are more
15 likely to hyphenate names than non-Hispanics, and that can
16 complicate Hispanic surname analysis.

14:05:54

17 Q. Might that affect the duration of stop, and your analysis
18 of the length of duration of stop?

19 A. Yes, because when the officer calls in names, he may need
20 to call in the hyphenated name, the first name in the
21 hyphenation, and the second name in the hyphenation. So there
22 would be a much longer stop as he waits for responses back on
23 each of those names.

14:06:13

24 MR. LIDDY: Thank you, Doctor. I have no further
25 questions, Your Honor.

14:06:28

1 THE COURT: Okay. Thank you.

2 Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. YOUNG:

5 Q. Good afternoon, Dr. Camarota. 14:06:46

6 A. Nice to see you again.

7 Q. Nice to see you again.

8 In your Ph.D. studies you focused on immigration
9 issues, correct?

10 A. I did. 14:06:56

11 Q. And you did that because you found the topic intrinsically
12 interesting?

13 A. Yes.

14 Q. After your Ph.D. in 1997 you continued to work on
15 immigration policy issues, correct? 14:07:03

16 A. Yes.

17 Q. You were interested in immigration and how it affected
18 society as a whole, including labor markets, demography,
19 criminal justice, use of public services, congressional
20 reapportionment, and other issues, correct? 14:07:18

21 A. Yes.

22 Q. You're employed by the Center for Immigration Studies, I
23 hear, where you're the director of research. That organization
24 contends that lower numbers of people should enter this
25 country, correct? 14:07:33

1 A. Yeah, we -- I would say that we have a lot of diversity of
2 opinion within our staff, but that overall, the center's
3 position would be that a more moderate pace of immigration
4 would make sense for the country.

5 Q. The Center for Immigration Studies also believes that it
6 would be beneficial to change the selection criteria to make
7 admission into this country more skills based, correct? 14:07:46

8 A. I don't know that that's a -- a stated position. I mean,
9 we have authors who have made the case for that. As a think
10 tank, we have a lot of, you know, different points of view. 14:08:08

11 But I would say that most of the people who work there would
12 share that perspective, yes, a more skills-based system.

13 Q. You represent the organization in a variety of settings,
14 including public speaking, testimony, interviews, research, and
15 publications? 14:08:24

16 A. Yeah, sure, yes. Yes, I do.

17 Q. And you've spoken to maybe 200 or 300 reporters on
18 immigration issues since July 2008?

19 A. I don't know the number. But I certainly speak to
20 reporters. 14:08:40

21 Q. And you speak to a lot of reporters, correct?

22 A. I would say I do, yes.

23 Q. You're not a criminologist, correct?

24 A. I'm not a criminologist.

25 Q. You have not worked with data regarding law enforcement 14:08:54

1 officer communication systems before this case, is that
2 correct?

3 A. That is correct.

4 Q. Let me ask you about some demographic issues.

5 About 30 percent of the population of Maricopa County
6 is Hispanic, is that right? 14:09:06

7 A. Yes. I think in 2009 it was like 31.8, or something like
8 that, yeah. About 30 percent.

9 Q. Now, you estimate that about one-third of the adult
10 Hispanics in this county are here illegally, is that right? 14:09:19

11 A. Yeah, it's based on research from the Pew Hispanic Center.

12 Q. That means that two-thirds of the adult Hispanics in
13 Maricopa County are here legally, is that right?

14 A. Yes, that's -- that's about right, yeah.

15 Q. Now, children are more likely to be legally present than
16 adults, so would you agree with me that if we said that
17 60 percent -- 67 percent of the Hispanics in Maricopa County
18 are here legally is a conservative estimate? 14:09:40

19 A. Oh, yeah. It's about two-thirds are legal, either green
20 card holders, naturalized citizens, or U.S. borns, yes,
21 absolutely. 14:10:01

22 Q. Now, 67 percent of 30 percent is just over 20 percent,
23 correct?

24 A. 67 percent. When I look at that number, 67 percent of --

25 Q. Well, let me put it a different way. 14:10:16

1 A. Yeah.

2 Q. Two-thirds of 30 percent is 20 percent, right?

3 A. Two-thirds of 20 percent, did you say?

4 Q. No, two-thirds of 30 percent is 20 percent. Would you
5 agree with me on that?

14:10:28

6 A. Yes. That sounds right.

7 Q. That means that 20 percent of the entire population of the
8 county, in your estimate, would consist of Hispanics who are
9 legally present in the United States. Would you agree with
10 that?

14:10:40

11 A. Yes, that's -- that's about right. Yeah, that sounds
12 right.

13 Q. According to the 2010 census, Maricopa County had about
14 3.8 million people, is that right? Does that sound right to
15 you?

14:10:50

16 A. That sounds right. I haven't looked at that
17 number recently.

18 Q. So 20 percent of 3.8 million people gives you at least
19 760,000 Hispanic people in Maricopa County who are here
20 legally. Do you agree with that?

14:11:02

21 A. Yeah, that sounds -- that sounds about right.

22 Q. Now, let's recap the sequence of events.

23 Dr. Taylor did a report initially which you looked at,
24 correct?

25 A. Yes.

14:11:15

1 Q. And it had, among others, three conclusions. First, that
2 Hispanic name check rates are higher on saturation patrol days
3 than nonsaturation patrol days, is that right?

4 A. Yes, that's one of his conclusions.

5 Q. And then he also concluded that saturation patrol active
6 officers are more likely than nonsaturation patrol active
7 officers to check Hispanic names on a saturation patrol day.

14:11:27

8 Do you recall that being in there?

9 A. Yes, I think that's one of his conclusions.

10 Q. And you also recall that he said that on all days, whether
11 saturation patrol days or not, stops last longer when there's
12 at least one Hispanic name checked, correct?

14:11:43

13 A. That -- I think that's a fair summation of his --

14 Q. Then you did a report criticizing Dr. Taylor for a couple
15 of things, or many -- many things. Among those was, one:
16 Failure to account for duplications due to people putting in
17 aliases, but having the same birth date for all of those
18 aliases, correct?

14:12:01

19 A. Yes.

20 Q. And you also criticized him for counting the mobile
21 computer entries which you believe to be double counting, is
22 that right?

14:12:15

23 A. That's what the -- the CAD coordinator had told me and
24 indicated to me, so that's why that -- that is the case. They
25 are, apparently, the same information.

14:12:33

1 Q. Then Dr. Taylor took those two criticisms and he accounted
2 for the aliases by eliminating the duplicate date of birth
3 entries, and removed the mobile terminal file, reprocessed the
4 data, and basically came to the same conclusions he had come to
5 before, is that right?

14:12:52

6 A. I think he -- yeah, I think he feels his conclusions are
7 the same the second time around.

8 Q. Now, I'd like --

9 A. I would disagree with one thing you said, and that is when
10 he reprocessed the data, he missed a whole lot of new cases, so
11 in some ways you might say that his first go-round included a
12 lot of stuff mistakenly. In his second go-round he cut way too
13 much out, so that if you look at -- he has a table in -- I
14 believe, in his -- his reprocessed report where you could see
15 how many fewer incidents, for example, he has in this second
16 go-round. And that's what we were talking about earlier: of
17 all these names that are available that this time around he
18 missed.

14:13:01

14:13:24

19 Q. I didn't ask you about that, but I'll get to that. So
20 let's talk about some of the areas where I think you may have
21 agreement with Dr. Taylor.

14:13:39

22 You agree with Dr. Taylor that it is possible to take
23 the CAD data and generate numbers about the role of race in
24 MCSO stops, or at least name checking, is that right?

25 A. I believe that we can get an idea in the aggregate of, you

14:14:01

1 know, MCSO stops that have Hispanic surnames. That's what I
2 think is definitely true, we can.

3 Q. You agree that it is possible to gain insights from the CAD
4 data on the issue of whether there are patterns of ethnic
5 disparity in the behavior of the MCSO, is that correct? 14:14:23

6 A. I think we can gain some insights, yes.

7 Q. And in fact, you think that if that's the data you have,
8 you can work with it, is that right?

9 A. I did work with it.

10 Q. And that's what Dr. Taylor did as well, correct? 14:14:39

11 A. Yes.

12 Q. You commented in response to Mr. Liddy's questions about
13 the use of the census data and the surname analysis. Do you
14 remember those questions and your answers?

15 A. I'm not sure to which you refer. Are you talking about the 14:14:56
16 construction of a Hispanic surname list, or the demographic
17 information about Maricopa and Arizona?

18 Q. Well, the former. Let me focus the question a little more.

19 A. Sure.

20 Q. Do you agree with the following statement: Hispanic 14:15:09
21 surname analysis was first developed by the census bureau in
22 1950. It is a well-established method for estimating the
23 Hispanic share of individuals in administrative or other data
24 when other information about ethnicity is not available?

25 A. I would agree it's -- I basically agree with that 14:15:31

1 statement, yes.

2 Q. That's in your report, correct?

3 A. Right, yeah, I agree with it.

4 Q. You yourself used the census data to come to your
5 conclusions, correct?

14:15:43

6 A. Could you -- you mean did I use a Hispanic surname list
7 derived from the 2000 Census? Is that what you're asking me?

8 Q. That's my question, yes.

9 A. Yes. Yes, I did.

10 Q. And you picked the 70 percent threshold for your findings,
11 but you could also use other thresholds, is that right?

14:15:57

12 A. Yes. In one of the footnotes I looked at several other
13 different lists that other people had developed.

14 Q. But for purposes of your basic conclusions you used the
15 70 percent?

14:16:17

16 A. Yes.

17 Q. Now, Dr. Taylor used 60, 70, 80, and 90 percent, correct?

18 A. I think for most of his results he reports 60, then like 80
19 and 90. I don't know that he purported much for 70.

20 Q. And that's a way of testing the rebustness of his
21 conclusions, to use different thresholds in order to see
22 whether the results are similar?

14:16:30

23 A. I would assume that's his intent.

24 Q. Okay. You did not do that, did you?

25 A. No, I did run them different numbers. In fact, I do some

14:16:41

1 different results in the footnotes, and also other lists
2 developed by people. But they all come out around, you know,
3 the same.

4 Q. When you read Dr. Taylor's report initially, you knew that
5 he was comparing saturation patrol days with nonsaturation
6 patrol days, is that right? 14:16:58

7 A. As one of his comparisons in his report, yes.

8 Q. But you did not attempt to replicate Dr. Taylor's inquiry
9 comparing saturation patrol Hispanic name check rates with
10 nonsaturation patrol Hispanic name check rates, is that right? 14:17:16

11 A. I did not replicate his -- his work.

12 Q. And you did not do that because you did not know that that
13 would be a focus of this trial, is that right?

14 A. When I was originally asked, I didn't know that that would
15 be a focus. When they originally asked me to prepare a report, 14:17:37
16 I did not know that that would be the focus of the trial.

17 Q. Also, you mentioned Mr. Jefferys. He's an employee of the
18 MCSO?

19 A. Yes. He is the CAD coordinator there.

20 Q. And Mr. Jefferys told you after you got Dr. -- well, let me 14:17:54
21 take it one at a time.

22 After you got Dr. Taylor's report you spoke to
23 Mr. Jefferys, correct?

24 A. I have spoken to -- to Mr. Jefferys between the -- since
25 I've gotten Dr. -- Dr. Taylor's report, I certainly have done 14:18:12

1 that. I didn't get it and call him. I don't recall that. But
2 I certainly have spoken to him since then. Since the time I
3 received it, I've certainly spoken to him.

4 Q. And Mr. Jefferys told you that Mr. Jefferys had concerns
5 about whether you could identify saturation patrol officers on
6 saturation patrol days, is that right? 14:18:28

7 A. I did speak to him about that issue, yes. I do recall
8 that.

9 Q. And he had that concern, and he told you maybe you can't do
10 that? 14:18:43

11 A. Right, because of the incomplete lists and so forth.

12 Q. You accepted Mr. Jefferys' statement on that issue,
13 correct?

14 A. I have no reason to believe he would lie to me. I think he
15 was truthful. 14:18:56

16 Q. You have no reason to doubt Dr. Taylor's identification of
17 saturation patrols, is that right?

18 A. I have no reason to doubt his -- his -- I assume they're
19 correct.

20 Well, let me -- let me rephrase. There is this issue 14:19:10
21 out there that --

22 Q. Actually, that's not an answer to my last question.
23 Mr. Liddy can ask you about it on redirect.

24 A. But you said do I have any reason to doubt. It's my
25 understanding that not all officers sign in, so there is that 14:19:26

1 concern that I have. I hope you feel that's responsive.

2 Q. Excuse me. You agree with Dr. Taylor that on days on which
3 a saturation patrol operation is underway, the Hispanic share
4 of names checked is higher compared to other times, is that
5 correct? 14:19:50

6 A. I agree that's what he found.

7 Q. Do you agree with that finding?

8 A. I have not gone into the data myself and identified all the
9 saturation patrols. But if he has done so accurately, and
10 reported them accurately, then it's true. But I haven't -- I 14:20:15
11 haven't verified that fact.

12 Q. Well, Dr. Camarota, I'm going to ask you to take a look at
13 page 31 of your report, which is Exhibit 402, and if we could
14 bring that up on the screen.

15 Exhibit 402. It's page 31. 14:20:39

16 A. I don't have anything yet.

17 Q. I think Mr. Braun is getting it up on the screen.

18 And in the paragraph down toward the bottom where the
19 sentence says "thus, days," I want to focus on that.

20 Can we focus, can we enlarge that part of it? 14:21:00

21 A. Thus, days on which saturation patrols -- okay.

22 Q. So in your report you said, quote: Thus, days on which an
23 SP operation was underway do show a Hispanic share that is 4.8
24 percentage points higher compared to the rest of the year, end
25 quote. 14:21:25

1 You wrote that in your report, correct?

2 A. Yes, I did.

3 Q. Okay. You have not modified or retracted that portion of
4 your report, correct?

5 A. I have not.

14:21:35

6 Q. And in fact, you think that Dr. Taylor may well be right in
7 his conclusion that Hispanic name check rates are higher on
8 saturation patrol days than on other days, is that right?

9 A. Yes, I think they are.

10 I thought you were asking me if I verified his
11 research before, I'm sorry. So I was confused. I understand
12 what you're asking me now. Okay. Yes, I think that they are.
13 The days that are saturation patrol days are somewhat higher
14 than nonsaturation patrol days.

14:21:52

15 Q. Thank you.

14:22:06

16 You agree that the stated purpose of saturation
17 patrols by the MCSO is disruption of illegal immigration,
18 correct?

19 A. It is my understanding that that is one of the goals.

20 Q. In fact, Lieutenant Sousa --

14:22:18

21 You spoke to Lieutenant Sousa during your --

22 A. I did, yes.

23 Q. -- your work?

24 A. In September of 2010, I believe it was.

25 Q. Lieutenant Sousa told you that the saturation patrols are

14:22:27

1 targeted at illegal immigration, correct?

2 A. He said that was one of the -- definitely one of the goals,
3 yes, one of the objectives.

4 Q. Because saturation patrols by the MCSO are aimed at illegal
5 immigration, you actually expect Hispanic stop rates, or 14:22:43
6 Hispanic name check rates, to be higher during saturation
7 patrols than at other times, is that right?

8 A. Yes, you would expect that. I would.

9 Q. Okay. In fact, you believe that if arresting illegal
10 immigrants is a goal of such patrols, then a large fraction of 14:23:01
11 those will be Hispanic, and if that's happening on a saturation
12 patrol day, then the Hispanic share that's stopped would have
13 to be higher. Is that your belief?

14 A. Yes, because of the large fraction of -- of illegal
15 immigrants in the state that are Hispanic. 14:23:19

16 Q. Now, during saturation patrols some illegal immigrants are
17 stopped, but there are also many people who are not illegal
18 immigrants who are stopped, is that correct?

19 A. Yes.

20 Q. During the 11 saturation patrols that Dr. Taylor studied, 14:23:36
21 you concluded in your report that 338 of them were illegal
22 immigrants, is that right?

23 A. I -- let me think. What I said in my report, I believe, is
24 the number of illegal immigrants who were arrested during those
25 saturation patrols -- and I believe that number's 308, 14:23:59

1 actually, because if you add up the number, there's a mistake
2 in my report where I -- in the -- I think in the text I say,
3 like, 338, but it's 308. I can't remember the exact number.

4 Q. Let's look back, just to refresh your memory --

5 A. Yeah.

14:24:17

6 Q. -- let's look back at your report, Exhibit 402, the bottom
7 of page 30 and the top of page 31, if we could have that on the
8 screen.

9 A. Yeah, here we go.

10 Q. So there's a list there of 11 saturation patrols and a
11 bunch of numbers of illegal immigrants arrested.

14:24:31

12 Do you see that?

13 A. Yes.

14 Q. You got those numbers from Lieutenant Sousa, correct?

15 A. I did. I did, yes.

14:24:43

16 Q. Now, you say in your report in total 338 illegal immigrants
17 were arrested, but you're saying that that isn't --

18 A. Right, I misadded it up. I think it's 308, as I recall.

19 Q. You misadded?

20 A. If you just take those numbers and add them up in the text
21 I think I said 338, right? But that's not quite right. It's
22 like 300 -- you see it here? Thank you. You see where it says
23 338? I think it's 308, I think is the right number. I can't
24 remember now. I had to revise the report, so...

14:25:02

25 Q. You have not revised the report, have you?

14:25:18

1 A. No.

2 Q. The mathematical error, that's your error?

3 A. I added them up wrong, yeah.

4 Q. Now, during those same 11 saturation patrols, Dr. Taylor
5 testified, depending on the threshold that you use, that
6 between 1,312 and 1,988 Hispanic names were checked. And I'll
7 tell you, that's on page 90 of the transcript.

14:25:33

8 Have you read the transcript, by the way, of the
9 earlier testimony in this case?

10 A. Are you asking me my old transcript or do you mean
11 Dr. Taylor's testimony?

14:25:52

12 Q. Dr. Taylor's testimony in this trial.

13 A. I have.

14 Q. You have read that. Does it sound right to you that he
15 testified that between 1312 and 1988 Hispanic names were
16 checked during the 11 saturation patrols that he studied?

14:26:01

17 A. I'm just not sure. As I recall, the number, the total
18 number was 2,066. I am going from memory here so I'm not sure,
19 but --

20 Q. I'll represent to you that that's in the transcript.

14:26:22

21 A. Okay. I'll believe you.

22 Q. Go with me on that.

23 A. Okay.

24 Q. So assuming that those numbers are right -- and again, it's
25 between 1300, roughly, and almost 2,000, depending on the

14:26:31

1 probability threshold -- and assuming that all of the 308
2 illegal immigrants that you list in your report were Hispanic,
3 that means that in order to -- in the operation that found
4 those 308 illegal immigrants, between 1,004 and 1680 other
5 Hispanics who were not illegal immigrants were also stopped on
6 those saturation patrol days, correct?

14:26:59

7 A. If those numbers are right, then, yeah. That sounds right.

8 Q. In order to achieve the stated purpose of the saturation
9 patrols to combat illegal immigration, and in order to
10 apprehend those 308 illegal immigrants, do you think it is
11 acceptable that between 1,000 and 1600 Hispanics who were not
12 illegal immigrants were subjected to a higher risk of being
13 stopped during those saturation patrol days?

14:27:17

14 MR. LIDDY: Objection, argumentative, Your Honor.

15 THE COURT: I'm going to sustain the objection.

14:27:41

16 BY MR. YOUNG:

17 Q. Now, you were asked -- you remember there was some
18 questioning -- well, let me just ask you: Do you see any
19 difference between the people who were arrested under the
20 MCSO's 287(g) authority and those who were arrested under
21 Arizona's state human smuggling law?

14:27:59

22 A. I -- I'm not sure what you're asking me. I don't have any
23 data on that information.

24 Q. Well, okay. So let's go back to the numbers that you
25 testified Lieutenant Sousa gave you that you --

14:28:15

1 A. Yes.

2 Q. -- you added up initially to get 338, but now -- how many
3 of those were arrested for human smuggling as opposed to
4 being --

5 A. I don't know. I don't know. 14:28:32

6 Q. You don't know.

7 THE COURT: All right. I'm going to -- I am going to
8 impose a rule. One person speaks at a time. You speak, you
9 wait for the question before you answer. All right?

10 You wait for the complete answer before you ask the 14:28:45
11 next question.

12 MR. YOUNG: I apologize, Your Honor.

13 THE WITNESS: I do, too.

14 BY MR. YOUNG:

15 Q. So just for clarity, and I apologize for speaking over you, 14:28:51
16 Dr. Camarota --

17 A. Me, too.

18 Q. -- of the 308 illegal immigrants listed in -- in your
19 report, you don't know how many of them, if any, were arrested
20 for human smuggling, is that correct? 14:29:06

21 A. I do not know.

22 Q. You didn't make any attempt to find out?

23 A. I didn't ask.

24 Q. Does it matter to you?

25 A. It didn't occur to me to ask. I just -- I didn't ask. 14:29:13

1 Q. Now, let's go to the issue of saturation patrol active
2 officers on saturation patrol days, and whether they're more
3 likely to check Hispanic names than nonsaturation patrol active
4 officers. You gave some testimony about some people being on
5 Lake Patrol and others being in the Human Smuggling Unit,
6 correct?

14:29:42

7 A. Yes.

8 Q. Okay. Did you -- you didn't actually do any calculations
9 yourself to try to sort that out and account -- and determine
10 whether that fact made any difference for purposes of this
11 issue, correct?

14:29:57

12 A. No, I only identified which ones were -- what the units
13 were, and -- and I identified that a total of 70 percent were
14 Lake Patrol or HSU. But I certainly didn't try to rereplicate
15 Dr. Taylor's results with taking into account units.

14:30:17

16 Q. You agree that HSU operations on saturation patrol days
17 significantly increases the Hispanic share of those stopped?

18 A. The fact that HSU makes up such a large fraction of stops
19 on saturation patrol days almost certainly has a significant
20 impact on the total fraction of Hispanics who are stopped on a
21 saturation patrol day.

14:30:47

22 Q. With respect to the issue of stop length, you agree with
23 Dr. Taylor that where there is at least one Hispanic name
24 checked, the stop will last longer, correct?

25 A. Yes, I think that's correct.

14:31:11

1 Q. In fact, you think that somewhat longer traffic stops are
2 to be expected for Hispanics in Maricopa County, is that right?

3 A. Yes, I do.

4 Q. Now, you said that, well, maybe sometimes someone will need
5 to spend more time because of a language difference. Is that
6 one of the things you told Mr. Liddy?

14:31:31

7 A. Mr. Lee? Oh, Mr. Liddy. I'm sorry.

8 Q. Yeah, I'm sorry.

9 A. No, that's okay. Yes.

10 Q. You did not do any calculations, though, to determine what
11 effect, if any, differences in language might have on stop
12 lengths?

14:31:44

13 A. That's a variable not available in CAD data.

14 Q. If a passenger in a car has darker skin and speaks only
15 Spanish, a deputy could call in a Spanish-speaker to inquire
16 about the citizenship of that passenger, which could make the
17 stop longer, correct?

14:32:06

18 A. Sounds plausible, yes.

19 Q. If an officer had a carload of Hispanic eight-year-old Boy
20 Scouts and decided to ask for their identification, that could
21 also make the stop longer, correct?

14:32:24

22 A. I guess so, yeah.

23 Q. If an officer decided to do a full-body pat-down of a
24 65-year-old landscaping worker, that could make that stop
25 longer, correct?

14:32:40

1 A. I think it could.

2 Q. You answered some questions from Mr. Liddy about the
3 selection of stops, and in particular you -- you talked first
4 with Mr. Liddy about ignoring the stops in which no name
5 appeared in the comments field.

14:32:58

6 A. Um-hum.

7 Q. Do you recall those answers?

8 A. Yes.

9 Q. Okay. You did exactly the same thing that Dr. Taylor did,
10 i.e., you discarded that data because there are no names,
11 correct?

14:33:06

12 A. Yes, that was the percentage I gave, 29.6 percent of
13 initial code type Ts have no -- no identifiable name.

14 Q. You believe it is understandable that Dr. Taylor did not
15 use the entries lacking names, is that right?

14:33:24

16 A. He couldn't.

17 Q. And you -- that's an understandable decision by him,
18 correct?

19 A. There was no other choice, he had to exclude them.

20 Q. His throwing out that data was not careless, correct?

14:33:39

21 A. My contention it was not careless, no.

22 Q. Now, you asked Mr. Jefferys of the MCSO to try to get the
23 information where the names were not present in the CAD data
24 from the Department of Motor Vehicles, correct?

25 A. I -- I don't recall ever having that conversation with him.

14:33:57

1 I think early on I had a discussion with Clarice McCormick
2 about seeing if there was some way to fill in this data. I
3 don't remember having one with him.

4 Q. Well, let me ask you this. Did Mr. Jefferys tell you,
5 quote, Even if we were able to do that, it would only provide a 14:34:20
6 minimal amount of names to add to the study and probably
7 wouldn't change any figures that much, end quote.

8 A. Did he say that? He may have. I don't remember.

9 Q. Did Mr. Jefferys tell you, quote --

10 A. I'm sorry, go ahead. 14:34:39

11 Q. -- plus, the call types and dispositions didn't contain the
12 information needed for an outcome analysis that could be used
13 with confidence?

14 A. I do not recall that conversation with Mr. Jefferys.

15 MR. YOUNG: I have an exhibit, Your Honor, that I'd 14:35:10
16 like to show the witness which we've marked as an impeachment
17 exhibit, 501. It's a series of pages containing e-mails
18 between Dr. Camarota and Mr. Jefferys.

19 THE COURT: All right. The exhibit will be re-marked
20 as -- 14:35:26

21 THE CLERK: 456.

22 THE COURT: -- 456.

23 BY MR. YOUNG:

24 Q. Dr. Camarota, remember after your deposition and after all
25 the expert reports in this case you provided a set of materials 14:35:43

1 to Mr. Liddy --

2 A. Any e-mails I had, right, I remember.

3 Q. And those e-mails included e-mails between you and
4 Mr. Jefferys?

5 A. Okay.

14:35:54

6 MR. YOUNG: Okay. I'm going to ask if we could go to
7 page 18 of that exhibit, Mr. Braun, if you have that.

8 MR. LIDDY: Excuse me. Your Honor -- here it is.
9 Never mind.

10 BY MR. YOUNG:

14:36:16

11 Q. All right. Let's focus on -- okay. There's another
12 version of this, which is page 18 of the PDF version. Or I can
13 actually try to use this machine, if we can.

14 MR. YOUNG: Mr. Braun, you'll need to tell me whether
15 I use the ELMO or whether we're using -- thank you.

14:36:44

16 Your Honor, may I present the witness with a copy of
17 the exhibit?

18 THE COURT: You may.

19 MR. YOUNG: Thank you.

20 THE COURT: You know, to be on the safe side, I think
21 that Kathleen has taken out the exhibit you have so designated
22 and is now re-marking it. Why don't we have her hand that
23 exhibit to the witness.

14:37:04

24 MR. YOUNG: That would be fine.

25 THE COURT: That way, there will be no unclarity about

14:37:15

1 what it states.

2 MR. YOUNG: Should I take back the one?

3 THE COURT: You may take back the one you've given the
4 witness.

5 BY MR. YOUNG:

14:37:35

6 Q. Dr. Camarota, does the version that you have have page
7 numbers on the bottom?

8 A. It does. It does.

9 Q. Go to page 18. Is what you have in your hands the same as
10 what's on the screen?

14:37:48

11 A. Let me -- let me compare. Looks the same.

12 Q. Okay. So there's an e-mail dated January 18, 2011, which
13 is your response to an earlier e-mail from Mr. Jefferys.

14 Do you see that?

15 A. No, I'm not sure which one you're referring to. I'm sorry.

14:38:07

16 Q. Okay.

17 A. Would you just tell me what it begins with.

18 Q. Yeah, it says, From Steven Camarota, sent Tuesday, January
19 18, 2011.

20 Do you see that?

14:38:20

21 A. Yes.

22 Q. And then it's responding to an earlier e-mail that appears
23 in the string below from Mr. Jefferys to you dated December 14,
24 2010, correct?

25 A. Okay.

14:38:32

1 Q. The second paragraph of Mr. Jefferys' e-mail says: The
2 last I remember I was attempting to extract driver license
3 numbers that could be matched to MVD records so we could
4 extract additional names. Last contact with Clarice indicated
5 that wasn't going to happen. Even if we were able to do it, to 14:38:53
6 do that, it would only provide a minimal amount of names to add
7 to the study and probably wouldn't change any figures that
8 much. Plus the call types and dispositions didn't contain the
9 information needed for an outcome analysis that could be used
10 with confidence, end quote. 14:39:14

11 Do you see that?

12 A. I do. I do.

13 Q. Okay. That's an e-mail that Mr. Jefferys of the MCSO wrote
14 to you, correct?

15 A. Yes. I remember -- like I said, I remember talking to 14:39:22
16 Clarice about this. But this is, like, two years ago. I
17 hadn't remembered talking to Mr. Jefferys about it. But -- and
18 maybe I guess he had spoken to Clarice, too, and we were trying
19 to see, you know, if we could make the data better, but it
20 looked like we couldn't do it. That's my recollection of it. 14:39:37

21 MR. YOUNG: Your Honor, I move to admit this exhibit,
22 and I think it's 496. I apologize if I've --

23 THE COURT: 456.

24 MR. YOUNG: 456. I move to admit this exhibit into
25 evidence. 14:39:52

1 MR. LIDDY: Without objection, Your Honor.

2 THE COURT: Exhibit 456 is admitted.

3 (Exhibit No. 456 is admitted into evidence.)

4 BY MR. YOUNG:

5 Q. You're not aware of any evidence that the omission of the 14:40:05
6 names -- of the incidents that had no names caused any change
7 in the Hispanic versus non-Hispanic name data, is that correct?

8 A. Could you restate that?

9 Q. Let me -- let me restate that.

10 You have no evidence that the group of incidents with 14:40:27
11 no names had any different mixture of Hispanic and non-Hispanic
12 names than the incidents that did have names, is that right?

13 A. We don't know anything about those -- those ones, the
14 Hispanic names that weren't there. We don't know about names
15 that weren't there, we don't know anything about. 14:40:45

16 Q. Given that fact, in your view, it would be better, or may
17 be better, simply to accept the inability to use that data, is
18 that correct?

19 A. If you're going to use the data you have no choice, you
20 have to exclude those cases. 14:41:01

21 Q. And you didn't study those no-name incidents to see how
22 they were distributed, correct?

23 A. No, I -- I did not.

24 Q. From your standpoint, it would be possible that if one were
25 able to include those no-name entries, they could either 14:41:20

1 increase or decrease the disparity that Dr. Taylor found,
2 correct?

3 A. Yes, it could go either way. It could -- could have an
4 effect either way.

5 Q. Now, you were also asked some questions by Mr. Liddy about 14:41:34
6 the selection of stops where there were names present, and you
7 said that he should have -- and let me ask you: You think he
8 should have counted all of the incidents with the initial call
9 type T, is that correct?

10 A. What I would say is that he describes his report as 14:41:56
11 interested in officer traffic stops in which -- where the
12 officer has discretion to look for incidence of bias.

13 The way those cases that I was mentioning where there
14 was, like I say, a suspended or revoked license looked to be
15 exactly the universe that he's interested in. An officer is 14:42:16
16 stopped who's -- an officer stops someone using his discretion
17 and it turn -- doesn't give him a citation or a -- or a
18 warning; he gives him -- he -- he cites them for the -- the
19 lack of a driver's license. So they drop out of it now, so he
20 doesn't have them. So that would be an example of about 1300 14:42:37
21 cases that would seem to fit his universe perfectly that he
22 didn't include, and there are others.

23 Q. My question was pretty simple, Dr. Camarota. You believe
24 that he should have counted all of the incidents with the
25 initial call type T, correct? 14:42:51

1 A. I don't know that he should have counted them all, but
2 there are lots that seem to, you know, meet his criteria that
3 he didn't count.

4 Q. He did count the vast majority of the incidents designated
5 with initial call type T, correct? 14:43:04

6 A. Yes.

7 Q. And there are many initial call type T stops of a nature
8 that you would agree he would be justified in excluding from
9 his study, correct?

10 A. Given what he was specifically interested in, there are 14:43:18
11 some like that, I think.

12 Q. Animal problems?

13 THE COURT: You know what? I want to ask a question
14 here. I want to interrupt and ask a question.

15 The stops that would have been excluded -- 14:43:30

16 THE WITNESS: Yes.

17 THE COURT: -- were the -- that we're talking about
18 now are stops that would have resulted in an arrest?

19 THE WITNESS: I -- I'm not an expert on what happens
20 when you have a suspended license. I don't know. I can tell 14:43:43
21 you that they're not coded as a T or 910. I don't know what
22 happens.

23 THE COURT: All right. So if they resulted in an
24 arrest, or if driving with a suspended license would result in
25 an arrest -- well, I think you indicated it was driving with a 14:43:56

1 suspended license and some DWIs --

2 THE WITNESS: Yeah, possession of narcotics --

3 THE COURT: And possession of narcotics?

4 THE WITNESS: -- I think that would, yeah.

5 THE COURT: So you would presume that DUIs would
6 result in an arrest, correct?

14:44:09

7 THE WITNESS: Um-hum.

8 THE COURT: You would presume that possession of
9 narcotics would result in an arrest?

10 THE WITNESS: Result in arrest.

14:44:18

11 THE COURT: And it's possible, at least, that driving
12 on a suspended license would result in an arrest?

13 THE WITNESS: Yeah, I -- I don't know.

14 THE COURT: Did you ever look at the arrests, the
15 actual arrests that took place during saturation patrols to
16 compare whether or not those arrests were predominantly
17 Hispanic or non-Hispanic names?

14:44:30

18 THE WITNESS: I have not done that, no.

19 THE COURT: Thank you.

20 BY MR. YOUNG:

14:44:44

21 Q. Dr. Camarota, you'd agree with me that the following are
22 also initial call type T stops: reckless boat driving, ticket
23 scalping, runaway juveniles, welfare checks, abandoned
24 vehicles, vehicle accidents with injuries?

25 A. There are a small number of cases that are coded T

14:45:03

1 initially, and then they have one of those kind of codes at the
2 end, yeah.

3 Q. So would you agree that it's appropriate for Dr. Taylor not
4 to include those in his study?

5 A. I think so. I think he should have -- I don't think he
6 should have included those, given his interests.

14:45:14

7 Q. Now, with the driving under the influence or the driving
8 while intoxicated, DWI, those would include incidents where the
9 officer has information that the operation of vehicle was
10 impaired before the stop, correct?

14:45:36

11 A. No, we don't know that from the CAD data. If a person --

12 Q. I'm sorry. Go ahead.

13 A. Well, from the CAD data it's listed as a T as initial, and
14 then it's listed as, I can't remember, DWI, I think that is the
15 code, but I can't remember, on the final.

14:45:50

16 But we don't know if it was because he failed to
17 signal or because he's swerving between lanes. There's no
18 information in the CAD data that would tell you that.

19 Q. It could be a case, though, or one of them could be a case,
20 where someone was swerving between lanes?

14:46:04

21 A. Could be.

22 Q. With respect to that class of stops, is it correct that you
23 do not know whether the percentage of Hispanics for those stops
24 is higher or lower than the percentage Hispanic for the stops,
25 or name checks that Dr. Taylor did study, correct?

14:46:21

1 You don't know one way or the other.

2 A. You -- could you just rephrase that? I wasn't sure -- I
3 don't know the percentage -- could you rephrase it? I'm sorry.

4 Q. Okay. For the suspended license cases and the driving
5 while intoxicated cases, you do not know whether the percentage 14:46:36
6 of Hispanics is higher or lower than for those cases that
7 Dr. Taylor did include in his study, correct?

8 A. Correct.

9 Q. That's true for the remainder of the instances that
10 Dr. Taylor did not include in his study, correct? 14:46:58

11 A. I don't know their Hispanic distribution.

12 Q. You yourself could have done some looking at those stops to
13 see whether there was a difference in their distribution,
14 correct?

15 A. Well, I used -- I had those in my analysis. They are part 14:47:16
16 of my whole analysis. But I didn't pull those single cases
17 out. I go from initial call type T. So it's a much broader.
18 So in that sense they are in my data, but I didn't pull out the
19 ones that he excluded. I don't know what their Hispanic
20 distribution is. 14:47:37

21 Q. So you don't know whether including those stops would have
22 made any difference at all in Dr. Taylor's conclusions,
23 correct?

24 A. It just looms as an unknown.

25 Q. And it's an unknown to you because you don't know whether 14:47:49

1 it would make a difference or not, is that right?

2 A. Don't know. It's just out there.

3 Q. You also answered some questions from Mr. Liddy about
4 socioeconomic factors.

5 A. Um-hum.

14:48:03

6 Q. And basically, your assertion is that Hispanics generally
7 are poorer and less well educated and don't speak English as
8 well, and, therefore, that explains why their name checks might
9 be higher during saturation patrols, is that right?

10 A. I said that possibility exists and it can play a role.

14:48:20

11 Given the nature -- as I recall, I said given the nature of
12 saturation patrols and their attempt, say, to stop everyone
13 with an equipment violation.

14 Q. Other than the data issues that we just talked about, the
15 failure or lack of socioeconomic variables in Dr. Taylor's
16 report is your primary criticism of his analysis, correct?

14:48:37

17 A. When you say data issues, the series of data issues that
18 we've been talking about, right? Yes. And then the lack of
19 socioeconomic factors, that could -- could make a significant
20 difference. The lack of a goodness of fit so I can evaluate
21 the overall statistical model is another thing that I really
22 would be helpful to see, you know, that I've mentioned before,
23 so -- so those things.

14:48:57

24 Q. Let me try it again, Dr. Camarota.

25 Do you agree with this statement, quote: Putting

14:49:13

1 aside data issues, the primary weakness of his analysis is that
2 Dr. Taylor does not control for any socioeconomic factors that
3 could explain his results, end quote?

4 A. The primary, the biggest problem other than data factors,
5 yes, I think that's a fair statement, that the... 14:49:32

6 Q. You do not blame Dr. Taylor for omitting socioeconomic
7 factors from his study, correct?

8 A. I don't blame -- there's no -- that doesn't exist in the
9 CAD data. We don't know anything about the socioeconomic
10 status. 14:49:48

11 Q. My question, though, is you -- is it true that you do not
12 blame Dr. Taylor for omitting those factors from his study?

13 A. I do not blame Dr. Taylor.

14 Q. If the data's not there, which it isn't, then you simply
15 cannot do that analysis, correct? 14:50:04

16 A. Correct.

17 Q. In your own comparison between what the CAD data showed and
18 the overall population mix of Maricopa County, you yourself did
19 not account for socioeconomic factors, correct?

20 A. No. There's no socioeconomic factors. 14:50:19

21 Q. So you did not account for income?

22 A. No.

23 Q. You did not account for education level?

24 A. No.

25 Q. You did not account for language skills. 14:50:29

1 A. No.

2 Q. It's possible for a foreign-born person to know the traffic
3 laws as well as a U.S.-born person, correct?

4 A. Sure.

5 Q. You can't think of any studies showing whether foreign-born 14:50:49
6 people are less likely to be law-abiding than native-born
7 people, is that correct?

8 A. In general, the research on whether the foreign born are
9 less law-abiding or not is inconclusive. It is unclear. As a
10 general proposition, I am unpersuaded that there is strong 14:51:16
11 evidence that, say, immigrants are more likely to commit crime.
12 I don't think the evidence supports that.

13 But there is this important caveat: that in Maricopa
14 County, the analysis that the Supreme Court cited and my
15 research on that did tend to support that, that illegal 14:51:36
16 immigrants represented a disproportionate share of felons in
17 Maricopa County. At least that's what the evidence seemed to
18 indicate, relative to their fraction of the overall population.

19 But as a general proposition, I do not think the
20 evidence is clear at all that the foreign born are -- have 14:51:49
21 higher rates of crime than the native born. I don't think that
22 is true. I'm not convinced of it, that's for sure.

23 Q. I'm going to read to you from page 212 of your deposition,
24 starting at line 21.

25 A. Um-hum. 14:52:04

1 MR. YOUNG: Your Honor, I have a copy of it here for
2 the witness. May I approach?

3 THE COURT: You may.

4 (Pause in proceedings.)

5 BY MR. YOUNG:

14:52:21

6 Q. Dr. Taylor, at page 212 you were asked this question:

7 "My question was not about the legal population but
8 about the foreign born. Have you done any research into the
9 issue of whether the foreign born are less likely to be
10 law-abiding, or are you aware of any studies that have been
11 done on that issue in Maricopa County?

14:52:33

12 "ANSWER: In Maricopa. People looked at Arizona. I
13 can't think of -- foreign born, Maricopa. Off the top of my
14 head, I can't think of anybody who has done a look at that."

15 A. That's right. That's consistent with what I just said, the
16 foreign born. I don't think anyone's looked at the foreign
17 born. My was talking about illegal immigrants we were just
18 talking about. They're not the same populations.

14:52:52

19 Q. You have no way of knowing from the CAD data whether
20 Hispanics or non-Hispanics have either higher or lower rates of
21 compliance with the law, correct?

14:53:07

22 A. From the CAD data, no. No, I mean --

23 Q. And you don't know whether Hispanics are either more or
24 less likely to violate the traffic laws than non-Hispanics,
25 correct?

14:53:19

1 A. No, we don't, not -- it's not in the CAD data, per se.

2 Q. Is it possible that Hispanics who hear about the MCSO's
3 saturation patrols may be more conscientious about following
4 the rules because they don't want to be subjected to stops?

5 MR. LIDDY: Objection, Your Honor, calls for
6 speculation.

14:53:40

7 THE COURT: I'm going to sustain the objection.

8 BY MR. YOUNG:

9 Q. Did you read David Rodriguez's testimony earlier in this
10 case, Dr. Camarota?

14:53:57

11 A. I have not.

12 Q. You also said something about poorer people being less able
13 to maintain their cars, and therefore being perhaps more
14 susceptible to vehicles code violations, correct?

15 A. I said that possibility definitely exists.

14:54:14

16 Q. You have not attempted to ascertain the vehicle maintenance
17 habits of Hispanics in Maricopa County, correct?

18 A. I have not.

19 Q. Other than the fact that many states give assistance to
20 low-income people to help them maintain their cars, you have no
21 data showing that lower income people are less likely to keep
22 their vehicles up to code, correct?

14:54:30

23 A. Yeah, other than that GAO report that found that states
24 found that to be the case and helped them out.

25 Q. You think it's plausible that people who have less money

14:54:51

1 would also have cars that are less expensive to maintain?

2 A. It's certainly possible, sure.

3 Q. It's also possible that a poorer person could care more
4 about his or her car than a more wealthy person, correct?

5 A. Certainly possible. 14:55:06

6 Q. And someone who's concerned or fearful about being stopped
7 by the Sheriff's Office could be more careful about not driving
8 with a cracked windshield or a burned out headlamp because that
9 person does not want to be stopped, correct?

10 A. I think I understood the question. Could you just restate 14:55:23
11 that?

12 Q. Sure. If you -- if you're afraid of being stopped by the
13 Sheriff's Office, it's possible that you might be more careful
14 than other people to make sure that your car does not have a
15 cracked windshield, does not have a burned out headlamp or have 14:55:39
16 some other reason that you could be stopped, correct?

17 A. If that's possible.

18 Q. Your critique about traffic and vehicle maintenance code
19 violations and the effect on them of socioeconomic factors
20 assumes a zero tolerance policy for traffic stops by the MCSO, 14:55:57
21 is that correct?

22 A. The way it was explained to me and the way I understand
23 their policy is they attempt when practicable, and when it's
24 viable, to pull over during saturation patrol anybody they see
25 in violation making equipment violations or violating the rules 14:56:15

1 of the road.

2 Q. It's your belief that saturation patrols are different,
3 that they have a different criteria for which they use to stop,
4 which is that there's a zero tolerance policy, is that right?

5 A. Something like a zero tolerance policy. 14:56:36

6 Q. Okay. And your assumption about saturation -- did you
7 finish your answer?

8 A. No, go ahead. That's okay. I'm fine, yeah.

9 Q. Your understanding about saturation patrols being governed
10 by zero tolerance policy comes from your discussion with
11 Lieutenant Sousa, correct? 14:56:51

12 A. Yes, primarily.

13 Q. And Lieutenant Sousa told you that on saturation patrols
14 the policy is to stop all violations -- broken windshields,
15 headlights out, fumes, all kinds of maintenance problems -- is
16 that right? 14:57:07

17 A. Yeah, I think that's roughly what he said.

18 Q. The only exception to that in your understanding is that
19 the officer should not endanger public safety, for example, by
20 shooting suddenly out into traffic, is that right? 14:57:20

21 A. Yes, I think that -- that makes sense.

22 Q. And if there is a zero tolerance policy, all violations are
23 pursued, then the fact that Hispanics have a higher name check
24 rate during saturation patrols may be due to the fact that they
25 maintain their cars more poorly, or they don't know the traffic 14:57:41

1 laws as well as more educated people, is that right? That's
2 your claim?

3 A. Yes, I think that's a -- yeah, sure. That's fine.

4 Q. If your assumption about the zero tolerance policy during
5 saturation patrols is wrong, then that critique would not be
6 valid, correct? 14:57:56

7 A. I didn't say zero tolerance, however; that's a term I
8 believe you've used. I don't think I used that term in my
9 paper. I thought I used, I said they tried to stop as many
10 people as possible when they violate -- when they see a
11 violation. So -- 14:58:13

12 Q. Well --

13 A. -- if that's not the case, if that has been misrepresented
14 to me, then that's not what happens during a saturation patrol,
15 then that can matter. 14:58:28

16 Q. Didn't you say in your deposition at page 224, line 18,
17 that saturation patrols have what has been described as a kind
18 of zero tolerance policy?

19 A. A kind of a zero tolerance policy.

20 Q. Now, would it change your view if you knew -- and I'm
21 telling you this now -- that members of the MCSO have testified
22 that for traffic stops during saturation patrols, zero
23 tolerance is actually not something that's implemented? 14:58:44

24 A. Would it change my view for traffic stops.

25 Q. Would it change your view as to the socioeconomic factors 14:59:07

1 if you knew that in fact during saturation patrols the MCSO,
2 for traffic stops, does not in fact stop every violator?

3 A. It could -- it could matter. I could see how it could
4 matter.

5 Q. It would weaken the link between these alleged 14:59:27
6 socioeconomic determinants of people being stopped and the fact
7 that a higher number of Hispanics are stopped, correct?

8 A. It might. It's possible.

9 Q. Let's talk a little bit about the length of stops.

10 You did not study whether there was any difference 14:59:55
11 between incidents where officers are called to translate and
12 incidents where officers are not called to translate, correct?

13 A. I did not.

14 THE COURT: Do you know what, Mr. Young? I don't --
15 you know, I try not to interrupt you if I don't have to, but I 15:00:10
16 think I'm pushing folks a little far. We need an afternoon
17 break.

18 How much longer do you have on --

19 MR. YOUNG: I have a few more minutes, not long, but
20 if -- this would be a good time for a break. 15:00:24

21 THE COURT: All right. Why don't we take a break
22 right now and we will reconvene at 20 after 3:00.

23 (Recess taken.)

24 THE COURT: Thank you. Please be seated.

25 Mr. Liddy, you ready for redirect? 15:20:11

1 MR. YOUNG: Actually, Your Honor, I still have a few
2 more questions.

3 THE COURT: Oh, I'm sorry. That's right. I
4 apologize, Mr. Young.

5 MR. YOUNG: Thank you. 15:20:18

6 BY MR. YOUNG:

7 Q. Dr. Camarota, before the break we were talking about the
8 stop length issue?

9 A. Yes.

10 Q. You criticized Dr. Taylor for not running his analysis by 15:20:29
11 taking any stop where one non-Hispanic name is present and
12 counting that as a non-Hispanic stop, correct?

13 A. As I recall that's how he did it, yes.

14 Q. Well, did you do it the opposite way to see what would
15 happen? 15:20:52

16 A. I did not.

17 Q. Your observation that's reflected in Figure 1 of your
18 report is based on your 70 percent threshold, correct?

19 A. Yes.

20 Q. And that's where you compare the number of Hispanic names 15:21:09
21 checked with the percentage of the population that is Hispanic,
22 correct?

23 A. Yes.

24 Q. Now, if you were to use a 60 percent threshold, the
25 number of Hispanic names checked would go up, wouldn't it? 15:21:22

1 A. Yes, slightly.

2 Q. Is it correct that you did not rely on any literature on
3 methodological approaches to racial profiling studies in your
4 analysis?

5 A. I'm not sure I quite -- you're asking me did I cite a study 15:21:41
6 on racial profiling in my report, is that -- is that what
7 you're asking me?

8 Q. You can answer that question. Did you?

9 A. I did not.

10 Q. You're aware, aren't you, now, of the problem with using 15:21:54
11 census data as you used it as a de -- as a denominator problem
12 in racial profiling studies of police stops?

13 A. I'm aware that it is something that you -- I mean, my
14 interpretation of the literature is that the fraction of the
15 population that is of the -- that is of the ethnicity of 15:22:16
16 interest is not irrelevant, but it is not the only thing that
17 matters. Dr. Taylor reported it in his study.

18 Q. Some -- well, Dr. Taylor called it the benchmarking
19 problem, correct?

20 A. Yes, I think he also called it the denominator problem as 15:22:32
21 well.

22 Q. And Dr. Taylor cited some articles, including the 2009
23 Ridgeway article about the Cincinnati Police Department traffic
24 stops, and then another article by Walker, S. Walker in 2001
25 called Searching for the denominator: Problems with police 15:22:51

1 traffic stop data and an early warning system solution.

2 Did you read his report, his rebuttal report in which
3 he cited those articles?

4 A. I do, yes, I remember.

5 Q. You did not in your own study take into account the
6 denominator problem or the benchmarking problem described in
7 those articles, correct?

15:23:05

8 A. I'm not sure I understand your question.

9 When you're looking over time at the same data from
10 2005 to 2009, the issue that you just discussed is not even
11 relevant, because you're comparing the same thing over time.

15:23:22

12 So Figure 1 has two important components. One
13 important component is the lack of a rise in the Hispanic
14 share, even though you have this big increase and concern over
15 illegal immigration. That part of the analysis has nothing to
16 do with the fraction of the population that's Hispanic. That's
17 looking at the same data over time.

15:23:42

18 On this question of the denominator problem, in my
19 report I talked about other things like the demography of the
20 area around it. So I did talk about some of those other things

15:24:01

21 in my original report, and as -- and it turns out that
22 Hispanics are as likely to drive in Maricopa County as -- as
23 anyone else. They're as likely to drive to work -- about
24 29 percent of -- 30 percent of Hispanics, roughly, drive to
25 work -- as non-Hispanics, and they make up about 29 percent of

15:24:20

1 people who drive to work.

2 So to the extent that we can look at those questions
3 and deal with this issue of, well, maybe Hispanics drive a
4 whole lot less, which is one of the -- basically, one of the
5 essential issues that you're talking about, the American
6 community survey shows that they actually drive about in
7 proportion to their share of the population.

15:24:34

8 MR. YOUNG: Your Honor, I'll move to strike that
9 answer as nonresponsive.

10 THE COURT: The motion is granted. The answer is
11 stricken.

15:24:46

12 BY MR. YOUNG:

13 Q. Dr. Camarota, referring specifically to the Ridgeway and
14 Walker articles, it is correct that you did not take them into
15 account in doing your analysis, correct?

15:24:59

16 A. I would argue strongly that the comparison between 2005 to
17 2009 doesn't -- doesn't -- is -- is most certainly taking that
18 into account, 'cause I'm comparing not the population base, but
19 change over time within the CAD data.

20 Q. Did you read those articles before doing your report?

15:25:22

21 A. I was aware of those articles.

22 Q. Did you read them before doing your report?

23 A. I -- I read them -- I read them. Did I read them before
24 the report? I think so. But I certainly read them after. I
25 have read them.

15:25:38

1 Q. So you're not certain whether you read them before doing --

2 A. I'm not sure if I read them before or after.

3 Q. You did not attempt to design your study to make use of
4 internal benchmarking, correct?

5 A. Except for the comparison over time. 15:25:54

6 But I also -- let me take that back. I also did look
7 at comparisons over time by district, as well as the overall
8 data, so that's an internal comparison, not comparing -- not
9 a comparison to the demography of the area.

10 And then I also looked at specific as many units as 15:26:16
11 could possibly be identified over time, and all that data is
12 reported in Figure 1. So that's an internal comparison. It's
13 not a comparison to the demography of Arizona or Maricopa.

14 Q. Your conclusion would be invalid if Hispanics had a lower
15 rate of exposure to the MCSO, for example, because they drive 15:26:43
16 less, correct?

17 A. What conclusion -- I'm not sure I understand what you're
18 asking. What conclusion are you referring to?

19 Q. Your conclusion based on a comparison between the MCSO name
20 check rates and the overall population of Hispanics in Maricopa 15:26:57
21 County, that conclusion would be invalid or at least be
22 undermined if Hispanics had a lower rate of exposure to the
23 MCSO, is that right?

24 A. You mean they drive less; that's what you're essentially --
25 yes, if Hispanics drive less and so have a less likely, then 15:27:13

1 that would change the percent, the chance that they would be
2 stopped, if that's what you're asking me.

3 Q. So if Hispanics drove less for leisure, for shopping, for
4 example, that would have the effect of making your conclusion
5 less secure, correct? 15:27:30

6 A. I'm not -- when you say my conclusion, you mean my
7 comparison just between the --

8 Q. That's right.

9 A. -- the basic demographics?

10 Q. That's right. 15:27:41

11 A. It could change that result.

12 Q. So if Hispanics, for example, just suppose that they went
13 to work in carpools more often than non-Hispanics, and drove
14 together with other people, would that make your -- would that
15 change the basis on which you did your comparison as set forth 15:27:59
16 in Figure 1 in your report?

17 A. It could have an effect on its comparison to the
18 demography, but not the change over time.

19 Q. If Hispanics drove in areas of the county that are policed
20 by the MCSO more heavily, less frequently than non-Hispanics, 15:28:13
21 that would also undermine the relevance of your study, correct?

22 A. No, I don't -- I don't quite understand that question.

23 Could you -- you're saying that if they drove in areas that
24 the -- well, re -- could you restate it?

25 Q. Let me simplify the question. 15:28:32

1 A. Yeah.

2 Q. It's possible that the MCSO patrols more in some areas and
3 less in other areas of the county, correct?

4 A. Right.

5 Q. And if Hispanics drove more in the areas that are less
6 heavily patrolled by the MCSO, that would weaken the validity
7 of your comparison, true? 15:28:40

8 A. It -- it -- it would -- I understand. You're asking me
9 whether the demographic could be different, right, that just
10 simply comparing them to the share of the population, not the
11 change over time, but the population number. Yes, that -- that
12 could weaken that. 15:28:59

13 Q. And if Hispanics drove less when the MCSO announces
14 publicly and has a press conference telling everyone that
15 they're going to do a saturation patrol, that would also affect
16 the validity of your comparisons, correct? 15:29:15

17 A. If that -- if that sort of thing happened.

18 Q. Now, your assumption is that Hispanics and non-Hispanics
19 violate the law, the traffic laws, at equal rates, right?
20 That's a basis that you use to show that your Figure 1
21 calculation is relevant to the issues in this case, correct? 15:29:35

22 A. I provided -- I'm not sure I -- I quite understand what
23 you're saying. Do I think -- you're not asking whether I think
24 that they do. You're asking is -- if that's the case, does the
25 figure make the most sense? 15:30:06

1 Well, the part of the figure that compares the
2 population numbers to the share stopped. I would say yes, that
3 makes sense.

4 Q. You've not done anything to confirm that assumption,
5 correct?

15:30:23

6 A. What assumption is that?

7 Q. The assumption that Hispanics and non-Hispanics violate the
8 traffic laws at equal rates.

9 A. I have no information to suggest that they don't -- that
10 there's a fundamental difference between those two groups.

15:30:35

11 Q. Now, I'd like to talk with you a little bit more about
12 Mr. Jefferys. You received the first CAD data set from him,
13 correct?

14 A. Yes.

15 Q. Okay. Then he gave you a second set of data, and that's
16 the one that you used for your analysis?

15:30:49

17 A. Yes.

18 Q. And the second set of data contained fewer incidents, and
19 Mr. Jefferys had created a separate field where he put the
20 names, is that correct?

15:31:02

21 A. Yes.

22 Q. Mr. Jefferys manually reviewed the comment fields of the
23 various data entries in order to pull the names out for you?

24 A. He -- as -- he didn't just manually review. He did an
25 algorithm, and then the remaining cases he used a manual

15:31:17

1 review. So one of the things he did was a manual review, as I
2 say in the report.

3 Q. So Dr. Taylor actually pulled the names out of the data
4 himself, correct?

5 A. That's my understanding, yes. 15:31:29

6 Q. So basically, Mr. Jefferys did for you what Dr. Taylor had
7 done for himself, is that right?

8 A. I think that -- that's correct.

9 Q. You did not know everything that Mr. Jefferys did to find
10 those names, correct? 15:31:45

11 A. I had a long series of conversations with him on the phone
12 about it, but I can't say I know every single thing that he
13 did.

14 Q. You can't remember or you don't know every query that was
15 done in Access to get those names, correct? 15:32:01

16 A. I don't know every one.

17 Q. And you did not suggest to Mr. Jefferys any criteria to
18 distinguish names of people from things that were not names of
19 people, correct?

20 A. I told -- well, I told him I wanted the last names of 15:32:12
21 everyone for whom there was an available last name for
22 T traffic stops. So I told him exactly what I wanted.

23 Q. I'm going to read from your deposition at page 41 --

24 A. Okay.

25 Q. -- line 17. 15:32:34

1 "QUESTION: Did you suggest any criteria by which to
2 distinguish names from things that were not names?

3 "ANSWER: Did I suggest any criteria that he might
4 use? No, I pretty much left it up to him. I mean, he's worked
5 with the data for years. He's been asked to do this kind of
6 thing where he pulls out people's names and stuff. Apparently
7 he knows how to do it. So he provided me with data with
8 names."

15:32:49

9 A. Yes, he provided me with names. And as I said, I asked him
10 for all the last names.

15:33:03

11 Q. Was that answer accurate?

12 A. The testimony --

13 Q. The one I just read?

14 A. Yeah, he provided me with the names, absolutely.

15 Q. You did not watch Mr. Jefferys prepare the data?

15:33:11

16 A. I did not.

17 Q. You were not looking over his shoulder?

18 A. No.

19 Q. It was Mr. Jefferys who organized that data so that it
20 could be exported to a statistical software package, correct?

15:33:21

21 A. Yes, he provided it to me as an Access, and then I exported
22 it to SPSS.

23 Q. You did not, yourself, check the individual records to see
24 whether or not Mr. Jefferys was excluding any names

25 incorrectly?

15:33:40

1 A. No, I -- I did check names. I -- I manually reviewed, but
2 I certainly didn't check everything that he provided.

3 Q. You checked a subset?

4 A. Yes, I checked -- I checked what he had provided to me
5 with -- against the original data, but I -- I certainly didn't
6 check every name he provided. 15:33:58

7 Q. In fact, you looked at just a couple of hundred cases,
8 correct?

9 A. I think that sounds about right, yes.

10 Q. A couple of hundred out of how many? 15:34:10

11 A. Incidents or names? 170,000 names.

12 Q. In addition to manipulating the names and removing some
13 incidents, Mr. Jefferys also removed other information,
14 including officer information and disposition of the stop,
15 correct? 15:34:30

16 A. Yes, I do not -- in the data that he provided me -- let me
17 be clear. In the original data, that -- that information is
18 there. But when he pulled out the names and provided me with
19 things like the unit and so forth, the officer's name was not
20 there. 15:34:45

21 Q. Let's go to Exhibit 402 of your -- which is your report,
22 and I want to go to page 14.

23 A. Of my report?

24 Q. Of your report. Let's look at the first five lines. In
25 the fourth line, actually the fifth line, you say: In 2005, 15:35:18

1 just 44 stops were attributed to HSU.

2 You see that?

3 A. Yes, that's what the data showed.

4 Q. Now, you put that data also in a table that's in your
5 report, correct?

15:35:30

6 A. Yes.

7 Q. That's on page 35, and we can take a look at that.

8 A. Okay.

9 Q. Actually, it's page 39. Please pull up page 39 of
10 Exhibit 402. And there you have a big table with various
11 operational areas and --

15:35:46

12 A. I can't read here.

13 Q. Let's go -- let's take the first half of the page, page 39.

14 All right. That's -- that's fine. You see there
15 there's a line HSU?

15:36:09

16 A. Yes.

17 Q. And under the column 2005 you have that same number, 44?

18 A. Yes.

19 Q. That's in the CAD data that Mr. Jefferys gave you, correct?

20 A. Yes.

15:36:20

21 Q. Mr. Jefferys put that number -- put that data leading to
22 your 44 stops into the CAD data that he gave you, correct?

23 A. He put that number in. I don't understand your question.

24 He -- he did not -- I mean, I ran the data, and 44 for that

25 year showed the code HSU.

15:36:41

1 Q. Those 44 stops are in an operational area field for the
2 HSU, correct?

3 A. Yes.

4 Q. And it was Mr. Jefferys who determined which incidents to
5 put into which operational field, correct?

15:36:58

6 A. No, that's not my understanding. He pulled the data as it
7 existed. The operational field, I said I wanted to know the
8 unit, and he gave me the unit. I'm not -- maybe I'm not quite
9 understanding your question. He didn't -- that's one of the
10 fields in the Access data, and it's one of the fields he
11 included in the information that he sent me.

15:37:16

12 Q. Well, I'm going to read to you from your deposition again
13 starting at page 54, line 20.

14 "QUESTION: Okay. How did Mr. Jefferys determine
15 which incidents to put into the Human Smuggling Unit
16 operational field, operational area?

15:37:44

17 "ANSWER: As I understand it, he went from the field
18 that says operational area, I mean --

19 "QUESTION: What field was that?

20 "ANSWER: In the CAD data there's a field, as I
21 understand it, that says operational area. I mean there are
22 lots of fields. I know that there is an indication of what the
23 officer, you know, what the officer is assigned to and what
24 operational area the officer is assigned to."

15:38:02

25 So as I read your deposition testimony, you said that

15:38:20

1 Mr. Jefferys put it there. Is that accurate?

2 A. I think what I was saying there, based on the context, is
3 that there's a field that indicates the unit, and that's just
4 what he went from. He gave me that column. That's all.

5 Q. The Human Smuggling Unit did not exist in 2005, correct? 15:38:39

6 A. That's my understanding, it did not exist.

7 Q. And when you saw the 44 stops listed there, you believed
8 that that was an anomaly or a mistake, correct?

9 A. Yeah, I -- in fact, I think I inquired about it. I mean
10 this was a while ago. It seemed strange to me. Why would 15:39:00
11 there be 44 stops if the unit hadn't been created yet? Yes, I
12 agree, I think it's some kind of anomaly.

13 Q. In fact, at the time that you were preparing your report,
14 which we've just been looking at, you found it strange that
15 there were 44 stops reported for the Human Smuggling Unit, 15:39:13
16 correct?

17 A. I think that's unusual, yes.

18 Q. You found it strange, right?

19 A. "Strange" seems like an appropriate word.

20 Q. You nonetheless proceeded to incorporate that figure into 15:39:24
21 the table and paragraph of your report that we just looked at,
22 correct?

23 A. Absolutely. That was what the data showed. I was not
24 going to manipulate the data to -- or suppress that. I
25 couldn't account for it, but that's what's in -- and I think 15:39:39

1 what that is an indication of the thing that we had talked
2 about earlier of all the problems in HS -- in the CAD data.

3 Q. You relied on that number in coming to your conclusions?

4 It's part of what you relied on in coming to your conclusions?

5 A. The -- I didn't exclude that data. That data's there and I 15:39:56
6 included it.

7 Q. Now, as we discussed earlier, you -- you provided some
8 documents to Mr. Liddy, who provided them to us after your
9 deposition and after all the expert reports were completed in
10 this case, correct? 15:40:13

11 A. Yes.

12 Q. That's where we got that e-mail string between you and
13 Mr. Jefferys?

14 A. Yes.

15 Q. That data also included a data -- the data file that you 15:40:19
16 used consisting of names linked to incident numbers, correct?

17 A. Yes, I'm -- I'm sure I sent that to you.

18 Q. You did not provide that file for purposes of giving to
19 plaintiffs in this case at any time at or prior to your
20 deposition on March 22, 2011, is that right? 15:40:45

21 A. I can't remember when I sent it to you. I don't know.

22 Q. Well, if I represent to you that --

23 A. If that --

24 Q. -- I asked you about it at your deposition --

25 A. Okay. 15:40:57

1 Q. -- and you said that you would subsequently provide it to
2 Mr. Liddy, you wouldn't have any reason to disagree with that,
3 would you?

4 A. Yeah, that sounds right.

5 MR. YOUNG: Thank you very much, Dr. Camarota. 15:41:07

6 THE COURT: Redirect.

7 MR. LIDDY: No redirect, Your Honor.

8 THE COURT: All right. You may step down, Doctor.

9 Thank you.

10 THE WITNESS: Thank you. 15:41:21

11 MR. CASEY: Your Honor, for defense's next witness
12 will be MCSO Deputy Matt Ratcliffe.

13 THE COURT: Deputy Ratcliffe, please come right here
14 to be sworn in front of this microphone.

15 THE CLERK: Can you please state and spell your full 15:42:13
16 name.

17 MR. RATCLIFFE: Matthew Ratcliffe. M-a-t-t-h-e-w,
18 R-a-t-c-l-i-f-f-e.

19 THE CLERK: Thank you. Please raise your right hand.

20 (Matthew Ratcliffe was duly sworn as a witness.) 15:42:34

21 THE CLERK: Thank you. Please take our witness stand.

22 MATTHEW RATCLIFFE,

23 called as a witness herein, having been duly sworn, was
24 examined and testified as follows:

25 DIRECT EXAMINATION 15:43:04

1 BY MR. CASEY:

2 Q. Please tell us your full name, sir.

3 A. Matthew Ratcliffe.

4 Q. And who are you employed by?

5 A. Maricopa County Sheriff's Office. 15:43:09

6 Q. And how long have you been with the MCSO, sir?

7 A. Approximately nine years.

8 Q. So what year would that mean you started at MCSO?

9 A. Started originally in 2002.

10 Q. What year did you go to the academy? 15:43:22

11 A. 2002 and 2003.

12 Q. When you were at the academy, do you recall ever undergoing
13 any training regarding the use of race or ethnicity in making
14 law enforcement decisions?

15 A. Yes, sir. 15:43:36

16 Q. What did you generally learn at the academy?

17 A. There's no place for it in law enforcement.

18 Q. At any point in your career did you ever become what's been
19 known as 287(g) certified?

20 A. Yes, sir. 15:43:50

21 Q. When did you become 287(g) certified?

22 A. I believe it was early 2007.

23 Q. Where was that training conducted?

24 A. At the training facility for Maricopa County.

25 Q. Do you recall who conducted that training? 15:44:02

1 A. Various agencies in the federal level.

2 Q. Now, when you say various agencies at the federal level,
3 what are you talking about specifically?

4 A. I believe it was Customs Enforcement; Border Patrol, I
5 believe, was also there, a number of federal agencies.

15:44:17

6 Q. What -- how long was the program?

7 A. I don't remember the time frame.

8 Q. Okay. Did you learn anything there about their use of race
9 or ethnicity in making law enforcement decisions?

10 A. There's no place for it there.

15:44:32

11 Q. Did you have any components in that ICE course about things
12 such as community policing, cultural awareness, cultural
13 sensitivity, things like that?

14 A. Yes, sir, I did.

15 Q. Let's turn now to the time period of December of 2007.

15:44:48

16 You, I assume, were employed still at MCSO?

17 A. Yes, sir.

18 Q. Where were you -- what -- where were you stationed?

19 A. I was stationed at the Bartlett Lake area for the Lake
20 Patrol Division.

15:45:05

21 Q. Explain for the Court, what is the Lake Patrol Division?

22 A. Some of the duties that Lake Patrol covers is search and
23 rescue throughout the outlying areas, as well as Tonto National
24 Forest.

25 Q. And what do lake -- what do deputies do who are assigned to

15:45:23

1 the Lake Patrol Division?

2 A. Anything from mounted patrol, ATV, boats, search and
3 rescue, dive missions, various other patrol duties.

4 Q. Thank you, sir.

5 I'm going to now turn to a different subject, that is, 15:45:42
6 a specific day back in December of 2007. Specifically, I
7 believe it was a -- the record will reflect it was a Sunday,
8 December 2nd, 2007.

9 Did you make a traffic stop on a truck that you ended
10 up learning was driven by a man named David Rodriguez? 15:46:01

11 A. That's correct.

12 Q. All right. Could you tell the Court, why did you make the
13 traffic stop on that truck?

14 A. The vehicle had violated Title 28 law of bypassing a
15 traffic control device. 15:46:17

16 Q. And what road was that truck traveling on?

17 A. Bartlett Dam Road.

18 Q. And what was the violation?

19 A. Basically had violated the traffic control device by
20 driving around the traffic signs that were -- that stated that 15:46:30
21 the road was closed.

22 Q. Do you know why the road was closed that day?

23 A. We had a severe storm the previous evening.

24 Q. And what -- and what was it that you understood as to why
25 the road was closed, other than there was a storm the previous 15:46:42

1 evening?

2 A. Flash flooding is prone in that area, as well as a lot of
3 road damage done to that area.

4 Q. Would you describe for us Bartlett Dam Road, is -- how many
5 lanes there are; which direction it generally goes. 15:46:57

6 A. One lane east and west. It's approximately 14 miles long
7 starting at Cave Creek Road and ending at the lake.

8 Q. Okay. Who closed the road? Was that -- and let me strike
9 that. I apologize to the court reporter.

10 Who makes decisions in Maricopa County as to whether a 15:47:14
11 road should be closed or not?

12 A. I believe that would fall to MCDOT.

13 Q. And what does that stand for, sir?

14 A. The Maricopa County Department of Transportation.

15 Q. Did you close the road under your authority? 15:47:27

16 A. No, sir.

17 Q. And were there hazards on Bartlett Dam Road?

18 A. Yes, sir.

19 Q. And what type of hazards were there, sir?

20 A. A lot of different washes cross Bartlett Dam Road leaving 15:47:38
21 different debris, whether they're rocks or sand.

22 Q. On that day, please tell me precisely what was your cause,
23 probable cause, or reasonable suspicion to stop that vehicle?
24 And you mentioned it earlier.

25 A. It was basically at that point in the road where I was 15:47:58

1 located, the road had been closed to the west, closing all
2 traffic basically down to the lake.

3 Q. What happened after you spotted this car on the road? What
4 did you do?

5 A. Got out of my vehicle and made a traffic stop on that
6 vehicle. 15:48:12

7 Q. Were you in a marked or unmarked vehicle?

8 A. I believe I was in a marked vehicle at that time.

9 Q. Okay. And what happened after you got in your vehicle and
10 pulled over this dark-colored vehicle? 15:48:27

11 A. I contacted the driver at the driver's window.

12 Q. And what happened next, sir?

13 A. I asked him for driver's license, insurance, and
14 registration, and asked them why they were driving on the road.

15 Q. And do you recall what -- what were you told about them
16 driving on the road? 15:48:37

17 A. The driver explained to me that they were taking the kids
18 to the lake.

19 Q. And did you later identify who that driver was?

20 A. Yes, sir. 15:48:51

21 Q. And who was it?

22 A. David Rodriguez.

23 Q. Did you at any time ever ask Mr. Rodriguez for a Social
24 Security card?

25 A. No, sir. 15:49:02

1 Q. Is it your custom and practice at any point when you stop
2 vehicles for Title 28 violations to ask drivers for their
3 Social Security cards?

4 A. No, sir.

5 Q. At any point do you remember if you asked the driver for
6 anything else other than driver's license, proof of insurance,
7 and proof of registration?

15:49:15

8 A. No, sir.

9 Q. At some point did you make a decision that you were going
10 to issue a citation to Mr. Rodriguez?

15:49:37

11 A. Yes, sir.

12 Q. And what was that decision based on?

13 A. My decision was based on him saying he was taking the kids
14 to the lake, putting them in harm's way.

15 Q. And did at any time -- and I'm going to back up a minute --
16 at any time before you made the traffic stop could you identify
17 the number of people in that vehicle?

15:49:49

18 A. No, sir.

19 Q. Could you identify the gender of the people in the vehicle?

20 A. Not prior to contact, no, sir.

15:50:04

21 Q. Prior to contact, making the traffic stop, could you
22 determine the race or ethnicity of anyone in that vehicle?

23 A. No, sir.

24 Q. Did race or ethnicity play any role in your decision to
25 make that traffic stop?

15:50:17

1 A. No, sir.

2 Q. All right. Now, let's go to this point where you decided
3 to issue a citation. Did the race of Mr. Rodriguez, or his
4 ethnicity, play any role in your decision to issue him that
5 citation?

15:50:31

6 A. No, sir.

7 Q. Did Mr. Rodriguez ask you any questions while the traffic
8 stop was occurring?

9 A. Yes, sir.

10 Q. What did he ask you?

15:50:42

11 A. He asked why some people are being allowed to pass and
12 others weren't.

13 Q. And what was your response?

14 A. They were -- the people that were being allowed to pass at
15 that time were responding to the damages done to their boats
16 and the RVs down at the lake.

15:50:53

17 Q. Explain for me why some people were being allowed to go to
18 take care of property damage on this dangerous road and others
19 were not.

20 A. Simply because they had a right to try to recover and
21 recoup their property from the area.

15:51:08

22 Q. Did -- was there -- were -- strike that.

23 Were there any other questions that he asked you about
24 the traffic stop or the effect of the citation on him?

25 A. Yes, sir. He was concerned about his CDL.

15:51:26

1 Q. And what did you do in response to that question about the
2 CDL?

3 A. I explained to him that unfortunately, I didn't know what
4 effect it would have, if any, at that time.

5 Q. And when you mentioned CDL, what does -- what does that
6 stand for?

7 A. Commercial driver's license.

8 Q. Do I understand your testimony is that he was asking you,
9 If I get a citation, Deputy, do you know what effect this is
10 going to have on my commercial driver's license?

15:51:39

15:51:52

11 A. Correct.

12 Q. All right. At any time did you have any conversation with
13 anyone else in the -- in this truck?

14 A. Yes, sir.

15 Q. And who did you have a conversation with?

15:52:02

16 A. The female passenger.

17 Q. And where was that female passenger seated?

18 A. I believe in the front passenger seat.

19 Q. Do you remember what the nature or substance of that
20 conversation was about?

15:52:15

21 A. It was a very heated conversation with her.

22 Q. I'm sorry, what did you say?

23 A. It was a very heated conversation with her. She became
24 very agitated.

25 Q. And why do you say she became very agitated?

15:52:24

1 A. Because I was issuing her husband a traffic ticket while
2 other people were being allowed to pass.

3 Q. And what did she say, if anything, to you?

4 A. She wanted to know why -- basically why I was giving her --
5 him a specific ticket, and everyone else was being turned
6 around or being allowed down the roadway. 15:52:39

7 Q. And what did you tell her in response?

8 A. I explained to her about the damage to the boats and RVs,
9 and I couldn't -- explained to her also that I was dealing with
10 her and not dealing with the other people, another deputy was. 15:52:53

11 Q. Did she accuse you of anything at all during this heated
12 conversation?

13 A. Not at that time.

14 Q. Okay. At any other time did she accuse you of anything
15 that day? 15:53:05

16 A. Not that day, no, sir.

17 Q. Okay. Her husband testified, I believe the record will
18 reflect, that she accused you of something called selective
19 enforcement. Does that refresh your recollection as to whether
20 or not she made any comment like that? 15:53:19

21 A. I don't believe she made that comment, but I -- it's been
22 five years.

23 Q. All right. Thank you, sir.

24 What happened after you issued the citation to

25 Mr. Rodriguez? 15:53:31

1 A. I went back to my vehicle and cleared the traffic stop, and
2 then drove westbound on Bartlett Dam Road.

3 Q. And where -- where was the Rodriguez vehicle as you were
4 driving westbound on Bartlett Dam Road?

5 A. In front of my vehicle.

15:53:46

6 Q. And why were you traveling westbound?

7 A. Basically, after the complication that she provided, I
8 basically wanted to take photographs of the Road Closed signs
9 for later representation in court.

10 Q. Explain for me, what was it about your interaction with the
11 lady in the car that made you want to take pictures.

15:54:02

12 A. Just her extreme aggravation and hatred towards me.

13 Q. When you say hatred towards you, help me understand, what
14 was it about that that led you to conclude she had hatred for
15 you?

15:54:26

16 A. Just highly confrontational about the entire 10-minute
17 process that we were there. Her verbal tones and accusations
18 that she was making.

19 Q. And those photographs, you provided those during the course
20 of the litigation that brings us to the courtroom today?

15:54:40

21 A. Yes, sir, I have.

22 Q. And those were used during your deposition by the
23 plaintiffs' lawyers?

24 A. Yes, sir.

25 Q. Okay. And let me ask, were you following -- let me back

15:54:47

1 up.

2 Was there any other route for you to head out
3 westbound other than Bartlett Dam Road?

4 A. No, sir.

5 Q. Was there any other way for you to get to the location
6 where you took photographs other than Bartlett Dam Road?

15:55:02

7 A. No, sir.

8 Q. Were you following the Rodriguezes in their vehicle for any
9 reason?

10 A. To get to the intersection to take photographs.

15:55:17

11 Q. Were you following them to intimidate them?

12 A. No, sir.

13 Q. Did you ever use your lights or siren, anything like that
14 with them?

15 A. No, sir.

15:55:28

16 Q. At any time -- and I'm backing up a little bit.

17 After you issued the citation until you took the
18 photographs, did you ever get on a horn, a loudspeaker, and
19 tell them anything?

20 A. No, sir.

15:55:41

21 Q. Did you ever get on a loudspeaker and tell them: Move on,
22 You gotta move on, You gotta get out, anything like that?

23 A. No, sir.

24 Q. Okay. Did the race or ethnicity of the occupants of that
25 vehicle play any role in your decision to drive westbound on

15:55:59

1 Bartlett Dam Road?

2 A. No, sir.

3 Q. Did the race or ethnicity of anyone in that vehicle play
4 any role whatsoever in your decision to take photographs of the
5 Road Closed sign? 15:56:11

6 A. No, sir, they did not.

7 Q. Okay. Now, one final area, sir.

8 Did you make other traffic stops that day?

9 A. Yes, sir.

10 Q. And do you remember how many traffic stops that you -- you 15:56:21
11 made before you stopped what turns out to be the Rodriguez
12 vehicle?

13 A. No, sir, I don't recall.

14 Q. Can you give us an estimate, sir?

15 A. I don't remember, sir. 15:56:34

16 Q. Okay. Do you remember generally what you did with those
17 people that you stopped?

18 A. Handled them over to the Tonto National Forest law
19 enforcement officer.

20 Q. Could you explain, please, why you handed them over to the 15:56:44
21 Tonto National Forest ranger?

22 A. He was in the area also enforcing the road closed as well,
23 and we were working a partnership between the two.

24 Q. Is -- do you have, as an MCSO deputy on Lake Patrol, do you
25 have primary jurisdiction, concurrent, or how would you 15:57:02

1 describe that relative to the forest ranger?

2 A. We are contracted through the Tonto National Forest to
3 assist in law enforcement activity enforcing state laws on
4 federal land.

5 Q. Okay. The people that you refer to, the Tonto National
6 Forest ranger, do you know what, generally, was the outcome of
7 those referrals?

15:57:16

8 A. They were issued citations from him.

9 Q. And how do you know that?

10 A. He told me. And I was standing there at the time.

15:57:29

11 Q. So you actually saw that?

12 A. Yes, sir.

13 Q. Plus he also told you.

14 A. Yes, sir.

15 Q. Do you remember the race or ethnicity of those people you
16 referred to the Tonto National Forest ranger?

15:57:37

17 A. No, sir, I don't.

18 Q. Do you care what the race or ethnicity is of the people you
19 referred to the forest ranger?

20 A. No, sir.

15:57:51

21 MR. CASEY: Those are all the questions I have for
22 you, Deputy. Thank you.

23 THE COURT: Cross-examination?

24 MS. GALLAGHER: Yes, Your Honor. Thank you.

25

15:58:05

1 CROSS-EXAMINATION

2 BY MS. GALLAGHER:

3 Q. Good afternoon, Deputy Ratcliffe.

4 A. Good afternoon.

5 Q. I just want to clarify a few things that you spoke about 15:58:14
6 during your examination.

7 You work for Lake Patrol, that's right?

8 A. Yes, ma'am.

9 Q. And Lake Patrol covers recreational areas?

10 A. Yes, ma'am. 15:58:25

11 Q. And there's not many residences in those areas, is that
12 correct?

13 A. There's a few.

14 Q. Not many, though?

15 A. Depends on how many "many" is, ma'am. 15:58:33

16 Q. It's largely national forest area, is that correct?

17 A. Yes, ma'am.

18 Q. So there's not many residences, this is a national forest
19 area, is that correct?

20 A. Yes, ma'am. 15:58:42

21 Q. You were 287(g) certified in the past, that's correct?

22 A. That's correct.

23 Q. But you were never part of the Human Smuggling Unit,
24 correct?

25 A. No, ma'am. 15:58:54

1 Q. And you understand -- but you did go on saturation patrols,
2 is that correct?

3 A. Yes, ma'am.

4 Q. And you understood that part of your job on those
5 saturation patrols was to find and arrest undocumented
6 immigrants, is that correct?

15:59:01

7 A. No, ma'am.

8 Q. Have you ever felt at any time that it was part of your job
9 to find and arrest illegal aliens?

10 A. Yes, ma'am.

15:59:29

11 Q. Now, your counsel asked some questions about some training
12 that you took regarding racial profiling, both at the academy
13 and during your 287(g) training, is that correct?

14 A. Yes, ma'am.

15 Q. And you testified that you were -- excuse me. Strike that.

15:59:47

16 What was the definition of racial profiling that was
17 provided to you at the academy?

18 A. Basically, any traffic stop conducted due simply to the
19 color of someone's skin.

20 Q. And you were also trained on racial profiling at the 287(g)
21 training, is that correct?

16:00:07

22 A. Yes, ma'am.

23 Q. And what was the definition of racial profiling provided to
24 you at the 287(g) training?

25 A. Very similar.

16:00:20

1 Q. And when you participated in saturation patrols, there was
2 no particular information given to you about crime spikes in
3 the areas, is that correct?

4 A. No, ma'am.

5 Q. And during those saturation patrols you did not collect any 16:00:42
6 information about the ethnicity of persons stopped, is that
7 correct?

8 A. No, ma'am.

9 Q. I want to turn to the stop of the Rodriguezes that we were
10 talking about, or that you were talking about with your counsel 16:00:57
11 earlier.

12 On that day you could observe, in particular at the
13 time you stopped the Rodriguezes, you could observe other
14 motorists on the same stretch of road as the Rodriguezes, is
15 that correct? 16:01:08

16 A. Yes, ma'am.

17 Q. And in fact, several of those other vehicles were stopped
18 by Deputy Multz?

19 A. Correct.

20 Q. And that occurred at the same time as you were dealing with 16:01:17
21 the Rodriguezes, correct?

22 A. Approximately.

23 Q. That occurred at the same time as you were dealing with the
24 Rodriguezes?

25 A. Yes, ma'am. 16:01:25

1 Q. And he was still dealing with some of those other motorists
2 at the time that you concluded your stop with the Rodriguezes,
3 is that correct?

4 A. I don't recall.

5 Q. Do you recall the number of other motorists he dealt with
6 in the time that you dealt with the Rodriguezes?

16:01:36

7 A. No, ma'am.

8 Q. Do you recall that it was more than one?

9 A. Like I stated, ma'am, I don't remember how many there were.

10 Q. You don't recall whether or not it was more than one?

16:01:51

11 A. I'm sure it probably was. I was tied up writing a
12 citation.

13 Q. So you believe it was more than one?

14 A. Yes, ma'am.

15 Q. And you knew the area was popular for off-roading, is that
16 correct?

16:02:03

17 A. Correct.

18 Q. And you knew that there was approximately two miles between
19 the Road Closed sign and where you were stationed at the Camp
20 Creek Wash, is that correct?

16:02:16

21 A. Approximately a mile and a half.

22 Q. And at the time that you pulled -- excuse me.

23 At the time that you pulled over the vehicle, had you
24 already decided whether you were going to give them a citation?

25 A. Yes, ma'am.

16:02:28

1 Q. And in fact you had decided you were going to give them a
2 citation, is that correct?

3 A. Yes, ma'am.

4 Q. And at that time you did not know whether David Rodriguez
5 had driven around the Road Closed sign, is that correct?

16:02:38

6 A. Correct.

7 Q. And at that time you did not know that there were children
8 in the car, is that correct?

9 A. Correct.

10 Q. And at that time you did not know whether or not David
11 Rodriguez had any property, including a boat, down at the
12 marina, is that correct?

16:02:45

13 A. Correct.

14 Q. And it's correct that David Rodriguez was driving towards
15 you prior to making a U-turn and prior to when you stopped him,
16 is that correct?

16:02:57

17 A. Correct.

18 Q. When you first approached the Rodriguez vehicle you asked
19 Mr. Rodriguez for his license, registration, and insurance?

20 A. Correct.

16:03:11

21 Q. And also his Social Security number?

22 A. Not at that time.

23 Q. You did ask him for his Social Security number at some
24 point during the day?

25 A. Yes, ma'am.

16:03:18

1 Q. And you requested the Social Security number even though
2 you had already received a valid ID and registration, is that
3 correct?

4 A. That is correct.

5 Q. But you did not ask David about his military status, is
6 that correct?

16:03:32

7 A. No, ma'am.

8 Q. You testified during your examination that you did not
9 place the Road Closed sign that day, is that correct?

10 A. That's correct.

16:03:53

11 Q. In fact, no one from MCSO placed that sign?

12 A. Not that I believe.

13 Q. And you don't know who exactly did place the sign?

14 A. No, ma'am.

15 Q. Now, you also testified earlier that you did not recall the
16 passenger in the vehicle saying anything to the effect of it
17 was selective enforcement?

16:04:03

18 A. No, ma'am.

19 Q. I want to direct your attention to your -- excuse me.

20 MS. GALLAGHER: May I approach the witness with a copy
21 of his deposition from October 15th, 2009?

16:04:20

22 THE COURT: Sure.

23 BY MS. GALLAGHER:

24 Q. I want to direct you to page 28 of the deposition I just
25 handed you, starting at line 20 -- 21, excuse me, and if you

16:04:44

1 could read along as I read out loud.

2 "Do you recall either of them saying anything along
3 the lines of, 'This appears to be selective enforcement'?

4 "Yes, sir," was your answer.

5 "QUESTION: Who do you recall saying that? 16:04:58

6 "ANSWER: The female passenger."

7 That was your recollection at the time of your
8 deposition?

9 A. Yes, ma'am.

10 Q. So it's fair to say that as you sit here today, your 16:05:06
11 recollection may not be exact as to the events that happened
12 that day?

13 A. No, ma'am, it's been five years.

14 Q. And after you gave Mr. Rodriguez a citation, you followed
15 him and his family up the road, is that correct? 16:05:23

16 A. Yes, ma'am.

17 Q. And in fact, you followed them for approximately two miles
18 or so?

19 A. Approximately mile and a half.

20 Q. And you were no more than two car lengths behind them for 16:05:31
21 that entire time, is that correct?

22 A. Correct.

23 Q. And as you were leaving the area, you had no problems
24 navigating the road, is that correct?

25 A. That's correct. 16:05:43

1 Q. And the Rodriguezes had no problems navigating the road?

2 A. I don't believe so.

3 Q. When you conduct a traffic stop, is it regular practice to
4 call in the license plate of the vehicle before conducting the
5 stop?

16:06:13

6 A. Yes, ma'am.

7 Q. And when you do that, the information that is returned
8 about the vehicle typically includes the registered owner's
9 name, is that correct?

10 A. Not entirely.

16:06:21

11 Q. Is it typical that it includes the registered owner's name?

12 A. I would probably give it a fifty-fifty.

13 Q. So in approximately half the cases it includes the
14 registered owner's name?

15 A. Yes, ma'am.

16:06:33

16 Q. Now, it's your understanding that in order to determine
17 someone's nationality, you would ask them questions about where
18 their parents were born, is that correct?

19 A. Are you referring to the 287(g) program, ma'am?

20 Q. Let's take it in that context. In terms of the 287(g)
21 program, it was your understanding that in order to determine
22 someone's nationality, you would ask them questions about where
23 their parents were born?

16:06:50

24 A. Correct.

25 Q. You would ask them questions that would help you determine

16:06:58

1 their heritage?

2 A. Correct.

3 Q. And that would include questions such as where their
4 parents were born?

5 A. Yes, ma'am.

16:07:06

6 MS. GALLAGHER: No further questions, Your Honor.

7 THE COURT: Redirect?

8 MR. CASEY: Briefly, Your Honor. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. CASEY:

16:07:18

11 Q. Deputy Ratcliffe, you were asked a question by plaintiffs'
12 counsel about whether it was your job to find and arrest
13 illegal immigrants.

14 Do you remember that question?

15 A. Yes, sir.

16:07:27

16 Q. Could you tell us, what were your duties, generally, when
17 you were 287(g) certified?

18 A. I was assigned to Lake Patrol Division. It entailed
19 everything that encompasses Lake Patrol.

20 Q. Okay. And when you were on saturation patrols, could you
21 tell the Court what, generally, were your duties as -- when you
22 were on a saturation patrol as a -- as a deputy?

16:07:39

23 A. Go out and look for different Title 28 violations and
24 contact the drivers. If we saw anything suspicious, to contact
25 whoever was being suspicious, things along that nature.

16:07:55

1 Q. Okay. When you said Title 28, you're talking about moving
2 violations?

3 A. Yes, sir.

4 Q. Talking about equipment code violations?

5 A. Yes, sir.

16:08:05

6 Q. And what were your duties if you had reasonable suspicion
7 that someone was in the vehicle that was unlawfully present?
8 What would happen then?

9 A. I don't understand your question, sir.

10 Q. Sure. If you made a traffic stop for someone, say, that
11 had made an unsafe lane change in violation of 28, Title 28,
12 and you had then stopped the vehicle, and then through whatever
13 factors developed reasonable suspicion that a person in that
14 vehicle was unlawfully present in the United States, what would
15 you do then?

16:08:19

16:08:39

16 A. Could detain them at that time and contact ICE.

17 Q. Okay. And what authority did you use to detain them?

18 A. Depends on the totality of the circumstances, sir.

19 Q. Okay. One of those authorities would have been your 287(g)
20 at the time?

16:08:55

21 A. At the time yes, sir.

22 MR. CASEY: Okay. Those are all the questions I have.
23 Thank you, sir.

24 THE COURT: Thank you, Deputy. You may step down.

25 THE WITNESS: Thank you, sir.

16:09:02

1 THE COURT: Next witness.

2 MR. CASEY: Your Honor defendants call, via videotape
3 deposition, the ICE employee Jason Kidd. And if I may have
4 your indulgence, I may have to ask Ms. Zoratti to assist with
5 the volume on this that will be piped through.

16:09:16

6 THE COURT: All right. Let me ask a question or two.
7 Have you edited the program to take out -- to reflect
8 my rulings on the objections this morning?

9 MR. CASEY: Yes. There were no objections on Kidd.

10 THE COURT: None on Kidd. Okay.

16:09:32

11 MR. CASEY: But I have on Pena, yes.

12 THE COURT: Let me ask this as well. Are you going to
13 run the tape straight so that it contains both your
14 designations and plaintiffs' designations?

15 MR. CASEY: Yes, Your Honor.

16:09:42

16 THE COURT: And how much time should be designated to
17 you?

18 MR. CASEY: Defendants are 47 minutes, plaintiffs 20
19 minutes, 55 seconds, a total of one hour and seven minutes.

20 THE COURT: Okay. Do you care if I stop you or do you
21 want to run all of that this afternoon?

16:09:56

22 MR. CASEY: Your Honor, we're not going to be able to
23 get it through by 5:00, so whenever you decide we're done we
24 can use this as filler tomorrow for the balance. Since it
25 is -- I don't have a problem with the Court like I would with

16:10:09

1 the jury picking up and dropping off.

2 THE COURT: All right. Let me ask you as well, it
3 doesn't seem to me to serve any purpose to make the court
4 reporter retranscribe everything that is played on the
5 videotape. Is there any sort of stipulation to just accept the 16:10:26
6 transcript of the video -- of the deposition as acceptable?

7 MS. GALLAGHER: Your Honor, that -- that's fine with
8 us, assuming that what's played on the video reflects the
9 designations we agreed upon earlier, with the objections that
10 we stated earlier being excluded from -- I guess that's 16:10:44
11 actually only Pena's deposition, but from Pena's deposition,
12 that's -- we agree.

13 THE COURT: All right.

14 MR. CASEY: Your Honor, I will -- I agree with
15 Ms. Gallagher, and we will provide your court reporter with 16:10:56
16 only those designations that are played.

17 MS. GALLAGHER: Your Honor, I believe, actually, the
18 court reporter has a copy of the designations already high -- a
19 transcript already highlighted with the designations, so it
20 would just be removing the one paragraph -- couple lines that 16:11:11
21 we agreed -- or that Your Honor ruled would be removed this
22 morning.

23 THE COURT: All right.

24 MR. CASEY: I have a highlighted -- I have a new one
25 of that, so we'll give that to Mr. Moll when we get to 16:11:21

1 Mr. Pena.

2 THE COURT: All right. Thank you.

3 MS. GALLAGHER: Your Honor, one other issue before we
4 play the videotape. It's our understanding that the video --
5 or the transcript itself is under protective order, that a
6 redacted version of the transcript has been approved by the
7 government to be released that redacted a couple names.

16:11:31

8 I'd asked Mr. Casey earlier if those names had been
9 removed from the videotape. He said he thought so, but it
10 seemed as though he wasn't sure, so I wanted to verify that
11 those names have been removed to the videotape before it's
12 played in open court with other members present.

16:11:48

13 MR. CASEY: I can only represent my understanding of
14 it that we are in complete compliance with all protective
15 orders. That's including the protective order entered into
16 with the federal government.

16:12:03

17 What I would suggest is if this is a concern, I have
18 the ability to hit a mute button immediately. I don't know how
19 else to proceed on that.

20 THE COURT: Well, I want to proceed. If you know
21 what's protective order in your agreement with the government
22 and you can hit a mute button, in case anything's there I
23 expect you to hit it.

16:12:28

24 MR. CASEY: Thank you, sir.

25 THE COURT: All right.

16:12:37

1 (Videotaped testimony from the Deposition of Jason
2 Douglas Kidd played as follows:)

3 "QUESTION: Good morning, Mr. Kidd. I'm Thomas Liddy,
4 and I represent Defendant Sheriff Joe Arpaio."

5 (Videotaped deposition paused.)

17:24:44

6 MR. CASEY: I need to plug in the volume. Excuse me.

7 THE COURT: Go ahead.

8 MR. YOUNG: Your Honor, if Mr. Moll's going to be
9 released, there was the issue of three objections to
10 Dr. Camarota's testimony on the ground that it had not been --
11 his opinions had not been disclosed in the deposition or expert
12 reports.

16:13:23

13 I do have a citation in his deposition where I asked
14 him whether he had any other disagreements with Dr. Taylor and
15 he said no. And should we present a written motion where we
16 can cite the --

16:13:37

17 THE COURT: No. What we're going to do is take that
18 up at 8:30 tomorrow morning.

19 MR. YOUNG: All right. Thank you.

20 THE COURT: Thank you.

16:13:48

21 MR. CASEY: Thank you, Your Honor.

22 (Videotaped deposition continues.)

23 "QUESTION: Thank you for joining us this morning.

24 "Would you please state your full name for the record.

25 "ANSWER: Jason Douglas Kidd.

17:28:24

1 "QUESTION: Okay. And where do you reside?

2 "ANSWER: In Ittigen, Switzerland.

3 "QUESTION: Mr. Kidd, where are you currently
4 employed?

5 "ANSWER: I'm the assistant attaché in Bern,
6 Switzerland, for Immigration and Customs Enforcement.

17:31:17

7 "QUESTION: And are you stationed at the United States
8 Embassy?

9 "ANSWER: I am.

10 "QUESTION: And how long have you worked there?

17:33:06

11 "ANSWER: Since August of 2010.

12 "QUESTION: And where did you work immediately
13 preceding that posting?

14 "ANSWER: I was the deputy special agent in charge in
15 Phoenix, Arizona -- acting deputy special agent in charge in
16 Phoenix, Arizona, for ICE.

17:33:32

17 "QUESTION: Is that position sometimes referred to in
18 all caps as the DSAC Phoenix?

19 "ANSWER: Yes.

20 "QUESTION: And when did you start working as the DSAC
21 Phoenix?

17:36:17

22 "ANSWER: In September 2009.

23 "QUESTION: Okay. And prior to serving as the deputy
24 special agent in charge in Phoenix, where were you employed?

25 "ANSWER: In Phoenix, Arizona, as the assistant

17:37:12

1 special agent in charge from 2008.

2 "QUESTION: Also at ICE?

3 "ANSWER: Yes.

4 "QUESTION: Prior to that?

5 "ANSWER: In Phoenix, Arizona as a group supervisor

17:37:31

6 for ICE.

7 "QUESTION: And when did that begin?

8 "ANSWER: July 2006.

9 "QUESTION: How long have you been working with ICE?

10 "ANSWER: Since its beginning in February 2003 or

17:37:50

11 March 2003.

12 "QUESTION: And would you tell us your assignments
13 from February 2003 up until July 2006.

14 "ANSWER: In February 2003, I was a special agent in
15 Houston, Texas. And I transferred in 2- -- well, I transferred
16 to Atlanta, Georgia, in July 2003. And then in July 2006, as a
17 group supervisor in Atlanta, Georgia. In July 2006, I
18 transferred to Phoenix as a group supervisor -- excuse me --
19 supervisor.

17:38:54

20 "QUESTION: Thank you.

17:39:38

21 "Prior to your employment with ICE, where were you
22 employed?

23 "ANSWER: The Immigration and Naturalization Service.

24 "QUESTION: That was prior to the creation of the

25 Department of Homeland Security?

17:40:22

1 "ANSWER: That's correct.

2 "QUESTION: Okay. Now, what were your
3 responsibilities as the DSAC?

4 "ANSWER: Excuse me. I was responsible for all of
5 ICE's activities for the counties, Pinal County and north and 17:40:43
6 out to Yuma. Because there's -- there's another deputy special
7 agent in charge in Tucson that has the southern part of
8 Arizona.

9 "QUESTION: Would you describe for us ICE's
10 activities. 17:41:11

11 "ANSWER: ICE covers a wide range of different crimes,
12 anywhere from prosecuting child pornography cases, gang members
13 that are in the country legally -- illegally, I should say.
14 Financial crimes. Asset removal.

15 "There's several -- I mean, just several different 17:42:38
16 things that ICE does, including immigration violations, customs
17 fraud, immigration fraud. I think the list is very long.

18 "QUESTION: What is the 287(g) program?

19 "ANSWER: The 287(g) program was designed and -- and
20 started -- I should say was used to -- as a force multiplier to 17:44:22
21 be able to give state and local law enforcement the ability to
22 enforce immigration laws.

23 "QUESTION: So is it your understanding that the
24 287(g) program only acted as a force multiplier for ICE's
25 activities with regard to immigration law? 17:45:04

1 "Did you personally work directly with Maricopa County
2 Sheriff's Office employees that were certified under the 287(g)
3 program?

4 "ANSWER: We didn't work in the same building or
5 anything of that nature. I worked closely with them on the
6 program and the implementation of it. 17:50:22

7 "QUESTION: Right. Well, I want to narrow the scope
8 of the question to the DSAC responsibilities only with respect
9 to your activities with Maricopa County Sheriff's Office 287(g)
10 certified officers. 17:51:48

11 "ANSWER: Okay.

12 "QUESTION: What activities did you undertake in that
13 regard?

14 "ANSWER: The activities would be consulting with the
15 Maricopa County, their command staff, and looking into any type
16 of situation that may arise that would cause question and
17 reporting back to the ICE headquarters and to others on the
18 activities. 17:54:25

19 "QUESTION: Whom did you meet with in the command
20 staff of the Maricopa County Sheriff's Office when you were
21 undertaking those responsibilities? 17:56:25

22 "ANSWER: I met with Sheriff Arpaio on many occasions.
23 Chief Brian Sands. Chief Jerry Sheridan. Occasionally Ray
24 Churay from Maricopa, but not necessarily with the 287 program.
25 Lieutenant Joe Sousa. Lieutenant Irene Irby. 17:57:33

1 "QUESTION: Did you ever accompany Maricopa County
2 Sheriff's Office law enforcement personnel that were 287(g)
3 certified to the field when they were utilizing their 287(g)
4 authority?

5 "ANSWER: No.

17:58:23

6 "QUESTION: While you were coordinating with the
7 Maricopa County Sheriff's Office, were you provided advance
8 notice of their 287(g) certified officers being deployed to the
9 field to use their 287(g) authority?

10 "ANSWER: I wasn't told they were going to use their
11 authority. I was told that there were operations that were
12 going to take place that may encompass that authority. Or
13 notified.

17:59:00

14 "QUESTION: All right. And generally speaking, how
15 much advance notice would you receive from them prior to them
16 going operational?

18:00:06

17 "ANSWER: The time varied. Some operations I knew two
18 weeks in advance. Some operations I didn't find out till the
19 day before.

20 "QUESTION: And were there some instances when you did
21 not find out until the operations were ongoing or after they
22 had occurred?

18:00:39

23 "ANSWER: Not that I recall.

24 "QUESTION: Were you involved in any way in the
25 training of Maricopa County Sheriff's Office personnel who

18:01:03

1 became 287(g) certified?

2 "ANSWER: Yes.

3 "QUESTION: Would you describe your involvement.

4 "ANSWER: In 2007, I began coordinating the classes,
5 bringing in instructors, instructing and putting together
6 background packets and getting the background interviews and
7 coordinating those with Maricopa County and with ICE
8 headquarters.

18:01:19

9 "QUESTION: Did you provide any of the training
10 yourself?

18:01:47

11 "ANSWER: Yes.

12 "QUESTION: And what aspects of the training did you
13 provide?

14 "ANSWER: There's a course or a block of instruction
15 where they want to know -- where they have the local people
16 talk about how 287(g) and the laws are implemented within the
17 local district. Since the instructors are from the academy,
18 they don't know how things actually work in each district. So
19 they have the local people instruct in that block.

18:01:55

20 "QUESTION: Okay. So the faculty for this training
21 came from outside Arizona?

18:02:35

22 "ANSWER: Most of the time.

23 "QUESTION: And so they were not familiar with some of
24 the local activities in Customs?

25 "ANSWER: Correct.

18:03:25

1 "QUESTION: And so you filled that gap as part of the
2 training for the 287 certified officers?

3 "ANSWER: Yes.

4 "QUESTION: Can you give us some specific examples of
5 some of the information which you would provide to your
6 students in that regard?

18:04:14

7 "ANSWER: One of the specific examples I would talk
8 about would be our alien smuggling activities within Arizona,
9 what ICE does, a general overview of ICE and their
10 responsibilities and how our alien smuggling program works
11 within and compliments the 287(g) program.

18:04:46

12 "QUESTION: Did you ever discuss the issue of racial
13 profiling with your students when you were part of the
14 certification process?

15 "ANSWER: I don't recall ever bringing that subject up
16 to the students in the classroom setting.

18:07:50

17 "QUESTION: Do you know if other faculty members in
18 this 287 certification process raised the issue of racial
19 profiling?

20 "ANSWER: Yes. There's a course of instruction on the
21 use of race and some other related topics that are part of the
22 curriculum, and I was there for several of those courses.

18:08:18

23 "QUESTION: Would you describe for us the information
24 that was provided the students regarding racial profiling.

25 "ANSWER: The curriculum includes the Department of

18:09:23

1 Justice use of race memorandum or training that came out in
2 2003.

3 "QUESTION: Is that sometimes referred to as the DOJ
4 guidelines?

5 "ANSWER: Yes. And there's a course of instruction 18:10:18
6 where they talk about -- they go over that. It's at least an
7 hour. It could be two hours.

8 "QUESTION: Is there anything else that you recall
9 about racial profiling in the certification process other than
10 the DOJ guidelines? 18:10:49

11 "ANSWER: Some of the statutory authority and issues
12 of probable cause, reasonable suspicion and other policy -- ICE
13 policy is discussed around that time frame.

14 "QUESTION: What is racial profiling?

15 "ANSWER: It's the use of race to -- as a determining 18:11:10
16 factor for a law enforcement activity.

17 "QUESTION: And what do you mean by determining
18 factor?

19 "ANSWER: To single out or decide to use their race as
20 a means of deciding which person you encounter or talk to. 18:11:35

21 "QUESTION: Does racial profiling entail using race as
22 the sole factor in making determinations about law enforcement
23 decisions?

24 "ANSWER: No. It's -- it talks about using it ever as
25 a factor is what the guidelines talk about. 18:12:04

1 "QUESTION: Is racial profiling illegal?

2 "ANSWER: I don't know that there's a law. I know
3 that there are lawsuits about it. I would have to look at it
4 to see if there's anything.

5 "QUESTION: In your experience working in federal law 18:13:15
6 enforcement, do you understand that the use of racial profiling
7 by law enforcement personnel is improper?

8 "ANSWER: Yes.

9 "QUESTION: Are you familiar with the term saturation
10 patrol? 18:13:40

11 "ANSWER: Yes.

12 "QUESTION: What is a saturation patrol?

13 "ANSWER: The way I'm most familiar with it is the way
14 Maricopa County was -- or is using saturation patrol to bring
15 in extra officers to an area to look for violations of state 18:14:54
16 law and encounter those people.

17 "QUESTION: Are you aware of saturation patrols used
18 as a tactic by law enforcement agencies outside of Maricopa
19 County?

20 "ANSWER: Yes. I've heard of other and talked to 18:15:18
21 other law enforcement that -- and they may call it something
22 different, but they -- they talk about going after crime using
23 this type of method.

24 "QUESTION: Is that outside of Arizona?

25 "ANSWER: Yes. 18:15:56

1 "QUESTION: And in other areas in Arizona but outside
2 of Maricopa County?

3 "ANSWER: I don't recall any outside of -- inside
4 Arizona but outside Maricopa County.

5 "QUESTION: Did you ever attend any saturation patrols 18:17:28
6 in Maricopa County?

7 "ANSWER: I went to the command center on occasion
8 during some of the saturation patrols.

9 "QUESTION: And what is the command center for a
10 saturation patrol? 18:17:46

11 "ANSWER: The command center's where the large
12 vehicles and tables and things of that nature are set up to be
13 able to process and talk to all the people encountered during
14 the saturation patrol. It may include a processing vehicle, a
15 van or a wagon to be able to take people that are arrested. 18:18:04
16 Media area. Things of that nature.

17 "QUESTION: Was there communications equipment at the
18 command center?

19 "ANSWER: Yes.

20 "QUESTION: Do you recall whether that communications 18:18:50
21 equipment was used to communicate from the command center to
22 287(g) certified personnel in the field during the saturation
23 patrol?

24 "ANSWER: I wouldn't know.

25 "QUESTION: Would it be accurate to describe your 18:20:39

1 activities at the command center as observer?

2 "ANSWER: Yes.

3 "QUESTION: Okay. With regard to this question, I'm
4 only interested in the area of the saturation patrol in which
5 you were present at the command post.

18:21:01

6 "ANSWER: On at least one of the saturation patrols,
7 it was in Guadalupe, and I went out to that. And it was in --
8 the command center was in Guadalupe.

9 "QUESTION: Did you visit the command center for a
10 saturation patrol in Mesa?

18:24:58

11 "ANSWER: I don't recall.

12 "QUESTION: Did you visit the command center during a
13 saturation patrol in Phoenix?

14 "ANSWER: At least one of them, I did.

15 "QUESTION: Did you visit the command center at a
16 saturation patrol in Fountain Hills?

18:25:56

17 "ANSWER: No.

18 "QUESTION: Approximately how many times did you visit
19 the command center during a saturation patrol?

20 "ANSWER: I can only recall two."

21 (Videotaped deposition paused.)

22 MR. CASEY: Your Honor, Tim Casey, for the record.

23 I just want to put on the record that I'm going to hit
24 the mute for a designation at page 29, line 22, and line 25,
25 which contains a name. It's not marked out on my hard copy, so

1 I just want to alert the Court that I'm going to be doing that.

2 THE COURT: Okay.

3 (Videotaped deposition continues.)

4 "QUESTION: Can you recall -- can you recall when
5 those two were? 18:27:33

6 "ANSWER: No, not without some research.

7 "QUESTION: Why did you attend those saturation
8 patrols? Or let me rephrase that.

9 "Why did you visit the command post during those
10 saturation patrols? 18:28:07

11 "ANSWER: We were informed that they were -- through
12 Maricopa County would likely encounter subjects and be using
13 the 287(g) authority, and we went out to observe and be able to
14 have people on scene if there were questions once the authority
15 was used. 18:28:31

16 "QUESTION: Do you recall whether there any -- do you
17 recall whether any questions arose during the saturation
18 patrols that you visited in either Guadalupe or Phoenix?

19 "ANSWER: I recall in Guadalupe there was at least one
20 question, and it was fielded by someone else that I had come
21 out. 18:29:16

22 "QUESTION: Do you recall who that person was?

23 "ANSWER: [REDACTED].

24 "QUESTION: Do you recall what the question was?

25 "ANSWER: No. 18:29:45

1 "QUESTION: At the time, was [REDACTED] an
2 employee of ICE?"

3 "ANSWER: Yes.

4 "QUESTION: While you were visiting the command post
5 in Guadalupe, did you observe any activity by MCSO 287(g)
6 certified personnel that was outside conformance with the MOA?

18:49:08

7 "ANSWER: No.

8 "QUESTION: When you were visiting the command post
9 during the saturation patrol in Phoenix, do you recall
10 observing any activity by Maricopa County Sheriff's Office
11 certified personnel that was outside the conformity with the
12 MOA?

18:51:03

13 "ANSWER: No.

14 "QUESTION: Did you ever express in writing to the
15 Maricopa County sheriff or any Maricopa County Sheriff's Office
16 command personnel any criticism of its use of crime suppression
17 patrols?

18:52:46

18 "ANSWER: Not that I recall.

19 "QUESTION: Are you familiar with the term zero
20 tolerance?

18:53:32

21 "ANSWER: Yes.

22 "QUESTION: What is zero tolerance?

23 "ANSWER: In the law enforcement setting, zero
24 tolerance is used to describe encountering, talking to and
25 citing or prosecuting anything within the purview or sight of

18:53:46

1 the law enforcement officer in that particular area at that
2 particular time.

3 "QUESTION: Is it your understanding that zero and
4 tolerance -- excuse me. Is it your understanding that zero
5 tolerance, when employed in that regard, involves all statutes 18:54:16
6 or just specified criminal statutes?

7 "ANSWER: It's my understanding that it involves all
8 style -- all statutes that they're eligible to prosecute or
9 enforce.

10 "QUESTION: Are you aware whether Maricopa County 18:54:49
11 Sheriff's Office 287(g) personnel -- let me withdraw that
12 question. Start again.

13 "In your experience as the DSAC in Phoenix, were you
14 ever aware of the Maricopa County Sheriff's Office employing
15 the tactic of zero tolerance? 18:55:28

16 "ANSWER: I don't remember receiving anything that
17 used those words.

18 "QUESTION: While you were serving as the DSAC in
19 Phoenix, were you aware that Maricopa County sheriff's officers
20 could encounter a subject that could be charged in Arizona laws 18:56:39
21 and not federal immigration laws?

22 "ANSWER: Yes.

23 "QUESTION: Would that include traffic violations?

24 "ANSWER: Yes.

25 "QUESTION: When you were serving as DSAC in Phoenix, 18:57:47

1 were you aware that subjects encountered during saturation
2 patrols could be charged with violations of Arizona law,
3 including traffic violations?

4 "ANSWER: Yes.

5 "QUESTION: While you were serving as DSAC, were you 18:58:22
6 aware that Maricopa County Sheriff's Office crime suppression
7 patrols also encountered individuals that were charged with not
8 having legal status as aliens present in the United States?

9 "ANSWER: Yes.

10 "QUESTION: Did you ever express in writing any 18:59:25
11 concern to Maricopa County Sheriff or sheriff's office
12 personnel that you had regarding MCSO personnel identifying
13 aliens without legal status present in the United States during
14 civil traffic stops?

15 "ANSWER: I don't recall having -- putting anything in 19:00:01
16 writing about that.

17 "QUESTION: How about verbally?

18 "ANSWER: We may have talked about -- or I recall
19 talking to them about how these saturation patrols went and
20 whether or not they were citing people that they encountered 19:00:28
21 with traffic violations and things of that nature.

22 "QUESTION: Do you remember to whom you spoke on that
23 topic?

24 "ANSWER: I'm pretty sure I spoke to Joe Sousa.

25 "QUESTION: Do you recall ever expressing your 19:00:49

1 concerns that MCSO was identifying aliens without legal status
2 present in the United States during civil traffic stops to your
3 superiors in ICE?

4 "ANSWER: We had internal discussions about how the
5 operations were going. I wouldn't say they were concerns. It 19:01:10
6 was just discussions of whether that was within the scope of
7 the MOA.

8 "QUESTION: While you were serving as the DSAC in
9 Phoenix, did you ever review operations plans of the MCSO
10 287(g) certified personnel? 19:01:38

11 "ANSWER: The operations plans were dealing with state
12 crime, not 287(g).

13 "QUESTION: And how do you know that?

14 "ANSWER: I reviewed the operations plans, and they
15 were talking about prosecuting state crime. 19:03:23

16 "QUESTION: So the answer is, yes, you did review the
17 operations plans?

18 "ANSWER: Operations plans, yes.

19 "QUESTION: Okay. Why did you review the operations
20 plans? 19:03:48

21 "ANSWER: They were sent to me in advance as a
22 notification.

23 "QUESTION: Why were they sent to you if they did not
24 involve potential use of 287(g) authority?

25 "ANSWER: They were sent to me because they were 19:04:12

1 operations that the Human Smuggling Unit was doing, and they
2 could involve the use of 287(g). So they would send them to
3 me.

4 "QUESTION: What is the Human Smuggling Unit?

5 "ANSWER: It's a group within Maricopa County
6 Sheriff's Office of deputies and detention officers that work
7 human smuggling within the County of Arizona.

19:04:44

8 "QUESTION: Did you ever meet with any of the members
9 of the Maricopa County Sheriff's Office Human Smuggling Unit?

10 "ANSWER: Yes.

19:05:53

11 "QUESTION: Were any of them Hispanic?

12 "ANSWER: Yes.

13 "QUESTION: Were more than one of them Hispanic?

14 "ANSWER: Yes.

15 "QUESTION: Did you ever review shift summaries of the
16 Maricopa County Sheriff's Office?

19:06:13

17 "ANSWER: Yes.

18 "QUESTION: What is a shift summary?

19 "ANSWER: The shift summary was a document prepared
20 and transferred -- or transmitted to ICE regarding like a
21 post-action report of an operation and entailed several details
22 of that operation.

19:06:35

23 "QUESTION: What were some of the types of details
24 that would be included in a shift summary?

25 "ANSWER: A shift summary would include a number of

19:06:57

1 arrests, number of aliens that were arrested of those -- of the
2 total number arrested, how many of those were illegal aliens.
3 It would include how many -- where -- what country they were
4 from, the male or female, juvenile or adult, custody status,
5 how they were processed, the way they were encountered and also
6 the other -- usually how many warrants were cleared based on
7 the shift.

19:07:31

8 "QUESTION: Did the shift reports only include
9 information on individuals that were arrested?

10 "ANSWER: No.

19:08:12

11 "QUESTION: What other information did the shift
12 summaries include other than about individuals that were
13 arrested?

14 "ANSWER: Sometimes if there was a -- an incident or
15 something strange that would happen, they would put a note in
16 there so that we would be aware of things that would happen
17 within the media and things like that. How many protesters
18 might be out or -- or anything of that nature.

19:08:25

19 "QUESTION: Was there any information in the shift
20 summaries that you reviewed regarding the ethnicity of
21 individuals encountered by Maricopa County Sheriff's personnel
22 during one of these operations?

19:08:47

23 "ANSWER: No.

24 "QUESTION: Were there -- was there any information in
25 the shift summaries regarding individuals that were encountered

19:09:21

1 but were not arrested present in the shift summaries?

2 "ANSWER: Not that I really recall other than what I
3 mentioned before of incidents.

4 "QUESTION: Was it part of your responsibility as the
5 DSAC in Phoenix to handle inquiries from the field via the
6 telephone?

19:11:28

7 "ANSWER: Not as the DSAC, no.

8 "QUESTION: Was it ever part of your responsibility to
9 handle inquiries from the field via the telephone -- telephone?

10 "ANSWER: Yes, when I was a group supervisor.

19:12:14

11 "QUESTION: Tell me about that responsibility.

12 "ANSWER: When Maricopa County would exercise their
13 287(g) authority following an -- an encounter and the clearance
14 of all state law or state violations, they would then talk to
15 the person about their alienage. And occasionally they would
16 have questions as to whether they could detain, transport,
17 whether the -- and other technical questions regarding
18 determining -- determining alienage, and they would call me.

19:12:40

19 "QUESTION: And would you answer the questions
20 yourself?

19:13:19

21 "ANSWER: Either myself or one of the people that
22 worked for me would, yes.

23 "QUESTION: Did ICE supervise the Maricopa County
24 Sheriff's Office when it was exercising its 287(g) authority?

25 "ANSWER: Yes.

19:14:00

1 "QUESTION: Describe for me, if you will, how that
2 supervision was carried out.

3 "ANSWER: It depended on what operation and where they
4 might be. In general, it would take place telephonically at
5 first, and then later on review of the documents produced and 19:14:23
6 signatory authority to sign those charging documents and accept
7 those aliens into ICE custody from Maricopa County.

8 "QUESTION: Would the biographical data in the
9 charging sheets include country of origin?

10 "ANSWER: Yes. 19:15:18

11 "QUESTION: Ethnicity?

12 "ANSWER: No.

13 "QUESTION: Sex?

14 "ANSWER: Well, actually, it -- I'm trying to think
15 what the -- the term. There is a place where it says 19:15:39
16 white/black. That's about -- I mean...

17 "QUESTION: Is it your recollection that it includes
18 only white/black, or might there also be other potential
19 options, such as Latino or Hispanic or Asian?

20 "ANSWER: I believe Asian is one. The FBI does not 19:16:38
21 accept Hispanic or Latino. It's either white, black, Asian and
22 I think other. But Hispanics are not put into either of
23 those -- any of those. They're just put into white.

24 "QUESTION: So is it your understanding that it's the
25 practice of federal law enforcement that when they take into 19:17:08

1 custody and charge an individual who is Hispanic or Latino,
2 that they are categorized as white?

3 "ANSWER: Correct.

4 "QUESTION: Can you describe for me any other
5 activities you undertook in your -- in carrying out your duties 19:18:27
6 as supervising MCSO 287(g) -- 287(g) personnel.

7 "ANSWER: Coordinating training. Recurring training.
8 Signing documents. Answering questions. Setting up equipment.
9 Getting computer equipment put into the processing locations
10 and reviewing those locations. 19:19:14

11 "Basically implementing the program.

12 "QUESTION: Okay. Would you describe for me some of
13 the recurring training of 287(g) personnel for Maricopa County
14 Sheriff's Office that was conducted while you were working for
15 ICE in Phoenix. 19:19:41

16 "ANSWER: The -- excuse me. The training included
17 online courses.

18 "QUESTION: This is the recurring training?

19 "ANSWER: Yes.

20 "QUESTION: Okay. 19:20:11

21 "ANSWER: Online courses that were required in order
22 to keep the certification and compete -- to keep access to ICE
23 computers. It also included a post-academy class or secondary
24 academy class, where they would travel to Charleston to receive
25 additional training and refresher training, is what it was 19:20:37

1 called. And we coordinated that training also.

2 "QUESTION: Sure. Were you ever aware of MCSO 287(g)
3 certified personnel using race to determine whether or not to
4 make a traffic stop?

5 "ANSWER: No. 19:21:30

6 "QUESTION: Were you ever aware of MCSO 287(g)
7 personnel using race when using their 287(g) authority?

8 "ANSWER: No.

9 "QUESTION: So is it your testimony that prior to
10 receiving information about this lawsuit, you did not know of 19:22:20
11 any allegations against Maricopa County Sheriff's Office
12 personnel regarding racial profiling?

13 "ANSWER: I was not notified of any allegations. I
14 read them in the paper like everyone else.

15 "QUESTION: Were you ever asked by your supervisors to 19:22:53
16 investigate allegations of racial profiling by Maricopa County
17 Sheriff's Office law enforcement personnel that were 287(g)
18 certified?

19 "ANSWER: No.

20 "MR. LIDDY: 34. May I ask you to mark that as 19:23:31
21 Exhibit 34."

22 (Videotaped deposition paused.)

23 MR. CASEY: Your Honor, Tim Casey again, interrupt.

24 There is a series of questions and the answers
25 beginning at page 45 that I'm not confident have been deleted

1 that I believe are pursuant to the protective order, so I
2 wanted to let the Court know at page 46, line 8, I'm going to
3 be deleting a name; at page 46, line 12, deleting a name; line
4 13, deleting a name; and then at page 47, line 17 and 18 I'll
5 be deleting a name. If the Court needs further continuity,
6 we'll provide the transcript to the Court, but you will hear
7 pauses.

8 (Videotaped deposition continues.)

9 "QUESTION: Have you ever seen this document before?

10 "ANSWER: Yes.

19:24:27

11 "QUESTION: And when did you see it before?

12 "ANSWER: I was during the time forwarded a copy of
13 these statistics from [REDACTED].

14 "QUESTION: Is that while you were serving as the
15 DSAC?

19:24:54

16 "ANSWER: I was probably an ASAC at the time since
17 it's in March of 2008.

18 "QUESTION: Who is [REDACTED]?

19 "ANSWER: [REDACTED] is the field office director
20 for the Office of Enforcement Removal Operations, Phoenix,
21 Arizona.

19:26:25

22 "QUESTION: And, as you understand them, what were her
23 responsibilities serving in that capacity?

24 "ANSWER: She's responsible for all of the detention
25 and removal operations within the state and to include custody

19:26:44

1 of aliens and things of that nature.

2 "QUESTION: What's the significance of the statistics
3 presented in this e-mail?

4 "ANSWER: The statistics were sent to us, and
5 basically saying how many people Maricopa County has
6 encountered and removed since the program began, and they were
7 provided to us on a recurring basis. 19:27:08

8 "QUESTION: And when you say the program, are you
9 referring to the 287(g) program?

10 "ANSWER: Yes. 19:27:38

11 "QUESTION: In your opinion, are those numbers high?

12 "ANSWER: I can say they were -- they were the highest
13 numbers in the country.

14 "QUESTION: I've asked the court reporter to mark as
15 Exhibit Number 35 a document Bates numbered ICE 497, which on
16 its face appears to be an e-mail from [REDACTED]
17 to [REDACTED] dated February 28th, 2008. 19:28:03

18 "Give you a moment to look at that document.

19 "ANSWER: Uh-huh. Yes.

20 "QUESTION: Have you ever seen this document before? 19:29:57

21 "ANSWER: This, I assume I have. I -- I would get
22 these stamped things. But we get them every -- we would get
23 them mostly every month, so...

24 "QUESTION: So this is similar to Exhibit Number 34?

25 "ANSWER: Yes. 19:30:19

1 "QUESTION: So it also presents -- is this an update
2 of statistics?

3 "ANSWER: Well, it's --

4 "QUESTION: Of the 287(g) program?

5 "ANSWER: Yes. 19:31:01

6 "QUESTION: Would you say that this -- that these
7 statistics are also high?

8 "ANSWER: Yes, they're high.

9 "QUESTION: Would you say they represented the highest
10 in the country at that time? 19:32:47

11 "ANSWER: Yes.

12 "QUESTION: Was it your understanding that Maricopa
13 County Sheriff's Office personnel could use their state police
14 authority to enforce traffic violations and they did not need
15 to use 287(g) authority to enforce those traffic violations? 19:33:45

16 "ANSWER: Yes.

17 "QUESTION: While you were serving in Phoenix, were
18 you aware of Maricopa County Sheriff's Office employees
19 enforcing any state law, traffic or otherwise, using their
20 287(g) authority? 19:34:22

21 "ANSWER: I don't really understand the question. But
22 to use that -- that authority. They're two different things.

23 "QUESTION: Okay. Well, that answers the question to
24 my satisfaction. Maybe to make the record clear -- well, let
25 me ask you something. What do you mean by they're two 19:34:48

1 different things?

2 "ANSWER: The 287(g) gives you a certain set of
3 authorities to enforce those -- those immigration laws. The --
4 being a deputy of the state for the State of Arizona or County
5 gives you a certain set of authorities to enforce state laws.
6 And they're two separate laws.

19:35:12

7 "QUESTION: So by immigration law, you mean federal
8 law?

9 "ANSWER: Yes.

10 "QUESTION: So by your understanding, a Maricopa
11 County Sheriff's Office employee who was certified by 287(g)
12 can still use his state police authority to enforce state law
13 without using the 287(g) authority?

19:35:45

14 "ANSWER: Correct.

15 "QUESTION: Did ICE have the authority to supervise
16 the Maricopa County Sheriff's Office personnel when -- while
17 they were enforcing state laws?

19:36:02

18 "ANSWER: No.

19 "QUESTION: Does the Maricopa County Sheriff's Office
20 have state authority to conduct immigration enforcement
21 operation?

19:36:42

22 "ANSWER: The Maricopa County Sheriff's Office has the
23 authority to enforce the state laws, and some of those laws do
24 include immigration related matters.

25 "QUESTION: Okay. And the subject line is AZ Civil

19:37:18

1 Rights Advisory Board on 287(g) with Maricopa County.

2 "While you were working in Phoenix, were you familiar
3 with the Arizona Civil Rights Advisory Board?

4 "ANSWER: I knew they existed. I didn't really have
5 any dealings with them. 19:38:30

6 "QUESTION: This e-mail represents that that letter --
7 in that letter, there was a request for an investigation be
8 initiated regarding allegations of civil rights violations.

9 "Does that refresh your recollection as to whether or
10 not you would have seen that letter? 19:38:51

11 "ANSWER: No, it doesn't refresh.

12 "QUESTION: While you were working in Phoenix, were
13 you aware that such an investigation was requested?

14 "ANSWER: Yes.

15 "QUESTION: Do you know whether such an investigation
16 was initiated? 19:39:34

17 "ANSWER: No.

18 "QUESTION: Were you ever interviewed as part of such
19 an investigation?

20 "ANSWER: No. 19:40:28

21 "QUESTION: A fourth bullet point on that subcategory
22 reads, 'MCSO utilizes their state statutory authority routinely
23 when encountering aliens.'

24 "Does that conclusion comport with your experience
25 while serving in Arizona? 19:42:29

1 "ANSWER: Yes.

2 "QUESTION: Were you present when Mr. Melendres was
3 arrested?

4 "ANSWER: No.

5 "QUESTION: Did you ever interview any ICE employees 19:43:39
6 who were present at the time he was arrested?

7 "ANSWER: No.

8 "QUESTION: Did you ever interview any 287(g)
9 authorized MCSO employees that were present?

10 "ANSWER: Not that I recall. 19:44:15

11 "QUESTION: Do you recall when you first learned about
12 the arrest of Mr. Melendres?

13 "ANSWER: It was pretty close to the time of the
14 incident, but I don't remember exactly when.

15 "QUESTION: Do you remember who brought the 19:44:29
16 information to you?

17 "ANSWER: No.

18 "QUESTION: Do you remember what you learned about the
19 arrest of Mr. Melendres at that time?

20 "ANSWER: I learned that he was released, I remember, 19:44:38
21 and that there was some -- some questions about it.

22 "QUESTION: Do you recall what the questions were?

23 "ANSWER: It had to do with his -- whether or not he
24 was working in the United States and whether he was -- whether
25 he should have been released or not. 19:45:00

1 "QUESTION: How would the information about whether a
2 particular detainee was working in the United States or not
3 affect the decision as to whether or not that individual should
4 be released or detained in Maricopa County jail?

5 "ANSWER: The release or detention wasn't based on
6 Maricopa County or state crimes. This was a -- more of a
7 287(g) federal immigration violation.

8 "QUESTION: Okay. So with respect to the enforcement
9 of federal immigration law and whether a particular subject
10 would be detained or not, what does the role of that
11 individual's employment play in the decision as to whether or
12 not to detain that individual or release that individual?

13 "ANSWER: There are several different ways that you
14 can fall out of status. When you enter into the United States,
15 you're given a status that -- to be able to be here as a
16 visitor or whatever classification you receive at the time.
17 You can fall out of status by doing several things: committing
18 a crime, staying too long, working or doing something that your
19 visa does not allow you to do.

20 "And so working on a visit -- well, when you're
21 admitted as a visitor can cause you to fall out of status, and;
22 therefore, you would -- out of status may be detained.

23 "QUESTION: So just so it's clear to me, if a foreign
24 national obtained a visa to enter into the United States as a
25 tourist for a fixed amount of time and remained in the United

19:45:34

19:45:54

19:46:39

19:47:10

19:47:41

1 States after the end of that fixed time, would that individual
2 fall out of status?

3 "ANSWER: Yes.

4 "QUESTION: If an individual obtained a visa to come
5 into the United States as a tourist for a fixed amount of time
6 and sought and gained employment, would that individual fall
7 out of status?

19:49:14

8 "ANSWER: Yes.

9 "QUESTION: I'm asking you if you recall today what
10 you knew then about the significance of whether or not
11 Mr. Melendres was working at the time of his arrest?

19:49:54

12 "ANSWER: Okay. The -- Mr. -- from what I recall,
13 Mr. Melendres was admitted for a period of time as a visitor.
14 And once he accepts or takes employment, he would then be out
15 of status and subject to removal proceedings.

19:50:46

16 "So when he claims he -- well, when it said that he
17 claimed he was working, then that would have put him into that
18 status of -- or that category of being subject to removal
19 proceedings.

20 "QUESTION: Okay. And you personally did not at the
21 time have any information as to whether or not Mr. Melendres
22 was working or was not working, is that correct?

19:51:08

23 "ANSWER: That's correct.

24 "QUESTION: And you personally did not witness
25 Mr. Melendres making any statement with regard to whether he

19:51:21

1 was not working at the time, is that correct?

2 "ANSWER: That's correct.

3 "BY MR. POCHODA:

4 "QUESTION: Mr. Kidd, this was an exhibit that you had
5 looked at before, and it's an e-mail that has certain
6 statistics.

19:54:01

7 "Do you see that?

8 "ANSWER: Yes.

9 "QUESTION: And are those the -- what -- the program
10 total is what, the total number of -- of -- of folks turned
11 over to ICE from the MCSO, is that correct?"

19:54:15

12 THE COURT: Do you want to pause that for a second,
13 please, Mr. Casey?

14 (Videotaped deposition paused.)

15 THE COURT: Have we switched questioners here?

16:59:55

16 MR. CASEY: Yes, Your Honor, we have.

17 THE COURT: Who is questioning now?

18 MR. CASEY: Plaintiffs' counsel, Dan Pochoda.

19 THE COURT: Okay. Sounded like Mr. Pochoda. So are
20 we on plaintiffs' part of the questioning of this witness?

17:00:09

21 MR. CASEY: They're actually inter -- interwoven with
22 the previous designations. We're both plaintiffs and
23 defendants. This is predominantly plaintiffs now.

24 THE COURT: Okay. Well, now it's as good a time as
25 any to take a break. We're going to do that for the day. I

17:00:22

1 will begin promptly at 8:30 tomorrow.

2 Let me ask you, how many more witnesses do you intend
3 to call in your case, just to make sure as we plan things we
4 can conveniently hear all your witnesses?

5 MR. CASEY: Yes, Your Honor. Our intention is with 17:00:40
6 the Court's permission, since this -- we could use this as
7 filler, is to call live Dan Beeks, Charley Armendariz,
8 Officer Francisco Gamboa, expert Bennie Click. We need to
9 evaluate whether or not we'll be calling Scott Jefferys, and
10 then we have a videotape of Mr. Pena, which is, unfortunately, 17:01:00
11 long.

12 So I expect Mr. Beeks will be very quickly, probably
13 on the order of Mr. Ratcliffe today. Mr. Armendariz may be 40
14 minutes to 45 on direct. Gamboa may be 10 minutes on direct.
15 Click, I would expect that I'm going to take an hour with him. 17:01:20

16 And the -- I've got to check the notes how long Pena's
17 is, but Pena is -- Pena's deposition has been shortened based
18 on your ruling, but as of before that, it was an hour and 28
19 minutes with -- of defendants' designations. Plaintiffs' are
20 25 minutes, 40 seconds. So there's a total almost of one hour 17:01:49
21 and 53 minutes.

22 I will tell the Court that I may be looking at Pena
23 tonight personally and seeing if we can narrow that down.

24 THE COURT: All right. But it sounds to me like
25 between today and tomorrow you should be able to finish your 17:02:06

1 case as well as we can give plaintiffs their two -- up to two
2 hours if they need it for rebuttal.

3 MR. CASEY: I do not believe -- I think it would --
4 their rebuttal would be late tomorrow afternoon, if not
5 Thursday morning. I --

17:02:22

6 THE COURT: That's fine.

7 MR. CASEY: That's the best guess.

8 THE COURT: When I said today and tomorrow, I actually
9 meant tomorrow and the next day. We have those two days
10 available.

17:02:31

11 MR. CASEY: I believe that we will -- my goal and
12 Mr. Liddy's goal is to finish our case in chief by 5:00 p.m.
13 tomorrow.

14 THE COURT: All right. I did indicate, and I think it
15 was the understanding of the parties, that I would allow
16 written submissions at the end of the case, and I will allow
17 them. I, however, don't have any desire to drag on those
18 written submissions and if your case is over, Mr. Casey, it
19 doesn't sound to me like there's any real reason to prolong
20 them.

17:02:44

17:03:01

21 MR. CASEY: I don't -- I do not agree -- excuse me, I
22 do not disagree with the Court.

23 THE COURT: All right. Then plaintiffs, how many
24 pages are you going to need, Mr. Casey?

25 MR. CASEY: Let's do the 17 pages.

17:03:18

1 THE COURT: All right. Then here's what I'm going to
2 say. Plaintiffs and defendants will file jointly on August 9th
3 17 pages. And then they can file response -- when I said
4 jointly I meant simultaneously. They can file simultaneously
5 responses on the 16th of 10 pages. And then I will deem the
6 case submitted. 17:03:44

7 Let me ask, is there going to be any efforts to
8 provide me with any sort of reconciliation between the exhibits
9 used at depositions and the exhibit numbers that -- that
10 they've been admitted under in this case? 17:04:03

11 For example, we talk about Exhibit 34, Exhibit 35. Do
12 you have any idea what exhibit numbers those are in this case
13 and whether or not they've been admitted?

14 MR. CASEY: Your Honor, Tim Casey. I do not know, but
15 we will find that for these depositions and let you know. 17:04:20

16 MS. GALLAGHER: Your Honor, I don't have the numbers
17 handy, but I do believe that neither of those exhibits have
18 been admitted at this point in this case.

19 THE COURT: All right. What about the -- I think
20 there was some discussion of the Department of Justice 2003
21 guidelines. Have those been admitted in this case? 17:04:34

22 MR. CASEY: Your Honor, I'm going to go through very
23 quickly. I believe it has been. I'm looking through the
24 plaintiffs' list of exhibits, and I do believe I just saw those
25 yesterday, I believe the DOJ guidelines are in evidence by 17:04:55

1 stipulation. You know, there's a lot of exhibits here. I
2 don't want to take the Court's time, but we can come in
3 tomorrow and let you know.

4 THE COURT: All right.

5 MR. YOUNG: I had a vague memory that's similar to 17:05:07
6 Mr. Casey's, but we need to find the exhibit number and provide
7 that to make sure.

8 THE COURT: All right. Anything else to be taken up
9 before the end of -- before I let you go?

10 MR. CASEY: No, Your Honor. I just understand that as 17:05:18
11 a matter of housekeeping tomorrow we'll be dealing with the
12 objections on Dr. Camarota's testimony.

13 THE COURT: Yes. After you've coordinated that I'll
14 rule on them in the morning.

15 Then I take it that you are not necessarily going to 17:05:32
16 want to start off with this deposition testimony?

17 MR. CASEY: That is correct, Your Honor. We'd like to
18 do the live witnesses, with the Court's permission, and I
19 assume that's agreeable to plaintiffs' counsel. We'd like to
20 go live first and fill -- fill in with these. 17:05:47

21 THE COURT: All right. Then I'm going to ask that
22 we -- I think we've gone through one question by Mr. Pochoda.
23 I'm going to ask that we resume when Mr. Pochoda starts
24 questioning here.

25 MR. CASEY: Yes, Your Honor. 17:06:00

1 THE COURT: I'll be able to more easily keep track of
2 it that way. We'll see you tomorrow at 8:30 prompt.

3 (Proceedings recessed at 5:06 p.m.)
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2 C E R T I F I C A T E
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7 I, GARY MOLL, do hereby certify that I am duly
8 appointed and qualified to act as Official Court Reporter for
9 the United States District Court for the District of Arizona.

10 I FURTHER CERTIFY that the foregoing pages constitute
11 a full, true, and accurate transcript of all of that portion of
12 the proceedings contained herein, had in the above-entitled
13 cause on the date specified therein, and that said transcript
14 was prepared under my direction and control.

15
16
17 DATED at Phoenix, Arizona, this 31st day of July,
18 2012.

19
20 _____
21 GARY MOLL

22
23 _____
24 s/Gary Moll
25

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) August 1, 2012
Joseph M. Arpaio, et al.,) 8:32 a.m.
8)
Defendants.)
9 _____)

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11
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14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE G. MURRAY SNOW
17 (BENCH TRIAL DAY 6 - Pages 1418-1726)

18
19
20
21
22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
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25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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I N D E X

<u>Witness:</u>	<u>Page</u>
DOUGLAS W. BEEKS	
Direct Examination by Mr. Casey	1433
Cross-Examination by Mr. Pochoda	1450
Examination by The Court	1471
RAMON CHARLEY RAMIREZ ARMENDARIZ	
Direct Examination by Mr. Casey	1480
Examination by The Court	1519
Direct Examination Continued by Mr. Casey	1526
Cross-Examination by Mr. Pochoda	1540
Further Examination by The Court	1579
Redirect Examination by Mr. Casey	1591
FRANCISCO GAMBOA	
Direct Examination by Mr. Liddy	1595
Cross-Examination by Ms. Ramirez	1618
BENNIE R. CLICK	
Direct Examination by Mr. Casey	1628
Cross-Examination by Mr. Pochoda	1696

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
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(None)

P R O C E E D I N G S

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3

THE COURT: Thank you. Please be seated.

4

5

THE CLERK: This is CV-07-2513, Melendres v. Arpaio,
on for continuation of bench trial.

08:32:32

6

7

THE COURT: Do we have any matters to raise before
resuming testimony?

8

9

MR. CASEY: Yes. Yes, Your Honor. Defendants have a
couple of matters to address with the Court pursuant to your
direction yesterday as to Jason Kidd's deposition.

08:32:44

10

11

THE COURT: All right.

12

13

14

MR. CASEY: Yesterday you inquired about Kidd
deposition Exhibit 34. For the record, that is a document
produced by ICE, Bates number 484. It's Defense Exhibit 1087.
We move for the admission of Defense Exhibit 1087.

08:33:02

15

16

MS. GALLAGHER: Plaintiffs object on the basis of
hearsay, lack of foundation, and relevance.

17

18

THE COURT: All right. You know, what I'm going to do
is take a minute to look at the exhibit and then I'll rule, but
I'm not going to do it right now.

08:33:22

19

20

MR. CASEY: Sure. And then the next, as a matter of,
I guess, practicality, when we begin playing the balance of it,
there's also Kidd Deposition Exhibit 35, which is ICE document
Bates labeled 497. That's Defense Exhibit 1088. We will move
for admission on that, Your Honor.

08:33:40

21

22

23

24

25

1 MS. GALLAGHER: And plaintiffs will object on the same
2 grounds. They're similar documents. We believe the testimony
3 does not lay the foundation.

4 THE COURT: All right.

5 MR. CASEY: The final thing as to the Kidd deposition 08:33:50
6 is Mr. Kidd referenced the use of a DOJ article entitled
7 Guidance Regarding Use of Race by Federal Law Enforcement
8 Agencies. That has been stipulated in the pretrial into
9 evidence. That's Exhibit 1194. And that was referenced by
10 Jason Kidd. 08:34:10

11 One final area, Your Honor, for the Court, I talked to
12 your clerk, and just putting on the record that I don't
13 remember which witness it was, but we referenced the following
14 exhibit, 1017. It was Defense Exhibit 1017 not offered into
15 evidence, but it is duplicative of Exhibit 411. 08:34:30

16 We referenced Exhibit 1020, which is not in evidence,
17 but Exhibit 71 is in evidence and is duplicative of 1020.

18 Exhibit 1043 was referenced but not offered into
19 evidence. It is duplicative of Exhibit 34, which is in
20 evidence. 08:34:51

21 Exhibit 1152, which was referenced but not offered
22 into evidence, is duplicative of Exhibit 114, which is in
23 evidence.

24 And finally, Exhibit 1188, which was referenced but
25 not offered into evidence because it was duplicative of 08:35:06

1 Exhibit 174, which is in evidence.

2 Thank you for your courtesy, Your Honor.

3 THE COURT: All right. Thank you.

4 Let me -- Mr. Young.

5 MR. YOUNG: Yes, Your Honor. I did have a couple of 08:35:17
6 matters to raise.

7 On the Department of Justice guidelines on the use of
8 race in federal law enforcement, which Mr. Casey just mentioned
9 is Exhibit 1194, our memory was correct. It is an exhibit. It
10 was also, I would note, Exhibit C to the first-amended 08:35:33
11 complaint in the case.

12 With respect to Dr. Camarota's testimony yesterday, I
13 did raise three objections, and they are all on the basis that
14 the particular opinions stated by Dr. Camarota yesterday were
15 not in his expert report or in his deposition. 08:35:53

16 They appear in the final transcript which, thanks to
17 Mr. Moll's valiant efforts we received late yesterday, are
18 pages 1272, line 16, to 1273, line 12; 1274, line 11, to 1275,
19 line 13; and 1283, line 21, to 1284, line 13.

20 The first of those is an opinion about 81 percent and 08:36:22
21 64 percent being 910s. The second was about 11 out of 13
22 saturation patrols being considered by Dr. Taylor, and
23 therefore one-seventh being missing, in his view. And the
24 third is about comparing self-reporting in Maricopa County
25 versus in the U.S. census. And none of those, in my view, were 08:36:44

1 in his report or in his deposition.

2 I did ask him in his deposition, and I confirmed this
3 with counsel yesterday, whether he had any other criticisms of
4 Dr. Taylor's opinions, and he said at that point he had none.

5 So my view is that under Rule 26(a)(2), the opinions
6 which I just identified ought to be excluded. 08:37:07

7 THE COURT: You want to be heard on that, is it
8 Mr. Liddy?

9 MR. LIDDY: Yes, please, Your Honor. Our opinion
10 would be that Mr. Camarota's an opinion witness, not a fact 08:37:21
11 witness, and therefore he's permitted to either be in the
12 courtroom and hear the testimony or read the transcripts, which
13 he did. And Dr. Taylor was specifically asked about the -- in
14 his direct -- excuse me -- in his testimony under
15 cross-examination, specifically asked about the universe of 08:37:42
16 incidents that he excluded, and whether or not it mattered
17 whether they were randomly distributed or not.

18 And on page 144 of his testimony, beginning at
19 line 15, he testified about his opinion as to whether it
20 mattered if there was random distribution or not. 08:38:04

21 So Mr. Camarota's testimony was in rebuttal to those
22 comments about the importance of random distribution in the
23 excluded incidents of the data file.

24 THE COURT: Don't I recall -- and maybe I don't,
25 Mr. Young -- that you'd agreed to allow each other's experts to 08:38:22

1 attend or listen to, otherwise review the testimony of experts?

2 MR. YOUNG: That is correct, Your Honor.

3 THE COURT: All right. Well, then I'm going to
4 overrule the objection and I'll allow the evidence in.

5 Anything else?

08:38:37

6 MR. YOUNG: No, Your Honor.

7 THE COURT: I have one other thing that I want to
8 raise with the parties.

9 Just a second. Kathleen, did you have something you
10 wanted to check with me on?

08:38:45

11 (Off-the-record discussion between the Court and the
12 clerk.)

13 THE COURT: This is just to clarify the record in
14 light of some of what you indicated earlier, Mr. Casey, about
15 duplicative exhibits.

08:39:21

16 MR. CASEY: Yes, Your Honor.

17 THE COURT: That is, although at the first day of
18 trial when I read in the list of stipulated exhibits I read in
19 1017, 1020, 1043, 1152, and 1188, the parties had already
20 withdrawn those exhibits at that time. So although I admitted
21 the exhibit numbers, there's no exhibit there, and I just want
22 the record to reflect that.

08:39:34

23 So to the extent that you've indicated they were
24 duplicates, you were right, but not technically so, because
25 there's no exhibit there. But that's just for purposes of

08:39:52

1 clarity.

2 MR. CASEY: Yes. And that's why, thankfully, your --
3 Ms. Zoratti has been very helpful in pointing that out. That's
4 why I read a few minutes ago that those are things that, yes,
5 were stipulated in, but withdrawn to avoid duplication. I
6 identified the plaintiffs' exhibits which are in evidence which
7 correspond, so if anyone reads this the record in the future
8 when they hear, for example, 1017, they'll actually go to
9 admitted Exhibit 411, et cetera.

08:40:06

08:40:23

08:40:39

08:40:57

08:41:19

10 THE COURT: Yeah, all right. Just to make that clear.

11 Now, there's one other issue I wanted to raise with
12 the parties. I have contemplated -- although I've asked
13 questions when I felt like I wanted to, and I appreciate the
14 parties' indulgence in allowing me to do that, there have been
15 a number of times when I haven't asked questions. And one of
16 the things that came up yesterday in discussion of whether or
17 not I was going to take written closings or oral closings was
18 whether or not I cared to indicate to the parties what I was
19 interested in for purposes of written closing.

20 I have begun to compile a list of questions for
21 plaintiffs and questions for defendants that I'm interested in
22 that mostly cut to legal questions, which would be appropriate
23 for briefing, that is, both in light of what I perceive the
24 evidence, or at least some of the evidence to be that I have to
25 weigh, and thus, depending on how I weigh the evidence, what

1 the legal standard would be.

2 That's what it principally is. But it also relates to
3 some factual questions that haven't quite been tied up in my
4 mind that I would invite supplementation on.

5 There's a problem with that, with doing that, though, 08:41:36
6 and that is to the extent that I identify what my thinking is,
7 I think it invites the parties to try to supplement the record
8 with all kinds of affidavits and other exhibits that I'm just
9 not interested in receiving, and that if you -- if you put them
10 in the record it would rather taint my view of their 08:41:55
11 credibility, anyway.

12 So I will -- I'll just make this offer to you. I'm
13 more than glad to share with you what my principal questions
14 are for both sides. But if I do that, I am not going to do it
15 until both parties agree that the record is closed except for 08:42:11
16 upon the topics on which I invite supplementation, and I don't
17 invite supplementation if the parties can't stipulate to the
18 facts that I ask about.

19 So I'll let you chew on that. I'm more than happy to
20 give you your 17 pages, and you can do whatever you want with 08:42:28
21 it without me indicating the questions I'm interested in, or if
22 you want to acknowledge that the record, the factual record is
23 closed at the end of this trial, I will -- and -- I will
24 identify for you what I view to be principally the legal
25 questions. But there are some factual questions in which I 08:42:46

1 remain interested.

2 MR. CASEY: I should let plaintiffs go first. I'm
3 sorry.

4 MR. YOUNG: I think we would like a chance to think
5 about that, Your Honor, and we appreciate greatly the fact that 08:42:57
6 you've identified this issue for us and we'll try to get back
7 to you later today, perhaps after talking to defendants'
8 counsel.

9 MR. CASEY: Your Honor, I'm prepared to tell you that
10 we want that. We invite that. You should do that. 08:43:13

11 As to the legal issues there, it's what I guess is
12 better known as a no-brainer. That is completely appropriate.

13 On the factual issues, quite frankly, I welcome that.
14 My concern is if the Court asks that, it seems to necessarily
15 invite a supplementation of the record. And I understand the 08:43:41
16 Court's concern, and I -- I believe I share that.

17 I'm not sure -- and I think this is where Mr. Young
18 and I have to get together, because there are probably some
19 things we can stipulate to. But as you know, throughout this
20 trial, sometimes it's said tomato and we say tomato. There are 08:44:00
21 nuances in the same facts.

22 My concern, just briefly, when I hear that, is: How
23 can we answer factual questions of the Court without
24 necessarily supplementing it? And I hear what you said
25 about -- about it perhaps affecting witness credibility, mostly 08:44:20

1 on my clients' side.

2 I'm not sure how we skin that cat, how we accomplish
3 it, and still achieve the Court's goal of not effectuating
4 negatively, particularly my clients' credibility. I'd like to
5 think about that.

08:44:37

6 The other option that comes to my mind is we're going
7 to try to finish up today --

8 THE COURT: Hold on to your thought, but I just wanted
9 to add on to -- you don't have to sit down. I want to add on
10 to what you've just said.

08:44:48

11 I think what I said, or what I intended to say and I
12 may not have said it clearly, is I don't mind laying out my
13 factual questions, and if you can stipulate to their answer,
14 I'll accept the stipulation. And if you can't stipulate to
15 their answer, I don't want either side to supplement the
16 record. I'll just take it as it is.

08:45:03

17 MR. CASEY: Okay. Let me throw this option out for
18 you. Let's say hypothetically that you have questions that we
19 can't stipulate to, and we're going to have rebuttal tomorrow
20 in the morning. My envision is the worst-case scenario, we're
21 done by noon tomorrow. It might make sense, if we can't
22 stipulate to that, to bring in a witness or two under your
23 strict scrutiny and discretion in narrowing it to answer those
24 questions where they're open to answering those questions
25 directly from you, and then the plaintiffs get to question them

08:45:21

08:45:44

1 and we get to question them. Because I'm -- I am concerned
2 that although we've, I think, counsel have gotten along
3 famously well, we're probably not going to be able to, if
4 history is -- we're not going to agree on certain things.

5 THE COURT: I understand that. I will tell you that
6 it strikes me that the factual questions that I have in mind
7 are questions that I think are susceptible to stipulation.

08:46:03

8 MR. CASEY: Okay.

9 THE COURT: That doesn't mean that you will be able to
10 stipulate, and I'm not trying to suggest that you will. But
11 they aren't of the nature that I think -- that I think is
12 inherently -- that you would inherently be unable to stipulate
13 to.

08:46:14

14 MR. CASEY: Okay.

15 THE COURT: They are, I think, facts that you may be
16 able to stipulate to.

08:46:25

17 MR. CASEY: And I just throw out that option that
18 if for some reason they are not, and if we were to get them,
19 say, at the close of business today so we can talk this
20 evening, then maybe the Court would be willing to have some
21 sort of additional testimony under your direction. In other
22 words, you doing the questioning and us following up.

08:46:41

23 THE COURT: Well, I'll tell you, I'm not interested in
24 disclosing what my questions are, even though I think they're
25 susceptible to stipulation, until the evidence is closed. I

08:46:55

1 don't want to give either side an inherent advantage. I don't
2 want to -- I don't want to tell you what my questions are, for
3 example, after you've closed your case and before rebuttal,
4 because then that invites plaintiffs to stick in a bunch of the
5 facts on rebuttal and may limit your opportunity to respond on
6 cross-examination, or vice versa.

08:47:09

7 MR. CASEY: Yes, sir.

8 THE COURT: And I understand that's just your
9 position.

10 Mr. Young, I understand you haven't yet taken a
11 position, and I'll be interested in hearing it when you arrive
12 at some sort of a position.

08:47:22

13 MR. YOUNG: Yes. Just to be clear, we would be happy
14 to get questions from the Court about legal issues that the
15 Court would like to hear about. I think that would be very
16 helpful to all of us. On the factual issues, I do think we
17 need to have some discussion, and we would like to have it with
18 defense counsel as well.

08:47:33

19 THE COURT: That's fine.

20 You ready to resume, Mr. Casey?

08:47:47

21 MR. CASEY: Yes, Your Honor. We ended yesterday with
22 Mr. Kidd. We are going to continue that until later today at
23 the appropriate time. Our first witness will be a former MCSO
24 deputy named Douglas Beeks.

25 THE COURT: Was that Beeks?

08:48:08

1 MR. LIDDY: Yes, Your Honor.

2 THE CLERK: Right up here, sir.

3 Can you please state and spell your full name.

4 MR. BEEKS: Douglas W. Beeks. D-o-u-g-l-a-s, W.,
5 B-e-e-k-s. 08:48:45

6 THE CLERK: Thank you. Please raise your right hand.

7 (Douglas W. Beeks was duly sworn as a witness.)

8 THE CLERK: Thank you. Please take our witness stand.

9 DOUGLAS W. BEEKS,

10 called as a witness herein, having been duly sworn, was 08:48:58

11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CASEY:

14 Q. Good morning, sir. How are you?

15 A. Good morning. 08:49:26

16 THE COURT: Can I get you to stop for just a second,
17 Mr. Casey?

18 MR. CASEY: Yes, sir.

19 THE COURT: I'm going to stop running your time. I

20 just want to make sure that I am where I need to be to take 08:49:30

21 notes, and that's going to take me half a second. I apologize.

22 (Pause in proceedings.)

23 THE COURT: All right. Thank you.

24 MR. CASEY: Sorry. You ready, Your Honor?

25 THE COURT: I am. 08:49:56

1 MR. CASEY: All right. Thank you, Your Honor.

2 THE COURT: I apologize.

3 MR. CASEY: No problem. Thank you, sir.

4 BY MR. CASEY:

5 Q. Please tell us your full name. 08:49:59

6 A. It's Douglas W. Beeks.

7 Q. And where do you currently live?

8 A. I currently live in Cedar Rapids, Iowa.

9 Q. And are you employed in Iowa?

10 A. Yes, I am. 08:50:08

11 Q. And who are you employed by?

12 A. Rockwell Collins Aviation.

13 Q. And what do you do for Rockwell Collins Aviation?

14 A. I'm a senior systems engineer with the radio systems group.

15 Q. And just generally, what does that job entail? 08:50:18

16 A. I'm a systems engineer with a product that does a radio
17 tuning on commercial and business jets.

18 Q. Was there a time that you lived here in Maricopa County?

19 A. Yes, I did.

20 Q. And when you lived here in Maricopa County, who were you
21 employed by? 08:50:32

22 A. By Maricopa County.

23 Q. And what was your position with Maricopa County?

24 A. Deputy sheriff.

25 Q. And how long were you a deputy sheriff? 08:50:41

1 A. I was a reserve deputy from 1998 until 2005, and I
2 transitioned from reserve to full-time deputy from 2005 till
3 August 2010.

4 Q. Were you -- would you explain for us, why did you leave
5 service as a deputy for the Maricopa County Sheriff's Office in 08:51:02
6 August of 2010?

7 A. I had a good paying job offer outside of Maricopa County
8 with Rockwell Collins. I have some friends that work there. I
9 had prior engineering contacts before I came to -- to Maricopa
10 County, and they suggested me for a job position with a good 08:51:19
11 salary. And having two kids going to college, I went ahead and
12 accepted that position.

13 Q. How are the kids doing in college?

14 A. They're doing well. One will start this fall; the other
15 one is just finishing. 08:51:34

16 Q. All right, good.

17 Tell me, when you -- when did you go to the academy,
18 the Arizona POST police academy?

19 A. I started there in August of 1998.

20 Q. And do you remember roughly how long that academy training 08:51:45
21 was?

22 A. It was a reserve academy, so it actually took longer. The
23 total number of training hours is the same, but it took -- the
24 calendar time was from August until May of 2000. May 1999,
25 correction. 08:52:06

1 Q. During your academy training did you have any training on
2 the use of race or ethnicity in making law enforcement
3 decisions?

4 A. It was discussed, yes.

5 Q. And in what context was it discussed?

08:52:15

6 A. That race and ethnicity is not criteria for -- for charging
7 or any criminal decisions that are made.

8 Q. What about use of race or ethnicity to make any traffic
9 stops, what was --

10 A. It's not a criteria for a traffic stop.

08:52:30

11 Q. What about using race or ethnicity to make any -- make any
12 decision to detain someone?

13 A. It's not a criteria for any decision.

14 Q. Or arrest someone?

15 A. No, not for an arrest, either.

08:52:43

16 Q. I'd like to focus you now on a particular date in 2008.

17 Mr. Beeks, the parties have stipulated that the MCSO conducted
18 a saturation patrol, or a crime suppression operation, on March
19 27 and 28 of 2008 near Cave Creek Road and Bell Road.

20 Did you participate in that saturation patrol?

08:53:12

21 A. Yes, I did.

22 Q. And would you tell the Court, what were your duties or
23 responsibilities as a deputy during that saturation patrol?

24 A. My duties at that time were to patrol and to perform on
25 duty -- or on-view enforcement of laws that were broken. So

08:53:27

1 basically I wasn't responding to any radio calls, it was all
2 on-view traffic.

3 Q. Do I understand, when you say that, you're talking about
4 you were on traffic patrol?

5 A. Correct.

08:53:41

6 Q. And tell us what, if anything, you were looking for while
7 you were on traffic patrol.

8 A. Criminal activity, traffic violations, any signs of
9 criminal activity.

10 Q. On that date specifically, at some time during March 28,
11 2008, did you hear a radio call from Deputy Ramon Charley
12 Armendariz?

08:53:52

13 A. Yes, I did.

14 Q. Were you in a vehicle? Were you on a motorcycle? Describe
15 what kind of vehicle you were in.

08:54:15

16 A. I was in a marked patrol car at that time.

17 Q. Do you know Charley Armendariz?

18 A. I worked with him on several squads over approximately two
19 years prior to that.

20 Q. And how familiar would you say you are with Charley as a
21 person, as a -- and as a deputy?

08:54:27

22 A. As a person I'd consider him a friend. We've hung out or
23 spent time with each other on duty and off duty. I know him
24 fairly well. And as a deputy he's a -- he's a good deputy.

25 Q. Are you familiar with him to be able to identify his voice

08:54:43

1 over a radio transmission or over a telephone?

2 A. Yeah, I've had voice contact with him throughout that time
3 many times during the day, so I'm familiar with his voice.

4 Q. Please describe for us what you heard on the radio call
5 when you heard Deputy Armendariz. 08:55:05

6 A. Well, I know he was out on a traffic stop at Nisbet/Cave
7 Creek Road area, and I wasn't too far from that area. And I'd
8 heard him check out, so I -- I'd say I was keeping ear out if
9 he needed anything on that traffic stop, but as we do, we tend
10 to keep track of each other just in case they need assistance. 08:55:27

11 And I heard Charley put out a call on the radio
12 that -- that during his traffic stop, that another vehicle had
13 tried to -- had tried to run over him, or had done something
14 similar to that. And the tone of his voice indicated that
15 there was a serious incident that had occurred. 08:55:44

16 Q. Now, when you say you knew he was at a stop, and I -- you
17 mentioned this but I'm not sure I understood. How did you know
18 he had -- he was in the progress --

19 A. Well, he --

20 Q. -- in progress of stopping? 08:55:58

21 A. He checked out on a traffic stop.

22 Q. What's that mean?

23 A. He gave his vehicle location and that he was out with a
24 vehicle at Cave Creek and Nisbet. So I knew he was out on a
25 traffic stop with I don't know how many individuals, but that's 08:56:09

1 where he was at.

2 Q. Now, when you mentioned the word "tone" in context of his
3 voice. Did I understand that correct?

4 A. Correct.

5 Q. What do you mean when you say the tone of his voice? 08:56:20

6 A. Well, there's a -- there's a normal conversational tone
7 such as what you and I are having. But then there's a tone
8 that, a voice inflection that would be pretty obvious if
9 something significant had just happened to you, whether someone
10 had threatened you or come towards you or some incident where 08:56:37
11 you were potentially at risk of being harmed or had come close
12 to being harmed, you'd -- you'd have an excited tone or tenor
13 in your voice. And that was very clear when Charley got on the
14 radio that something had occurred.

15 Q. Was it clear based on your familiarity with Charley and his 08:56:57
16 voice in the past?

17 A. Correct.

18 Q. What did you believe or understood happened, based on what
19 you heard on that call and his tone?

20 A. Knowing that he was on a traffic stop, his tone and what he 08:57:12
21 said, I believed that a vehicle had tried to strike him or had
22 come towards him.

23 Q. Do you remember if he said that on the radio call or if
24 that -- what do you remember about actually the words said?

25 A. I believe the words that I heard, and I don't know the 08:57:28

1 exact words, but the word -- the sentence that he said
2 contained the words that "a vehicle just tried to run me over."

3 Q. Now, there is testimony already in this case from a deputy
4 named Michael Kikes. Do you know Michael Kikes?

5 A. Yes, I do. I've also worked with him. 08:57:46

6 Q. Now, he mentioned something called a station 45. What is a
7 station 45?

8 A. Well, while this was occurring, the dispatcher wasn't able
9 to clear Deputy Armendariz to get a status update.

10 Q. What's that mean? 08:58:03

11 A. Basically, to find out if he was okay, what had happened,
12 because the -- the tone of his voice and what he had just said
13 indicated that things weren't okay where he was at.

14 Q. Let me interrupt you real quick, and I apologize, with your
15 indulgence, sir. 08:58:20

16 Are you telling us that the dispatcher was trying to
17 reconnect or contact Armendariz and could not?

18 A. Correct.

19 MR. POCHODA: Objection, hearsay.

20 THE COURT: I'm going to sustain that. 08:58:31

21 BY MR. CASEY:

22 Q. What was your understanding of whether or not the
23 dispatcher could reconnect with Charley Armendariz on the radio
24 transmission?

25 MR. POCHODA: Objection, hearsay. 08:58:46

1 THE COURT: I'm going to overrule that.

2 THE WITNESS: It elevates the priority if -- if she
3 can't get ahold of him, or he -- I don't remember if we had a
4 male or female dispatcher on that particular day -- can't
5 reconnect with him, and he's not responding back to a radio
6 call, it elevates the priority that something is not okay, and
7 they'll hold a station if there's a volatile or unknown
8 situation that could involve injury or significant risk to the
9 deputy.

08:59:02

10 BY MR. CASEY:

08:59:23

11 Q. So was there a station 45 placed on that?

12 A. Yes, the station was held.

13 Q. And that means what?

14 A. Means that all other radio traffic is to be held that's not
15 directly related to that particular incident or case. And
16 that's so that the deputy that's involved in that station 45
17 has an open frequency if they can get back on the frequency and
18 talk if they need to.

08:59:34

19 Q. Based on what you believed you heard, the tone of Charley
20 Armendariz's voice, and what you understood was the inability
21 to reconnect with Mr. Armendariz, or Deputy Armendariz --

08:59:54

22 MR. POCHODA: Objection, leading.

23 THE COURT: I haven't heard the end of the question
24 yet.

25 BY MR. CASEY:

09:00:07

1 Q. -- what did you understand to be going on with Charley
2 Armendariz?

3 THE COURT: Overruled.

4 THE WITNESS: At that point all I can assume is that
5 he's not okay, he's not answering on his radio. That it's
6 critical that I get there soon as possible to assess his
7 condition and situation to make sure that he's not hurt,
8 injured, or something else occurring.

09:00:18

9 BY MR. CASEY:

10 Q. What kind of situation did you think that you were facing?

09:00:31

11 A. Well, it could have been -- could have been any -- a number
12 of things. He -- he had just stated that a vehicle had tried
13 to run him over. He may have been struck. He could have been
14 injured by that. There could be other subjects on scene
15 that -- that he was now engaged in physically or otherwise.
16 It's an unknown situation. We don't know why he's not
17 answering. It's not normal.

09:00:48

18 Q. When you say "not normal," you mean emergency?

19 A. Right.

20 Q. Now, what did you do at this point when you heard -- well,
21 let me back up a minute.

09:01:02

22 Was there ever a call for backup?

23 A. At the particular time when he said that a vehicle had
24 tried to -- to strike him, to send another unit.

25 Q. What did you do after you heard this call and his tone, and

09:01:17

1 there's the station 45 put on, what did you do next?

2 A. I was nearby. I was already starting to head -- to head
3 over that way anyway just as a cursory drive-by to make sure
4 everything was fine. And when that call came out and the
5 situation presented itself, I expedited my travel to his -- to
6 his area. 09:01:35

7 Q. And what happened next?

8 A. When I came up, I -- I saw the traffic stop where he was
9 at. I drove into the parking lot.

10 Q. Let me -- and I apologize. I may interrupt you every now
11 and then. 09:01:47

12 A. That's fine.

13 Q. When you say you saw the traffic stop, did you make the
14 traffic stop?

15 A. No, I did not. I drove up to the area where Deputy
16 Armendariz had made the traffic stop at Nisbet and Cave Creek
17 Road. I came up from one of the side streets and drove into
18 the parking lot and saw -- saw Deputy Armendariz there at that
19 particular point and assessed that he was fine. He signaled to
20 me that he was -- he was not injured, and I didn't have any
21 words with him at that time. There was no time to do that.
22 And he signaled a direction that the vehicle had -- had gone. 09:02:14

23 Q. What vehicle?

24 A. The vehicle that Armendariz had said had tried to strike
25 him. 09:02:27

1 Q. And what did you do after Deputy Armendariz had signaled
2 towards the direction of the vehicle?

3 A. I left the parking lot, proceeded in that direction.

4 Q. Okay. And what did you see next?

5 A. Not even a quarter of a mile down the road, be on the -- 09:02:38

6 the east side of the road, which would be to my left as I was

7 going south, I saw a dark-colored SUV, I believe it was a

8 pickup, pulled into a service drive, into a shop area, such as

9 like an auto shop, and the vehicle had already been stopped.

10 Behind that vehicle was one of our motor officers and his bike, 09:03:03

11 and he was off that -- off of his bike and had made contact

12 with the driver of that vehicle.

13 Q. Do you know the name of that motorcycle officer?

14 A. Yeah, it was Deputy Kikes.

15 Q. Okay. What did you see after that? 09:03:16

16 A. As I was coming up, I approached kind of at a -- at a

17 diagonal to the traffic stop. I didn't park behind it. And I

18 could see Deputy Kikes engaged with the driver, and the driver

19 was noncompliant, combative, belligerent, and arguing with the

20 deputy, and it gave the impression to me that the -- the driver 09:03:34

21 was attempting, if possible, to drive off from the traffic

22 stop.

23 Q. Do you know whether or not that vehicle that Deputy Kikes

24 stopped, whether its engine was on or off?

25 A. It was on. 09:03:52

1 Q. And how do you know that?

2 A. I could hear it when I exited my vehicle.

3 Q. Now, you described this driver of the vehicle had been
4 stopped as combative and belligerent. What did you see that
5 led you to those conclusions?

09:04:06

6 A. He was yelling at the deputy, pulling away from the deputy.
7 The deputy was trying to get him to turn off the vehicle and
8 put it into park and exit the vehicle. He was leaning away
9 from the deputy. His -- his tone and demeanor were -- were
10 hostile and combative. He was not compliant at all.

09:04:27

11 Q. Now, you also said he was arguing. Did you hear what he
12 was saying, the driver of the vehicle?

13 A. I don't remember his exact words, no.

14 Q. Okay. And what -- what did you do at this point?

15 A. Well, my concern at that point was for the -- the safety of
16 the deputy and the safety of the vehicle occupants and anyone
17 else that was on the scene. Other deputies had also arrived on
18 scene. And the situation was out of control and getting out of
19 control more -- more rapidly, and needed to be stopped at that
20 point.

09:04:45

09:05:02

21 I drew my weapon and proceeded over to the area where
22 Mike Kikes, or Deputy Kikes, had made contact with the driver.

23 Q. Did you see interaction, any physical interaction between
24 Deputy Kikes and the driver of this black-colored vehicle?

25 A. I saw Deputy Kikes attempting to remove the driver from the

09:05:22

1 vehicle.

2 Q. And would you describe for us how that attempted removal --
3 how that went.

4 A. After I made contact with Deputy Kikes and the -- the
5 driver, and the driver became aware of my presence, and
6 presumably that I did have a weapon drawn, he became compliant
7 and exited the vehicle.

09:05:35

8 Q. Okay. At any time did you -- did Deputy Kikes, in your
9 sight, ever pull or use any force to remove this driver out of
10 the car?

09:05:55

11 A. The only force I saw Deputy Kikes use was he assisted the
12 driver out of the vehicle, keeping hands on him so that he
13 didn't pull away or get away from him, and placed him into
14 custody in restraints.

15 Q. At any time did you ever see this driver -- first of all,
16 can you -- back up. Strike that.

09:06:10

17 Did you see the appearance of the driver, whether --
18 his gender, for example?

19 A. It was a -- it was, I assume, a Hispanic male. He was dark
20 skin, dark hair. 35, 40 years old. Average build.

09:06:25

21 Q. Did you ever see that man ever on the ground or on his
22 knees?

23 A. No, I did not.

24 Q. Did you ever see him slammed up in any way against the car
25 where any part of his body hit that vehicle that he was in?

09:06:42

1 A. No, he -- he may have been faced towards the vehicle. He
2 was not slammed against the vehicle while he was placed in
3 restraints.

4 Q. What did you see next?

5 A. He was led away from the vehicle, and at that point I did
6 not have much further contact. I went over to the passenger
7 side while others -- deputies had arrived and we made contact
8 with the passenger.

09:06:55

9 Q. Did you ever point your gun at anyone?

10 A. At one point it may have been pointed in the direction of
11 the driver.

09:07:11

12 Q. Okay. Did you ever point your gun at anyone else at the
13 scene?

14 A. No, I did not. After the issue with the driver was
15 resolved, my weapon was reholstered.

09:07:27

16 Q. Did you ever see --

17 THE COURT: Pardon me.

18 BY MR. CASEY:

19 Q. Did you ever see the driver being cuffed?

20 A. By Deputy Kikes, yes, while I was still with him.

09:07:38

21 Q. And where -- where was he cuffed, and where was he located,
22 if you saw?

23 A. My recollection is he was cuffed in back, right after he'd
24 exited the vehicle, alongside the vehicle.

25 Q. What do you remember happening after that point?

09:07:57

1 A. With the driver, I don't remember anything specifically.

2 At that point I went around to the passenger side of the
3 vehicle and assisted the other deputies in making contact with
4 the passenger.

5 Q. And who was the passenger by appearance? 09:08:11

6 A. It was a female subject.

7 Q. Did you have any conversation with the female subject?

8 A. Not directly, no.

9 Q. Okay. Do you know how this incident resolved and how it
10 cleared? 09:08:26

11 A. This particular incident, contact was made with Deputy
12 Armendariz back at -- back at his traffic stop that he was
13 still -- still on, finishing, and he advised that other than
14 the potential disorderly conduct charges, that no charges were
15 to be filed on the driver of the vehicle. 09:08:44

16 Q. Did you have that communication with Deputy Armendariz?

17 A. No, not at that time.

18 Q. At some later time you did?

19 A. I went back to his traffic stop.

20 Q. And this was after the people had already been released? 09:08:57

21 A. That's correct.

22 Q. Did deputy -- strike that.

23 Do you have any understanding why there was no arrest
24 made?

25 A. No. 09:09:17

1 Q. Do you have any understanding why no citation was issued?

2 A. No.

3 Q. Did the race or ethnicity of the driver of the vehicle that
4 you described as argumentative, combative, and belligerent have
5 anything to do with your decisions to withdraw your gun?

09:09:35

6 A. My decision was based on -- was based upon the situation,
7 the driver's behavior, and my concern for officer safety and
8 the occupants of that vehicle.

9 Q. Did race have anything to do with it?

10 A. That had no portion whatsoever.

09:09:50

11 Q. If in fact you pointed your gun either at that man or at
12 his direction, did his race or ethnicity have any role in that
13 decision?

14 A. No whatsoever.

15 Q. Did race or ethnicity of the two occupants in that vehicle
16 play any role in your decision to respond to Charley
17 Armendariz's call for backup?

09:10:06

18 A. None whatsoever.

19 Q. Did race or ethnicity of any of the vehicle occupants have
20 any role or influence on your decision to have any
21 participation in what turned out to be the traffic stop made by
22 Deputy Kikes?

09:10:23

23 A. No.

24 MR. CASEY: Okay. Those are all the questions I have
25 for you. Thank you for your time and your patience, sir.

09:10:35

1 THE WITNESS: Thank you.

2 THE COURT: Cross-examination.

3 MR. POCHODA: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. POCHODA:

09:10:49

6 Q. Good morning.

7 A. Good morning.

8 THE COURT: Good morning.

9 BY MR. POCHODA:

10 Q. Mr. Beeks, you testified that at some point you drew your
11 gun as part of a traffic stop, is that correct?

09:11:01

12 A. Yes, it is.

13 Q. And where did that traffic stop take place?

14 A. Particular traffic stop was on Cave Creek Road south of
15 Nisbet.

09:11:16

16 Q. And that -- do you know what the location was specifically?

17 A. It was a shop area. I don't know the exact name of the
18 shop.

19 Q. And you were not the first MCSO deputy on the scene, is
20 that correct?

09:11:27

21 A. That's correct.

22 Q. Deputy Kikes had already stopped the vehicle, is that -- is
23 that right?

24 A. Correct. And there may have been one or two other deputies
25 on the scene, I don't recall exactly.

09:11:42

1 Q. There were two other deputies on the scene?

2 A. Possibly, I don't -- they showed up at some point. I don't
3 know if they were there exactly at the time or showed up while
4 I had arrived.

5 Q. But at some point, either just before or as you were
6 arriving, two other deputies also appeared on the scene, is
7 that correct?

09:11:52

8 A. Correct.

9 Q. And one of those deputies drew his weapon as well, is that
10 correct?

09:11:58

11 A. I did not see that.

12 Q. Is it possible that one of them drew his weapon?

13 A. I'd only be guessing. I don't know.

14 Q. It's possible, you don't know, is that the answer?

15 A. That's correct.

09:12:11

16 Q. Now, when you were trained in traffic stops and vehicle
17 infractions at the MCSO, you were not taught as a matter of
18 course to draw your weapon, were you?

19 A. Not in general practice, no.

20 Q. Even though that might make the officer safer on any
21 particular stop, because you never know who's going to be in a
22 car, isn't that correct?

09:12:30

23 A. You only re -- not on a general traffic stop, no. You do
24 not draw your weapon.

25 Q. There are occasions when what appears to be a general

09:12:42

1 traffic stop turns out to be a very dangerous individual in the
2 car, and indeed, someone who possesses weapons, is that
3 correct?

4 A. It would be done in response to a threat.

5 Q. You would only draw your weapon in response to a threat.

09:12:56

6 A. A threat to myself or another individual, yes.

7 Q. And it would have to be a very serious threat to dem -- to
8 display a gun, isn't that correct?

9 A. Death or serious injury.

10 Q. Would have to be a threat of death or serious injury,
11 correct?

09:13:10

12 A. Correct.

13 Q. And that would be -- in your continuum of force that was
14 taught at the MCSO, that would be your last -- last tactic
15 would be drawing a gun and pointing it at someone, is that
16 correct?

09:13:25

17 A. It's at the top level of the force continuum, yes.

18 Q. And you would only use it if none of the others were
19 adequate, is that right?

20 A. You're not required to go one, two, three, four, all the
21 way to the top.

09:13:35

22 Q. But you shouldn't use the tactic of pointing a gun at
23 somebody unless it was necessary to alleviate a situation that
24 involved a serious threat of death or serious injury.

25 A. It was done in response to that, yes.

09:13:49

1 Q. A situation of death or serious injury, correct?

2 A. Potential for death or serious injury.

3 Q. Now, let me see what distinguished this particular stop
4 from others where you would not be allowed or proper training
5 would not indicate you should draw your weapon.

09:14:05

6 I'm trying to get at what factors were in your mind at
7 that moment that led to your conclusion: I have to draw my
8 weapon in this case.

9 The first factor is what you heard over the radio, is
10 that correct?

09:14:18

11 A. That was the first portion of it, yes.

12 Q. And so when you approached that scene, you believed that a
13 vehicle had tried to run over the deputy, is that correct,
14 Mr. Armendariz?

15 A. Correct.

09:14:35

16 Q. And of course, that would be an assault with a deadly
17 weapon, trying to run someone over with a car, is that correct?

18 A. Correct.

19 Q. And that's a crime, is that right?

20 A. It's a felony, correct.

09:14:44

21 Q. And if you did hear that on the radio you would indeed
22 respond very quickly, as you said you did, is that right?

23 A. Correct.

24 Q. And there was nothing else in the radio report that you
25 heard that indicated any other criminal activity on the part of

09:14:54

1 any of the occupants of the car, is that right?

2 A. That's correct.

3 MR. POCHODA: Let me -- if we could put up Plaintiffs'
4 Exhibit 71 -- that has been admitted -- and publish it, please,
5 with the Court's permission.

09:15:14

6 It doesn't seem to be coming up.

7 THE COURT: All right. We're going to shut down the
8 system and reboot it.

9 MR. POCHODA: I have one extra copy, if the Court
10 can -- can get one from the file.

09:16:31

11 THE CLERK: Exhibit 71?

12 MR. POCHODA: 71. Plaintiffs' 71.

13 May I approach to give this to the witness, Your
14 Honor?

15 (Pause in proceedings.)

09:16:47

16 THE COURT: I have -- I have a copy.

17 BY MR. POCHODA:

18 Q. This exhibit, Exhibit 71, has a number of pages.

19 Do you see that, Mr. Beeks?

20 A. Yes, sir.

09:17:10

21 Q. If you could turn to the page that's marked MCSO 001817.
22 It would be on the top right of that page.

23 A. Okay.

24 Q. And if you could quickly look at the next two pages and
25 then we'll turn back to the first page, up through 001820.

09:17:38

1 And is this a CAD incident history report, sir?

2 A. Yes, it is.

3 Q. And turning to that first page, 001817, do you recognize
4 any of the entries in this report?

5 A. Yes, I do. It has the call units for Deputy Armendariz and 09:18:20
6 myself.

7 Q. And Deputy Armendariz is unit 135D, is that correct?

8 A. That's correct.

9 Q. And what is your unit?

10 A. I'm 129D. 09:18:33

11 Q. And at some point does this indicate that Deputy Armendariz
12 made a traffic stop?

13 A. At the very beginning of the first line, "Out on scene."

14 Q. And what would be the next entry from Deputy Armendariz?

15 A. Shows that he ran some license registration vehicle -- 09:18:51
16 license registration information for a vehicle. He had two
17 detained.

18 Q. And following that?

19 A. There's a -- dispatch is requesting a code 4 from him and
20 there's no response. The code 4 is a request for status, 09:19:12
21 whether or not you're okay or need assistance.

22 Q. And as a matter of course, if there's no response, as
23 you've testified, the line would be kept open, is that correct?

24 A. Generally.

25 Q. Because it could be that the no response is due to a 09:19:30

1 problem that has arisen at the other end, is that right?

2 A. That's correct, on a traffic stop it's a concern.

3 Q. And it could be the officer was not at the radio at that
4 moment, is that correct?

5 A. He could -- there's any number of things that would cause
6 him not to answer up. He has a portable radio with him. It
7 could -- could be any number of reasons. 09:19:44

8 Q. And a number of those reasons would not be attributable to
9 the deputy being in any sort of problem or threatening
10 situation? 09:20:01

11 A. Well, that's an assumption you can't make.

12 Q. I'm not saying you make that assumption, but a number of
13 the reasons that people would -- do not answer when they are
14 asked about this code 4 turn out to be happily benign reasons,
15 is that right? 09:20:10

16 A. There's always that chance, yes.

17 Q. And then the next line, what does that indicate?

18 A. They're requesting another unit to start towards that
19 traffic stop.

20 Q. When you say "they," that's Deputy Armendariz, is that
21 correct? 09:20:23

22 A. Correct.

23 Q. And those are his words, is that correct, "Start me another
24 unit"?

25 A. "Start me another unit," correct. 09:20:33

1 Q. And that would be -- you've heard him use that terminology
2 in such reports before, is that correct?

3 A. Yes.

4 Q. And that means he wants a backup car, is that right?

5 A. Yes.

09:20:41

6 Q. And is there any indication on this page of any other words
7 stated by Deputy Armendariz on that dispatch call at that
8 moment?

9 A. Not on here. Not all words will be transcribed onto a call
10 history.

09:20:53

11 Q. But there are no other words transcribed onto this call
12 history, is that correct?

13 A. There's not, no.

14 Q. There's no indication in this call history -- or take a
15 look at the following pages for a moment -- of any indication
16 from Mr. Armendariz that, "Someone has just tried to run me
17 over," is there?

09:21:04

18 A. I'm not showing in the call history. It was the voice
19 inflection and the tone of his voice --

20 Q. I'm not asking that.

09:21:17

21 A. Okay.

22 Q. I'm asking on these pages is there any indication that
23 Mr. Armendariz stated to dispatch, such that others like
24 yourself could have heard, that someone had tried to run him
25 over?

09:21:26

1 A. It's not shown on this -- on this call history, no.

2 Q. And that would be information that would be of interest to
3 any of -- other deputies listening in, is that correct?

4 A. It would be, but not all words that are spoken during a
5 radio transmission get transcribed onto a call log. There are 09:21:43
6 times when the message may be garbled that the dispatcher can't
7 enter those words.

8 Q. You're saying there may be a reason why, even though he may
9 have said that, it's not listed here, is that correct?

10 A. His -- his statement that a vehicle tried to run him over 09:22:02
11 does not appear on this call log. However, that's what I did
12 hear.

13 Q. And if -- if you can explain to the Court, if none of the
14 other deputies involved heard any such words over the dispatch
15 that day and it's not reflected in the records in front of us 09:22:21
16 today, how is it that you are the only person who heard that?

17 A. I don't know what they heard.

18 MR. CASEY: Excuse me. Objection, Your Honor, to the
19 foundation to the predicate of the question. It assumes facts
20 not in evidence. 09:22:35

21 BY MR. POCHODA:

22 Q. Deputy Kikes did not indicate in his testimony hearing
23 anything other than "Start me another unit."

24 A. I don't know what Deputy Kikes heard; I know what I heard.

25 THE COURT: I'm going to sustain the objection. 09:22:48

1 BY MR. POCHODA:

2 Q. In any event, others -- other deputies --

3 MR. CASEY: Excuse me, Your Honor. I'm going to move
4 to strike the answer of the witness that was given before --
5 why your -- why the --

09:23:03

6 THE COURT: Yeah, I'll grant the motion to strike.

7 MR. CASEY: Thank you, Your Honor.

8 BY MR. POCHODA:

9 Q. Other deputies listening to the dispatch that day would
10 have heard the same things that you heard, is that correct?

09:23:09

11 A. I can only assume.

12 Q. In any event, turning back to the stop itself at the -- you
13 said it was some type of shop, is that correct?

14 A. It's a convenience store/gas station on the corner.

15 Q. And we have heard testimony that it's approximately 350
16 feet from the gas station itself. Is that your understanding?

09:23:33

17 A. Give or take a little bit.

18 Q. And we were talking about the factors that led you to, in
19 this instance as opposed to normal traffic stops, draw your
20 weapon. We talked about one of them being the fact that you
21 were under the impression that this particular driver had
22 already committed a crime in trying to run down Deputy
23 Armendariz, is that correct?

09:23:51

24 A. That's correct.

25 Q. And then the other factor is what you observed when you

09:24:03

1 came upon the scene, is that correct?

2 A. That's correct.

3 Q. And when you came upon the scene, the car had been stopped
4 and Deputy Kikes was already off of his vehicle, a motorcycle,
5 I believe, is that correct?

09:24:16

6 A. Correct.

7 Q. And where was Deputy Armendariz standing at that point?

8 A. Deputy Armendariz was still back at the convenience store,
9 the gas station.

10 Q. I'm sorry, Deputy Kikes. I apologize.

09:24:25

11 A. Deputy Kikes made contact with the driver. At that point I
12 don't recall exactly if the driver's door had been opened, but
13 he was at the driver's door making contact with the driver.

14 Q. And his motorcycle was parked behind the driver's car, is
15 that correct?

09:24:37

16 A. I believe so, yes.

17 Q. And so he had left that and was now speaking to the driver
18 at the driver's side of the car, is that right?

19 A. Correct.

20 Q. At any point in this did the -- was there any weapons
21 observed from inside the car?

09:24:51

22 A. I didn't see any, no.

23 Q. Did any -- anybody report any weapons to you, though, were
24 inside the car?

25 A. No.

09:25:03

1 Q. And the others -- deputies that arrived on the scene, where
2 did they pull up their cars?

3 A. I don't recall exactly. Off to the -- I think one was to
4 the south, which would be opposite the side of the truck where
5 I was on.

09:25:20

6 Q. And if you could describe, as you approached, you also
7 approached on the driver's side, is that right?

8 A. Correct.

9 Q. The car's facing away from you.

10 A. It's facing -- well, I'm coming up to the driver's side.
11 It's facing to the left of me.

09:25:31

12 Q. But when you pulled in, the car was facing -- you pulled in
13 to the back of the car, in the back side of the car?

14 A. I pulled off at a -- almost a 45-degree angle to the back
15 of -- back of the vehicle.

09:25:55

16 Q. And at that point you were able to get up to the side door
17 and you were able to observe the occupants of the car, is that
18 correct?

19 A. I pulled up in such a way that as I exited my vehicle I
20 could observe the deputy and the occupant of the vehicle.

09:26:05

21 Q. You saw the faces of the occupants, is that correct?

22 A. I saw the face of the driver; the passenger I couldn't see.
23 She was still somewhat obscured by the pillar of the -- of the
24 vehicle.

25 Q. And you didn't hear specifically any of the words that the

09:26:19

1 driver said, is that correct?

2 A. Not specifically that I can recall, no.

3 Q. And did you hear the words of Deputy Kikes?

4 A. He was telling him to turn off the vehicle and exit to
5 vehicle. The driver was yelling something; I don't remember
6 his exact words. He was combative, noncompliant.

09:26:36

7 Q. Combative and noncompliant because he didn't turn off the
8 car, is that your opinion?

9 A. His whole physical demeanor and body language were -- were
10 not in --

09:26:51

11 Q. What is his physical demeanor? Did he raise his fists in
12 any way?

13 A. He was tense and agitated.

14 Q. He did not -- when you say combative, he did not take a --
15 a stance of combat, did he?

09:27:01

16 A. He was still seated in the vehicle, no.

17 Q. And his hands were not in a fist formation, were they?

18 A. He was holding on to the vehicle's steering wheel, I
19 recall.

20 Q. You recall that he had both hands on the steering wheel?

09:27:12

21 A. One of them; I can't say about the other one.

22 Q. So the -- the determination of him being combative is
23 because he wasn't complying with what you took to be orders
24 from Deputy Kikes to turn off the vehicle, is that correct?

25 A. His -- his demeanor, his -- his yelling, his -- totality of

09:27:30

1 the whole circumstances.

2 Q. And do you know if he was yelling at Deputy Kikes or
3 somebody else?

4 A. He could have been yelling at somebody else, too. I don't
5 recall exactly. 09:27:43

6 Q. And if in fact Deputy Kikes testified that the driver of
7 the car was on the telephone for the entire time during this
8 incident, would that be consistent with what you observed?

9 A. I don't recall the driver being on a telephone. I believe
10 the passenger was on a telephone at one point. 09:27:57

11 Q. And if that's inaccurate, you might be inaccurate about
12 what the driver was doing, is that right?

13 A. I didn't see the driver with a telephone in his hand.

14 Q. It's your testimony the driver did not have a telephone and
15 the passenger did, is that -- is that your testimony? 09:28:11

16 A. Didn't see the driver with a telephone in his hand.

17 Q. Would you -- would you dispute the fact if Deputy Kikes,
18 who was closer, testified that the driver was on the phone for
19 the entire time that he was sitting in the driver's seat?

20 A. He may have been on the phone before I came to the side of
21 the truck. I don't know that. 09:28:26

22 Q. Would you dispute Deputy Kikes' testimony that the driver
23 was on the phone for the entire time that he was sitting in the
24 driver's seat?

25 A. I didn't see him on the telephone. 09:28:36

1 Q. So you do dispute that.

2 A. I didn't see him on the telephone.

3 Q. He would not be so combative if he was on the telephone, is
4 that correct?

5 A. I wouldn't say that.

09:28:47

6 Q. He might be combative. He might not have liked the person
7 he was talking to, of course, is that right?

8 In any event, you did not see any weapons or direct
9 threats from the driver towards any deputy on the scene, did
10 you?

09:29:03

11 A. Based upon the totality of the circumstances, I can't make
12 the assumption that there's no vehicles -- or no weapons in
13 that vehicle.

14 Q. Right. So some of your -- some of your decision to pull
15 your weapon is 'cause there's always a possibility there might
16 be a gun in the vehicle, is that correct?

09:29:11

17 A. In response to a threat.

18 Q. That there's always the possibility of a weapon. He never
19 threatened use of a weapon, did he?

20 A. His vehicle could be considered a weapon.

09:29:22

21 Q. And again, we're going back to this report that you
22 allegedly heard about the driver trying to run over the deputy,
23 is that right?

24 A. That's the beginning of it. And then my observations on
25 the scene.

09:29:35

1 Q. Your observation on the scene was that there was a driver
2 who did not get out of the car when told, and was speaking
3 loudly, is that right?

4 A. He was speaking loudly, yes.

5 Q. If both the driver and Deputy Kikes indicated that what the
6 driver was in fact doing was making a 911 phone call because of
7 his concern about being threatened by the deputies, you would
8 not dispute the accuracy of those statements, would you?

09:29:45

9 A. I didn't see him on the telephone making that telephone
10 call, so I don't know.

09:30:09

11 Q. And if there's no testimony that the woman was ever on the
12 phone, you would not dispute the accuracy of that testimony,
13 would you?

14 A. I saw her on the telephone. I don't know what her
15 testimony's been.

09:30:24

16 Q. And you testified on direct that you did not see the driver
17 being pulled from the car, is that correct?

18 A. I saw the driver being pulled from the car.

19 Q. And in fact, Deputy Kikes did pull him from the car, isn't
20 that right?

09:30:43

21 A. He didn't pull him out of the car. He had hands on him
22 while the vehicle -- or while the driver exited the vehicle.
23 He did not forcibly remove him from the vehicle.

24 Q. Mr. Beeks, did you give a deposition at an earlier time in
25 this case?

09:31:02

1 A. Yes, I did.

2 Q. Do you recall doing that on or about October 22nd, 2009?

3 A. Yes.

4 MR. POCHODA: May I approach, Your Honor?

5 THE COURT: Yes.

09:31:11

6 MR. POCHODA: Would you like a copy for the Court?

7 THE COURT: Please.

8 MR. POCHODA: (Handing deposition to the clerk).

9 BY MR. POCHODA:

10 Q. Is that your deposition that you gave previously in this
11 matter, Mr. Beeks?

09:31:37

12 A. Appears to be.

13 Q. And you were under oath at the time you answered the
14 questions in this deposition?

15 A. Correct.

09:31:46

16 Q. If you could turn to page 106, please, starting at line 3,
17 through line 6.

18 A. Okay.

19 Q. "QUESTION: Did Deputy Kikes reach in to the driver?

20 "ANSWER: I believe so.

09:32:13

21 "QUESTION: And he pulled him out of the car; is that
22 right?

23 "ANSWER: Yes."

24 Do you see that?

25 A. Yes, I do.

09:32:19

1 Q. And was that accurate testimony at the time?

2 A. He assisted him out of the vehicle. You could read
3 anything you want into that. He did not yank him out of the
4 vehicle, if you're assuming that that's what "pulled" means.

5 Q. I'm not assuming anything. I asked you the question here: 09:32:32
6 "And he pulled him out of the car; is that right?" You chose
7 to answer yes, is that correct?

8 A. That's correct.

9 Q. So at that point you answered yes, he did pull him out of
10 the car, is that right? 09:32:47

11 A. Yes.

12 Q. And then with assistance from other deputies he was
13 handcuffed behind his back and put against the car, is that
14 correct?

15 A. Yes. 09:33:02

16 Q. And all this time you had a gun pointed at the driver, is
17 that right?

18 A. At this point I believe I had reholstered, once he was
19 removed from the vehicle.

20 Q. After he was handcuffed. 09:33:15

21 A. Yes. Well, at the point he was being handcuffed, I -- at
22 that -- during that point, that transition, I had reholstered
23 my -- my weapon.

24 Q. But the driver was aware that there was a deputy with a gun
25 pointed at him as he was leaving the car, is that correct? 09:33:30

1 A. I assume so. I don't know what he was thinking or what he
2 saw.

3 Q. But your goal was to let him know that he had a gun pointed
4 at him in order to stop being belligerent, is that right?

5 A. Correct.

09:33:43

6 Q. And the occupant -- at that point the driver was not free
7 to leave the scene, is that right?

8 A. Not at that point, no.

9 Q. At some point you said that there was a call made back to
10 deputy -- contact made with Deputy Armendariz, is that right,
11 about what should occur, is that right?

09:34:01

12 A. I didn't hear what the -- about what?

13 Q. Let me withdraw that question.

14 At some point there was a contact made from the
15 officers on the scene of the stop to Deputy Armendariz, who was
16 back at the gas station, is that right?

09:34:15

17 A. That's correct.

18 Q. And Deputy Armendariz indicated that there was no need for
19 an arrest, and there may not have been any crime committed, is
20 that right?

09:34:25

21 A. I did not speak with him directly, but his -- the decision
22 was made that charges would not be pursued at that time.

23 Q. He didn't indicate that he had any charges, did he?

24 A. Other than disorderly conduct, no.

25 Q. He said it could be a disorderly conduct charge, is that

09:34:44

1 right?

2 A. I believe so. He didn't say that to me specifically, but
3 that was the conversation he had with the other deputies.

4 Q. It was reported to you. And who was the victim of that
5 disorderly conduct behavior? 09:34:54

6 A. The disorderly conduct would be state of Arizona.

7 Q. I know. But did Deputy Armendariz indicate who was the
8 victim, who was offended by the conduct?

9 A. State of Arizona.

10 Q. State of Arizona? You don't require someone to be offended 09:35:06
11 to bring a disorderly conduct charge?

12 A. Well, I guess the deputy and the -- in the scene that he
13 was on would have been the site of the disorderly conduct
14 charge.

15 Q. The deputy would have been the victim. 09:35:20

16 A. Yeah.

17 Q. And did you file any reports about the events on March
18 28th, 2008 --

19 A. I did not.

20 Q. -- including the -- 09:35:29

21 Let me finish.

22 -- including a use of force report?

23 A. I did not.

24 Q. You were required, as a member of the MCSO, when you draw
25 and point a weapon, to file a use of force report, is that 09:35:37

1 correct?

2 A. Not for that, no.

3 Q. Not for drawing your weapon?

4 A. No.

5 Q. So there are many occasions where people draw their weapon
6 and there's no written record of it, is that correct?

09:35:45

7 A. Yes.

8 Q. And did anyone at the MCSO ever speak to you about the
9 events that took place on March 28, 2008, at that shop?

10 A. At that particular time, or later on during this court
11 hearing?

09:35:59

12 Q. Did anyone from MCSO -- within, let's say, a month of the
13 events, did anyone speak to you about what occurred?

14 A. No.

15 Q. Did you have to in any way -- or did you in any way write
16 any incident report about what occurred on March 28th, 2008?

09:36:13

17 A. No.

18 Q. You're not required as a deputy to indicate anywhere in
19 writing what happened on your daily activities on a particular
20 shift, is that correct?

09:36:30

21 A. We don't keep a log of that unless there's been a criminal
22 report filed or a citation.

23 Q. So absent an arrest or a citation, a supervisor in your
24 unit would not know what other interactions you had with

25 citizens during your shift, is that right?

09:36:42

1 A. Correct.

2 MR. POCHODA: No further questions.

3 THE COURT: I don't know whether to call you Deputy
4 Beeks or Mr. Beeks. I'll call you Mr. Beeks --

5 THE WITNESS: Okay. 09:36:55

6 THE COURT: -- since you're no longer a deputy.

7 EXAMINATION

8 BY THE COURT:

9 Q. You were involved in several sat -- saturation patrols, you
10 said? 09:37:04

11 A. Correct.

12 Q. Do you remember which ones?

13 A. This particular one, it was at Cave Creek and 32nd Street,
14 or Bell Road --

15 Q. Which would have been -- 09:37:12

16 A. -- this particular one with the traffic stop that we just
17 discussed.

18 Q. Right. Which would have been in March 2008?

19 A. Right. One in Mesa and one in Sun City.

20 Q. All right. Were you ever -- did you ever receive 287(g)
21 training? Were you ever 287(g) certified? 09:37:21

22 A. I did in August of 2009.

23 Q. In August of 2009. So you were 287(g) certified after your
24 participation --

25 A. After this -- 09:37:40

1 Q. -- in all of the saturation patrols?

2 A. Correct.

3 Q. Not just this saturation patrol, but you were 287(g)
4 certified after all of the saturation patrols in which you
5 participated?

09:37:49

6 A. That's correct.

7 Q. Do you have any recollection as to whether or not you
8 received any instruction about who to stop or not to stop
9 during any of the saturation patrols in which you participated?

10 A. We were instructed that there would be no stops based upon
11 race or -- race or ethnicity. The stops would be -- if -- if a
12 traffic stop was performed, it would be for traffic infractions
13 or violations, or any other criminal activity.

09:38:06

14 Q. Were you told that you had no discretion as to who to pull
15 over?

09:38:24

16 A. We have discretion as a patrol deputy, and, yeah, we have
17 discretion who we can stop, based upon the violation, the
18 totality of the circumstance surrounding that violation.

19 Q. All right. So I'm not -- I want to understand to the best
20 you understood what, if any, instruction you received about who
21 you should or should not pull over.

09:38:44

22 A. There was no specifics as to who to stop or who not to
23 stop, other than race, ethnicity, would not be a factor in
24 making that decision.

25 Q. When did you receive that instruction?

09:39:01

1 A. That's been spoken throughout the office for several years.
2 It comes up in briefings. It's -- it's mentioned at the
3 beginning of the saturation patrols.

4 Q. Okay. At the beginning of the saturation patrols do you
5 have a specific recollection of attending each of the briefings
6 in each of these saturation patrols? 09:39:19

7 A. Not the formal briefings. Our squad would meet up
8 informally before the -- before we'd go out on patrol and we
9 would be briefed.

10 Q. And who was -- what squad were you in? 09:39:35

11 A. At that particular time I was on SAU, which is our Special
12 Assignment Unit, and Squad 5. And our sergeant at that time
13 was Chris Scott, and we had an acting sergeant before that,
14 Deputy Tony Navarra.

15 Q. And would -- and so you don't have any recollection of the
16 briefings, the formal briefings before the saturation patrols,
17 but you do have a recollection that you would meet with your
18 own special assignment patrol? 09:40:02

19 A. With our squad members, yes.

20 Q. "Special Assignment Squad" perhaps is a better way of
21 saying it. And do you recall any instruction you received from
22 your squad leader specifically? 09:40:16

23 A. Racial profiling was not a -- was not a criteria for any
24 stops or investigations that we did.

25 Q. All right. When they told you that racial profiling wasn't 09:40:36

1 a criteria, what did you understand that to mean?

2 A. That if I see a Hispanic male driving down the road, I
3 don't isolate him from -- excuse me -- 20 other vehicles just
4 based solely upon my assumption that -- that he would be an
5 illegal alien.

09:40:58

6 Q. All right.

7 A. And --

8 Q. You hadn't received any 287(g) training at all at this
9 point?

10 A. Not formally, no.

09:41:05

11 Q. So to the extent that anybody referenced 287(g) training,
12 that wouldn't have meant anything to you anyway?

13 A. I was aware we had 287(g) deputies, but I was not aware of
14 their training.

15 Q. When you participated in a saturation patrol, do you recall
16 whether -- some of them were multiple days?

09:41:17

17 A. Right.

18 Q. Do you recall whether you participated in all days or only
19 some of the days?

20 A. Generally, one of the two days.

09:41:30

21 Q. Do you recall whether you made arrests on all the days in
22 which you participated?

23 A. No, I did not make arrests on all the days.

24 Q. Okay. Do you recall whether you were instructed that if
25 you saw anybody commit any traffic violation, you had to pull

09:41:42

1 that person over?

2 A. We were told to be proactive, and if we saw violations, to
3 address them.

4 Q. But you were given discretion as to how you would address
5 them?

09:41:57

6 A. We were given discretion.

7 THE COURT: If you would, can one of the two parties
8 with the nice computers put up Exhibit 90. And I'd like you to
9 bring up page MCSO 001905 in Exhibit 90.

10 BY THE COURT:

09:42:28

11 Q. Do you see on your screen the page I'm referring to?

12 A. Yes.

13 Q. Do you know what that is?

14 A. It's a stat sheet that was kept at the command post of some
15 of our operations.

09:42:39

16 Q. All right. And you'd seen -- you've seen something like
17 this before, enough to know what this is?

18 A. Yes.

19 Q. I assume this is not in your handwriting?

20 A. No, it's not my handwriting, no.

09:42:49

21 Q. But do you see where it's discussing a Mesa operation that
22 took place on June 26, 2007?

23 A. Yes.

24 Q. And do you see where on Arresting Deputy it has, in the
25 second, third, and fourth column, it has Beeks?

09:43:01

1 A. Correct.

2 Q. Are you aware of any other Beeks in the Maricopa County
3 Sheriff's Office that participated in saturation patrols?

4 A. No, I'm not.

5 Q. Are you aware -- for that matter, are you aware of any
6 other Kikeses in the MCSO who participated in saturation
7 patrols?

09:43:11

8 A. None that I've heard of, no.

9 Q. Any other Armendarizes who participated in saturation
10 patrols?

09:43:21

11 A. There's a possibility there with Armendariz, but I'm not
12 familiar with any of them.

13 Q. All right. Do you have any recollection of making this
14 arrest that it refers to on lines 20, 21, and 22?

15 A. Yes, I do.

09:43:36

16 Q. All right. So you arrest -- you -- it indicates here that
17 you're arresting deputy; that you observed -- that your
18 probable cause for a stop was speed, and you pulled over
19 somebody named Celerino -- Celerino Guzman Rodriguez?

20 A. Correct.

09:43:57

21 Q. And charged him with failure to have ID?

22 A. Correct.

23 Q. And there was a determination on 287(g)?

24 A. That determination was not made by myself.

25 Q. Who made that determination?

09:44:07

1 A. It was 287(g) deputies that arrived on scene.

2 Q. All right. Why did you call a 287(g) deputy in this case?

3 A. They were unable to provide any form of ID. I was not able
4 to -- I don't speak Spanish very well. They were in the area,
5 and they came by and assisted on the traffic stop to determine
6 their names and so we could check their ID to see if they were
7 a valid driver, and if they had a driver's license, and get
8 their information so I could go ahead and do a -- a warrants
9 check on them to see if there was any other criminal history as
10 to them.

09:44:27

09:44:46

11 Q. All right. So let me ask, the basis on which you called a
12 287(g) officer in this case was because the driver didn't have
13 an identification?

14 A. He did not have a valid U.S. identification.

15 Q. He didn't have a valid United States identification.

09:45:00

16 A. Correct.

17 Q. Any other reason?

18 A. Not specifically.

19 Q. Okay. Do you call 287(g) officers any time you stop
20 someone who does not have a valid United States identification?

09:45:14

21 A. No.

22 Q. But you did in this case?

23 A. Yes.

24 Q. And was it your habit to call a 287(g) officer any time you
25 stopped anyone in a saturation patrol who didn't have valid

09:45:32

1 United States identification?

2 A. No.

3 Q. I don't want to make you go through the trouble to look
4 at -- but on some of our other arrests --

5 A. Okay.

09:45:54

6 Q. -- when they've put down the PC for stop, they've indicated
7 a number. And that number appears not just for you, but a
8 number of other times elsewhere. Under the sample PC they just
9 list a number that says 2502. I've heard a number of officers
10 refer to Title 28 violations, and I can't find any violation of
11 Title 28-2502.

09:46:12

12 Do you have any idea what 2502 means?

13 A. No. Where's that? Is it on a stat sheet?

14 Q. It's on a sheet like this, but it's --

15 A. Maybe in context I could figure it out, but I don't --

09:46:28

16 Q. You don't know where he's --

17 A. Not off the top of my head, no.

18 Q. All right. Just let me check and see if I have any other
19 questions for you.

20 When you did patrols, were you on patrols alone? Were
21 you alone in your patrol car or did you have a partner?

09:46:42

22 A. It varied. Sometimes I had a trainee with me, or I could
23 have had another deputy or posseman with me.

24 Q. And you can't -- in this case on the sheet that we have up,
25 do you recall whether you had anybody with you?

09:46:59

1 A. I had a trainee with me on that particular day.

2 Q. I'm sorry?

3 A. I had a trainee with me.

4 Q. Okay. And the trainee wasn't 287(g) certified?

5 A. No, he wasn't, no.

09:47:08

6 Q. And you weren't 287(g) certified?

7 A. Not at that time, no.

8 THE COURT: Thank you very much.

9 THE WITNESS: Thank you.

10 THE COURT: Do you have any follow-up, Mr. Pochoda?

09:47:22

11 MR. POCHODA: No, Your Honor.

12 THE COURT: Any redirect?

13 MR. CASEY: None, Your Honor. Thank you.

14 THE COURT: You may step down.

15 Next witness.

09:47:37

16 MR. CASEY: Your Honor, defense calls Ramon Charley
17 Armendariz to the stand.

18 THE CLERK: Right up here, sir.

19 Can you please state and spell your full name.

20 MR. ARMENDARIZ: Sure. Ramon, R-a-m-o-n; Charley,

09:48:20

21 C-h-a-r-l-e-y; Ramirez, R-a-m-i-r-e-z; Armendariz,

22 A-r-m-e-n-d-a-r-i-z.

23 THE CLERK: Okay. Please raise your right hand.

24 (Ramon Charley Ramirez Armendariz was duly sworn as a
25 witness.)

09:49:04

1 THE CLERK: Thank you. Please take our witness stand.

2 MR. CASEY: May I proceed, Your Honor?

3 THE COURT: You may.

4 RAMON CHARLEY RAMIREZ ARMENDARIZ,
5 called as a witness herein, having been duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CASEY:

9 Q. Good morning, Deputy. How are you today?

10 A. Good morning, sir. How are you? 09:49:25

11 Q. I'm doing very well. Thank you.

12 Tell us your full name.

13 A. My full name is Ramon Charley Ramirez Armendariz.

14 Q. And where were you born, sir?

15 A. I was born in El Paso, Texas. 09:49:34

16 Q. And where did you grow up?

17 A. In El Paso, Texas.

18 Q. You still have family there?

19 A. Yes, I do.

20 Q. I understand you recently lost an uncle? 09:49:40

21 A. I did, to cancer.

22 Q. And did you go back there for the funeral services?

23 A. I did.

24 Q. And where was that funeral service held?

25 A. In our family plot in Juarez, Mexico. 09:49:50

1 Q. What is your first language?

2 A. Spanish.

3 Q. Tell me a little bit, did you graduate from high school?

4 A. I did.

5 Q. And where'd you go to high school?

09:50:00

6 A. Eastwood High School.

7 Q. And where was that?

8 A. In El Paso.

9 Q. And what did you do after high school?

10 A. After high school I joined the military.

09:50:06

11 Q. What branch?

12 A. United States Navy.

13 Q. How long were you in the United States Navy, sir?

14 A. For three and a half years' active duty, and then I
15 transferred over to reserve status.

09:50:15

16 Q. And what did you do in the Navy, sir?

17 A. I was a corpsman.

18 Q. And were you stationed anywhere particular, or --

19 A. Kind of all the way around, but my final duty station was
20 the USS Abraham Lincoln.

09:50:25

21 Q. Where was that stationed out of?

22 A. Alameda, California, at the time.

23 Q. After you left the -- the Navy, did you go into law
24 enforcement?

25 A. I did, sir.

09:50:35

1 Q. And a where did you go into law enforcement?

2 A. I began with the City of Austin Police Department.

3 Q. And that's Austin, Texas?

4 A. Yes, sir.

5 Q. And did you undergo training when you were in Austin,
6 Texas?

09:50:42

7 A. I'm sorry, sir?

8 Q. Did you undergo -- I'm sorry, I'm going to speak up in the
9 mike.

10 Did you undergo training while you were in Austin,
11 Texas?

09:50:50

12 A. I did the basic law enforcement academy.

13 Q. Okay. When you were at the basic law enforcement academy
14 in Texas, did you have any training about the use of race or
15 the prohibition on racial profiling?

09:51:01

16 A. Sir, that was many years ago. I don't remember.

17 Q. Okay.

18 A. I can't recall, I apologize.

19 Q. All right. That's fine.

20 How long were you at the City of Phoenix -- "City of
21 Phoenix." Strike that.

09:51:07

22 How long were you with the City of Austin police
23 force?

24 A. I was with the City of Austin on the law enforcement side
25 for two years, and then I transferred over to the emergency

09:51:16

1 medical services side, where I was a paramedic.

2 Q. Okay. Why'd you leave Texas?

3 A. I came to Phoenix to be closer to my family. My mother and
4 my grandmother both had terminal cancer, and it was more
5 appropriate for me to be closer to family at this time -- at 09:51:39
6 that time.

7 Q. And when did you move to Phoenix?

8 A. May of 2005. Or December of 2004, I'm sorry.

9 Q. When did you begin work at MCSO?

10 A. May of 2005. 09:51:50

11 Q. And how did -- did you have to undergo, since you were
12 already an officer, a peace officer, did you have to redo
13 training?

14 A. I opted to. I was given the option to apply with the state
15 for reciprocity and test out, but I opted to go through another 09:52:03
16 academy with the Sheriff's Office.

17 Q. Why did you do that?

18 A. For training purposes. It provides a better insight with
19 the agency that you're working for.

20 Q. Why'd you decide, of all -- let me ask this: Did you apply 09:52:18
21 anywhere else to -- to be employed in law enforcement when you
22 moved to Phoenix?

23 A. No, sir, this is the only agency I applied for.

24 Q. Why?

25 A. Sheriff Joe had a very good reputation of being a law 09:52:28

1 enforcement officer and allowing his law enforcement personnel
2 to enforce laws, and so I wanted to be a part of that.

3 Q. And when you went to the academy, do you recall roughly how
4 long that academy training was?

5 A. Somewhere in the twenty some-odd weeks. 09:52:46

6 Q. During that --

7 A. Eighteen, twenty weeks, somewhere.

8 Q. Okay. And during that training did you undergo any
9 training about the use of race or ethnicity in law enforcement
10 actions? 09:53:03

11 A. We under -- we attended a cultural diversity course that
12 was taught from the -- in the basic academy.

13 Q. And what do you remember being taught there at the basic
14 academy on that subject?

15 A. We were taught about different -- different races,
16 different religious groups, and what was important to them, and
17 how to handle certain situations with different races and --
18 and religious groups. 09:53:14

19 Q. You are Latino yourself?

20 A. I am Mexican. 09:53:32

21 Q. Did you have any -- any difficulty understanding any issues
22 about the Latino culture in Arizona versus in Austin or
23 El Paso?

24 A. I'm sorry. Could you rephrase it, please, sir?

25 Q. Did you have any adjustment, did you have any difficulty 09:53:44

1 understanding the cultural issues between the Latino
2 communities in Arizona versus in Texas?

3 A. No.

4 Q. Okay. Tell me, what were you taught at the academy about
5 whether or not you could use race or ethnicity to make any
6 traffic stops or any law enforcement decisions?

09:53:59

7 A. Well, I can't recall if we were ever taught anything
8 specific, but I know we were told that it was never a basis for
9 a traffic stop.

10 Q. All right. Now, at -- when did you -- after you completed
11 the academy, did you go through any type of monitoring or
12 training, if you will, actually out in the field with the MCSO?

09:54:11

13 A. I did. I went through a field training program.

14 Q. And do you remember how long that field training program
15 was?

09:54:31

16 A. No, sir, I do not. I apologize.

17 Q. Is -- after a deputy graduates from the academy at the MCSO
18 and before they actually go out on the street alone, is there a
19 field training program that's required?

20 A. There is. There is a time where the re -- the new deputy
21 will go out with -- with a seasoned or a field training
22 officer and go through a series of training protocols. Mine
23 was abbreviated because I was a law enforcement officer prior,
24 so mine was abbreviated.

09:54:46

25 Q. And let me also turn to another subject.

09:55:05

1 At some point during your career were you ever
2 certified by the federal government to be a 287(g) deputy?

3 A. Yes, sir, I was.

4 Q. What -- when was that that you were certified?

5 A. Approximately 2000 -- early 2007, early. I know I
6 graduated in July 2007.

09:55:26

7 Q. Do you recall where you -- where you had that training?

8 A. At the Maricopa County Sheriff's training academy.

9 Q. Who conducted that training?

10 A. ICE did, sir.

09:55:41

11 Q. Federal officials?

12 A. Federal officials, yes, sir.

13 Q. And I apologize if I asked you this, but do you recall
14 roughly the length of time the training was?

15 A. No, sir. I believe it was five or six weeks.

09:55:50

16 Q. Okay. Did the federal government ever teach you, the ICE
17 officials ever teach you about what you could and could not do
18 with race in law enforcement?

19 A. Well, race was not a -- they never taught us that race was
20 a priority for a traffic stop. They had other indicators with
21 287(g) to do their investigations; they had other indicators
22 that they had.

09:56:10

23 Q. And would you explain for us, what were you taught by ICE
24 that were indicators, and what were they indicators of?

25 A. I don't recall all -- I believe there were seven or eight

09:56:27

1 indicators. I don't recall what they actually were. But
2 what the indicators would lead to during the investigation was
3 the nationality of a person.

4 Q. All right. At any time during your career at MCSO did you
5 or have you ever used race or ethnicity of either a driver or
6 an occupant of a vehicle as part of your decision to stop the
7 vehicle?

09:56:54

8 A. No, sir.

9 Q. Now, did ICE ever teach you, sir, as part of the
10 indicators, about whether or not the use of race was one of
11 many factor to identify someone that may be in the country
12 unlawfully?

09:57:11

13 A. I don't recall, sir.

14 Q. Okay. At any time while you were a 287(g) officer did you
15 ever use race or ethnicity as a factor among many to determine
16 whether someone was present in the United States unlawfully?

09:57:28

17 A. No, sir.

18 Q. Now, let's just assume that there's testimony that ICE
19 taught that that factor could be used.

20 If you didn't do that, why?

09:57:46

21 A. There are other factors that I could have used in my
22 investigation. One of them was the language the other person
23 spoke; their failure to provide appropriate identification. I
24 know with myself, failure to provide appropriate identification
25 at the time.

09:58:05

1 There were so many other factors aside from race.
2 We're a border state, so I come across Latinos constantly, and
3 I don't base my decision on what occurs in a traffic stop just
4 based on their race.

5 Q. Okay. Now, are you a member of the Human Smuggling Unit? 09:58:20

6 A. Yes, sir, I am, currently.

7 Q. And how long have you been a member of HSU?

8 A. Since approximately April or May of 2008.

9 Q. And do you know how you became a member of that, how you
10 got there? 09:58:38

11 A. I was asked. I was called by a supervisor and asked if I
12 would be a part of their team.

13 Q. Do you have an understanding as to why you were asked to
14 join HSU?

15 A. I was briefly told because of my work ethic. They wanted
16 somebody like myself to work for them who would come actually
17 to work to work. 09:58:47

18 Q. Are you fluent in Spanish?

19 A. Yes, I am. That's my first language.

20 Q. Your first language. 09:59:00

21 Tell me, what is your understanding of the purpose of
22 HSU?

23 A. As an interdiction unit, we work the roadways interdicting
24 human smuggling load vehicles that are traveling within

25 Maricopa County, and we also investigate drop houses. 09:59:15

1 Q. Explain for us, when you talk about smuggling loads, the
2 Court's heard testimony about that but not from you.

3 What is a load vehicle?

4 A. A load vehicle is any means of transportation which has
5 persons that are highly probable or likely to be in the United 09:59:34
6 States illegally, and who are being transported en masse
7 through the United States to other parts of the United States,
8 through Maricopa County to other parts of the States.

9 Q. Explain for us, based on your experience, what's a drop
10 house? 09:59:52

11 A. A drop house is a place where the -- what they're called,
12 they're called "pollos." The smug --

13 Q. What are they called?

14 A. Pollos.

15 Q. Chickens? 10:00:02

16 A. Chickens, for another word.

17 They're smuggled in by a coyote. The coyote smuggles
18 them in. What occurs is somewhere down the line along the
19 border with Arizona they encounter a coyote. They make a
20 financial agreement to be smuggled into the United States 10:00:17
21 illegally. Typically, they walk through the desert from, you
22 know, several hours to several days. From that point they're
23 transported to a safe house, or a -- a drop house, where
24 they're held.

25 And then from that point on then they're transported 10:00:36

1 here within Maricopa County to another drop house, where
2 they're held until they're transported outside of Maricopa
3 County to other places in the United States.

4 Q. Based on your experience, have you seen the pollos, have
5 you seen the smugglees, detained against their will?

10:00:51

6 A. Yes.

7 Q. How frequently in that -- in your experience does that
8 occur?

9 A. Early on, when I came -- even prior when I was assigned to
10 the Special Assignment Unit, there were drop houses where we
11 would be called to assist the working detectives to clear
12 houses, tactically clear the houses where the persons were
13 being held against their will.

10:01:06

14 And in this case what happens is, and what's been in
15 my experience in the investigations of the drop houses that
16 I -- that I've investigated, where they're violent, there were
17 electronic restraint devices found in the house, firearms.

10:01:23

18 What they'll do is they'll turn the locks inside out
19 of the house, inside of the room that they're being held in.
20 They also at times will remove clothing, either keep them fully
21 nude, or at times keep them without their shoes on so that they
22 don't run away.

10:01:42

23 Q. Do you have any experience as to whether the female pollos,
24 the smugglees, experience any particular violent crime?

25 A. I've investigated a drop house where a female was sexually

10:01:59

1 assaulted. And there was another one, another incident that we
2 as a unit investigated where the female who was pregnant was
3 also not only physically assaulted, but sexually assaulted, and
4 she ultimately had a miscarriage here.

5 Q. Based on your experience in the years you've worked at HSU, 10:02:19
6 are these -- is there or are there organizations that are
7 running these human smuggling drop houses and these human
8 smuggling loads?

9 A. I don't know of a particular organization, but I know of
10 the persons that run these -- not personally, but of the 10:02:41
11 persons that run these drop houses.

12 Q. Are they associated at all with any of what is called in
13 the media "cartel"?

14 A. Based on our investigations and based on the statements
15 that the coyotes have given us who they work for, yes. 10:02:56

16 Q. Is it your experience, sir, that the same people involved
17 in narcotics trafficking are involved in the smuggling of human
18 beings from south of the border into Arizona?

19 A. It has been our experience in the investigations that we've
20 conducted that we have found not only firearms, but also drugs, 10:03:13
21 marijuana, cocaine, and meth.

22 Q. Have you had any experiences with smugglees, the pollos who
23 have negotiated a price to come into the United States, into
24 Maricopa County, and then the price changes?

25 A. Yes. 10:03:34

1 Q. Tell us about that.

2 A. In one particular -- a violent drop house where we found
3 firearms and ERD devices.

4 Q. What is that?

5 A. Electronic restraint device; a shock device, if you will. 10:03:46

6 Q. And how does that apply to this? What are those used for?

7 A. They're used to -- well, they can be used to incapacitate a
8 person, kind of the same function of a Taser, just not a Taser,
9 a Taser product.

10 And so what they'll do is they will smuggle -- I'll 10:04:05
11 give you an example. They'll pay \$1500 to be crossed over from
12 Mexico into the United States. They'll be -- their final
13 designation is to be Denver, Colorado. They'll be crossed over
14 to the United States illegally, be taken to a drop house. They
15 already paid their \$1500. 10:04:26

16 Once they get to this drop house, what will happen is
17 now they'll be detained by the coyotes, and what they'll be
18 told is they'll be told to contact their family members, and
19 now the price has gone up either to add an extra \$1500 or add
20 another thousand dollars, and in order for them to be released 10:04:42
21 it has to be wired to them.

22 Q. And what -- if in fact the family members can't wire the
23 money, is -- do you have any experience as to how the pollos,
24 the smugglees, now have to pay off the debt?

25 A. Well, unfortunately, sometimes it's with their life. The 10:05:02

1 coyotes will -- will continue to torture them until they either
2 pay up or they'll end up dying. And there have been a couple
3 incidents where I responded to a pollo being killed by a
4 coyote.

5 Q. Do you have any experience as to whether coyotes who have
6 extortionately raised the price requires these people who
7 they've smuggled to go out and try to work to pay off that
8 debt?

10:05:21

9 A. To pay off their debt, yes, sir.

10 Q. Okay. Would you describe for the Court what types of jobs,
11 in your experience, you've seen people, the smugglees, have
12 taken in order to pay off that increased extortionate debt?

10:05:38

13 A. Based on my experience and what I've --

14 Q. Yes.

15 A. -- the investigations that I've done, I know that they've
16 gone out, worked for lawn companies, they've gone out and
17 become day laborers, just looking for whatever work they can.
18 A majority of the time these people are really scared, and so
19 they're released to go work but are so scared that they do end
20 up coming back with money so that they can pay off their debt.

10:05:57

10:06:14

21 Q. Okay. Now, the Court has heard testimony about day
22 laborers congregating at location A or location B and working.
23 What is your experience as to whether smugglers are involved in
24 taking them to locations and then picking them up at the end of
25 the day?

10:06:33

1 A. I don't --

2 MR. POCHODA: Objection, Your Honor. No foundation.

3 THE COURT: You want to lay any foundation?

4 MR. CASEY: I was trying to by asking him what his
5 experience was. I didn't think there was any question, quite
6 frankly, other than his experience, yet.

10:06:44

7 Do you want me to rephrase?

8 THE COURT: Well, he hasn't described any operation in
9 which he's -- he's --

10 BY MR. CASEY:

10:06:55

11 Q. Do you have any experience where you have come across
12 people that have been working off coyote debts?

13 A. Yes.

14 Q. Okay. Explain what is your experience in that, sir.

15 A. Just based on my investigations and speaking with them of
16 what they were doing, and as I stated, you know, most of them
17 working for either lawn companies, you know, working -- working
18 in construction, finding whatever odd end jobs they could find
19 to earn any income they could.

10:07:07

20 Q. Okay. Thank you, sir.

10:07:22

21 I'd like to turn to a different subject, and that was
22 something you mentioned earlier was the purpose of HSU, and
23 that's human smuggling.

24 How can you determine whether or not a vehicle, when
25 you're driving down the road, may -- may or may not be a

10:07:35

1 smuggling load vehicle?

2 A. There are some strong indicators of the vehicle that may --
3 may or may not be a load vehicle. One of the typical ones that
4 I've come into contact as an investigator on the Human
5 Smuggling Unit is vehicles that are traveling which don't look 10:07:55
6 as if they're traveling on vacation and appear heavily weighted
7 down with persons in the vehicle.

8 Q. What other -- what other indicators are there, if any?

9 A. Well, those are the -- that's the main one that I look for
10 in vehicles. But not -- that's not always typical, because 10:08:14
11 I've stopped a load vehicle in a -- in a Ford Mustang, which
12 had the coyote driver and two pollos in the vehicle.

13 Q. Is there a particular -- the Court has heard testimony
14 about saturation patrols occurring in what we call the more
15 rural areas of the county and also in urban areas of the 10:08:37
16 counties.

17 Where have you identified load vehicles relative to
18 those two descriptions?

19 A. Traveling on the major highways outside of -- that lead
20 outside of Maricopa County. 10:08:52

21 Q. Okay. All right. So if you think you have a load vehicle
22 can you pull them over for that?

23 A. No.

24 Q. What do you need to pull them over?

25 A. Well, our policy is, and it's state law, we look for 10:08:59

1 probable cause to initiate a legal traffic stop.

2 Q. And when you say probable cause, you look -- what are you
3 looking for?

4 A. Either a -- either a moving violation or a mechanical or
5 equipment violation to the vehicle. 10:09:13

6 Q. What happens if you see a vehicle, and in Officer
7 Armendariz's mind he -- that's a load vehicle and you don't
8 have PC, what happens?

9 A. It's happened not only to myself, but other -- other
10 detectives at work, there have been times that we just let them 10:09:32
11 go.

12 Q. Have you actually had that experience?

13 A. I have. I followed one from approximately I-17 and
14 Thunderbird all the way to the county line at Black Canyon, and
15 the driver did everything perfect. There didn't appear to be 10:09:42
16 any equipment violations to the vehicle, and he continued out
17 of the county.

18 Q. And you believed as an officer, in your experience, that it
19 was a load vehicle?

20 A. Based on my training and experience that I've had with 10:09:54
21 stopping load vehicles, yes.

22 Q. Have you had any load vehicle -- well, first of all, let me
23 back up. And I apologize to Mr. Moll, our reporter.

24 How many load vehicles would you estimate in your
25 career that you have identified, found probable cause to stop, 10:10:11

1 and then stopped?

2 A. I would say since I've been with the Human Smuggling Unit
3 it would be more than 20, but I know the number would be
4 higher.

5 Q. Okay. Of those, have you had any load vehicles that
6 contained smugglees, pollos, that were not from Mexico or
7 Central America, non-Hispanic?

10:10:26

8 A. Me personally?

9 Q. Yes.

10 A. Yes. In 2009 I stopped a load vehicle that had six Chinese
11 nationals in it.

10:10:46

12 Q. Do you remember where you stopped the load vehicle with six
13 Chinese nationals in it?

14 A. I remember it was on I-17.

15 Q. Have you stopped any other vehicles that had smugglees that
16 were non-Hispanic?

10:11:00

17 A. Not me directly. The Human Smuggling Unit has --

18 MR. POCHODA: Objection, Your Honor, hearsay.

19 MR. CASEY: Let me -- I'm going to ask him a new
20 question, Your Honor.

10:11:17

21 I'm sorry. There's an objection.

22 THE COURT: Go ahead.

23 BY MR. CASEY:

24 Q. What, based on your experience in human smuggling, have
25 been the categories of people that were non-Hispanic that were

10:11:27

1 smugglees?

2 MR. POCHODA: Objection, Your Honor, hearsay.

3 THE COURT: Based on his experience. The objection's
4 overruled.

5 BY MR. CASEY:

10:11:37

6 Q. You can answer, sir.

7 A. We've stopped load vehicles with Chinese nationals, and
8 also African nationals.

9 Q. Is there in -- is there a predominant race or ethnicity of
10 illegals that you happen to come across in load vehicles?

10:11:54

11 A. Based on my experience with HSU, it was Latinos.

12 Q. Okay. And have you, in your experience, formed a
13 conclusion or a determination of why it appears to be Hispanic
14 or Latino?

15 A. We're a border --

10:12:07

16 MR. POCHODA: Objection, it calls for speculation.

17 THE COURT: I'm going to allow it.

18 BY MR. CASEY:

19 Q. You may answer, sir.

20 A. Well, we're a border state. We border Mexico and we're
21 really close to the Mexican border. A lot of the Latinos that
22 we do get from Guatemala, from El Salvador, travel through
23 Mexico and ultimately find it easier to cross through --
24 through the Mexican border.

10:12:19

25 Q. I'd like to go back just for a minute. The six Chinese

10:12:37

1 nationals that you've personally found, did you ever learn
2 during the course of your investigation how they got into the
3 United States?

4 A. During my investigation with that, we determined the
5 language that they spoke after, you know, finding out. We
6 actually contacted ICE, who had a -- a Mandarin translator who
7 came and translated for us. 10:12:56

8 Based on their statements and the monetary -- the
9 money that we found on them, we kind of got a -- an idea of the
10 path that they had traveled. From China -- it was from China
11 through Germany, coming up through Cuba, and from Cuba into
12 Mexico, and then straight up through Mexico. 10:13:17

13 Q. All right. So the Chinese nationalists came through from
14 the Mexican-U.S. border?

15 A. Yes, sir, that's correct. 10:13:35

16 Q. From the Republic of Mexico?

17 A. From Mexico.

18 Q. Okay.

19 A. From the Republic of China.

20 THE COURT: Mr. Casey, I'm looking for a good
21 opportunity. 10:13:43

22 MR. CASEY: This is a perfect opportunity, Your Honor.

23 THE COURT: All right. Why don't -- why don't we come
24 back about 25 to the hour.

25 MR. CASEY: Thank you, Your Honor. 10:13:54

1 (Recess taken.)

2 THE COURT: Thank you. Please be seated.

3 MR. CASEY: May I proceed, Your Honor?

4 THE COURT: You may.

5 MR. CASEY: Thank you very much, sir.

10:36:34

6 BY MR. CASEY:

7 Q. Deputy, we've just finished our break, and I'd like to turn

8 to a different subject, and that is something the Court has

9 heard testimony called saturation patrols, crime suppression

10 operations, and plaintiffs like to refer to them as immigration

10:36:49

11 sweeps.

12 How do you refer to special operations that HSU's

13 involved in?

14 A. The crime suppression sweeps that are put on by the

15 Maricopa County Sheriff's Office --

10:37:03

16 THE COURT: Mr. Armendariz.

17 THE WITNESS: Yes, sir.

18 THE COURT: I want to hear what you say.

19 THE WITNESS: Oh, I apologize, sir.

20 THE COURT: And I want to have a good record of it.

10:37:09

21 THE WITNESS: Yes, sir.

22 THE COURT: You have a habit of speaking very fast.

23 Can you slow yourself down a little?

24 THE WITNESS: Yes, sir, I will.

25 THE COURT: Thank you.

10:37:17

1 THE WITNESS: The crime suppression sweeps that are
2 put on by the Maricopa County Sheriff's Office, which are
3 organized through our command staff, do not make the Human
4 Smuggling Unit a part of those suppression sweeps.

5 BY MR. CASEY:

10:37:29

6 Q. Okay. What do you understand -- have you participated in
7 the --

8 THE COURT: Can I -- can I --

9 MR. CASEY: Please.

10 THE COURT: I want to make sure I understand your
11 answer.

10:37:35

12 Would you repeat it again. You say it doesn't make
13 HSU part of the crime suppression sweep?

14 THE WITNESS: In the sense that we participate with
15 everybody, but we're not part of the initial program in the
16 sense of, from my point of view, we don't go to the briefings
17 for the crime suppression sweeps that are held. The Human
18 Smuggling Unit doesn't attend the -- the initial briefings that
19 are held at the command post.

10:37:46

20 THE COURT: So HSU doesn't go to those briefings.

10:38:02

21 THE WITNESS: No, sir. Typically, no, we do not.

22 THE COURT: Okay. But you are on patrol during those
23 operations?

24 THE WITNESS: Yes, sir, that is correct.

25 THE COURT: Thank you.

10:38:12

1 THE WITNESS: Yes, sir.

2 BY MR. CASEY:

3 Q. Explain for me: Why do you, or HSU members, not go to
4 those presaturation patrol briefings?

5 A. Typically, those crime suppression sweeps, the briefings go 10:38:22
6 over jurisdictions on where the command staff wants the
7 deputies to work. The crime suppression sweeps bring in
8 deputies from other divisions, i.e., trails, lakes, district,
9 district offices, and sometimes call in detectives, you know,
10 to come in and work the crime suppression sweeps. 10:38:47

11 Those that are not assigned to the Human Smuggling
12 Unit, we go -- the briefing that is held for the crime
13 suppression sweeps will go over the jurisdiction, where they're
14 to work, remind them of policies, certain policies and
15 procedures. 10:39:04

16 Q. What are those reminders?

17 A. Well, such as there's no racial profiling is one of the big
18 ones that they -- that is continuously enforced in them. One
19 of the reasons that we don't go is because that's something
20 that we as a Human Smuggling Unit do every day. We work human 10:39:17
21 smuggling. We deal with illegal aliens being in the United
22 States illegally. And so something that we deal with every day
23 and know not to do, which is racial profile, is something
24 that's just reiterated to those deputies that don't do what we
25 do every day. 10:39:39

1 Q. Thank you, sir.

2 Do you know how many, I'm going to call saturation
3 patrols, what you've called crime suppression sweeps, that you
4 participated in?

5 A. It's been several, sir. I can think of, like, two or three 10:39:49
6 off the top of my head.

7 Q. What has been your role -- let me back up.

8 Have you had many different roles during your
9 participation in these patrols, or a single type of role?

10 A. Just as a law enforcement officer. 10:40:05

11 Q. Okay. And what has your role been as a law enforcement
12 officer in the saturation patrols you've conducted?

13 A. Nothing different than what I do on a daily basis when I am
14 at work, just the enforcement of federal, state, and local
15 laws, to include traffic laws. 10:40:24

16 Q. And when you're on a saturation patrol, are you considered
17 a patrol deputy?

18 A. No, I'm still a detective assigned to the Human Smuggling
19 Unit. I'm just participating in a -- in a crime suppression
20 sweep. 10:40:40

21 Q. All right. Let me talk to you about a different subject.

22 The Court has heard evidence about saturation patrols
23 and arrest lists. And I want you to assume that certain arrest
24 lists show, hypothetically, 22 names, and 20 or 21 of the 22
25 names will appear to be Hispanic surnames. 10:40:59

1 Will you assume that for me?

2 A. Okay.

3 Q. Okay. Just on that information alone, and as an HSU
4 detective, and being on saturation patrols, does that cause you
5 any concern? 10:41:16

6 A. No.

7 Q. Explain for me if there's a 90 or a 98 percent Latino
8 surname on your arrest list why that's not a problem for
9 Detective Armendariz.

10 A. We're a Latino state, primarily Latinos in this state. 10:41:29
11 We're the majority, and so it's not uncommon that there would
12 be more Latinos, you know, arrested.

13 Q. Is there any --

14 A. I mean, it doesn't cause me any concern.

15 Q. Is there any -- 10:41:49

16 THE COURT: Can you repeat that again, please?

17 THE WITNESS: Sure. It doesn't cause me any concern
18 because we're a Latino state.

19 THE COURT: What does it mean that we're a Latino
20 state? 10:41:58

21 THE WITNESS: We border Mexico. Majority of our
22 population is Latino.

23 THE COURT: Is it your belief that a majority of
24 Arizona's population is Latino?

25 THE WITNESS: It is my belief, yes, based on the fact 10:42:07

1 that we're on a, you know, border city, a majority of the
2 persons that I come into contact are Latinos.

3 BY MR. CASEY:

4 Q. Is there any other information on an arrest list that you
5 would use to determine whether or not there is a problem with
6 the Latino surnames? 10:42:23

7 A. Could you restate that? I didn't understand the question.

8 Q. Sure. In the arrest list there is a category, sir, for the
9 probable cause for the stop, and then the charge, and then
10 there's for dispositions. 10:42:48

11 Would you also look at any of those factors if you
12 were at all concerned that predominantly the names are Latino?

13 A. Are you speaking specifically about the charges?

14 Q. Yes, sir.

15 A. Well, no, 'cause the charges are ethnic neutral, I guess,
16 if you would put it that way. 10:43:04

17 Q. Okay. For example, if someone is pulled over for a DO --
18 excuse me. If someone is charged with DOSL, what is that for?

19 A. Driving on a suspended license.

20 Q. And when you said ethnic neutral, or to paraphrase you,
21 what did you mean by that in context of someone driving on a
22 suspended license? 10:43:22

23 A. Well, it doesn't matter whether you're white, Mexican, or
24 native: if you're driving on a suspended license, that's a
25 criminal offense. 10:43:36

1 Q. Okay. Well, what happens if someone is charged with a
2 warrant? What does that mean?

3 A. To me, that means that somewhere down the line a judge,
4 prior to my encounter with that person, feels that the person
5 needs to be taken into custody for whatever that reason. 10:43:55

6 Q. And what happens if there's something that says failure to
7 ID? What does that mean?

8 A. According to A.R.S. 28-1595, there are certain -- there are
9 certain elements to a proper identification in the state of
10 Arizona while operating a motor vehicle. 10:44:17

11 Q. And if they don't have that Title 28 identification, what
12 does that mean?

13 A. It's a failure to provide, it's a misdemeanor in this
14 state.

15 Q. And that's a criminal charge? 10:44:29

16 A. It is a criminal charge, yes, sir.

17 Q. So if there are, for example, warrants or D -- driving on a
18 suspended license or failing to produce ID, does that have, in
19 your experience as a law enforcement officer, any bearing on
20 the race or ethnicity? 10:44:51

21 A. No.

22 Q. You can be any race or ethnicity and have that?

23 A. That's correct.

24 Q. What about if someone's pulled over and charged with DUI?

25 Does that have any bearing, driving under the influence, on 10:45:03

1 race or ethnicity?

2 A. No.

3 Q. Okay. Now, what about if someone is charged with 287(g)?

4 In your experience, does that have anything to do with race or
5 ethnicity? 10:45:16

6 A. The term "287(g)" is a program that's designed by ICE, and
7 it's just a common nickname that's used for persons that I know
8 have been arrested, at the time when we were 287(g) certified,
9 that were arrested for being in the country illegally.

10 Q. Okay. Thank you very much, sir. 10:45:34

11 During saturation patrols have you ever used race or
12 ethnicity to make a decision to make a traffic stop on a
13 vehicle?

14 A. No, sir.

15 Q. Have you, during a saturation patrol, ever used race or
16 ethnicity to make a detention of a driver or an occupant? 10:45:49

17 A. No, sir.

18 Q. Have you ever used, during a saturation patrol, race or
19 ethnicity to initiate questioning of anyone?

20 A. No, sir. 10:46:08

21 Q. All right. I'd like to turn to a different subject.

22 The Court has heard testimony that traffic stops,
23 particularly on saturation patrol days, of Latinos, Hispanic
24 drivers, may take roughly two minutes longer than non-Latino
25 drivers. I just want you to assume that that's what the Court 10:46:31

1 has heard.

2 Will you assume that for me?

3 A. I will.

4 Q. Okay. Based on your experience in HSU, are there -- are
5 there any reasons that you can identify of why traffic stops of 10:46:43
6 Hispanic drivers may take longer than traffic stops of
7 non-Hispanic drivers?

8 A. For a couple of reasons, and it's not just specific to the
9 Human Smuggling Unit. This is a -- this would be generalized
10 to law enforcement officers that make any traffic stop dealing 10:47:04
11 with a Latino.

12 We'll take my name, for example. If you get -- if I
13 get pulled over, my name is Ramon Charley Ramirez Armendariz.
14 In the system when we run people we have to run them several
15 different ways. We'll run them first name Charley -- or Ramon, 10:47:21
16 middle name Charley, Ramirez Armendariz. Then we'll go back
17 and rerun them again -- bless you -- then we'll go back and
18 rerun them again as Armendariz Ramirez. Then we'll go back and
19 take off the hyphenated name and we'll run it as Ramon Charley
20 Armendariz and then Ramon Charley Ramirez. 10:47:39

21 So it takes a little bit of time to -- that's one
22 instance why it would take a little bit longer, because it does
23 take a little bit longer for us to run the person. We have to
24 run them several different ways to make sure that we get
25 everything, we cover all our bases. 10:47:55

1 Q. All right. Well, let's put -- what you're talking about is
2 multiple names, surnames.

3 A. Right, that's correct.

4 Q. Let me -- let's say hypothetically my wife goes by Sheila
5 Galoon (phonetic) Casey and she gets pulled over, and she's
6 Irish ancestry.

10:48:06

7 A. Yes, sir.

8 Q. How are you going to run that name?

9 A. The same way. It would run Sheila --

10 Q. Casey?

10:48:18

11 A. I forgot the --

12 Q. Galoon.

13 A. So we'd run it Sheila Galoon Casey, then we'd run it Sheila
14 Casey Galoon, then it would be just Sheila Galoon and Sheila
15 Casey.

10:48:29

16 Q. All right. In your judgment -- strike that.

17 Has it been your experience that that takes a little
18 longer?

19 A. Yes, it does.

20 Q. And what databases do you run names through?

10:48:36

21 A. We have the justice -- the Maricopa County Sheriff's
22 justice web interface. We also have the NCIC and the ACIC.

23 Q. And what does the NCIC stand for?

24 A. The National Crime Information Center and the Arizona Crime
25 Information Center, and we also run them through MVD.

10:48:54

1 Q. In addition to running multiple surnames, possibly
2 making -- or actually, your testimony is making traffic stops
3 of Hispanic drivers a little longer, are there any other
4 factors in your experience that might account for the longer
5 duration of those stops?

10:49:14

6 A. Yes. I have to translate the citations and any information
7 that they want. A person speaking English would be able to
8 reread the citation. There is a -- an envelope that is given
9 to all persons that receive a civil citation. That envelope is
10 generated by the county courts or the justice courts, not by
11 the Sheriff's Office, and it's only written in English.

10:49:31

12 And so one of the things that I have to do is I have
13 to make sure that they understand the citation fully prior to
14 them leaving, they understand the court date, if there's a
15 court date for them, and then translate the envelope.

10:49:48

16 Inside the envelope is a pamphlet that explains to
17 them other options. And typically, a person that would -- you
18 know, that just spoke -- that understood the English language,
19 I would let them know that, you know, here's the envelope.
20 Inside the envelope is a pamphlet that explains to you other
21 options that you have on how to take care of the citation.

10:50:03

22 It's not written in Spanish. Like I said, the
23 document is not generated by the Sheriff's Office, the document
24 is generated by the justice courts. And I have to -- I take
25 time to go over and translate the other options that they do

10:50:19

1 have.

2 Q. And that was going to be my next question. You used the
3 word "I have to." Is that something required, in your
4 experience, under law or policy, or is that your personal
5 practice?

10:50:33

6 A. Oh, no, sir, that's my personal practice. My
7 grandparents -- my grandparents are Spanish-speakers only, so I
8 understand the difficulty sometimes that they have whenever
9 they go somewhere and something's not explained to them fully,
10 and they don't understand. So I take that extra time to
11 explain it to them in Spanish.

10:50:44

12 Q. Is that something that you're taught at the MCSO as part of
13 what's called something like good community policing?

14 A. I think it's just something that I bring forth that's
15 something that my parents taught me. It's just being -- just
16 doing my job and doing -- doing the best that I can.

10:51:02

17 One of the reasons that I became a sign language
18 interpreter is so that when I have pulled over persons that are
19 hearing impaired, I can sign to them. And it just helps my job
20 a little bit easier and helps persons understand, because there
21 are times where I've pulled over a hearing impaired person, and
22 it takes me a little bit longer because I do have to sit there
23 and I have to sign the citation and explain to them, you know,
24 other options that they have.

10:51:16

25 Q. Because Spanish is your first language, does it take you

10:51:28

1 any longer to communicate information in Spanish than it does
2 in English?

3 A. No, I speak Spanish just about as fast as I speak English.

4 Q. Okay. That was going to be the next question: Are you as
5 fast in Spanish? 10:51:43

6 All right. So what you're talking about is
7 translating, if I can summarize what I understand you're
8 telling me, is that you -- you take as your practice to
9 translate from Spanish to English -- excuse me, from English to
10 Spanish with the Spanish-speakers? 10:51:56

11 A. That's correct, sir.

12 Q. Okay. Now, you've talked about multiple surnames; you've
13 talked about translation. Are there any other factors
14 whatsoever that you have experienced that might extend the stop
15 of Hispanic drivers? 10:52:09

16 A. Not necessarily Hispanic drivers, but other things that
17 might be, you know, be a factor, is a lot of times we do cite
18 and release. And so waiting for a tow truck does kind of help
19 us, you know, does delay us a little bit longer. There is
20 paperwork that has to be given to the person either being 10:52:29
21 arrested or cited and released, and we have to wait for the tow
22 truck to arrive on scene, and by our policy, I believe, is that
23 the tow truck has 30 minutes to arrive on scene from the time
24 it's requested.

25 Q. Okay. The Court has heard some evidence also -- 10:52:41

1 THE COURT: Wait a minute, please.

2 MR. CASEY: Excuse me.

3 THE COURT: I'm trying to understand the situations in
4 which you'd cite and release that would involve a tow truck,
5 and why those situations would be more common with Hispanic
6 drivers, and you haven't made that connection for my
7 understanding.

10:52:54

8 THE WITNESS: Oh, I don't think it was anything that's
9 just common directly to Latinos or to Hispanic drivers.

10 THE COURT: Um-hum.

10:53:06

11 THE WITNESS: It's other things that would, you know,
12 delay a traffic stop a little bit longer.

13 THE COURT: Okay. So it isn't -- it isn't related to
14 Hispanic drivers versus non-Hispanic drivers at all?

15 THE WITNESS: No, it's just a general statement.

10:53:16

16 THE COURT: When you cite and release, why would you
17 be waiting for a tow truck?

18 THE WITNESS: In certain cases driving on a suspended
19 license --

20 THE COURT: Okay.

10:53:24

21 THE WITNESS: -- if a person drives on a suspended
22 license, and we have that option to cite and release. The
23 person is released from the scene without any issues. However,
24 their vehicle is impounded.

25 THE COURT: All right. And the -- so the person's

10:53:33

1 just released, the passengers are released?

2 THE WITNESS: Yes, sir, that's correct.

3 THE COURT: Okay. And the passengers are released
4 presumably as soon as -- as soon as you issue the citation, or
5 even before? 10:53:43

6 THE WITNESS: Or even before. I mean, the -- the
7 citation, we take into consideration the driving on a suspended
8 license, then we would only have our dealing with the driver --

9 THE COURT: All right.

10 THE WITNESS: -- at that time. 10:53:54

11 THE COURT: And you wouldn't be any longer concerned
12 with the passengers?

13 THE WITNESS: No. A time that we would be concerned
14 with the passengers is if we pull over a vehicle, and maybe not
15 the driver is consuming alcohol in the vehicle, but the 10:54:03
16 passenger is consuming alcohol in the vehicle, which has
17 happened to me based on, you know, experiences that I've had
18 where the passenger's the one consuming an alcoholic beverage.

19 And so we issue a -- I'll issue a citation to the driver for
20 the initial reason for the stop, and the passenger will be 10:54:21
21 detained for the title --

22 THE COURT: For the open container?

23 THE WITNESS: For the open container, for the open
24 container and consuming in a vehicle, yes, sir.

25 THE COURT: Okay. But in situations where you were 10:54:30

1 going to detain a passenger because you'd cited the driver for
2 driving on a suspended license, there would have to be separate
3 probable cause as it pertains to the passenger?

4 THE WITNESS: Yes, sir, that's correct.

5 THE COURT: Thank you.

10:54:44

6 BY MR. CASEY:

7 Q. Have you, Deputy, stopped drivers in Maricopa County who
8 are unable to produce a form of identification that meets the
9 requirements of Arizona law?

10 A. Yes, sir.

10:55:05

11 Q. Okay. What I'd like to do is focus you on your experience.

12 Do you -- do you have any experience where you're able
13 to identify roughly for the Court what percentage of those
14 drivers -- again, in your experience -- were Hispanic?

15 A. I couldn't give you a number, but I would say it was quite
16 a few.

10:55:20

17 Q. Okay. When a driver lacks proper identification, can you
18 explain for us how does that affect the stop and the duration
19 of the stop?

20 A. Well, if the -- taking into consideration the driver, and
21 he fails to provide any form of identification, the driver's
22 taken into custody for failing to provide ID until that person
23 can be appropriately identified.

10:55:34

24 Q. I want to see if this is more practical for me so I'm
25 understanding.

10:55:55

1 A. Okay.

2 Q. You make a lawful traffic stop on me for probable cause.

3 You with me so far?

4 A. Yes, sir.

5 Q. And you ask me for my driver's license, proof of insurance, 10:56:02

6 and registration, and I tell you I don't have my driver's

7 license on me.

8 A. Yes, sir.

9 Q. I now tell you that my name is Tom Liddy.

10 A. Okay. 10:56:13

11 Q. How do you know if I'm Tom Liddy or not?

12 A. My practice, if a person tells me that they forgot their

13 driver's license, I will ask them for another form of

14 identification: a credit card with a picture on it; a school

15 ID; followed by their date of birth, followed by their date of 10:56:29

16 birth.

17 If they can't provide any of that information, it is

18 practice that they are taken into custody for failing to

19 provide ID. That is a misdemeanor, a crime under A.R.S. And

20 at that point -- which is typical, because persons -- I 10:56:45

21 generally run into it where persons will leave their wallet or

22 their purse at home and they forget their driver's license.

23 And I advise them that, You're being taken into custody for

24 failing to provide ID. Once I figure out who you are, then

25 you'll be released. 10:57:02

1 And typically that just entails I'll remove the person
2 from the vehicle, secure them in my patrol vehicle, and run
3 them through our justice web interface, which may provide me a
4 picture, their driver's license picture and their identity.

5 And if they're identified and there are no wants and
6 warrants, they're released and sat back in their vehicle.

10:57:17

7 Q. All right. So that's how you determine that if I say I'm
8 Tom Liddy, you can pull up that picture and see we're not the
9 same --

10 A. No, you're lying to me, right.

10:57:28

11 Q. All right. Does that, in your experience -- does that, in
12 your experience, sir, add to the time it takes to what we call
13 as lawyers authenticate who the person is?

14 A. Yes, it does take some time.

15 Q. All right. Sir, what I'd like to do is change subjects now
16 and turn to what I hope will be the final area of my
17 questioning of you, and that is a saturation patrol that the
18 parties have stipulated into evidence occurred back on March
19 27th and 28th of 2008 near Cave Creek.

10:57:46

20 Were you on that saturation patrol?

10:58:10

21 A. I was assigned to the Special Assignment Unit for -- pardon
22 me -- for that saturation patrol, yes, sir.

23 Q. And specifically I want to focus you on March 28th. The
24 evidence is in evidence already -- or, excuse me, the evidence
25 shows that you made a traffic stop at a convenience mart.

10:58:26

1 Do you remember that?

2 A. Yes, sir, I do.

3 Q. Tell the Court, what -- what happened at the convenience
4 mart? What were you doing there and what happened?

5 A. I had initiated a traffic stop on a vehicle for no brake
6 lights. During that traffic stop I had taken the driver into
7 custody for failure to provide ID. He had no driver's license
8 or identification with him. And subsequent to that he was also
9 found to be driving on a suspended license. And he was

10:58:39

10 secured --

10:58:59

11 Q. When you say "secured" --

12 A. He was handcuffed and locked -- secured in the back of my
13 marked patrol vehicle.

14 At that point I had turned my attention to the
15 passenger. What's typical of me -- well, what's typical of law
16 enforcement officers is to voluntarily ask for the
17 identification of passengers. And the reason that's primarily
18 done is to identify if they have any wants or warrants, you
19 know, within anywhere.

10:59:08

20 Q. Well, let me ask you this. If that guy says, I'm not
21 telling you diddly, what do you do? I'm not telling you
22 anything?

10:59:22

23 A. Well, then we just walk away. I mean --

24 Q. Walk away?

25 A. Well, let him go, because if he doesn't -- if the person

10:59:33

1 I understand correctly, and I think I do, there isn't any
2 requirement that a passenger in a car have identification?

3 A. That's correct.

4 Q. And so what is the reason that you will always ask everyone
5 in the car for identification? 11:00:50

6 A. Typically, when you run a person, what you're looking for
7 is you're looking to see if that person is either wanted or any
8 warrants, if there are any outstanding warrants for the person.

9 Q. All right. So you ask persons in the car for their
10 identification to investigate those persons? 11:01:05

11 A. To -- yes, sir, to investigate if they have any warrants
12 for their arrest.

13 Q. All right.

14 A. Which is typical.

15 Q. If they don't have identification, do you use that -- have 11:01:15
16 you used that as a factor in determining whether or not a
17 person should be detained for 287(g) violations?

18 A. No, sir.

19 Q. You never have.

20 A. Not as a passenger. 11:01:30

21 Q. All right. So if you are going to investigate someone for
22 287(g) violations, the fact that they don't have identification
23 is not a factor used?

24 A. Is not a factor used.

25 However, if I ask them to voluntarily give me their 11:01:49

1 name, and they give me their name and their date of birth, when
2 I go back to the database through JWI, NCIC, and ACIC, and MVD,
3 if a no record comes up and -- or no person not found, at that
4 point then they're detained until we can realize who they are.

5 It is typical for persons who are wanted to lie to the
6 police and give us, as Mr. Casey gave us an example, names of
7 other persons and dates of other persons so that they don't get
8 caught.

11:02:09

9 Q. I take it from what you've said, and I'm not trying to put
10 words in your mouth, that the fact that a person is a passenger
11 in a vehicle, without more, is no basis to detain them?

11:02:23

12 A. I'm sorry. Say that again, sir.

13 Q. The fact that a person is a passenger in a vehicle is no
14 basis to detain them?

15 A. Right, that's correct.

11:02:40

16 Q. So if you're going to cite the driver for driving
17 without -- on a suspended license, the passengers are free to
18 go?

19 A. Right, that is correct, sir.

20 Q. And if you're going to detain the passenger for 287(g)
21 purposes or otherwise, there has to be a reason to detain them
22 more than just they are a passenger in a vehicle you've stopped
23 for other purposes. Is that your understanding?

11:02:49

24 A. Well, they would be -- the passengers would be detained if
25 they voluntarily give me information. There have been many,

11:03:06

1 many instances where a passenger refuses to give me their name
2 or date of birth and flat out says: I don't have to give it to
3 you.

4 Q. And?

5 A. Okay, and that's that. 11:03:18

6 Q. All right. And --

7 A. If I don't have a violation, then I don't have any reason
8 to detain them or look further.

9 Q. All right. But when you ask them for their identification,
10 you don't have any reason to detain them, either, is that 11:03:26
11 correct?

12 A. That's correct.

13 Q. All right. So if you ask them for their identification and
14 they give you their name --

15 A. Yes, sir. 11:03:36

16 Q. -- are they then free to leave?

17 A. If they give me their name?

18 Q. Yes.

19 A. Yes.

20 Q. All right. If they ask you for -- if you ask them for 11:03:41
21 identification, you then -- they then give you their name, you
22 then run their name, are they still free to leave?

23 A. Yes.

24 Q. What happens to change that if you run their name and --

25 and nothing comes up on any of the databases? 11:03:59

1 A. Then it becomes a no record found and an investigation goes
2 into trying to identify the person. Not a 287(g)
3 investigation, trying to identify the person.

4 Q. So they're free to leave?

5 A. After -- after I've determined that there's no record
6 found?

11:04:16

7 Q. Correct.

8 A. No, sir. At that point they're detained until I can
9 identify who they are.

10 Q. All right. So at that point they're arrested?

11:04:22

11 A. They're detained, investigatively detained.

12 Q. Okay. They're not free to leave?

13 A. No, they're not free to leave, sir.

14 Q. All right. And what is the basis on which they are not
15 free to leave, in your mind?

11:04:31

16 A. We're trying to, at this point trying to figure out who
17 they are and then identify the person.

18 Q. All right. I think you've indicated it has nothing to do
19 with 287(g)?

20 A. That's correct, sir.

11:04:41

21 Q. What does it have to do with?

22 A. Trying to identify who the person is --

23 Q. All right.

24 A. -- and if they've given false info to a law enforcement
25 officer.

11:04:53

1 Q. Well, is there any reason to believe that they've given
2 false information to you, even if their name doesn't turn up
3 any records on your record check?

4 A. Say that again, Your Honor?

5 Q. Okay. I think that what we went through is a hypothetical 11:05:02
6 where you -- they're under no obligation to give you their
7 name, but they did give you their name.

8 A. That's correct.

9 Q. You go back, you check your records, no record comes up.

10 You indicated at that point they're detained 11:05:18
11 investigatively?

12 A. Yes, sir.

13 Q. Doesn't pertain to 287(g), if I've understood you
14 correctly?

15 A. That's correct, sir. 11:05:26

16 Q. And it doesn't pertain to any particular criminal charge?

17 A. That's correct, sir.

18 Q. And so I'm trying to ascertain, and I think you said you
19 just have the right to detain them to determine their identity.

20 A. That's correct, sir. 11:05:37

21 Q. All right. And then I think you said something about false
22 identity. At this point do you have any probable cause that
23 you have been given a false identification?

24 A. There's no probable cause, but there's reasonable suspicion
25 that they might have given me a false identification to elude 11:05:51

1 police.

2 Q. All right. And so you detain them for how long? What --
3 what is your next step that you take?

4 A. My next step is to continue running them through another
5 database. I will ask them where they've -- at this point,
6 where they've had identifications issued from, what states, and
7 I will run them through all those database -- through all the
8 databases that we can.

11:06:03

9 And I'll also contact our dispatch center and have
10 them run them through whatever databases they can, just in case
11 I miss something out in the field.

11:06:18

12 Q. All right. So your next step is to ask them additional
13 questions and to run them through additional databases?

14 A. That's correct, sir.

15 Q. And what happens then? What happens if they don't indicate
16 they have any other -- well, how long does this process
17 typically take, to run this additional investigation?

11:06:29

18 A. I can't give you a time frame, Your Honor. Usually, that
19 depends on how busy we are and how busy the dispatcher is.

20 Q. Can you give me an average?

11:06:50

21 A. No, sir, I can't. I mean, it takes a while because the
22 dispatchers -- the dispatcher that we have that we run on that
23 particular channel runs information for the entire county.

24 Q. All right. Now, let me ask you another question.

25 I'm sorry, Mr. Casey, I have stopped your time.

11:07:02

1 Does that change? Do you still do that? Is that
2 still your practice?

3 A. Yes, sir, it is.

4 THE COURT: All right. Mr. Casey.

5 MR. CASEY: Thank you, Your Honor.

11:07:14

6 DIRECT EXAMINATION CONTINUED

7 BY MR. CASEY:

8 Q. Are you able to give the Court any estimate of what
9 additional, under the hypothetical that he gave me -- gave you,
10 do you have any estimate that you can give the judge about how
11 much additional time it takes to run that?

11:07:27

12 A. You have to base it on the fact that when -- we're on the
13 satellite or we're on a mobile system and the computers
14 sometimes run real slow. There are a lot of cases where DPS,
15 the DPS system itself is down and the queue is down.

11:07:47

16 There is when we go to our info channel and we run
17 them on our information channel where the dispatcher is
18 backlogged because, as I said, she runs -- it's one dispatcher
19 for the entire county, whoever transfers over to that channel
20 that needs information.

11:08:08

21 And also that I also request a PACE check, which is
22 through the City of Phoenix. So she has to call -- the
23 dispatcher that is to contact the City of Phoenix for more
24 information.

25 Q. Are we talking 30 seconds? Are we talking a minute? Two

11:08:17

1 minutes? Five minutes?

2 A. I would say it would be greater than a minute.

3 Q. Okay. Less than five?

4 A. I can tell you it would be greater than a minute --

5 Q. Okay.

11:08:27

6 A. -- and if the dispatcher's not busy --

7 Q. I appreciate. I'm just trying to get a better feel for
8 that.

9 Let's summarize real quick what I understand about
10 durations of traffic stops is drivers without ID can affect
11 time? Is that yes?

11:08:39

12 A. Yes, sir, that's correct. I'm sorry.

13 Q. You talked about translating documents and then running
14 multiple surnames?

15 A. That's correct.

11:08:49

16 Q. Okay. Any of these things inherently, in your judgment,
17 your experience, are they based on race or ethnicity?

18 A. No, sir.

19 Q. All right. Now, let's -- let's go back to this particular
20 event on March 28th, 2008. And you were telling me you had
21 stopped two gentlemen and you were at a -- basically, a
22 convenience mart. You had taken one into custody and put him,
23 as I remember, you said into the cab of your vehicle, and I
24 think you were beginning to talk about the second person.

11:09:06

25 What -- what happened with him?

11:09:27

1 A. The second person, when he gave me his name, running him
2 through the database, was unable to find any of his
3 information. He was no record found initially.

4 From what I can remember on the traffic stop, after a
5 certain amount of time I believe identity was found, if I'm -- 11:09:43
6 if I'm not correct, and he was released from the scene.

7 Q. And what happened next when you at the scene with the two
8 men that were under detention?

9 A. It did take a little bit longer to release the second
10 subject because I had to deal with another incident that was 11:09:59
11 occurring on my traffic stop.

12 Q. Okay. And what was that, sir?

13 A. While I was on my traffic stop, from what I can recall, the
14 way that we had pulled into the gas station there was a dark
15 colored pickup truck that was -- had a loud -- drew my 11:10:14
16 attention to it because it had loud music playing. One of the
17 other reasons that it drew my attention is to where it parked.
18 It parked directly behind my patrol vehicle, which is -- can be
19 an officer safety issue. It's just one of those situational
20 awarenesses that you have to make yourself cognizant of what's 11:10:31
21 going on around you.

22 Q. How far away was it parked behind you?

23 A. I don't recall. It was directly -- I mean, within a couple
24 a feet. It was -- I was at the gas pumps and they had parked
25 alongside of the building. 11:10:46

1 Q. Now, relative to all the other parking spaces, was there
2 anything that alerted you or heightened your senses about that
3 choice of parking versus other available parking?

4 A. Typically, I don't mind if -- if persons park, if they're
5 parking to go into a store. However, the persons that were in 11:11:01
6 that vehicle didn't immediately go into the store without
7 starting to yell at me. And that kind of heightened my senses
8 a little bit more.

9 Q. Tell me about that. First of all, what was being yelled at
10 you, and by whom? 11:11:19

11 A. If I can backtrack just a little bit.

12 Q. Please.

13 A. Prior -- prior to me being -- prior to me being told by my
14 supervisor to go out onto the roadway to -- to initiate traffic
15 stops, I was assigned to the Special Assignment Unit, which is 11:11:32
16 a tactical unit. And the tactical units were called out by --
17 well, I was notified by my supervisor, who obviously must have
18 come down from the chain of command, to assist with command --
19 security for the command post, which was, I believe, at Bell
20 and Cave Creek. 11:11:51

21 Once every -- once security had been set, my
22 supervisor -- I typically am a hard worker, and so just sitting
23 around just basically kind of -- it kind of tends to ride on me
24 a little bit. So my supervisor asked me if I wouldn't mind
25 going out and, you know, just working and doing some traffic 11:12:13

1 stops. I'm, like, just go out and work and just do what I do.
2 Typically, what my supervisor tells me: Just go out and do
3 what you do.

4 So at this point I got in my take-home vehicle and I
5 began working -- working the roadways. 11:12:25

6 Q. All right. Well, let's get back to this black colored
7 vehicle pulls behind you, and you said someone was yelling at
8 you, and my question was --

9 A. And I apologize.

10 Q. No, that's okay. What was being yelled, and by whom? 11:12:38

11 A. One of the things that heightened my senses at the -- at
12 the command post, there were protesters, and a lot of
13 protesters. There were protesters that were walking around
14 armed, which they were legally -- they legally could. And
15 there were a lot of protesters yelling, you know, in Spanish, 11:12:57
16 you know, "No diga nada," you know, I remember them yelling,
17 "No firma nada." And that was --

18 Q. Hold on. You're going --

19 THE COURT: Translation, please.

20 BY MR. CASEY:

21 Q. We're going to give Mr. Moll a break. If you could repeat
22 that.

23 A. "No diga nada," don't say anything; "Pidale abo -- un
24 abogado," ask for a lawyer.

25 Q. All right. 11:13:18

1 A. "No firme nada," don't sign anything.

2 And it was a typical chant at all -- it was typical of
3 what I encountered whenever I went to these command posts.

4 And so when this traffic stop occurred I was dealing
5 with -- I had already secured the driver of the vehicle for
6 failing to provide ID, and then when I did identify him he was
7 found to be driving on a suspended license, so he was taken --
8 he was arrested for that.

11:13:34

9 Q. And he -- was he in cuffs?

10 A. Yes, he was already in handcuffs secured in the back seat
11 of my patrol car.

11:13:46

12 Q. Okay.

13 A. At this point I was dealing with the driver of the vehicle.
14 I had already removed him from the vehicle and told him that I
15 was unable to identify who he was, to give me his full name,
16 and that way we could run through the database.

11:13:57

17 And we were having a dialog. At this point he was --
18 understood that he was being detained investigatively until I
19 could determine who he was.

20 While we were having the dialog, this dark colored
21 pickup truck pulls up behind me. And immediately I could see
22 that there was a male driver and a female passenger, and they
23 just immediately kept yelling at me, or not yelling at me, but
24 in my direction, "No diga -- No diga nada" in Spanish. You
25 know, "No diga nada"; don't say anything, you know. "Pidale un

11:14:10

11:14:29

1 abogado"; ask for a lawyer. And they just continued yelling
2 over and over and over again.

3 I allowed it to go for just a few, and then at a point
4 where it kind of became more of an officer safety issue, I
5 began ordering them to leave. 11:14:45

6 Q. Okay. Now, let me ask you this. When you said they were
7 yelling, my wife and I have different views of what's yelling
8 and what's not yelling, so describe for us, when you say
9 "yelling," describe for us how that was occurring. You don't
10 need to do it, but if you could in words describe what you mean 11:15:03
11 by yelling.

12 A. Kind of like the mom in the grandstands yelling at her son
13 to hit a home run.

14 Q. Screaming?

15 A. Screaming, yelling. It was -- it wasn't a -- it wasn't 11:15:16
16 a -- a gentle yell as to, you know, Call for a lawyer. Don't
17 sign anything. It was -- it was aggressive.

18 Q. And how long did this yelling occur, when you said you gave
19 them some time until you asked them to leave?

20 A. Well, just a few moments, and then I could tell that the 11:15:39
21 situation started getting very aggressive. They were yelling
22 and screaming; at that point I told them that they needed to
23 leave.

24 This was for officer safety, not only for my safety,
25 but I have two persons in custody. And once a person is taken 11:15:50

1 into custody, they're my responsibility. I'm responsible for
2 their well-being. So I have to make sure that first and
3 foremost they're safe and that I'm taken care of, and that, you
4 know, none of the other public is, you know, is being
5 interfered with at that time.

11:16:08

6 I stayed where I was at and I just kept yelling at
7 them to leave. And when they refused to leave they just kept
8 yelling over and over again the same thing --

9 Q. Let me interrupt you.

10 Did you -- did you, sir, ever approach their vehicle?

11:16:21

11 A. No, I couldn't.

12 Q. Why?

13 A. Because I had the passenger of the vehicle who was being
14 detained. He was detained, he's my responsibility and I had to
15 care for him. Because I didn't know what the persons in the
16 truck were going to do.

11:16:41

17 Q. Were their windows down?

18 A. Yes.

19 Q. Were they both yelling, or was it one or the other?

20 A. No, they were both yelling from the vehicle.

11:16:51

21 Q. And they're only a few feet away from your vehicle?

22 A. Yes, sir, that's correct.

23 Q. Now, what re -- did they -- did they yell anything else at
24 you at that time?

25 A. No, sir. That's what they continuously kept yelling, and

11:17:04

1 it just -- because it -- it almost seemed as if it was
2 escalating, became very aggressive. I called for another unit
3 to back me up.

4 Q. When you told them to leave did they leave?

5 A. No, not initially. 11:17:16

6 Q. Okay. And at any point did you see any of the occupants in
7 that vehicle try to get out after you told them to leave?

8 A. Yes.

9 Q. What do you remember?

10 A. From what I can recall, the driver tried to get out of the 11:17:29
11 vehicle. And I just kept yelling at him: Don't get out of the
12 vehicle. Don't get out of the vehicle. You guys need to
13 leave. And I kept letting them know if they didn't leave they
14 were going to be arrested for disorderly conduct.

15 Q. Okay. At some point did they leave? 11:17:42

16 A. Yes.

17 Q. And did they say or yell or scream anything to you as they
18 left?

19 A. No, they just kind of zoomed out of the parking lot after
20 I'd already called for assistance, for backup. 11:17:56

21 Q. Now, I realize it's been since November 24, 2009, when your
22 first deposition was taken, so that was some time ago, so I'm
23 going to see if I can refresh your recollection.

24 Did they yell any profanities or vulgarities either
25 about you, about Sheriff Arpaio, or about the MCSO as they 11:18:16

1 left?

2 MR. POCHODA: Objection, Your Honor, leading.

3 THE COURT: Overruled.

4 You may answer.

5 THE WITNESS: Thank you. 11:18:26

6 From what I can remember it was -- pardon me my
7 language -- it was "fuck Arpaio" and they called us Nazis.

8 BY MR. CASEY:

9 Q. You say "called us"?

10 A. It was just Nazis. It was in my direction, you know. 11:18:39

11 Q. And this was being yelled at you as they were driving off?

12 A. Well, while they were there. I don't recall if it was also
13 as they were driving off, but that's part of the language that
14 was also there.

15 Q. Now, also during your deposition you testified about what 11:18:51
16 lawyers call a state of mind, how you were feeling at the time.

17 Would you tell the judge, at the time you were calling
18 for backup, what was going on in your mind about this situation
19 with this car and the words?

20 A. Don't let the uniform fool you, because I'm still just a 11:19:09
21 human being that's chosen to wear this uniform. So you have to
22 start thinking of officer safety. You have to start thinking
23 tactically: What's going to happen next? There's just so many
24 things that run through your head.

25 As I said, first and foremost, I've got two persons 11:19:29

1 that I'm -- I'm in charge of. I have sole custody of these two
2 persons. They can't defend themselves. I have them in
3 handcuffs. I have to defend them, one way or the other.

4 This is Arizona. You have to make the presumption
5 that a majority of the persons carry weapons on them. It 11:19:47
6 happens all the time whenever I do a traffic stop. It's just
7 typical persons do carry handguns. There's just so much that
8 was going through my head. It was more officer safety and just
9 tactically thinking of what my next step would have to be if,
10 you know, the situation got worse. 11:20:07

11 Q. Did you fear for your safety?

12 A. Well, not only my safety, but the safety of the persons I
13 had in custody.

14 Q. Tell me specifically whether you remember the fellow in the
15 car, whether he tried to get out of the car before or after you 11:20:20
16 called for backup.

17 A. I can't recall, sir.

18 Q. All right. Now, I'm going to refresh your memory and
19 see -- and I'm trying to look at your deposition, and I cannot
20 seem to find it, but I'm just going to use a crass expression, 11:20:35
21 that you were concerned that this guy was going to kick you're
22 a.

23 Do you remember testifying to that?

24 A. Well, I remember -- I mean, that would have been -- I was.
25 I mean, if this person came out and started fighting with me, I 11:20:47

1 mean, it would have been literally two against one, and I'm
2 still having to care for or protect this person that I have in
3 custody in front of me.

4 Q. Do you remember what you said on the radio when you
5 requested backup? 11:21:02

6 A. Not specifically. It would have been just to request
7 another unit to assist me.

8 Q. Okay. Now, at any time did these folks try to run you
9 over?

10 A. No. 11:21:13

11 Q. Okay. Did they -- other than what you've described here,
12 did they do anything else confrontationally?

13 A. No.

14 Q. Okay. Tell me what happened after the vehicle drives off.
15 What happened after you called backup and this other vehicle
16 leaves? 11:21:31

17 A. Well, after continuing to yell at them, you know: You guys
18 need to leave, You need to leave, I'm going to arrest you for
19 disorderly conduct, at that point they took off. They left the
20 scene. And as they left the scene they were traveling
21 southbound on Cave Creek from my traffic stop. 11:21:43

22 At that point I was still there kind of calming myself
23 down a little bit, but I remember a motorcycle unit, a
24 motorcycle unit came by, and I directed him in the direction
25 that the truck had left in. 11:22:02

1 Q. Why? Why did you do that?

2 A. Because that's the direction that the truck had left in and
3 I wanted them to go, you know, see if they could find that
4 truck and investigate it.

5 Q. Okay. What for?

11:22:13

6 A. Well, at that point, you know -- you know, they were
7 disorderly, they were aggressive, and it was -- that was the --
8 they were the reason that I had called for backup.

9 Q. Now, after the black vehicle leaves, you see another
10 officer go after him, did you return to your traffic stop?

11:22:31

11 A. Yes, I do.

12 Q. Okay. Eventually, did you ever communicate with any other
13 MCSO deputies that were involved in either the traffic stop
14 with those people or somehow involved with them?

15 A. Communicate at what point, or --

11:22:50

16 Q. Okay. You go back to your traffic stop?

17 A. Yes, sir.

18 Q. And you had pointed in that direction, you know other
19 officers are going, at least one, right?

20 A. And also Deputy Beeks, because Deputy Beeks had driven by
21 also just behind Deputy Kikes.

11:23:01

22 Q. Do you know how that scene, after a traffic stop was made,
23 do you know how it was cleared, how it was resolved?

24 A. I believe Deputy Beeks and I spoke about it, but I can't
25 recall what actually happened.

11:23:19

1 Q. The testimony is, and I want you to assume that this is
2 accurate, that the people in the vehicle were not cited and not
3 arrested, not charged. Assuming the accuracy of that, do you
4 have any information of why they were not cited, arrested, or
5 charged?

11:23:35

6 A. No, sir, I do not.

7 Q. Okay. Did you ever explain to Deputy Beeks or anyone what
8 had actually happened that led to your call for backup?

9 A. I explained to -- I'm sure I told Deputy Beeks when he came
10 back. After Deputy Beeks had cleared that scene, he came back
11 to my traffic stop and sat with me so that I wouldn't be alone
12 there any more, sat with me while we waited for the tow truck.

11:23:49

13 Q. At any time before Deputy Beeks came back did you
14 communicate via radio or any other device, like a cellphone,
15 with any other deputy that was at the traffic stop, if you
16 recall?

11:24:10

17 A. No, I did not. I -- I finished my -- not pertaining to
18 that. I remember I did call for a -- a posse unit to come and
19 transport my -- the person that I had arrested.

20 Q. And let's just talk about that briefly. The person that
21 you had arrested, what role did the posse member serve in -- in
22 that aspect of your stop?

11:24:27

23 A. He arrived on my scene and took custody of my prisoner and
24 transported him back to the command post for processing.

25 Q. Based on your experience in saturation patrols, do posse

11:24:44

1 members make traffic stops?

2 A. No.

3 Q. Why not?

4 A. They're not sworn officers.

5 Q. Do posse members question people?

11:24:55

6 A. No.

7 MR. CASEY: Okay. Those are all the questions,
8 Deputy, that I have. Thank you.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Cross-examination.

11:25:08

11 MR. POCHODA: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. POCHODA:

14 Q. Good morning.

15 A. Good morning, sir.

11:25:21

16 Q. It's Detective?

17 A. It's Detective, yes, sir. Thank you.

18 Q. Detective, you know Mr. Beeks, is that correct?

19 A. Doug Beeks? Yes, sir, I do.

20 Q. And you are aware that he testified earlier this morning,
21 is that correct?

11:25:38

22 A. Yes, sir. I was made aware of that, yes, sir.

23 Q. Were you made aware of any of the statements that he made
24 in court this morning?

25 A. No, sir, I'm not.

11:25:47

1 Q. And you talked about the fact that you have an occasion
2 while at the MCSO to perform general patrol duties, is that --
3 is that correct?

4 A. Yes, sir, that is correct.

5 Q. What you call law enforcement op -- law enforcement duties, 11:26:08
6 is that --

7 A. Law enforcement duties, yes, sir, that's correct.

8 Q. And in doing so is it fair to say that you observed that
9 folks are bad drivers, and you could not go down the street
10 without seeing a moving violation? 11:26:24

11 A. Sir, that is correct.

12 Q. And would that have been your observation when you
13 performed, as a member of the HSU, doing general patrol work on
14 one of the saturation patrols?

15 A. I perform law enforcement duties, enforcing state -- 11:26:39
16 federal, state, and local laws, yes, sir, that's correct.

17 Q. And you did that primarily through the tactic of traffic
18 stops, is that right?

19 A. I made traffic stops, yes, sir. I did initiate traffic
20 stops. 11:26:55

21 Q. And did you use your discretion both when you were on the
22 HSU and a member -- and performing on a special operation and
23 when you were on general patrol, because you could not stop all
24 of the traffic violators that you observed, is that correct?

25 A. That is correct, sir. 11:27:09

1 Q. In terms of doing traffic work, on occasion you would have
2 a difficult time seeing inside a vehicle because of tinted
3 windows, is that right?

4 A. Dark-tinted windows is a violation of Arizona state law,
5 yes, sir. 11:27:32

6 Q. That's correct. But if you had trouble seeing inside, you
7 would focus on the front passenger window and the driver's side
8 window in order to be able to see the driver, is that right?

9 A. Yes, sir, that's correct.

10 Q. And that tactic enabled you to look inside a car, is that 11:27:45
11 correct?

12 A. Well, if they have dark-tinted windows, sir, I wouldn't be
13 able to see inside the vehicle.

14 Q. And in this instance, we'll get to it, but in this instance
15 we're talking about the instance -- incident on March 28th, the 11:27:59
16 car that drove in that you in -- that you eventually chose to
17 order out of the station, the windows were down, is that right?

18 A. That is correct, sir.

19 Q. You could see inside?

20 A. Yes, sir, I could. 11:28:15

21 Q. You could see the faces of the people inside that car?

22 A. I could see a female and a male. If you asked me to recall
23 it today I could not.

24 Q. I understand. But they were within 15 or 20 feet from you
25 when they parked, is that right? 11:28:28

1 A. I wouldn't give you a space, but they were within a good
2 distance, yes, sir.

3 Q. Let me go back to some of the general traffic issues.

4 You talked a little bit about the passengers. You
5 said it was your practice to inquire of all passengers that
6 were in a car you stopped to produce their identification, is
7 that right? 11:28:41

8 A. If they voluntarily produced it, yes, sir.

9 Q. But you would ask everyone that was a passenger, no matter
10 the reason for the stop, you would ask them for their
11 identification, correct? 11:28:58

12 A. I would ask, yes, sir.

13 Q. And there have been occasions when you in fact detained and
14 arrested a, quote, Hispanic male, John Doe, for failing to
15 provide any form of ID while a passenger, and also for not
16 wearing a seat belt, is that correct? 11:29:13

17 A. Yes, sir.

18 Q. And there may have been other occasions when you also
19 detained and arrested folks for failing to provide ID when a
20 passenger? 11:29:28

21 A. I'm sorry, sir?

22 Q. There might have been other occasions as well when you
23 detained or arrested for that purpose.

24 A. For what purpose, sir?

25 Q. For failure to provide an ID and not wearing a seat belt. 11:29:34

1 A. Well, I don't know, sir. I'd have to recall my records.

2 Q. Okay. Now, just to clarify, I believe you said if the --
3 if the passenger told you generally, I'm not going to tell you
4 my name, or give you any ID, that would be okay. You would not
5 take any further action, is that right?

11:30:00

6 A. That's correct, sir.

7 Q. But if they gave you some data about themselves and that
8 didn't turn up when you ran it, you would in fact detain them?

9 A. I would for investigative purposes, yes, sir.

10 Q. And when you were a member of the HSU and you were making
11 these stops on these saturation patrols, you would look into if
12 you -- if you felt that a passenger in any of the cars you
13 stopped on one of those patrols was suspected, you found, you
14 believed, based on the indicators, you suspected of that person
15 being in the country illegally, you wouldn't just let that

11:30:18

11:30:37

16 person go, would you?

17 A. You need to rephrase that question for me, sir.

18 Q. When you were acting on one of the saturation patrols as a
19 member of the HSU, or SAU, and you came upon -- stopped a car
20 for a vehicle violation, and you believed, after stopping the
21 car and looking and reviewing the situation with the
22 passengers, maybe asking some questions about ID, you came to
23 the conclusion that there was reasonable suspicion that the
24 passengers were here illegally.

11:30:53

25 You follow me that -- so far?

11:31:13

1 A. No, that would not be what I led to my conclusion. It
2 would be failing to provide ID at that time and investigating
3 to identify them.

4 Q. Right, I -- I may not have been clear. I apologize.

5 Let's assume that for whatever reasons when you came 11:31:25
6 upon this car and stopped it for some vehicle violation, your
7 investigations or questions indicated to you that the passenger
8 was in fact -- you had reasonable suspicion that the passenger
9 was in the country illegally, you would not let that person go
10 at that moment, would you? 11:31:44

11 A. I wouldn't come to that conclusion during the initial
12 traffic stop, sir.

13 Q. No matter what information you found out about the
14 passenger?

15 A. Well, I would have to first, if they voluntarily give me 11:31:51
16 their name, then identify them. If -- as I stated before, if
17 they voluntarily give me their name or identification, or
18 failed to give me identification card but provided me a name,
19 and while running that name there was no record found or no
20 person found, at that point they would be detained to identify 11:32:11
21 them, not for illegal purposes.

22 Q. No, I understand. I was just asking you for whatever
23 reason, including this one here, based on the disparity when
24 you ran the information, you felt there was reasonable
25 suspicion that the person was here illegally, at that point you 11:32:33

1 would detain the passenger, is that correct?

2 A. Are you speaking about a specific incident, sir?

3 Q. No, generally -- your general practice when you stopped a
4 car, and based on your investigations, including running
5 these -- the information given to you, finding that there was
6 no match, you would -- you would detain the passenger for
7 further investigation, is that correct?

11:32:48

8 A. That is correct.

9 Q. And you would follow that practice when you were a member
10 of the HSU on one of the special operations patrols, correct?

11:33:00

11 A. I still follow that practice.

12 Q. And you did when you were on one of those special
13 operations patrols, correct?

14 A. Yes, sir, that's correct.

15 Q. And you do that -- and you did follow that practice when
16 you were on general patrol as well, is that right?

11:33:10

17 A. Yes, sir, that is correct.

18 Q. You became an HSU detective in April of 2008, is that
19 correct?

20 A. Approximately April or May of 2008, yes, sir.

11:33:28

21 Q. And Sergeant Madrid was the commander of your unit, is that
22 right?

23 A. No, sir.

24 Q. Who was?

25 A. Lieutenant Sousa.

11:33:35

1 Q. I'm sorry. Lieutenant Sousa was the head of the HSU?

2 A. He's our commander.

3 Q. And Sergeant Madrid, the head of your smaller unit within
4 HSU?

5 A. He was my squad sergeant, yes, sir.

11:33:46

6 Q. Squad sergeant. I apologize.

7 And amongst other things -- in any event, at that
8 point you did not receive any training on factors that make up
9 suspicion after you stop a smuggling load, did you?

10 A. You need to restate your question for me, sir.

11:34:02

11 Q. Did you receive any training from the M -- MCSO about
12 what -- the valid criteria that allowed you to find there was
13 reasonable suspicion that the persons that were in the car, the
14 load that you stopped, were here illegally? Did you receive
15 any training on that?

11:34:21

16 A. If you're asking if I received any training pertaining to
17 immigration, I did from ICE to become 287(g) certified.

18 Q. And from MCSO did you receive any training on indicators of
19 being here illegally?

20 A. Any indicators of being here illegally? No.

11:34:33

21 Q. And you talked a little bit about the training that you had
22 about racial profiling. You -- you had some information
23 provided to you on that topic when you went through the academy
24 at the MCSO, is that correct?

25 A. We went through a cultural diversity course, yes, sir.

11:35:00

1 Q. And you would agree that that was a -- the portion on
2 racial profiling was a -- in one class that was, quote, short
3 and sweet in that academy training, is that right?

4 A. I don't recall when the class occurred and how fast the
5 class was. 11:35:18

6 MR. POCHODA: May I approach with the depositions,
7 Your Honor?

8 THE COURT: You may.

9 MR. POCHODA: (Handing deposition to clerk).

10 BY MR. POCHODA: 11:35:51

11 Q. You recall giving a deposition in this case, Detective?

12 A. I do, sir.

13 Q. And you were under oath at the time, is that right?

14 A. Yes, sir, that is correct.

15 Q. If you could turn to page 198 of this deposition dated
16 November 24th, 2009. 11:35:58

17 A. I'm sorry, sir. Which one?

18 Q. Page 198.

19 A. Okay.

20 MR. CASEY: Excuse me, Your Honor. My understanding
21 is the witness wants his glasses. 11:36:08

22 MR. POCHODA: Oh, I'm sorry.

23 THE WITNESS: I forgot them. I apologize, yes.

24 THE COURT: Please approach and give him his glasses.

25 THE WITNESS: Thank you. 11:36:20

1 MR. CASEY: (Handing).

2 THE WITNESS: Thank you.

3 MR. CASEY: You're welcome.

4 THE WITNESS: 198, yes, sir.

5 BY MR. POCHODA:

11:36:32

6 Q. If you could turn to line 16, 16 through 23 of that page.

7 MR. CASEY: I'm sorry. What page, Counsel?

8 MR. POCHODA: 198.

9 MR. CASEY: Thank you.

10 BY MR. POCHODA:

11:36:43

11 Q. And if you can see, the question is:

12 "Have you received training on either of these
13 subjects by MCSO?"

14 The answer: "On racial profiling --"

15 The question: "Yes.

11:36:53

16 "ANSWER: -- to whether or not? Yes.

17 "QUESTION: And what was the nature of that training?

18 "ANSWER: I believe it was short and sweet, and we
19 don't racial profile. It's -- it's in the basic ethics
20 class --"

11:37:08

21 Do you see that sir?

22 A. I do, that's correct, sir.

23 Q. And that was accurate testimony, is that correct?

24 A. Yes, sir. The ethics class, the cultural diversity class,
25 yes, sir.

11:37:14

1 Q. That you were talking about at the academy, is that right?

2 A. Yes, sir, that's correct.

3 Q. And then continuing on that same page up on top, lines 1
4 through 5, see that the question: "Have you received any
5 training on whether or not to racially profile or what racial
6 profiling is by MCSO? 11:37:29

7 "ANSWER: We know what racial profiling is. No, we
8 have not and do not racial profile, so I have not received any
9 training on racial profiling."

10 Do you see that? 11:37:46

11 A. I do, sir.

12 Q. And that was accurate when you said it, is that correct?

13 A. Yes, sir, that's correct. We don't train on how to racial
14 profile.

15 Q. No, I understand. But you also believe that you don't
16 racial profile, you as a member of the MCSO, is that correct? 11:37:53

17 A. That's correct, and that's what I'm stating.

18 Q. And you don't believe anyone else who's a member of the
19 MCSO has ever racially profiled, is that correct?

20 A. That is correct, sir. 11:38:07

21 Q. So there's no need for extensive training in that
22 situation, is that right?

23 A. I'm sorry?

24 Q. Take it back. Withdraw the question.

25 You have never been provided any written definition of 11:38:23

1 racial profiling by the MCSO, have you?

2 A. Not that I can recall.

3 Q. That would be in writing or orally, is that right?

4 A. I'm sorry, I can't recall.

5 Q. You don't recall as you sit here today being provided such 11:38:36
6 a definition, is that right?

7 A. Being provided what racial profiling is?

8 Q. A definition, yes.

9 A. I don't recall if we received it in the cultural diversity
10 class or the ethics class, but I can't recall if they gave us a 11:38:47
11 definition of it.

12 Q. You don't recall receiving such a definition as we sit here
13 today?

14 A. That's correct.

15 Q. You do recall being told by persons at the MCSO to not 11:38:56
16 racially profile. Is that fair to say?

17 A. That is fair to say, sir.

18 Q. But at the times they told you that, they did not provide
19 you a definition of what would encompass racial profiling, is
20 that right? 11:39:11

21 A. I personally didn't receive a definition of it, sir.

22 Q. And I believe you mentioned that the -- when you were a
23 member of the Human Smuggling Unit, you did not go to the
24 briefings that occurred on the mornings of the -- the large
25 saturation patrols because, and I'm paraphrasing, so correct me 11:39:35

1 if I'm wrong, the Human Smuggling Unit already knew that it was
2 wrong to racially profile, is that right?

3 A. That is correct, sir.

4 Q. But all of the other units and personnel that were involved
5 in that saturation patrol were required to report to the
6 briefings, is that right?

11:39:48

7 A. That's correct, sir. HSU held its own briefing.

8 Q. And you were involved in a number, you said a few, of these
9 crime suppression saturation patrols, is that right?

10 A. Yes, sir.

11:40:06

11 Q. There's one that we'll talk about more, I believe was your
12 first such saturation patrol was the one in North Phoenix in
13 2008 near Cave Creek and Bell, correct?

14 A. I believe so.

15 Q. And then you participated in one in Mesa that took place on
16 July 14th in 2008.

11:40:19

17 Do you recall?

18 A. I'll have to defer to whatever our records show that I
19 attended. I don't recall what the dates were.

20 Q. Okay. But -- but it's possible that you did, would that be
21 your understanding?

11:40:33

22 A. I'm sorry, sir?

23 Q. It's possible that you took place -- took part in one in
24 Mesa in July of 2008?

25 A. I'd have to look at the sign-in sheet to see if I was

11:40:46

1 actually there, sir. I don't remember the dates that I
2 participated in. There were several that I did not because I
3 was on vacation.

4 Q. But you do recall participating in some in 2008 and 2009,
5 is that correct? 11:40:55

6 A. That's fair to say.

7 Q. And when you did participate, you were not told why a sweep
8 was being conducted in the area, is that correct?

9 A. That is correct.

10 Q. And you were not told to watch for any particular house or 11:41:11
11 person while you were on that sweep, were you?

12 A. No, sir, I was not.

13 Q. You were not given any instructions other than to go out
14 and patrol, isn't that correct?

15 A. That's fair to say. 11:41:26

16 Q. You were not told on any of them to look for particular
17 criminal acts, correct?

18 A. That is correct.

19 Q. And you had never, prior to the operation in March in 2008,
20 you had never previously, as a member of the MCSO, participated 11:41:37

21 in a law enforcement action of anywhere near such a large
22 scale, is that correct?

23 A. I'm sorry, sir. Would you restate --

24 Q. Prior to the operation in March of 2008 you had never
25 previously participated in an MCSO law enforcement action of 11:41:53

1 such a large scale, is that correct?

2 A. I'd have to defer back to whatever sign-in sheets that we
3 have, sir. I don't know which ones I participated in prior to
4 that March one you speak of.

5 Q. Well, assume -- assuming that was your first saturation
6 patrol prior to the -- being involved in saturation patrols,
7 you had not participated as a member of MCSO in any such large
8 enforcement actions, had you?

11:42:06

9 A. I don't know. As a tactical unit I responded to many SWAT
10 call-outs, and it's a pretty big event.

11:42:26

11 Q. If we could turn to page 102 of your deposition.

12 A. I'm sorry, sir. 102?

13 Q. 102.

14 Turn to line 19 through 23.

15 A. 19 through 23?

11:42:47

16 Q. Um-hum.

17 A. Okay.

18 Q. And the question is: "And before this particular crime
19 suppression detail in North Phoenix last year, have you -- had
20 you ever participated in a -- an enforcement action of a
21 similar scale as an MCSO officer?"

11:42:57

22 "ANSWER: As a deputy, no, ma'am."

23 A. Well, you were speaking of the Mesa crime suppression
24 sweep, and I told you that I did not, I could not without
25 looking at a sign-in sheet. Prior to the -- prior to the North

11:43:14

1 Phoenix one, no, I had not.

2 Q. I apologize for not being clear.

3 And in any event, there's no -- prior to your first
4 saturation patrol, you had not participated in any operation of
5 similar scale?

11:43:29

6 A. To the North Phoenix, that's correct, that I can recall.

7 Q. Now, let's turn to the events of March 28th, 2008. Let me
8 try to get some understanding of the location.

9 If we could look at Plaintiffs' Exhibit 411. That's
10 admitted. These are a series of photos of the gas station.

11:44:18

11 Can you see that on your screen?

12 A. Here it is. Yes, sir, I can.

13 Q. And is this the location that you were describing in your
14 earlier testimony where you had initially detained two males
15 and then had the encounter with the two folks who drove in in
16 the black vehicle, is that right?

11:44:38

17 A. From what I can recall, yes, sir, it is.

18 Q. And does A indicate where you were parked in the patrol
19 car, do you recall?

20 A. I would have to look at the actual one that I drew on,
21 because there's a diagram, I believe, behind it, and I think
22 there was a key to it that would identify which vehicle was
23 which.

11:44:52

24 Q. Okay. I'll provide that in a moment, but let -- since
25 we're on it, if we could turn to B of this same exhibit,

11:45:10

1 please, the next page.

2 Is that doable?

3 This again is a view of that -- I don't know, the
4 Quick Stop & Gas that you described in your earlier testimony,
5 is that right?

11:45:37

6 A. That's correct, sir.

7 Q. And looking straight ahead that would be the store itself,
8 the Quick Stop, is that right?

9 A. Yes, sir, that is correct.

10 Q. And then the pumps were in front of that store.

11:45:43

11 And you don't recall as you sit here today what the
12 markings that you placed on as A, B, and C stand for?

13 A. Well, I do recall them, sir, but when you initially showed
14 it to me it only showed one, so I didn't recall what the key
15 was. But now that you show it, however, the A would be the
16 suspect's vehicle, B would be my vehicle, and C would be the
17 dark colored vehicle.

11:45:59

18 Q. And you had -- the -- the suspects you had determined when
19 you were driving south on Cave Creek that you wanted to make a
20 traffic stop on that car, the car that eventually became A on
21 this diagram, is that correct?

11:46:21

22 A. Yes, sir, that is correct.

23 Q. And normally, when you make a stop and indicate to the car
24 ahead of you that you'd like it to stop, you want them to
25 turn -- pull over to the right, is that right?

11:46:35

1 A. Well, I would hope. Based on persons that receive driver's
2 license training it does say that you should pull over to the
3 right for emergency vehicles. However, there are persons that
4 do not, and continue driving into a location they feel more
5 comfortable.

11:46:49

6 Q. And there's some persons that get confused, isn't that
7 correct, when they see the sirens behind them, is that right?

8 A. Yes, sir, that is correct.

9 Q. Perhaps a little nervous, is that right?

10 A. Of course.

11:46:58

11 Q. And in this case they -- the folks pulled over to the left
12 from the Cave Creek Road, is that right?

13 A. That's correct, off of Cave Creek they made a left and into
14 the gas station.

15 Q. But they stopped fairly quickly after making that left, is
16 that correct?

11:47:07

17 A. That is correct.

18 Q. And that, in and of itself, the fact they pulled over to
19 the left as opposed to the right, did not increase your concern
20 about the situation, did it?

11:47:15

21 A. Not at all, that's typical.

22 Q. It's typical is what you said?

23 A. It is. Persons who get nervous, they just pull to the
24 right.

25 Q. And --

11:47:24

1 A. Or to the left.

2 Q. I apologize.

3 And so they parked in front of the -- some -- the
4 pumps, is that -- is that correct? That would be number --
5 letter A here.

11:47:34

6 A. That would be A. However, they were stopped on the left
7 side of the pumps. This diagram somehow I would have not put
8 them on that side.

9 Q. Okay. But B, you pulled your car basically behind them
10 slightly at an angle, but basically behind their car?

11:47:46

11 A. Tactically, that's correct.

12 Q. They could not back out, in other words?

13 A. They could not back out but they could drive forward.

14 Q. Right. Okay. Let's take a look at the other drawing,
15 which is seventy -- no, it's 3 -- if we could put up
16 Plaintiffs' Exhibit 397, which has been admitted, and publish
17 if that's okay.

11:47:58

18 THE COURT: It's up.

19 BY MR. POCHODA:

20 Q. We should go -- if we can turn this so that north is
21 actually on top.

11:48:14

22 That's fine.

23 You recognize this diagram?

24 A. Yes, sir, it's a diagram that I drew.

25 Q. And you drew this during your deposition, is that correct?

11:48:29

1 A. Yes, sir, that's correct.

2 Q. And the -- the lower right corner would represent this
3 Quick Stop station, is that right?

4 A. The lower right corner? Yes, sir, that's correct.

5 Q. And sort of rec -- near the rectangular thing would be the 11:48:46
6 gas pumps, is that right?

7 A. The fuel pumps, yes, sir.

8 Q. And then the rectangle that starts on the lower right, that
9 would be the store itself, is that right?

10 A. Yes, sir. 11:48:58

11 Q. And where it says number 5 here, that's Cave Creek Road, is
12 that right?

13 A. It is Cave Creek Road. I don't know if that's what
14 number 5 actually indicates on the key.

15 Q. Yeah, I didn't mean that that's what you designated, but 11:49:10
16 that is Cave Creek Road running north-south, is that right?

17 A. That is correct, sir.

18 Q. And Nisbet Road enters into Cave Creek, and Nisbet Road is
19 to the right, that's an east-west road?

20 A. That is an east road, yes, sir. 11:49:24

21 Q. Now, at some point the car that -- the black vehicle you
22 have marked here on the lower right as number 3, is that -- is
23 that correct?

24 A. Yes, sir, that's correct.

25 Q. And they pulled in from Nisbet Road, is that right? 11:49:38

1 A. That is correct.

2 Q. And they would have driven apparently straight down to park
3 in front of the store, is that right?

4 A. They -- not in front of the store. That's to the side of
5 the store, the north side of the store. 11:49:54

6 Q. Well, you could enter the store from that side, couldn't
7 you?

8 A. No, sir, you could not. You had to walk through the front,
9 and the front of the store is on -- faces Cave Creek.

10 Q. I see what you're saying. That the front -- but they would 11:50:04
11 have driven straight from Nisbet until they couldn't go any
12 more, is that correct, and hit some -- the structure of the
13 store?

14 A. That's correct, sir.

15 Q. And then at some point you ordered them to leave, is that 11:50:15
16 correct?

17 A. It wasn't at some point. It was at the point that they
18 became aggressive that I began ordering them to leave.

19 Q. That's some point. At some point you left -- I'm not going
20 into the reason at this time, you ordered them to leave, is 11:50:36
21 that right?

22 A. That's correct.

23 Q. At one point you said you saw the door begin to open, is
24 that right?

25 A. It was, correct. 11:50:44

1 Q. And if the -- that was the driver's side door, you thought?

2 A. That is correct.

3 Q. And if the driver wanted to enter the store he would have
4 to open his door to the car, is that right?

5 A. That is correct.

11:50:54

6 Q. And presume -- you don't know if they came there to buy
7 something at the store, is that right?

8 A. That is correct.

9 Q. In any event -- and at the point that he opened his door,
10 you don't know that he was looking to go into the store to
11 purchase cigarettes or something else?

11:51:08

12 A. I don't know what his intentions were with the store.

13 Q. But in any event, as soon as you saw the door begin to
14 open, you ordered him to close it and stay in the car, is that
15 right?

11:51:18

16 A. That's right.

17 Q. And he complied with that?

18 A. Yes, he did.

19 Q. And at no point in the time from when this car first drove
20 in to that stop until the time that you ordered them to leave
21 did either of the occupants leave the car, is that right?

11:51:28

22 A. That is correct.

23 Q. And at no point did they ever throw anything from the car,
24 did they?

25 A. Not that I can recall.

11:51:42

1 Q. And at no point did they exhibit any weapons or dangerous
2 objects, did they?

3 A. No, sir.

4 Q. So that the -- the behaviors that you were concerned with
5 was basically the statements they were making as they were
6 yelling, is that right? 11:52:03

7 A. The aggressive behavior.

8 Q. Aggressive behavior was yelling, is that right?

9 A. The yelling, that's correct.

10 Q. But they didn't shake their fists at you or threaten to get
11 you in any way, did they? 11:52:14

12 A. Not that I can recall.

13 Q. And so that it was the content of what they say and the
14 manner they said it that was the concern that led to you
15 ordering them to leave, is that right? 11:52:30

16 A. I think any reasonable and prudent person would be fearful
17 of it and ask them to leave.

18 Q. And for the most part, certainly for the initial time and
19 before you ordered them to leave, those were the Spanish words,
20 is that correct, that you described before? 11:52:42

21 A. I'm sorry, sir?

22 Q. They were Spanish, words in Spanish, is that right?

23 A. That they were yelling --

24 Q. Yes.

25 A. -- yes. 11:52:51

1 Q. And the -- let me back up just a second.

2 As they came in, you indicated before that their
3 windows were down and you could see inside the car, correct?

4 A. That's correct.

5 Q. And they were playing music on the radio, is that correct? 11:53:07

6 A. Yes, sir, that's correct.

7 Q. And you could hear that music?

8 A. I could. I remember loud music playing.

9 Q. And that was Hispanic music, Latino music, was that --

10 A. I don't recall what the music was. 11:53:17

11 Q. You don't recall.

12 But the -- the man is a male driver and a woman in a
13 passenger seat, correct?

14 A. That's correct.

15 Q. And the words that you remember the woman initially 11:53:24
16 yelling, and then both, were "No diga nada," and "Pida un
17 abogado," correct?

18 A. That's correct.

19 Q. And you understood those to mean, "Don't say anything,"
20 "Ask for a lawyer," right? 11:53:36

21 A. That's correct.

22 Q. And you're aware -- and who were they yelling those at?

23 A. It was in my direction.

24 Q. You think they were telling you to not ask for a lawyer?

25 A. Of course not. 11:53:46

1 Q. Who were they directing it at?

2 A. Probably the person I had in custody.

3 Q. And they did that by -- if we look back at the -- at the
4 exhibit, they had to turn to their right and look a little
5 behind so they could get the -- from their car to reach the --
6 the folks, one of whom was already in the back seat of your
7 patrol car, number two, is that correct?

11:54:01

8 A. That's correct. But this is not to scale and the exact --
9 exact location --

10 Q. I understand. But they would have been -- the two detained
11 persons would have been to the right and a little bit behind
12 the occupants in car number 3, correct?

11:54:15

13 A. The two detained persons?

14 Q. Yes.

15 A. Okay. Say that again.

11:54:28

16 Q. They would have been a little to the right and behind the
17 people in car number 3, correct?

18 A. One person would have already been in the back of my patrol
19 vehicle secured.

20 Q. Correct.

11:54:38

21 A. And if you see where approximately number 4 is, is where
22 myself and the second person I had in -- the second person I
23 had detained were.

24 Q. So they had to look out of their window and look to their
25 right, whatever, would it -- would it have been approximately

11:54:52

1 15 or 20 feet from the detained person to the persons in
2 vehicle number 3?

3 A. Are you asking me a question, sir --

4 Q. Yes.

5 A. -- or are you telling me? 11:55:03

6 Q. Would it have been approximately 15 to 20 feet from the
7 detained person, number 4, let's say, and the persons in the
8 car, number 3?

9 A. As I stated before, sir, I can't give you an approximate
10 amount. It was just a distance. 11:55:14

11 Q. Okay. In any event, you had heard this expression before:
12 Don't say anything. Get a lawyer. That's an expression
13 that's --

14 A. That was the typical chant that was chanted by the
15 protesters at the command posts. 11:55:31

16 Q. It's also a typical chant by lawyers to tell their clients,
17 Don't speak to anybody, is that correct?

18 A. I don't know.

19 Q. You're not aware that it's common advice to persons when
20 they're confronted by law enforcement, detained or arrested,
21 Don't say anything. Ask for a lawyer? You're not -- you're
22 not aware that that's common advice given to -- to persons that
23 may encounter -- encounters with law enforcement? 11:55:44

24 A. Well, I've never been arrested, so I wouldn't know what a
25 lawyer would tell me, and if a lawyer told that to the client, 11:56:00

1 it would be privileged.

2 Q. Now, I understand you weren't sitting in. I'm just in
3 general knowledge whether you're aware that attorneys --

4 A. I can't answer that question.

5 Q. -- tell their clients not to speak to law enforcement. 11:56:09

6 A. I can't answer that question, sir.

7 Q. Well, it's also your responsibility as a law enforcement
8 officer when you arrest somebody to tell them they have a right
9 to remain silent and get a lawyer, isn't that correct?

10 A. If I'm conducting an investigation where I would ask them 11:56:18
11 questions pertaining to the -- the crime, yes, sir. They would
12 be read their Miranda rights.

13 Q. And this was similar. They tell them to be silent and get
14 a lawyer was the advice they were telling these detain -- these
15 detainees, is that right? 11:56:35

16 A. Well, the person being arrested for driving on a suspended
17 would not have his rights read to him because I had no
18 questions in reference to the crime. The crime was he was
19 determined to have been driving on a suspended license, and
20 that was a matter of fact by the state. So his rights -- 11:56:45

21 Q. So you didn't have to give him Miranda warnings in this
22 case?

23 A. That's correct.

24 Q. And you did not?

25 A. That's correct. 11:56:53

1 Q. When the -- when the occupants of 3 yelled out the
2 window -- and first of all, it was all directed towards you and
3 the detainees, is that correct?

4 A. It was directed in our way, yes, sir.

5 Q. And there was no one else standing in between car number 3
6 and yourself or the detainees, is that right?

11:57:09

7 A. That's correct.

8 Q. And there was no one immediately around the pumps at that
9 moment?

10 A. Not to my left, that's correct.

11:57:18

11 Q. And upon this yelling, the detainees, the persons you had
12 detained, did not change any of their behavior, actions, or
13 words, did they?

14 A. They became more aggressive.

15 Q. They became more aggressive?

11:57:35

16 A. Yes, sir.

17 Q. One was already in the back of your car with his hands
18 cuffed, is that correct?

19 A. Are you talking about the detainees or the persons in the
20 black --

11:57:46

21 Q. The detainees.

22 A. The persons in the back? No, they were cooperative the
23 entire time.

24 Q. They were not impacted by these words that came out of the
25 car number 3, is that correct?

11:57:51

1 A. I don't know what their feelings were.

2 Q. They didn't change their behavior.

3 A. My detainees? No, they did not.

4 Q. In any event, these words that on their face seem fairly
5 nondescript, Get a lawyer, Don't speak to anybody, to you raise 11:58:06
6 serious concerns. They were ominous -- had an ominous meaning
7 and they caused you great concern, is that correct?

8 A. We're speaking about those in the black pickup truck -- in
9 the dark colored pickup truck?

10 Q. Yeah, the words about, Don't speak to them. Get a lawyer. 11:58:23

11 A. Well, it wasn't their words that caused me concern.

12 Q. Well, you indicated that you were told that people who use
13 the exact same expression, saying in Spanish the exact same
14 words, were in fact protesters with guns and were running
15 around the command post. Is that fair to say? 11:58:43

16 A. I was told that there were persons that were armed running
17 around the command post, but I saw it for a fact the
18 protesters, and heard for a fact the protesters yelling that
19 same verbiage.

20 Q. And it was reported to you that those people had guns. Is 11:58:55
21 that fair to say?

22 A. I was informed that there were people in the crowd that
23 were -- that were armed who were not law enforcement officers.

24 Q. And those were the protesters, correct?

25 A. I don't know. They were persons at the command post who 11:59:06

1 were armed.

2 Q. If you could turn to page 152 of your deposition, please.

3 Let me get the -- that's not the right page.

4 THE COURT: You know --

5 MR. POCHODA: Page 143. I apologize. 143. Starting 11:59:36
6 at line 13.

7 Well, let's start at line 9.

8 BY MR. POCHODA:

9 Q. Do you see that?

10 A. Yes, sir. 11:59:54

11 Q. That's in the middle of one of your answers, and it says,
12 quote: "My main concern was my safety, because not only did I
13 have myself dealing with, now I had these two people yelling --
14 and I knew they were protesters because there were protesters
15 at the command post yelling the same thing. And I knew that 12:00:09
16 this command post in itself was a very touchy and violent
17 command post, because we had people running around the command
18 post who were not law enforcement officers who were protesters
19 running around with guns."

20 Do you see that? 12:00:24

21 A. Okay. I do.

22 Q. So it was reported that the protesters were running around
23 with guns, is that right?

24 A. There were the reports that persons, I don't know if they
25 were protesters. I mean, I'm going to presume that they were 12:00:30

1 protesters.

2 Q. I'm just looking at your answer here, sir.

3 A. Okay. They would be protesters.

4 Q. Who were protesters running around with guns, is that
5 correct?

12:00:38

6 A. Right.

7 Q. That's your answer, is that right?

8 A. That's correct.

9 Q. And that was accurate at the time?

10 THE COURT: You know what -- Did you finish the
11 answer?

12:00:55

12 THE WITNESS: I believe so at this time.

13 THE COURT: Would you read back what you have, and
14 then we will complete the answer and then we're going to break
15 for lunch.

12:01:08

16 (The record was read by the court reporter.)

17 THE COURT: You want to ask the question again?

18 BY MR. POCHODA:

19 Q. I was asking that they were in fact protesters. You were
20 informed that there were protesters running around with guns,
21 is that correct?

12:01:30

22 A. That's correct.

23 THE COURT: All right.

24 MR. POCHODA: Thank you. I apologize for --

25 THE COURT: That's all right. We're going to break

12:01:37

1 for lunch. Please be back at 1 o'clock.

2 (Luncheon recess taken.)

3 THE COURT: Please be seated.

4 You ready to resume, Mr. Pochoda?

5 MR. POCHODA: Yes.

13:05:02

6 BY MR. POCHODA:

7 Q. Detective, you had mentioned that at one point you noticed
8 the driver's car door open, is that correct?

9 A. That is correct, sir.

10 Q. And you told them, I gather, in a firm voice that, If you
11 get out of it car it will be considered disorderly conduct, is
12 that correct?

13:05:09

13 A. I did tell them at one point that if they did not leave,
14 they would be arrested for disorderly conduct.

15 Q. Okay. Let me backtrack a little bit. Did you also say, If
16 you get out of the car, at that point it would be disorderly
17 conduct?

13:05:23

18 A. I can't recall at this time. I know I did state to them
19 that, though.

20 Q. In any event, they closed the door and they did not leave
21 the car?

13:05:33

22 A. He did not.

23 Q. He did not leave the car?

24 A. That's correct.

25 Q. And at some point you recall they asked if they could enter

13:05:39

1 the store to buy cigarettes, correct?

2 A. No, sir.

3 Q. You don't remember that?

4 A. They did not ask.

5 Q. And going back, as we had been talking about, the constant
6 yelling basically was the terms "No diga nada" and "Pida un
7 abogado," is that right?

13:05:49

8 A. That's correct, sir.

9 Q. And you were concerned about the possibility of the guns
10 and violence because you had been informed that other
11 protesters saying the same phrases in Spanish were running
12 around the command post with guns, correct?

13:06:07

13 A. I was concerned because of the situation that I was
14 involved in, yes, sir.

15 Q. But you also had in mind that there were other protesters
16 saying the same exact words, with guns, at the command station,
17 is that correct?

13:06:19

18 A. That's correct.

19 Q. And there was additional reason you were concerned because,
20 as you put it, this is Arizona, and you believe everybody
21 carries a gun at some point, is that correct?

13:06:31

22 A. You make the presumption, yes, sir.

23 Q. So there was no way you could rule out the possibility that
24 there wouldn't be an attack using a weapon in that situation,
25 is that right?

13:06:41

1 A. That's fair to say.

2 Q. And you couldn't rule out the possibility that at some
3 point they would jump out of the car and attack you, is that
4 correct?

5 A. That's a scenario that could have happened. 13:06:51

6 Q. And while you had not observed at that point any crime,
7 your main concern was about personal safety and to ensure that
8 you would be going home to your family, is that right?

9 A. Well, of course, but I also had the safety of my detainees
10 that I had to keep in mind. 13:07:09

11 Q. As well as your detainees?

12 A. That's correct.

13 Q. And in fact, you never got the names of the occupants of
14 the car that was number 3 on our diagram, did you?

15 A. No, I did not. 13:07:18

16 Q. And when you ordered the occupants of that vehicle to leave
17 immediately, they asked why they were being ordered to leave,
18 is that correct?

19 A. I'm sorry?

20 Q. They asked you why they were being ordered to leave. 13:07:31

21 A. They didn't ask me any questions, sir.

22 Q. They didn't at that point ask why they were being ordered
23 to leave?

24 A. No, they were just being ordered to leave.

25 Q. In any event, you never explained to them, gave them any 13:07:43

1 reason for the order to leave, did you?

2 A. Sir, based on the situation that was at hand and as
3 aggressive as it was, there was no time for dialog. I had
4 to --

5 Q. Please just answer the question. You never gave them a
6 reason as to why you ordered them to leave, did you?

7 A. No.

8 Q. And at some point they asked for your badge number and they
9 wrote it down, is that correct?

10 A. No, sir.

11 Q. If there was testimony to that effect you would dispute it,
12 is that right?

13 A. They did not ask for my tes -- for my badge number.

14 Q. Okay. If we could take a look at Exhibit 71, please.

15 Turning to page 001817.

16 A. Can you make this bigger? Can this be made bigger? Oh,
17 thank you very much.

18 Q. And before we get to that, you at some point, as you were
19 about -- just before or at the time you ordered them to leave,
20 you asked for a backup, is that right?

21 A. According to this CAD unit, yes, at approximately 1449.

22 Q. But you recall as we sit here today that you asked for
23 backup --

24 A. Yes --

25 Q. -- is that right?

1 A. -- that's correct.

2 Q. And if you could take a look at that, is that the CAD
3 description starting on page 001817, the CAD report from that
4 afternoon of March 28th, 2008?

5 A. It appears to be. 13:09:03

6 Q. And you are -- 135D would be your unit, is that correct?

7 A. At the time on the tactical unit, that's correct, I was 135
8 David.

9 Q. And so you -- looking down about five or six from the top
10 in terms of the entries, you informed dispatch to start -- 13:09:25
11 quote, Start me another unit, is that accurate?

12 A. I don't know that's specifically what I said; that's what
13 the dispatcher wrote into the CAD history.

14 Q. And that would be your custom when you're looking for
15 backup to use such words, is that right? 13:09:39

16 A. To ask for another unit, that's correct.

17 Q. And as is your custom, you did not tell the dispatch
18 additional details about what was going on on the scene, isn't
19 that correct?

20 A. I cannot recall. 13:09:50

21 Q. But your custom is to not tell the details about what's
22 going on when you ask for another backup, is that right?

23 A. That's generalized; you need to be more specific. As to
24 this incident, I cannot recall.

25 Q. Okay. Let me turn to page 147 of your deposition. Do you 13:10:01

1 still have that?

2 A. Yes, sir, I do, still up here.

3 You said 147?

4 Q. 147, thank you. On lines 13 through 17.

5 A. I'm sorry. Which lines, sir?

13:10:23

6 Q. Page 147, lines 13 through 17.

7 A. Thank you.

8 Q. You see that? The question is: "Have you ever told
9 dispatch additional details when you ask for another unit?"

10 "ANSWER: Before in the past?

13:10:39

11 "QUESTION: Uh-huh.

12 "ANSWER: No. Usually, I just ask for an additional
13 unit."

14 Do you see that?

15 A. I see that.

13:10:45

16 Q. And does that accurately describe your general practice?

17 A. It describes my practice that I would just ask for another
18 unit.

19 Q. In any event, there's nothing -- there's no other entry
20 from you in that dispatch report that we looked at on the CAD
21 report, is there?

13:10:56

22 A. Well, I don't make entries into that CAD report, sir.

23 That's not a -- that's not -- that's not a document that I
24 authored.

25 Q. No, I understand. There's no other indication that you

13:11:08

1 said anything other than, Start me another unit, is there?

2 A. Not based on this document.

3 Q. Now, the -- and if we could talk about Exhibit 397, which
4 is the hand-drawn map.

5 Again, the vehicle with the occupants that you were
6 concerned about is listed here as number 3, is that right? 13:11:31

7 A. That is correct.

8 Q. And when they did leave, they backed out, straight out onto
9 Nisbet, is that correct?

10 A. From what I can recall, yes, sir. 13:11:45

11 Q. And then they would have turned in a manner so they could
12 go west on Nisbet, is that right?

13 A. They did go west on Nisbet and then north on -- I'm sorry,
14 south on Cave Creek.

15 Q. And your primary goal was to make sure that they were
16 removed from the scene, because that was the only way you could
17 ensure that the possibility of gun use or attack on you could
18 be removed, isn't that right? 13:11:59

19 A. Of course, sir.

20 Q. And they didn't attempt to attack you or threaten you on
21 the way out, did they? 13:12:13

22 A. I'm sorry, sir?

23 Q. They didn't attempt to attack you or threaten you with any
24 weapons or in any manner on the way out?

25 A. No, they did not. 13:12:27

1 Q. And then at some point others reported to the scene, and is
2 it Deputy Kikes, I forget, who was the first to report to the
3 scene on a motorcycle, is that right?

4 A. Right. He didn't actually drive up onto my scene. He was
5 on the roadway and continued southbound in the direction I
6 pointed. 13:12:45

7 Q. Southbound on Cave Creek?

8 A. On Cave Creek, yes, sir.

9 Q. And you yelled at him something to the effect: They are
10 gone. They went thataway? 13:12:53

11 A. Something to the effect, and pointed in the direction that
12 they had left.

13 Q. And you gave him a description of their vehicle?

14 A. I cannot recall that, sir.

15 Q. But you would have not provided any other information to
16 Detective Kikes? 13:13:00

17 A. To detective -- I'm pretty sure I would have given him a
18 description of the vehicle, but I can't recall exactly what I
19 told him.

20 Q. I apologize. Other than the description of the vehicle,
21 you didn't give him any other information about what had
22 occurred? 13:13:08

23 A. No, sir, I did not.

24 Q. And then Mr. Beeks pulled into the station and you waved
25 him down to continue going, is that correct? 13:13:20

1 A. He did not pull into the station. He stopped in front of
2 the roadway also, and I pointed him in the same direction that
3 I pointed Detective Kikes.

4 Q. And you did not speak with Mr. Beeks?

5 A. No, not at that time. 13:13:30

6 Q. And you did not make any notes or reports about this
7 incident at any point or after your shift on that day, did you?

8 A. I did not.

9 Q. And you were never asked about this incident by anyone at
10 MCSO, were you? 13:13:50

11 A. No, I was not.

12 MR. POCHODA: I have no further questions.

13 FURTHER EXAMINATION

14 BY THE COURT:

15 Q. Detective Armendariz -- 13:14:12

16 A. Yes, sir.

17 Q. -- I think if I understood your testimony earlier today you
18 said that you'd participated in a number of saturation patrols?

19 A. Yes, sir, that is correct.

20 Q. And I think you also testified that it's not very difficult
21 to find a traffic violation when you're looking for one. 13:14:23

22 Did I -- am I misstating your testimony?

23 A. No, sir, it's not.

24 Q. I think you also testified that you had your discretion
25 about who you could pull over when you were on patrol in a 13:14:38

1 saturation patrol.

2 A. There is discretion involved, yes, sir.

3 Q. All right. Did you ever hear anything about a zero
4 tolerance policy in connec -- just so I'm sure, in connection
5 with a saturation patrol?

13:14:54

6 A. Yes, sir, I have.

7 Q. And do you recall where you would have heard that from?

8 A. It would have been relayed to me from my supervisors.

9 Q. Okay. And what did they tell you?

10 A. Normally, these --

13:15:04

11 Q. When you say your supervisors, did you say that
12 Sergeant Palmer or Sergeant Madrid was your supervisor? I
13 can't remember who. Or was it Lieutenant Sousa?

14 A. Sergeant Madrid is my direct supervisor. He is my -- we
15 have three squads, and the first squad was Sergeant Palmer.

13:15:20

16 Q. Um-hum.

17 A. He was the sergeant over Squad 1 and the five detectives
18 assigned to him. Sergeant Madrid is a sergeant over Squad 2
19 and the five detectives assigned to him.

20 Q. Um-huh.

13:15:30

21 A. And then acting Sergeant Cesar Brockman is a sergeant for
22 Squad 3 and the detectives that work for him.

23 Q. All right.

24 A. And Lieutenant Sousa is our commander.

25 Q. All right. So you were under Sergeant Madrid?

13:15:39

1 A. I was.

2 Q. And when you say you heard something about zero tolerance
3 from your supervisors, or supervisor or supervisors, who was
4 it?

5 A. We're a very integrated squad. Squad 1 and Squad 2 were
6 integrated, so our supervisors, we have direction from both
7 supervisors. 13:15:48

8 Q. Okay.

9 A. So it would have come from either one of them, or
10 Lieutenant Sousa, during a briefing. 13:16:01

11 Q. You don't have any specific recollection as to what
12 particular supervisor said what particular thing?

13 A. No, sir, I don't. I apologize.

14 Q. Do you have any particular recollection about being
15 instructed about zero tolerance, or do you just have a general
16 recollection? 13:16:13

17 A. What our understanding is of zero tolerance in the way it
18 was told is there -- if we make a traffic stop or come into an
19 incident where we have to -- where an arrest is -- is likely,
20 the person is not cited and released; the person is taken into
21 custody. 13:16:29

22 Q. I think you have indicated -- well, is it your experience
23 that if you're going to participate in a saturation patrol you
24 need to participate for the whole day?

25 A. Yes, sir, it is. 13:17:01

1 Q. All right. And how long did saturation patrols last in a
2 day?

3 A. That varies on the hours and when we're called off. I've
4 worked as long as midnight. We just -- I'd just go out there
5 and work and await word, and usually it would be the commander,
6 which would be Lieutenant Sousa, unless he left and designated
7 somebody else, but a majority of the time it would be
8 Lieutenant Sousa, and he would announce over the radio that,
9 Finish up whatever you're doing, We're shutting down the
10 operation, and to just go ahead and bring everything in.

13:17:18

13:17:30

11 Q. And you said that when you're on patrol in a saturation
12 patrol, you're just looking for violations of federal, state,
13 or local law?

14 A. That's correct, sir.

15 Q. And when you see one, did you pull somebody over?

13:17:40

16 A. Yes, sir.

17 Q. In your opinion, in, say, a seven-hour saturation patrol,
18 if an officer is being diligent and he's looking for violations
19 to pull people over without looking for anybody in particular,
20 just pulling people over when he sees a violation, how many
21 people will he pull over during a saturation patrol?

13:17:57

22 A. I can't speak for any other deputy; I can speak for myself.

23 Q. All right. You were diligent.

24 A. I'm very diligent.

25 Q. Okay.

13:18:11

1 A. I have a high work ethic.

2 Q. All right. So how many people would you pull over during
3 the course of a -- how many people would you pull over during
4 the course of a saturation patrol?

5 A. I'd have to look back at my records, but, I mean, I had a
6 high number. 13:18:20

7 Q. Would you think that other officers, if they were being
8 diligent and applying a zero tolerance policy, would have a
9 similar number?

10 A. Yes, sir, I agree with that. 13:18:31

11 Q. I think you've testified to this; I just want to make sure.
12 Did anybody ever review with you the ethnicity of the persons
13 that you actually arrested, and discuss with you whether that
14 might suggest that, whether intentionally or not, you might be
15 pulling over more of one kind of person than another? 13:18:53

16 A. No, sir.

17 Q. Are you still a member of the HSU?

18 A. Yes, sir, I am.

19 Q. Okay. But you're a detective now.

20 A. We are detectives in that unit, sir. 13:19:06

21 Q. All right. You remember when I was earlier asking you
22 questions during Mr. Casey's testimony, and we talked about you
23 were detaining persons that were passengers in cars?

24 A. Yes, sir.

25 Q. And you were saying that you would detain them for further 13:19:20

1 investigation, and you would go back and run them through, I
2 think, other databases. If they'd given you a name and you'd
3 run them through a database and you couldn't find anything
4 else, you'd run them through other databases. And I think you
5 indicated that that was not at that point a 287(g) arrest, it
6 was just a detention for further investigation, is that
7 correct?

13:19:37

8 A. Yes, sir, that's correct, to find out their true identity.

9 Q. All right. And you indicated that that would take some
10 time, I think?

13:19:51

11 A. Yes, sir.

12 Q. Now, as you work to investigate someone to find out their
13 true identity, I take it that sometimes that investigation
14 would ripen into a 287(g) arrest?

15 A. Yes, sir, it has.

13:20:03

16 Q. And at other times did it not ripen into a 287(g) arrest?

17 A. Yes, sir, it has.

18 Q. All right. So if you could, with me, go back and review
19 with me, you've run this person through all the databases, you
20 can't find anything. Then what do you do?

13:20:19

21 A. Dealing with what type of person?

22 Q. Well, you tell me.

23 A. Okay.

24 Q. Do you differentiate between persons? We're talking about
25 a passenger now.

13:20:32

1 A. A passenger in a vehicle.

2 Q. A passenger in a vehicle. And we'll say that you've
3 stopped the driver for a traffic violation, but you don't have
4 any probable cause -- I mean, you indicated that you might see
5 a passenger with an open -- open container. You don't have
6 that.

13:20:44

7 They're just a passenger in a vehicle. You've asked
8 to provide their names, and you've indicated they didn't have
9 to do that, but they did give you a name. And you went back,
10 you ran the name in at least one of the databases and you got
11 no hits. And I think you indicated to me at that point that
12 person is no longer free to leave, is that correct?

13:20:57

13 A. That's correct, they're placed in investigative detention.

14 Q. All right. And then you do the investigative detention.

15 Do you run them through other databases that you have?

13:21:11

16 A. Yes, I'll -- at that point I'll switch over to our
17 information channel and have the dispatcher utilize whatever
18 other -- other databases that they have available for them in
19 radio, also to include PACE.

20 Q. All right. And what will you do next?

13:21:26

21 A. Wait for a response to come back.

22 Q. And?

23 A. And during that time, during that time, of course, now at
24 this time I'm asking -- giving the person the benefit of the
25 doubt to prove -- to provide some form of identification,

13:21:37

1 school ID, credit card, credit card with a picture on it, or,
2 you know, a name on it. A passport. A passport or a visa.
3 And that's common to ask, you know, as a form of
4 identification.

5 Q. So you'll go back while the computer check is running and 13:21:53
6 you'll ask further questions to the passenger?

7 A. To continue to -- and letting them know why they're being
8 detained because I -- I'm unable to determine what their
9 identity is and who their identity is. It's common just as --
10 I'm sorry, as -- as last week when I pulled over a vehicle, 13:22:09
11 same situation, the driver, for speeding, found out that she
12 was driving on a suspended license.

13 I asked everybody to -- she had four other -- three
14 other passengers in the vehicle with her. I asked them for
15 voluntary IDs. The front seat driver gave me her ID. The back 13:22:23
16 seat driver -- the front seat passenger gave me her ID. The
17 back seat driver's side passenger gave me her ID. The male
18 that was on the rear passenger side said he didn't have an
19 identification card with him.

20 Q. Right. 13:22:39

21 A. So at that point I asked him, Would you mind providing me
22 with your name and your date of birth? Not a problem. He
23 gives he his name, his date of birth. Based on my training and
24 experience, the name that he had given me was not a common
25 spelling for the name, but I accepted it. And I ran the date 13:22:55

1 of birth. Went back to my system.

2 The other two young ladies were clear. Went back to
3 the vehicle, gave them their driver's license, told them they
4 were free to leave. They needed to step out of the vehicle
5 because at this point the vehicle's going to be impounded 13:23:09
6 because the owner of the vehicle is driving on a suspended.

7 Went and spoke to the male. Asked him to step out of
8 the vehicle. Detained him and told him he was being detained
9 because the name that he gave me came back with no record
10 found. Immediately, he came back to me and said: I apologize. 13:23:22
11 I lied to you because I think I have a warrant. So -- which is
12 common for persons to lie to law enforcement officers when they
13 have warrants.

14 Q. Um-hum.

15 A. And so at that point I secured him in the back of my patrol 13:23:34
16 car, obtained his real name, once I ran him once again and
17 verified his real name and his identity through the JWI system
18 with a picture --

19 Q. Um-hum.

20 A. -- it was found out that he did not have a warrant for his 13:23:47
21 arrest. However, at this time he was charged for false info to
22 a law enforcement officer.

23 Q. What was the ethnicity of this person?

24 A. He was white.

25 Q. Okay. Let me ask you, we're talking about 287(g) 13:23:58

1 arrests --

2 A. Okay.

3 Q. -- something that's going to eventuate into a 287(g)
4 arrest. You indicated you'll go back to the passenger, you'll
5 ask them for other forms of identification. What else will you 13:24:10
6 do?

7 A. Continue to figure out his identity, see if he's had
8 driver's license identifications issued out of other states.
9 At that point I ask him where he's from.

10 One of the other tools that we can use is if they have 13:24:23
11 a Social Security number, we can let the dispatcher know that
12 we have a Social Security number and they can -- I believe that
13 there is a database that they can run it under to try to figure
14 out if they have an identification.

15 Q. All right. So you run a Social Security number, you ask 13:24:34
16 them more questions about other identification?

17 A. Right. And at that time we just kind of lead into -- it
18 will be led into trying to figure out who the person is. It
19 will be -- you know: Where were you born? And from that point
20 on, the investigation progresses. 13:24:48

21 Q. Okay. Eventually, at some point you will acquire a belief
22 that this person may be in the country illegally?

23 A. Yes, sir.

24 Q. Okay. I'm talking about current day, when you are not any
25 longer 287(g) certified. 13:25:09

1 A. Okay.

2 Q. Well, let's go back while you were 287(g) certified.

3 You were 287(g) certified, so you could make a 287(g)
4 arrest, correct?

5 A. That's correct.

13:25:21

6 Q. And if it was during a saturation patrol would you then
7 take those persons down to the command post yourself?

8 A. No, I would call for a transport unit to come pick them up.

9 Q. Okay. And a transport unit would come pick them up and
10 take them in the transport?

13:25:31

11 A. Yes, sir, that's correct.

12 Q. All right. Now, is there -- do you operate any differently
13 today?

14 A. Yes.

15 Q. How do you operate differently?

13:25:36

16 A. If I'm unable to figure out who their identity is --

17 Q. Um-hum.

18 A. -- at this point I just let them go.

19 Q. You do.

20 A. Yes.

13:25:43

21 Q. And then let me ask you, why do you go to the trouble of
22 investigating who they are?

23 A. To a certain point there is a time where a person you're
24 going to find out and determine that they are wanted for a
25 warrant, you know, have a warrant issued for their arrest. I

13:26:03

1 take my due diligence and making sure that the person I'm not
2 letting go for some reason is not wanted for any reason.

3 At that point if I have no other reason to detain him,
4 then I just let that person go.

5 Q. What's the longest you've ever detained a person to make 13:26:22
6 that kind of identification attempt?

7 A. I cannot give you a time frame, sir.

8 Q. Be longer than a half hour?

9 A. Oh, no. No.

10 Q. Longer than 15 minutes? 13:26:31

11 A. Approximately, but it wouldn't be longer than -- I don't
12 believe it's ever taken anything longer than half an hour.

13 Q. Okay. Do you recall making a 287(g) arrest to anyone that
14 was not someone who appeared to you to be of Hispanic ancestry?

15 A. Yes. 13:26:57

16 Q. Okay. Do you have any -- can you give me any specifics
17 relating to that?

18 A. The load vehicle that I stopped with the Chinese nationals.

19 Q. Okay. And you made 287(g) arrests in that case?

20 A. Yes, sir. 13:27:11

21 Q. Did you ever make an arrest during a saturation patrol that
22 was a 287(g) arrest that wasn't a Hispanic person, or a person
23 that you believed to be a Hispanic person?

24 A. Not that I can recall without looking at my report, sir.

25 THE COURT: All right. Thank you very much, 13:27:35

1 Officer Armendariz.

2 THE WITNESS: Yes, sir.

3 THE COURT: Do you have any follow-up questions,
4 Mr. Pochoda?

5 MR. POCHODA: I do not. 13:27:42

6 THE COURT: Any redirect?

7 MR. CASEY: Briefly, yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. CASEY:

10 Q. Detective, the Court asked you a question about the 13:27:48
11 number of people that you have pulled over during a sat --
12 saturation patrol day, and you were talking about your
13 diligence. Do you remember that?

14 A. Yes, sir.

15 Q. Did I understand it correctly, what you were speaking is 13:28:05
16 about yourself and what your practice is?

17 A. I can only speak about myself and my practice, yes, sir.

18 Q. Okay. Now, you were also asked in that context about
19 diligence and applying a zero tolerance, and what your
20 expectations were for your comrades or colleagues. 13:28:22

21 Do you remember that?

22 A. Yes, sir.

23 Q. Okay. Are there factors that can affect how many people
24 are stopped, traffic stop, by any deputy during a saturation
25 patrol? 13:28:38

1 A. Would you mind restating that question?

2 Q. Sure.

3 A. I don't understand.

4 Q. Yes, it's a poor question. Let me break it up.

5 You and I are both doing a saturation patrol. You're
6 located in section A. You're a hard worker and you got a zero
7 tolerance policy. With me?

13:28:45

8 A. I understand.

9 Q. I'm in section B over here. I'm a hard worker and I'm
10 diligent.

13:29:00

11 Are there factors, separate and apart from our
12 respective work ethics and our respective following a zero
13 tolerance policy, that can affect whether you have more or less
14 stops than me?

15 A. There could be. The area that you're working in. If I'm,
16 hypothetically speaking, working in the section A, which is a
17 majority of a city area, that would increase my traffic
18 population and my population.

13:29:10

19 If you're working in section B, hypothetically, and it
20 covers MC 85 into SR 85, you're primarily going to get very few
21 sporadic --

13:29:30

22 THE COURT: Give me an interpretation. What are you
23 talking about? What area are you talking about?

24 THE WITNESS: Oh, I'm sorry. The west end leading
25 into Gila Bend.

13:29:43

1 THE COURT: Okay.

2 THE WITNESS: SR 85 going into Gila Bend.

3 THE COURT: Thank you very much.

4 THE WITNESS: I apologize.

5 BY MR. CASEY:

13:29:50

6 Q. When you say SR, is that State Route 85?

7 A. State Route 85. And if you're working that area leading
8 into Gila Bend, your traffic stops might be very minimal
9 because traffic -- there's not a lot of traffic and not a lot
10 of population there.

13:30:02

11 Q. Okay. Can the time of day that you're handling traffic
12 patrols, can that also play a role?

13 A. Yes. Time of day, most people are up and driving around
14 during the day, and at night most people -- there's not a lot
15 of traffic during the nighttime.

13:30:18

16 Q. All right. So if I'm at -- near my office, I'm a little
17 bit by 13th Street and Osborn, that's -- just say that's my
18 area, and you're at Central and Indian School, would the
19 traffic volume disparities, could that affect our results,
20 regardless of our work ethics?

13:30:40

21 A. Regardless of your work ethics?

22 Q. Yes, sir.

23 A. Yes, it could.

24 Q. All right. Now, based on the Court's question, and human
25 nature being what it is, is it your experience in every

13:30:51

1 occupation you've held, whether it was in the Navy when you
2 were a corpsman, whether it was at the City of Austin Police
3 Department, or now at MCSO, has it been your experience that
4 some people work harder than others?

5 A. Yes, sir. 13:31:07

6 Q. Some people are higher performers than others?

7 A. I was trained to work, so that's what I do, so I can only
8 speak for myself --

9 Q. Okay.

10 A. -- and I do do my job. 13:31:17

11 Q. All right. So let's just say hypothetically Charley
12 Armendariz happens to make, on a saturation patrol, 27
13 contacts, and Tim Casey's over here and I've got four.

14 Just based on that data alone, are you able to
15 determine that -- anything about what I'm doing. 13:31:38

16 A. Can tell you're probably being lazy.

17 Q. All right. Other than being lazy, is there anything that
18 you can determine else about that?

19 A. The demographics may be different of where you're at and
20 where you're working. 13:31:57

21 MR. CASEY: Okay. All right. Those are all the
22 questions I have for you. Thank you very much, sir.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you, Detective Armendariz.

25 THE WITNESS: Thank you, Your Honor. I appreciate it. 13:32:07

1 Have a good day.

2 THE COURT: You, too.

3 MR. CASEY: Your Honor, next witness the defendants
4 will call will be MCSO Detective Francisco Gamboa.

5 THE CLERK: Right up here, sir. 13:32:59

6 Hi. Can you please state and spell your full name for
7 me.

8 MR. GAMBOA: It's Francisco Gamboa.

9 F-r-a-n-c-i-s-c-o; last name Gamboa, G-a-m-b-o-a.

10 THE CLERK: Thank you. Please raise your right hand. 13:33:14

11 (Francisco Gamboa was duly sworn as a witness.)

12 THE CLERK: Thank you. Please take our witness stand.

13 THE COURT: Please, Mr. Liddy.

14 FRANCISCO GAMBOA,

15 called as a witness herein, having been duly sworn, was 13:33:51

16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LIDDY:

19 Q. Good afternoon, Officer Gamboa.

20 A. Good afternoon, sir. 13:33:57

21 Q. Just for the record would you put your full name on the
22 record, please.

23 A. Deputy Francisco Gamboa.

24 Q. And where are you currently employed?

25 A. With the Maricopa County Sheriff's Office. 13:34:06

1 Q. And how long have you been there?

2 A. Approximately four years.

3 Q. And where are you currently stationed?

4 A. Communications division.

5 Q. And what are your responsibilities with the communications 13:34:18
6 division?

7 A. That's where we receive our emergency calls in the 911 --
8 in the 911 dispatch center.

9 Q. How long have you been positioned there?

10 A. Approximately six months, sir. 13:34:35

11 Q. And prior to that, where were you stationed?

12 A. Over at District 2, which is on the west valley. Our
13 substation is on Dysart and Van Buren.

14 Q. And what were your responsibilities while you were at
15 District 2? 13:34:50

16 A. I was assigned to the patrol division, answering calls for
17 service.

18 Q. And what does that mean when you say answering calls for
19 service?

20 A. Going to residents' homes, taking any type of calls that 13:34:58
21 are for service for the public.

22 Q. And did you ever patrol?

23 A. Yes, sir.

24 Q. And what were your duties and responsibilities when you
25 were on patrol? 13:35:12

1 A. Pull over anybody that has a civil infraction, any type of
2 civil infractions, moving violations, equipment violations,
3 et cetera, et cetera.

4 Q. And if there was a call for service while you were on
5 patrol, would you react to the call for service?

13:35:28

6 A. Yes, sir.

7 Q. And where were you -- well, let me strike that question.

8 Do you recall a traffic stop you made involving a
9 driver Lorena Saucedo?

10 A. Yes, sir.

13:35:57

11 Q. Approximately when was that traffic stop?

12 A. September of 2009.

13 Q. Do you recall where that traffic stop was?

14 A. Yes, sir.

15 Q. Where was it?

13:36:06

16 A. In the area of 55th Avenue and Baseline.

17 Q. Was there anything unusual about that traffic stop, in your
18 experience?

19 A. Before or after making contact, sir?

20 Q. Say through the entirety of the stop.

13:36:22

21 A. Yes, sir.

22 Q. Does the fact it was unusual make it more memorable to you?

23 A. Yes, sir.

24 Q. What was unusual about that traffic stop?

25 A. Well, in the beginning, as soon as I decided to pull over

13:36:40

1 the vehicle for having no rear license plate light, she failed
2 to pull over to my lights and sirens. Then she pulled into a
3 residential area of a home and a driveway in that area of the
4 housing development of 55th Avenue and Ellis, which is known
5 for high drug traffic area.

13:37:02

6 As she pulled into the driveway, she -- I approached
7 the vehicle. At that time she refused to provide
8 identification to me. We went back and forth for several
9 minutes. After that I ended up informing her that she can
10 actually go to jail for refusing to provide ID, in addition to
11 failing to stop for my lights and sirens. After that, just her
12 behavior was very bizarre; very erratic; very noncompliant.

13:37:20

13 Q. What do you recall about her behavior that was erratic?

14 A. Not listening to anything that I was telling her;
15 refusing -- she was yelling. At one point she was honking the
16 horn to her vehicle. I don't know if she was signaling
17 somebody to come out. I didn't know where we were at. We were
18 just in some residential driveway. I didn't know whose it was
19 until further investigation we found out it was her residence.

13:37:40

20 But at that time there's a lot of officer safety issues that
21 are going through my mind because of the area that I'm in, and
22 the person that I'm dealing with at that time.

13:37:59

23 Q. Do you recall whether you issued Ms. Saucedo, now
24 Escamilla, a citation?

25 A. Yes, sir.

13:38:18

1 Q. Did you write up an incident report based on this incident?

2 A. Yes, sir, I did. And the reason being was because of her
3 erratic behavior. It's not common practice for a deputy
4 sheriff to write an incident report on a civil infraction,
5 which I did.

13:38:34

6 Q. Did you have the opportunity to review that incident report
7 prior to today?

8 A. Yes, sir.

9 Q. And when did you review that report?

10 A. Yesterday, sir.

13:38:42

11 Q. And did that -- did your review of that report refresh your
12 recollection of the events of that day?

13 A. Yes, sir.

14 MS. RAMIREZ: Objection, Your Honor. We do not have a
15 copy of that, and we've not been provided with anything prior
16 to today.

13:38:58

17 THE COURT: All right. So what's your objection?

18 MS. RAMIREZ: Well, I'm objecting because this
19 witness -- we objected in the pretrial order that the witness
20 was nondis -- not disclosed or inadequately disclosed, that he
21 was only going to testify to rebut the testimony of
22 Ms. Escamilla.

13:39:13

23 THE COURT: So are you objecting to his entire
24 testimony?

25 MS. RAMIREZ: No, but we have not had an opportunity

13:39:26

1 to depose him or to review any kind of documents --

2 THE COURT: So what is your objection? I don't mean
3 to be unkind. What is your objection?

4 MS. RAMIREZ: I'm objecting to the admissibility of
5 the document. 13:39:42

6 THE COURT: Nobody has moved to admit the document, so
7 I will overrule your objection at this point.

8 BY MR. LIDDY:

9 Q. Where were you patrolling, as specific as you can be, when
10 you first saw the vehicle driven by Ms. Saucedo? 13:40:04

11 A. After reviewing my police report, I was already in the
12 neighborhood of 55th Avenue and Ellis when I was driving
13 southbound. My beat partner and I, that actually right after
14 shift we -- or right after briefing we had both discussed about
15 going into that area, because he works there off duty in the 13:40:26
16 HOA, which is a housing association, and he's -- he had the
17 intel that there was a lot of high-volume drugs going on in
18 there in that neighborhood.

19 Q. A lot, he had intel of a lot of --

20 A. Drug activity. 13:40:42

21 Q. In that neighborhood?

22 A. Yes, sir.

23 Q. And did he share that information with you?

24 A. Yes, sir.

25 Q. Is that why you were patrolling that area? 13:40:47

1 A. Yes, sir.

2 Q. Okay. Do you recall what roads you were driving on when
3 you first saw the vehicle by Ms. Escamilla?

4 A. Yes, sir. It was Ellis.

5 Q. You were driving on Ellis?

13:41:00

6 A. Yes, sir, I was driving southbound on Ellis.

7 Q. And was her vehicle also on Ellis?

8 A. Yes, sir.

9 Q. Which direction was she going?

10 A. Northbound.

13:41:08

11 Q. Did you pass each other?

12 A. Yes, sir.

13 Q. And at what point did you determine to have a traffic stop?

14 A. After I viewed through my driver's side mirror that she had
15 no rear license plate light.

13:41:24

16 Q. So what did you do then?

17 A. I made a U-turn and positioned my vehicle directly behind
18 hers.

19 Q. Is it your normal practice to pull over cars with no rear
20 license plate light when you're patrolling a high drug
21 trafficking area?

13:41:35

22 A. Yes, sir.

23 Q. Why is that?

24 A. Because it's probable cause for us to speak to the driver.

25 Q. And why would you want to speak to a driver?

13:41:44

1 A. To see what they're doing, see what they're doing in that
2 area; see if in fact they even live there. There's numerous
3 contributing factors that we look for at night and then as
4 opposed to during day as well while you're on patrol looking
5 for probable cause to pull over a vehicle.

13:42:01

6 Q. And at this time this was at night?

7 A. Yes, sir. I believe it was approximately 2200 hours,
8 10:00 p.m.

9 Q. So you executed a U-turn and came in behind her?

10 A. Yes, sir.

13:42:19

11 Q. Then what did you do?

12 A. I radioed in dispatch and ran the license plate, which is
13 normal practice, making sure that that vehicle isn't stolen.

14 Q. This is prior to turning on any lights or sirens?

15 A. Yes, sir.

13:42:30

16 Q. What do you recall about what Ms. Escamilla did at that
17 time?

18 A. As soon as I -- as soon as dispatch advised me that the
19 vehicle was 29 negative, meaning that the vehicle was not
20 stolen, I activated my emergency lights. At that time she
21 continued to drive northbound into the residential area.

13:42:45

22 Q. Did she execute any turns?

23 A. Yes, sir, I believe it was two turns. She turned -- had a
24 right turn and then a left turn, and then she turned into a
25 private driveway.

13:43:02

1 Q. And did she make these turns before or after you turned
2 your lights on?

3 A. After.

4 Q. In your experience, is it unusual for a vehicle that's in
5 front of you when you have your lights on to make two turns? 13:43:12

6 A. Yes, sir.

7 Q. What did that -- how did that information influence you at
8 that time?

9 A. I'm even more on my toes now. Officer safety issues,
10 knowing the -- the fact that it's not normal for a person to 13:43:28
11 keep driving and make two, three turns, and then turn into a
12 private driveway.

13 Q. Approximately how long did she continue to drive until she
14 turned into the driveway?

15 A. I would say approximately a minute, maybe a minute and a 13:43:43
16 half.

17 Q. Can you tell us what she did after she pulled into the
18 driveway?

19 A. She sat in the driver's side of the vehicle as I approached
20 the vehicle. That's when I made contact. I asked her if she 13:44:02
21 was the only person in the vehicle, which she stated yes, and
22 that's when I identified her as a young female.

23 Q. So prior to that point you did not know whether the driver
24 of the vehicle was male or female?

25 A. Correct. 13:44:15

1 Q. Did you know the race or ethnicity of the driver of the
2 vehicle?

3 A. No, sir.

4 Q. When you were able to visually meet the driver of the
5 vehicle were you able to determine --

13:44:24

6 A. Yes, sir.

7 Q. -- her race or ethnicity?

8 A. Yes, sir.

9 Q. What did you determine her race or ethnicity to be?

10 A. Just by looking at her I would have guessed that she was
11 Hispanic.

13:44:32

12 Q. And how did that information influence your future conduct?

13 A. Didn't influence at all, sir.

14 Q. Officer, would you consider yourself Hispanic?

15 A. Yes, sir.

13:44:48

16 Q. And how would you determine that you're Hispanic? You
17 personally.

18 A. Through the culture and traditions and values that I have
19 with my family.

20 Q. What are the cultures and traditions and values of your
21 family?

13:44:57

22 A. Getting together, celebrating certain holidays; the foods
23 that we eat; the closeness and togetherness that we have as a
24 close -- close Hispanic family.

25 Q. Do you speak Spanish?

13:45:15

1 A. Yes, sir.

2 Q. Have you ever been called upon to interpret for other law
3 enforcement officers in Maricopa County?

4 A. Yes, sir.

5 Q. Can you tell me about that?

13:45:30

6 A. Sure. Numerous times people who work in the south area,
7 South Phoenix, will call me, or if they have just a person who
8 is not quite understanding what they're either, A, getting the
9 trip ticket for, or just doesn't understand the deputy who's
10 involved with them or interacting with them, they'll call me
11 and I'll translate over the phone. As well now as in

13:45:53

12 communications, dispatchers will receive calls by Spanish --
13 from many Spanish-speakers. I'm not a call-taker or a
14 dispatcher, so I'll be translating for that person or the
15 complainant or the victim for our dispatch so they can enter a
16 call for service.

13:46:08

17 Q. So it's your experience in Maricopa County that many of the
18 victims of crime are Hispanic?

19 A. Could be, sir, yes, sir.

20 Q. Do you consider it part of your duties and responsibilities
21 to protect Hispanics that are potential victims of crime?

13:46:16

22 A. Yes, sir.

23 Q. Have you ever been called to interpret a call for help from
24 an Hispanic who was in the country illegally?

25 A. Yes, sir, quite often, sir.

13:46:35

1 Q. Tell me about that. What was your experience with that?

2 A. While I was on patrol we got called for -- our code is a
3 670, which is a welfare check of two Hispanic males who had
4 crossed illegally. We ended up finding them, who were very
5 dehydrated, pretty much crying for help to save them, because 13:46:55
6 they hadn't had water in certain amount days, I don't remember
7 exactly what they told me, but they hadn't had food or water
8 for a long period of time.

9 We ended up -- and when you work out there, and the
10 area that we're working is the Gila Bend area, which is 13:47:10
11 predominantly desert, which is where we encounter a bunch of
12 people trying to cross illegally. It's for us, for me
13 personally, I carry an ice chest with some waters just in case.

14 Q. Just in case what?

15 A. For myself or for them, in case we get stuck on a call 13:47:25
16 somewhere. Or sometimes we're searching for people who are
17 crossing illegally, and we can spend hours out there. So we
18 ourselves, as well as the uniform we have and all the gear, you
19 can become dehydrated yourself.

20 So when I encountered these gentlemen they were just 13:47:40
21 asking for water. We gave them water, and they just -- they
22 were asking for Border Patrol, in fact, to -- they just wanted
23 to get deported back, because they said they were left there,
24 stranded and abandoned by their coyote.

25 Q. So it's your experience that often Hispanics who are in 13:47:53

1 this country illegally, their lives are in danger --

2 MS. RAMIREZ: Objection.

3 BY MR. LIDDY:

4 Q. -- is that correct?

5 A. Absolutely. 13:48:06

6 MS. RAMIREZ: Objection, Your Honor. This is outside
7 the scope of this witness's testimony.

8 THE COURT: Are we going to be a lot longer on this?

9 MR. LIDDY: No, Your Honor.

10 THE COURT: Okay. I'm going to overrule the
11 objection. 13:48:15

12 BY MR. LIDDY:

13 Q. Let me see if I can make this more brief.

14 Do you consider it part of your duties and obligations
15 to save the lives of Hispanics that are in this country
16 illegally? 13:48:25

17 A. Yes, sir.

18 Q. Have you actually done that?

19 A. Yes, sir.

20 Q. Do you harbor any anti-Hispanic bias? 13:48:31

21 A. No, sir.

22 Q. You take pride in your own family's Hispanic cultural
23 background?

24 A. Absolutely.

25 Q. Did there come a point in time where you asked 13:48:44

1 Ms. Escamilla to exit the vehicle?

2 A. Yes, sir.

3 Q. And why did you do that?

4 A. Try to calm her down a little bit. And the other thing,
5 she kept on trying to get on her cellphone.

13:48:58

6 Q. You earlier testified that she was honking the horn. Do
7 you recall that testimony?

8 A. Yes, sir.

9 Q. Were you concerned about her honking the horn?

10 A. Yes, sir.

13:49:13

11 Q. What was your concern?

12 A. From an officer's perspective or a deputy's perspective, it
13 was I don't know who she's trying to call; I don't know who
14 she's trying to warn. I don't know what -- I didn't know that
15 was her residence at that time.

13:49:24

16 Q. Did anyone exit the house?

17 A. Yes, sir, a -- a Hispanic male who ended up identifying
18 herself -- identifying himself as her husband.

19 Q. Did you speak with him?

20 A. Yes, sir.

13:49:35

21 Q. Was he cooperative?

22 A. Yes, sir.

23 Q. Do you feel that his conduct was of assistance to you in
24 the stop?

25 A. Yes, sir.

13:49:43

1 Q. Did there come a time where you told Ms. Escamilla it would
2 be okay for her to use her telephone?

3 A. Yes, sir.

4 Q. And why was that?

5 A. She -- actually, we -- she asked her husband if she can
6 call her mom and her sister. And at that time we ended up
7 explaining to the husband exactly kind of what happened, I
8 guess the scenario how it broke down, with her failing to
9 provide ID or refusing to provide ID at that time, and prior to
10 that failing to yield to my lights and sirens. We explained
11 the situation and we asked him to go ahead and call the mom to
12 bring her down, to defuse the situation and try to talk to her
13 daughter.

13:49:56

13:50:14

14 Q. All right. Let me back up just a moment. You asked her
15 for her ID?

13:50:27

16 A. Initially, yes, sir. When I approached the vehicle and she
17 was the only one in there, I asked her routinely, as I do all
18 the time, for driver's license, insurance, and registration.

19 Q. And how did she react to your request?

20 A. She refused.

13:50:39

21 Q. Did she say why she refused?

22 A. No, sir, she just -- we kept going on back and forth that
23 she was insistent that she didn't know why she got pulled over,
24 which is even after she exited the vehicle and finally produced
25 her driver's license, she was still asking why she got pulled

13:50:52

1 over, when prior to that I had told her she was being pulled
2 over because she had no rear license plate light illuminating
3 the rear plate.

4 Q. Back to the telephone call. Said she called her mother?

5 A. Yes, sir.

13:51:08

6 Q. Did her mother later arrive on the scene?

7 A. Yes, sir.

8 Q. Did you allow Ms. Escamilla to speak with her mother?

9 A. Yes, sir.

10 Q. How was her mother's conduct on the scene?

13:51:16

11 A. Cordial.

12 Q. Would you say that her mother's presence and conduct was
13 beneficial to the law enforcement stop?

14 A. In a way, yes, sir.

15 Q. When Ms. Escamilla exited the vehicle, did you search her?

13:51:31

16 A. No, sir.

17 Q. Did you frisk her?

18 A. No, sir.

19 Q. Did you ask her to place her hands on the vehicle?

20 A. No, sir.

13:51:49

21 Q. Was there anything about her physical condition that you
22 recall?

23 A. Yes, sir. As she exited the vehicle I noticed that she was
24 pregnant.

25 Q. So when you say you noticed she was pregnant, you mean

13:52:01

1 visually?

2 A. Visually, sir.

3 Q. Did you ever attack her?

4 A. No, sir.

5 Q. Did you ever assault her?

13:52:16

6 A. No, sir.

7 Q. Did you ever cause her stomach to collide with her
8 automobile?

9 A. No, sir.

10 Q. Were there law enforcement officers present at this time?

13:52:24

11 A. Yes, sir.

12 Q. Who was that?

13 A. My beat partner, Deputy Kevin Herring (phonetic).

14 Q. Was he patrolling in this same vehicle as you?

15 A. No, sir. He was patrolling in another vehicle in the same
16 area that I was in.

13:53:02

17 Q. At what point in time during the stop did he arrive on
18 scene?

19 A. Approximately about 30 seconds after we pulled into the
20 private driveway.

13:53:13

21 Q. Did he ever make comments to you such that your conduct was
22 inappropriate?

23 A. No, sir.

24 Q. Did Ms. Escamilla's mother ever make a comment to you that
25 your conduct was inappropriate or unprofessional?

13:53:28

1 A. No, sir. As a matter of fact, her mother thanked us.

2 Q. How about her husband, did he make any comments to you such
3 that your conduct was unprofessional or otherwise
4 inappropriate?

5 A. No, sir. 13:53:44

6 Q. Do you recall whether you ever called in for a K-9 unit?

7 A. Yes, sir.

8 Q. Did you?

9 A. Yes, sir.

10 Q. And describe for us what a K-9 unit is. 13:53:58

11 A. A K-9 unit is an officer with a -- with a patrol dog.

12 Q. And what are patrol dogs used for?

13 A. They're used to sniff out drugs, bombs, pretty much
14 anything you need.

15 Q. Do you recall why you made a call for a K-9 unit? 13:54:15

16 A. No, sir, I don't recall exactly why.

17 Q. Have you ever had other instances in your years at Maricopa
18 County Sheriff's Office that you've called for a K-9 unit?

19 A. Yes, sir. At that particular time, I don't recall exactly
20 why, but there had -- had to have been some exhibiting factors
21 and the reason being that we called out just for a K-9 unit.

22 I'm not going to waste my time or the resources of Phoenix

23 PD -- because it was actually Phoenix who came out -- just for
24 the heck of it.

25 Q. Well, setting aside this traffic stop and your training and 13:54:49

1 in your practice and in your experience, what are some of the
2 instances, what are some of the events that would have to occur
3 for you to want to call out a K-9 unit from Phoenix PD?

4 A. We can have the smell of marijuana, any type of drug
5 paraphernalia in the vehicle, or just being a high traffic drug 13:55:07
6 area where you have a person who, if you see anything inside
7 the vehicle, anything that would give us the assumption that
8 there could be something inside.

9 Q. But as you sit here today, you do not recall what prompted
10 you to call the K-9 unit? 13:55:26

11 A. Correct.

12 Q. Did you ever enter Ms. Escamilla's vehicle?

13 A. No, sir.

14 Q. Did the K-9 dog ever enter her vehicle?

15 A. I cannot recall. I don't think so. 13:55:45

16 Q. Did you ever at any time place your hands on Ms. Escamilla?

17 A. No, sir.

18 Q. Did you at any time call Phoenix Fire Department?

19 A. Yes, sir.

20 Q. Why did you call Phoenix Fire Department? 13:56:05

21 A. If I recall, I believe Ms. Escamilla -- I believe her name
22 at that time was Saucedo.

23 Q. Yes, that's correct.

24 A. Her breathing was elevating. She was -- I don't know if it
25 was anxiety or she was hyperventilating, but due to the fact 13:56:20

1 she was pregnant we had asked if she wanted to see fire, so
2 Phoenix fire arrived on scene shortly after and advised us that
3 her blood pressure was elevating. At that time she refused to
4 go to the hospital.

5 Q. You specifically called, that it was you who called the
6 fire department?

13:56:36

7 A. Yes, sir.

8 Q. And the fire department did arrive on the scene?

9 A. Yes, sir.

10 Q. Were you ever 287(g) trained?

13:56:44

11 A. No, sir.

12 Q. Have you ever encountered a driver during a traffic stop
13 that did not have an ID?

14 A. Yes, sir.

15 Q. Did you ever encounter a driver who did not have a driver's
16 license?

13:57:07

17 A. Yes, sir.

18 Q. In your experience, of the drivers you encountered that had
19 no driver's license, are they more often of one ethnicity than
20 another, in your experience?

13:57:23

21 A. Yes, sir.

22 Q. And what -- what's been your experience in regards to the
23 people who you've stopped that did not have a driver's license,
24 in terms of ethnicity?

25 A. I would say out of a hundred percent, I'd say at least

13:57:37

1 anywhere from 30 to 40 percent don't have any type of valid
2 driver's license, they're Hispanic.

3 Q. 30 to 40 percent of Hispanic --

4 A. Of Hispanics.

5 Q. -- drivers?

13:57:48

6 A. Of my stops.

7 Q. Of your stops, do not have driver's license or IDs?

8 A. Correct.

9 Q. And is that rate --

10 THE COURT: I want to understand what you're saying.

13:57:59

11 If you stop somebody and they don't have a valid
12 driver's license and they are Hispanic, between 30 to
13 40 percent of them -- I'm sorry. If you stop somebody -- I
14 still don't understand what you're saying.

15 Are you saying 30 to 40 percent of all people that you
16 stop for driver's license, or for failure to have a driver's
17 license, are Hispanic?

13:58:20

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. So you're not saying -- okay. So
20 you're saying that 60 to 70 percent are non-Hispanic?

13:58:33

21 THE WITNESS: Or just people who in general have a
22 valid driver's license.

23 MR. LIDDY: Do you want to continue, Your Honor?

24 THE COURT: That doesn't translate. You can try

25 and --

13:58:49

1 MR. LIDDY: I agree. I agree. Let's back up.

2 BY MR. LIDDY:

3 Q. You've testified that it's been your experience that
4 sometimes when you make a traffic stop the driver has no valid
5 driver's license --

13:58:57

6 A. Yes, sir.

7 Q. -- is that correct?

8 So I'm talking about all your experiences with someone
9 who you pulled over who has not had a valid driver's license.

10 What percentage of those drivers are Hispanic?

13:59:08

11 MS. RAMIREZ: Objection, Your Honor. This goes beyond
12 the scope of the witness's testimony.

13 THE COURT: What is the scope of the witness's
14 testimony?

15 MS. RAMIREZ: What Ms. Escamilla testified to in her
16 stop.

13:59:19

17 THE COURT: Is there any reason why they can't present
18 a witness for other reasons?

19 MS. RAMIREZ: Because this is -- in the pretrial order
20 we objected that we have not had an opportunity to depose this
21 witness, and --

13:59:27

22 THE COURT: All right. So you've made that objection.
23 I'm overruling it. I'm going to allow the answer.

24 MR. LIDDY: Excuse me. Can you reread the question?

25 (The record was read by the court reporter.)

13:59:40

1 THE WITNESS: Working in the South Phoenix area,
2 predominantly Hispanic, I'd say about 30 or 40 percent.

3 BY MR. LIDDY:

4 Q. So 30 or 40 percent of the drivers that you've encountered
5 without driver's licenses are Hispanic? 14:00:11

6 A. Yes, sir.

7 Q. And the other 60 to 70 percent are non-Hispanic?

8 A. Correct.

9 THE COURT: All right. And you indicated that you
10 work in a predominantly Hispanic area? 14:00:23

11 THE WITNESS: Yes, sir.

12 THE COURT: Did you ever do any test to see, of that
13 30 to 40 percent, how many are not legal residents in the
14 United States? Do you have any idea?

15 THE WITNESS: I could just give you approximate 14:00:35
16 number, sir, just through the experience that I've had.

17 THE COURT: Which is?

18 THE WITNESS: I would say at least half.

19 THE COURT: Okay. So in your experience working in a
20 predominantly Hispanic area, of all the people that you stop 14:00:44
21 for not having a valid driver's license, 30 to 40 percent are
22 Hispanic, 60 to 70 percent are non-Hispanic, and of the 30 to
23 40 percent who are Hispanic, you believe that half may have --
24 may have been in the country without authorization?

25 THE WITNESS: Yes, sir. 14:01:02

1 THE COURT: Thank you.

2 MR. LIDDY: I have no further questions.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 BY MS. RAMIREZ:

14:01:16

6 Q. Good afternoon, Officer Gamboa.

7 A. Good afternoon, ma'am.

8 Q. Did you review any documents other than the incident report
9 in preparation of your testimony today?

10 A. Yes, ma'am.

14:01:30

11 Q. I'm sorry, was that a yes?

12 A. Yes.

13 Q. What other documents did you review?

14 A. A CAD report.

15 Q. And any other documents besides the incident report and the
16 CAD report?

14:01:38

17 A. No, ma'am.

18 Q. Officer Gamboa, you have been employed with the Maricopa
19 County Sheriff's Office for the last four years, is that
20 correct?

14:01:52

21 A. Yes, ma'am.

22 Q. And on September 2, 2009, you stopped Ms. Lorena Escamilla,
23 at the time Saucedo?

24 A. Yes, ma'am.

25 Q. You stopped her at about 10:00 p.m., correct?

14:02:04

1 A. Yes, ma'am.

2 Q. And she was stopped in the driveway of her home, is that
3 correct?

4 A. When she eventually pulled over?

5 Q. Yes. She pulled over into the driveway of her home? 14:02:11

6 A. After failing to yield to my lights and sirens, yes.

7 Q. So your answer is yes, she pulled into the driveway of her
8 home, is that correct?

9 A. Correct, after she failed to --

10 Q. I'm just asking you to please answer the question. 14:02:27

11 A. Okay.

12 Q. You realized that she was pregnant, is that correct?

13 A. After she was exiting from the vehicle, correct.

14 Q. I would like to take a look at the MCSO CAD report, CAD
15 incident history for that evening. It's been entered into
16 evidence as Exhibit 978. 14:02:52

17 MS. RAMIREZ: Your Honor, may I approach the witness?

18 THE COURT: Yes. You're not going to put it up on the
19 screen?

20 MS. RAMIREZ: I have a hard copy available. 14:03:10

21 THE COURT: That's fine. You can do it however you
22 wish.

23 MS. RAMIREZ: (Handing document to witness).

24 MR. LIDDY: Your Honor, may I inquire as to the
25 exhibit number? 14:03:22

1 THE COURT: 978.

2 MR. LIDDY: Thank you.

3 THE COURT: Is it --

4 BY MS. RAMIREZ:

5 Q. Can you take --

14:03:29

6 THE COURT: Has this been admitted?

7 MS. RAMIREZ: Yes, it has.

8 THE COURT: Okay.

9 BY MS. RAMIREZ:

10 Q. Can you take a look at the first line under the comments,
11 has the time as 10:04. That's the time that you stopped --

14:03:34

12 THE COURT: There is no Exhibit 978.

13 MS. RAMIREZ: Oh, it was marked as Plaintiffs'
14 Exhibit 63.

15 THE COURT: That would make it Exhibit 63.

14:03:49

16 MS. RAMIREZ: I apologize.

17 THE COURT: Okay.

18 Has Exhibit 63 been admitted?

19 THE CLERK: Yes, Judge.

20 MR. LIDDY: Yes, Your Honor.

14:04:00

21 THE COURT: Why don't you take this document back.

22 Kathleen, why don't you give the witness Exhibit 63.
23 That way, we're not worried about what the exhibit is.

24 BY MS. RAMIREZ:

25 Q. I'd like to turn your attention to the first line in the

14:04:28

1 comments section. 10:04, is that the time that you stopped
2 Ms. Escamilla?

3 A. 10:04 would be when I ran the plate.

4 Is that where you're looking at, ma'am?

5 Q. Yes, the first line.

14:04:50

6 A. That's when I advised dispatch that I was about to pull her
7 over.

8 Q. And if you look three lines down from that at 10:08, that's
9 when you ran her name and her date of birth, is that correct?

10 A. Yes, ma'am.

14:05:04

11 Q. And that was about four minutes after the stop?

12 A. Yes, ma'am?

13 Q. And then the next entry after that at 10:13, that's when
14 you called the K-9 unit, is that correct?

15 A. Yes, ma'am.

14:05:15

16 Q. If you look at the last line on that page, at 10:30 you
17 called the fire department, is that correct?

18 A. Correct.

19 Q. And that was approximately 26 minutes after the stop.

20 A. Correct.

14:05:28

21 Q. You don't call the fire department in every traffic stop
22 you make, is that correct?

23 A. Correct.

24 Q. There was a posse member present at your -- during the
25 stop, is that correct?

14:05:40

1 A. I believe according to CAD, yes, ma'am.

2 Q. And you only called the fire department because the posse
3 member asked you to, is that correct?

4 A. No, ma'am, I don't recall that.

5 Q. The fire department arrived and they checked
6 Ms. Escamilla's vitals, is that correct?

14:05:53

7 A. Yes, ma'am.

8 Q. They checked her blood pressure, is that correct?

9 A. Yes, ma'am.

10 Q. They checked to make sure that she wasn't bleeding, is that
11 correct?

14:06:03

12 A. I don't recall that, ma'am.

13 Q. They offered to take her to the hospital, is that correct?

14 A. Yes, ma'am.

15 Q. The fire department was there for quite a while, is that
16 correct?

14:06:16

17 A. I don't recall exactly how long they were there.

18 Q. I'd like to turn your attention to page 2 of the CAD
19 incident report. The very last entry says 11:35.

20 Is that the end of the detention?

14:06:42

21 A. Correct.

22 Q. And that detention lasted approximately one hour and 31
23 minutes, is that correct?

24 A. Correct.

25 Q. During Ms. Escamilla's stop you requested the Phoenix

14:06:56

1 Police Department send a K-9 unit, is that correct?

2 A. Initially I asked for our K-9, but I don't think we had one
3 available so we went with Phoenix.

4 Q. And you testified that if you smell marijuana, that gives
5 you reason to call the K-9 unit, is that correct?

14:07:14

6 A. It could be one -- one or another where we are contributing
7 factors, but if I don't find it, if I smell it, it could be
8 somewhere in the vehicle, correct.

9 Q. You didn't smell marijuana coming from Ms. Escamilla's
10 vehicle, did you?

14:07:29

11 A. I can't recall at this time, ma'am.

12 Q. You didn't see any drug paraphernalia in your car -- in her
13 car, did you?

14 A. Like I testified before, ma'am, I can't recall. But I can
15 tell you this: that it's not my normal practice just to call a
16 K-9 unit just for the heck of it. If there was going to be --
17 if I'm calling a K-9 unit, there's gotta be some type of
18 external factors that I've encountered through my training and
19 experience that this could be possibly dope or marijuana or
20 some type -- something in that vehicle.

14:07:37

14:07:53

21 Q. And is one of the those external factors the makeup or
22 demographics of the neighborhood?

23 A. It could possibly, but I'm not -- if it's -- just because
24 it's the neighborhood, I mean, I work South Phoenix. There's a
25 lot of areas in that neighborhood -- or that area that I could

14:08:05

1 call. But I didn't. So it had to be something with that
2 vehicle. But again, this traffic stop occurred three -- about
3 three years ago, I don't recall.

4 Q. The K-9 unit did search Ms. Escamilla's car, correct?

5 A. I don't believe he went inside. I believe he just had his 14:08:23
6 K-9 dog walk around the vehicle. But I can't -- I don't
7 recall.

8 Q. Is it the practice of the K-9 unit to come to a detention
9 solely to walk around a vehicle and not to go inside of it?

10 A. If they don't find anything -- or if the -- if the dog 14:08:38
11 doesn't hit on anything outside, yes, ma'am, it is; it is
12 common practice.

13 Q. You testified that you saw Ms. Escamilla driving on
14 55th Avenue, correct?

15 A. Correct. 14:09:00

16 Q. And that you made a U-turn?

17 A. Correct.

18 Q. And you made that U-turn after you saw her vehicle.

19 A. After I saw no license plate light illuminating --
20 illuminating the rear plate. 14:09:16

21 Q. Now, license plates are located in the back of a vehicle,
22 correct?

23 A. Correct.

24 Q. Then when -- if you made a U-turn, you were traveling in
25 the opposite direction. How could you see the license plate in 14:09:26

1 the back of the vehicle?

2 A. Through my driver's side mirror.

3 Q. You cited Ms. Escamilla for failure to provide
4 identification, is that correct?

5 A. Initially. 14:09:47

6 Q. And you cited her for failure to provide proof of
7 insurance?

8 A. Correct.

9 MS. RAMIREZ: Your Honor, I have what's been marked
10 for identification as impeachment Exhibit 463. 14:10:22

11 Your Honor, may I approach the witness?

12 THE COURT: Not yet.

13 THE CLERK: That will be 457.

14 THE COURT: It will be Exhibit No. 457.

15 MS. RAMIREZ: May I approach the witness? 14:10:43

16 THE COURT: You may now.

17 What? I'm sorry.

18 Yeah, why don't you pull it out of the packet.

19 BY MS. RAMIREZ:

20 Q. Do you recognize this, Officer Gamboa? 14:11:27

21 A. Yes, ma'am, I do.

22 Q. And what is it?

23 A. It's a traffic citation.

24 Q. And is this -- this is the traffic citation for Lorena
25 Saucedo, correct? 14:11:38

1 A. Yes, ma'am, it is.

2 Q. And it has your signature in the bottom right corner, is
3 that correct?

4 A. That is correct.

5 Q. With your badge number next to it?

14:11:44

6 A. Yes, ma'am.

7 Q. The middle of the page it says defendant committed the
8 following, and it says in row A, Refused to provide ID, is that
9 correct?

10 A. Yes, ma'am, that's correct.

14:11:56

11 Q. And there's a line through it, correct?

12 A. Correct, ma'am.

13 Q. And next to the line or next to that entry there's some
14 letters and what looks like 1924. Are those your initials?

15 A. Yes, ma'am.

14:12:09

16 Q. And row B it says, No proof of insurance, is that correct?

17 A. Yes, ma'am.

18 Q. Nowhere on this citation does it say broken license plate
19 light, does it?

20 A. No, ma'am.

14:12:21

21 Q. So Officer Gamboa, you could have written this citation in
22 less than an hour and 30 minutes, is that correct?

23 A. If she wasn't as hostile, yes, ma'am.

24 MS. RAMIREZ: I have no further questions.

25 THE COURT: Redirect?

14:12:43

1 MR. LIDDY: No, Your Honor.

2 THE COURT: Next witness.

3 MR. CASEY: Your Honor, the next witness defense calls
4 is Bennie Click.

5 THE COURT: Okay.

14:12:53

6 You may step down, Officer Gamboa. You can just leave
7 that there. Thank you.

8 THE WITNESS: Thank you, sir.

9 MR. CASEY: Your Honor, may I have a moment to set my
10 computer up?

14:13:10

11 THE COURT: You may.

12 MR. CASEY: Thank you, sir.

13 THE COURT: Right here, Mr. Click, please.

14 THE CLERK: Right here, sir.

15 Can you please state and spell your name for me.

14:13:40

16 MR. CLICK: Yes, it's Bennie R. Click. First name is
17 B-e-n-n-i-e; last name is Click, C --

18 THE CLERK: Did you say R?

19 THE WITNESS: Yes, R. Last name is Click, C-l-i-c-k.

20 THE COURT: Please raise your right hand.

14:13:59

21 (Bennie R. Click was duly sworn as a witness.)

22 THE CLERK: Thank you. Please take our witness stand.

23 THE COURT: Please.

24 MR. CASEY: Your Honor, one minute. I'm having --

25 thank you, sir.

14:14:37

1 (Pause in proceedings.)

2 MR. CASEY: I apologize to the Court. I'm having some
3 problem here.

4 THE COURT: It's a little early for the afternoon
5 break. I'll take it now if you want me to. 14:15:35

6 MR. CASEY: I'd love it very much, Your Honor, if we
7 could do that. For some reason, every time I transfer up here,
8 I'm not sure what happens.

9 THE COURT: All right. How about this? We'll do 15
10 minutes, then we might take a quick break sometime in the rest 14:15:46
11 of the day, but we'll do 15 minutes now and hopefully, you can
12 change -- fix your problem.

13 MR. CASEY: Thank you, Your Honor.

14 (Recess taken.)

15 THE COURT: Please be seated. 14:35:11

16 MR. CASEY: May I proceed, Your Honor?

17 THE COURT: You may.

18 MR. CASEY: I'd like to first thank the Court and
19 counsel for their courtesies in allowing me to solve my
20 computer glitch. 14:35:29

21 BENNIE R. CLICK,
22 called as a witness herein, having been duly sworn, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CASEY: 14:35:31

1 Q. Please introduce yourself to the Court.

2 A. Yes. My name is Bennie R. Click.

3 Q. And Mr. Click, where do you currently live?

4 A. Just south of Flagstaff.

5 Q. Okay. Specifically the heart of hearts, where is that? 14:35:40

6 A. In Munds Park.

7 Q. Okay, good for you.

8 And what is your current occupation, sir?

9 A. I'm retired and do this part time. I do expert witness
10 work or consulting work in the area of law enforcement 14:35:53
11 litigation.

12 Q. Okay. And tell me -- just describe for us briefly, what
13 does it entail when you do law enforcement consulting?

14 A. Normally, it entails evaluating officers' conduct or
15 performance in a particular situation, and along with that, 14:36:11
16 generally ask to look at policies, procedures, and training of
17 the organization and offer opinions in regards to -- to both of
18 those categories.

19 Q. How long have you been doing law enforcement consulting,
20 whether it's related to litigation or claims? 14:36:29

21 A. You know, I started 22 years ago -- actually, maybe 24
22 years ago, about 1988, doing what I'm doing today, when I was
23 still with the Phoenix Police Department. Did it with the
24 police department as an internal expert for -- for almost five
25 years. 14:36:49

1 I did not -- during the period of time when I was in
2 Dallas, I was a police chief in Dallas from '92 to 2000, I did
3 not do any expert witness work. Came back in 2000 and was
4 approached by people that I knew from when I was here in
5 Phoenix, and from 2000 to now have part time been doing law
6 enforcement-related litigation consulting. 14:37:06

7 Q. Would you please tell the Court, what is it that you have
8 been asked to do in this case that's known as Melendres
9 v. Arpaio?

10 A. Yeah. I was asked to evaluate the deputies' conduct and 14:37:23
11 performance in -- in the three instances that involved the
12 plaintiffs in this case, and also to offer opinions in terms of
13 the policies, procedures, training that -- of the Maricopa
14 County Sheriff's Office.

15 Q. All right. Thank you, sir. 14:37:46

16 Now, did you write in this case a report that
17 summarized your opinions?

18 A. I did.

19 Q. I'm going to show you what's been marked into evidence as
20 Exhibit 1070, and it's actually admitted into evidence, and I'm 14:38:01
21 just going to show you this first page.

22 And because I do, every now and then my computer gets
23 finicky, in front of you to your left I also have pulled the
24 hard copy of the exhibit, Mr. Click.

25 A. Yes. I see it. 14:38:17

1 Q. Okay. So this is Exhibit 1070, and I can read through it,
2 you can go through the hard copy, but does this appear to be
3 the report you authored?

4 A. It does.

5 Q. And does that report fairly and accurately contain the
6 opinions that you have expressed in this case?

14:38:32

7 A. It does.

8 Q. Does it detail the factual bases in which you have rendered
9 your opinions or that support your opinions?

10 A. Yes, it does.

14:38:47

11 Q. So if anyone wanted to go to find out what specific
12 opinions you have and the specific bases for that opinion, they
13 can go to Exhibit 1070?

14 A. Correct.

15 Q. All right. Now, quickly what I'd like to do is go to a
16 particular page --

14:38:56

17 THE COURT: Let me just ask, before we go into the
18 particulars so that I can evaluate your testimony.

19 THE WITNESS: Yes, sir.

20 THE COURT: If you'll permit, Mr. Casey.

14:39:16

21 MR. CASEY: Yes, sir.

22 THE COURT: Have you ever had any experience with the
23 287(g) program?

24 THE WITNESS: No, sir.

25 THE COURT: Have you ever had any experience with

14:39:21

1 local law enforcement cooperating with ICE under 287(g)
2 agreements or other agreements?

3 THE WITNESS: No, I haven't.

4 THE COURT: So when you offer your opinions, just to
5 sort of net it out for me, are you offering your opinions based 14:39:32
6 on the application of state law?

7 THE WITNESS: Yes. I -- no, as I just stated, I've
8 not had any personal experience with 287(g) or the application
9 of 287(g), other than the materials I reviewed for this case.

10 Yes, I do offer some opinions in regards to 14:39:59
11 enforcement of state law.

12 THE COURT: All right. In the report do you offer any
13 opinions about the enforcement of federal immigration law?

14 THE WITNESS: Not other than the discussion of 287(g),
15 the authority that 287(g) gave the deputies, and then what 14:40:18
16 the -- when 287(g) was rescinded, the process and procedure to
17 use at that point to notify ICE, to -- who are authorized to
18 enforce immigration law, as to that relationship at that point
19 and how that changed.

20 THE COURT: Thank you. 14:40:44

21 MR. CASEY: All right. Thank you, sir.

22 BY MR. CASEY:

23 Q. Sir, I have up on the screen, I pulled up attachment 1 to
24 Exhibit 1070. This begins at page 50, I believe, of your
25 report. 14:40:56

1 Would you tell us what is attachment 1?

2 A. Attachment 1 are the materials that I reviewed in this
3 case.

4 Q. And it goes for several pages, does it not?

5 A. It does.

14:41:08

6 Q. And I'm thumbing through this. Does this fairly and
7 accurately describe all the materials that you have received in
8 formulating your opinions?

9 A. Yes, it does.

10 Q. Also, the plaintiffs' standard of care expert, Mr. Stewart,
11 has been in the courtroom listening to testimony. I know you
12 haven't been here, but have you received daily transcripts of
13 the testimony, both that the plaintiffs have presented and the
14 defense have presented in this case?

14:41:23

15 A. I have.

14:41:42

16 Q. Okay. Have you read those?

17 A. Yes.

18 Q. All right. Thank you, sir.

19 Now, I don't have it on this particular image, but the
20 actual hard copy of Exhibit 1070 there's an attachment
21 number 2.

14:41:50

22 Would you tell the Court generally, what is attachment
23 number 2?

24 A. Attachment number 2 is my curriculum vitae, my fee
25 schedule, and cases that I've offered testimony in in the past

14:42:06

1 five years, either in deposition or in trial.

2 Q. Okay. Are you doing this for free?

3 A. No.

4 Q. All right. How much are you charging?

5 A. I believe at the time that you retained me, I think it's 14:42:18
6 \$200 an hour.

7 Q. And do you know how many hours you've spent on this,
8 roughly?

9 A. The initial report I spent almost 80 hours. I think as you
10 saw, there's a lot of material. Since then -- that was about a 14:42:32
11 year and a half ago. I think the only -- there was a
12 deposition that I gave, and then from the deposition till just
13 this last two weeks when we've met twice, I had no expenses.

14 Q. All right. Thank you very much, sir.

15 What I'm now interested is changing subjects. Why do 14:42:58
16 you believe that you are qualified to address opinions about
17 officer conduct, standard of care, and the reasonableness of
18 policies and procedures in a law enforcement setting?

19 A. I think I have the background in terms of my experience in
20 the Phoenix Police Department and the Dallas Police Department 14:43:22
21 to make judgments in terms of -- or offer opinions in terms of
22 policies, procedures, training, and officer conduct.

23 Q. How long were you with the City of Phoenix Police
24 Department?

25 A. I -- I spent almost 29 years with the City of Phoenix 14:43:39

1 Police Department. I started as a police officer, worked my
2 way up through the ranks to where in 1992 I was promoted to the
3 executive assistant chief position, which is the number 2
4 position in Phoenix.

5 And during that almost 29 years I worked in 17
6 different assignments throughout the department, virtually
7 every aspect of -- of local law enforcement.

14:44:01

8 Q. As a patrol deputy?

9 A. Well, as a -- as a patrol officer. I started out as a
10 patrol officer, worked traffic. Worked planning and research.
11 Worked as a sergeant in patrol. Worked community relations.
12 Worked -- as a lieutenant I worked both patrol and
13 investigations, property crimes.

14:44:19

14 As the captain I was the administrative assistant for
15 a period of time with the patrol chief. Then I took over the
16 regional academy, which at that time it was under the auspices
17 of the City of Phoenix. Ran the police academy for three
18 years.

14:44:42

19 At that time we trained about half the officers in
20 Arizona. That academy is now under the state system, but
21 the -- from the academy I was assigned to open a new patrol
22 precinct, the South Mountain Precinct, and when that was
23 completed in 1980 I was promoted to major and was over two
24 patrol precincts. As a major I made assistant chief, in 1983 I
25 think it was. And as an assistant chief, part of that time I

14:45:00

14:45:29

1 was over patrol, all the patrol for the City of Phoenix. I was
2 over investigations for a period of time.

3 And then when I became the executive assistant chief
4 in 1992, I was the number two person in the department that
5 would fill in when the chief wasn't there, but also oversaw
6 special investigations, oversaw Internal Affairs, some of
7 the -- some of the more sensitive functions in the department.

14:45:50

8 Q. And did you say from beginning to the end of your career at
9 Phoenix it was total of 29 years?

10 A. It was 28 years and seven months, or something like that.

14:46:09

11 Q. During the course of your career have you had the
12 opportunity to hire police officers?

13 A. Yes.

14 Q. Have you had the opportunity to evaluate performance of
15 police officers?

14:46:23

16 A. Many, many hundreds, probably.

17 Q. Have you had the opportunity to supervise the performance
18 of deputies -- excuse me, officers in various law enforcement
19 activities?

20 A. As a sergeant I supervised probably eight or ten people.

14:46:35

21 By the time I made executive assistant chief in Phoenix, when I
22 had all the patrol, probably supervised about 1800 or 2,000
23 patrol officers. I'm not touching on Dallas at this point,
24 but --

25 Q. I understand, we're just talking about Phoenix.

14:46:54

1 A. So, yes, but also had the opportunity to supervise, either
2 directly or through other supervisors, other layers of
3 supervision, as many as 500 detectives.

4 Q. During your career with Phoenix did you also, especially
5 when you were at management level, did you have the occasion to
6 develop policies and procedures for the City of Phoenix Police
7 Department? 14:47:15

8 A. Yes. In the various positions I was in, the -- it was a
9 period of change for law enforcement, so I preface that it was
10 a time when I think a lot of police departments around the
11 country were doing more to professionalize the policing. 14:47:37

12 And, yes, I think from the time I was -- well, 1968 I
13 was still a patrol officer, was brought into research and
14 development. It was called planning the research at that time.
15 The previous chief had abolished all of our policies and
16 procedures for whatever reason, I don't think anybody really
17 understood. He just felt that good judgment and common sense
18 was sufficient. 14:48:00

19 When Chief Weitzel was appointed police chief, he
20 disagreed with that and felt that we needed policies and
21 procedures, and it was a matter of putting all that back
22 together. Myself and one sergeant did that. Took us about a
23 year to -- to put together a policies and procedures manual for
24 the department at that point. 14:48:18

25 But from that point on, yes, I was involved in many, 14:48:33

1 many, either as the initiator, or involved in various
2 committees. A lot of policies and procedures are developed in
3 committee where you're getting broad input.

4 Q. Now, let's talk about a subject that's related to your time
5 in Phoenix. You said you were running the police academy, and
6 then you said it took over by the state. 14:48:54

7 Did I understand that correctly?

8 A. Yeah, it wasn't taken over by the state until 1993 or 1994.

9 Q. Is that Arizona POST?

10 A. It's Arizona -- well, Arizona POST is over all the 14:49:07
11 academies in Arizona. There's a proliferation of academies now
12 through the junior colleges, the community colleges. But there
13 are several stand-alone academies, and the academy that is now
14 called the Arizona Law Enforcement Academy was the Phoenix
15 Regional Academy back at that time. And it still probably 14:49:24
16 trains half the officers in Arizona through that academy.

17 Q. Now, when you say you ran that when you were at the City of
18 Phoenix, explain for us what that entailed.

19 A. I was in charge of the -- the training curriculum. I was
20 responsible for the training both in -- both basic training, 14:49:44
21 the academy training that -- that new officers get, and at that
22 time all of the valley agencies, including the Maricopa County
23 Sheriff's Office, came through that academy.

24 Q. All right. Now, let's fast-forward. You said that you
25 were the chief of police for the City of Dallas, Texas. Did I 14:50:05

1 understand that correctly?

2 A. That's correct.

3 Q. What years was that?

4 A. I went there in July of 1993, and I left in -- my last day
5 of work was January of 2000.

14:50:22

6 Q. And tell us generally, I know there's -- we don't need a
7 lot of detail, but can you give us generally an overview of
8 what you did in that time period as the chief of police of a
9 city that size.

10 A. Well, you're overseeing all the law enforcement functions
11 in the city. During that period of time there was a -- a
12 vacant position in the city manager's office, the assistant
13 city manager that was over public safety, which was police,
14 fire, and emergency services, and for six months I was asked to
15 fill that position.

14:50:38

14:50:58

16 For most of the time I was there as the police chief I
17 oversaw a department that, again, was a full-service local law
18 enforcement agency with about 4,000 people. During the time I
19 was the public safety assistant city manager, oversaw about
20 6500 people.

14:51:19

21 Q. And that was kind of dovetailing into my next question,
22 what was the number -- yeah, what was the number of police
23 officers and other employees that you were responsible for as
24 chief of police of the City of Dallas?

25 A. Well, as the police chief I was responsible for everybody

14:51:34

1 in the police department. At that time it was almost 4,000
2 people. Everything from investigations to patrol to K-9 to the
3 air patrol unit to -- I mean, it's a full gamut. Dallas is
4 typical of most major United States police departments.

5 Q. Did you -- at Dallas, in your role as chief of police, did 14:51:55
6 you have opportunity to review policies and procedures to
7 determine whether or not you believed they were appropriate for
8 your department, for your police department?

9 A. Yes, I -- I think that during the time I was there we made
10 about 650 changes in policy and procedure, some new, some of it 14:52:15
11 revision, and I saw all of that. I felt in my position that I
12 was responsible. I was the person that made the final decision
13 on internal policy. City policy was something established by
14 city council, but in terms of internal policy, I was the
15 individual that was responsible for reviewing and approving or 14:52:43
16 disapproving of it.

17 Q. Now, this case that we're here today about involves
18 allegations of racial profiling. Is that your understanding?

19 A. Yes.

20 Q. And there's been a lot of discussion of race. Is race and 14:52:54
21 community relations between members of the community and a
22 police force something that's foreign to you in your
23 experience?

24 A. No, I think if -- many people have asked me about what was
25 the -- my first perceptions of Dallas, because the racial 14:53:13

1 issues in Dallas were much more pronounced than they were in
2 here in Phoenix when I left, and throughout my tenure there it
3 was a major issue, the relationship between the minority
4 community. Dallas is a minority/majority city, which --

5 Q. What's that mean?

14:53:33

6 A. That means that the majority of your citizenry are of
7 recognized minority group, either African-American or Hispanic,
8 primarily, although there was a -- a much smaller Asian
9 population, too.

10 Q. Does your experience in Dallas, in that environment you
11 just described, do you believe that that has given you an
12 insight on how police practices can be perceived in the
13 community?

14:53:49

14 A. Certainly.

15 Q. Okay. Does it give you insight in how to, what you believe
16 to evaluate whether a police practice is appropriate in law
17 enforcement standards, or under law enforcement standards?

14:54:06

18 A. Certainly.

19 Q. Okay. At any time after -- during or after Dallas did you
20 ever receive any commendations by any organizations or any
21 governmental agencies?

14:54:25

22 A. Yes, I did.

23 Q. What -- and don't -- I don't want you to be modest. Tell
24 me about what you received.

25 A. And again, I think, and I do want to be a little bit

14:54:36

1 modest, because you're the police chief and you've got a lot of
2 people that contribute to what goes on in an agency.
3 Hopefully, you're providing the leadership for that.

4 But I was recognized by the Texas state legislature
5 for the work that I did involving -- the work that I did, or 14:54:53
6 the work that was done while I was there, let me put it that
7 way.

8 Q. Okay.

9 A. The improved relationship between minority communities and
10 police department was commended by the city council upon my 14:55:04
11 retirement for the same, and the mayor. And I was commended by
12 the Department of Justice for the same, that the improved
13 relationship between the police department and the -- and the
14 minority community.

15 Probably, I guess from my end of it, probably the 14:55:23
16 most -- the thing I was proudest of is the mayor, who was
17 African-American, his compliment to me on the day I retired is
18 that we'd probably gone through the quietest time in the last
19 30 years in terms of the relationship between the police
20 department and the minority community. 14:55:42

21 Q. Thank you, sir.

22 And then you retired from full-time law enforcement
23 after you left Dallas?

24 A. I did.

25 Q. All right. How have you kept active, or have you kept 14:55:50

1 active in law enforcement in terms of the standards and what is
2 accepted as generally acceptable or reasonable standards in law
3 enforcement?

4 A. Yeah, I've continued -- there's several ways. I've
5 continued my membership in several professional organizations. 14:56:11
6 I'm a life member of the International Association of Chiefs of
7 Police. My first several years of retirement I continued to
8 participate in some of the communities that are there, that are
9 involved.

10 I've continued to be a member of the Police Executive 14:56:26
11 Research Forum, which is maybe one of the -- along with the
12 International Association of Chiefs of Police, maybe the other
13 preeminent research organization that looks at best practices
14 and standards for law enforcement.

15 I've got three kids that are all in law enforcement 14:56:46
16 here in the valley, and certainly there's ongoing discussion.
17 We can't hardly -- to my wife's displeasure, there's almost
18 always some discussion about what's going on in law
19 enforcement.

20 Q. Are you knowledgeable right now on August 1st, 2012, about 14:57:04
21 what is generally accepted and reasonable police practices and
22 standards?

23 A. I think I'm as knowledgeable now as I was when I was
24 working full time.

25 Q. Do you believe that you are as knowledgeable now on August 14:57:20

1 1st, 2012, about police training?

2 A. Yes, I -- I think if there was one area that I -- if I had
3 to pick out one area that was the highlight of my career, and I
4 had a great career in a lot of different areas, that it would
5 have been the training, because you can affect culture; you can 14:57:43
6 affect the direction of a department. And I was at the -- I
7 was very fortunate at the time that I was directly in charge of
8 training, but indirectly I -- either as an assistant chief or
9 the executive assistant chief you still had some oversight of
10 the training function. 14:57:58

11 And I guess a long way to get to your question is that
12 I think that training is -- training and policy, I don't know
13 that you can disconnect the two, but the two most important
14 things you can do to make sure the department is running the
15 way that you want it to run. 14:58:17

16 Q. One final area, sir. Since your retirement have you taught
17 law enforcement officers in some form of -- some sort of
18 training?

19 A. I've continued to teach. I've taught in the academy here
20 in Phoenix for 20 -- 20-plus years when I left, everything from 14:58:37
21 laws of arrest to the last 10 years I taught ethics, the ethics
22 course, just because I think it's so important in law
23 enforcement.

24 When I got to Dallas, I insisted that I was going to
25 teach the ethics course at the police academy in Dallas, which 14:58:51

1 I did for the six plus years that I was there.

2 It gave the officers an opportunity to see me eye to
3 eye as the police chief, and gave me a good feeling to look at
4 the new officers that are coming in and recognizing that we are
5 hiring good people, but I want that message to be there as to 14:59:10
6 what ethical conduct relates to.

7 Q. Are you familiar with the general training that is provided
8 by Arizona POST to people that want to become peace officers,
9 such as the deputies at the MCSO?

10 A. Yes. I guess to digress just a moment, I also still teach. 14:59:29
11 I teach an online course in police ethics that is primarily law
12 enforcement officers, sometimes from other states, sometimes in
13 the military overseas, but I do teach an online ethics course
14 currently, and have since I retired.

15 Q. And who is that for that you teach it? 14:59:50

16 A. Ottawa University.

17 Q. Thank you, sir.

18 A. I am familiar with the Arizona POST training. I was
19 involved in the early stages when during my time at the police
20 academy, Arizona POST was really in its infancy. It was 15:00:04
21 called -- it had a different acronym then, ALEOAC, for Arizona
22 Law Enforcement Officers Advisory Council is what it was called
23 then, but it's the same as Arizona POST. And it was a matter
24 of taking and -- and professionalizing law enforcement training
25 in terms of making sure that you had trained instructors, that 15:00:24

1 you had lesson plans that had been reviewed, that were
2 sufficient, current; that you had a review process set up.

3 I was on a committee early on as part of my role in
4 the early stages of what is today Arizona POST, and was part of
5 the -- the group that put that together, and many of the lesson 15:00:48
6 plans I look at today are not a lot different. Many of them
7 have been updated to -- to fit whatever changes have occurred,
8 but I was involved in that process in helping Arizona POST
9 develop the curriculum and the lesson plans to go with that
10 curriculum. 15:01:06

11 Q. All right. Thank you, sir.

12 I'd like to turn now to a different subject, and that
13 is the training of MCSO patrol deputies.

14 Have you formed any opinions on the quality of the
15 training provided by MCSO traffic patrol deputies? 15:01:17

16 A. I have.

17 Q. And what are those opinions?

18 A. They exceed the requirements of Arizona POST. The current
19 academy that -- the Sheriff's Office has its own academy now,
20 and has I think for the last 10 or 15 years, both for officers 15:01:38
21 and for detention personnel, but I'm speaking about the
22 deputies at this point. It's a -- I believe it may even be a
23 20-week academy, which exceeds POST. POST has a minimum of 585
24 hours, which is about, I think, 17 weeks.

25 The Sheriff's Office, like most agencies today, has a 15:02:00

1 field training officer program, so if you successfully complete
2 the academy, which has a -- a very broad spectrum of law
3 enforcement topics, you go into the field training program. A
4 field training program for the Sheriff's Office is 15 weeks.
5 As I understand it's actually 16 weeks, but the final week is a
6 riding solo with some oversight from a field training deputy.

15:02:27

7 But the field training program is where you have
8 specially-trained deputies that are overseeing the field
9 training, the application of what they learned in the academy
10 to being a patrol officer on the street.

15:02:45

11 Q. All right.

12 A. The -- so that -- that is basically the training program.

13 Many of the sheriff's deputies came through -- came up
14 through the detention system, I found, and not just in this
15 case but in other cases I've seen, and in that process they --
16 they go through I think it's a six- or eight-week academy as a
17 detention officer, along with a field training program that is
18 shorter, but for detention officers.

15:03:00

19 So many of these officers, or many of the deputies,
20 have not only had the POST, or the training that would apply to
21 deputies, to a law enforcement officer; they've also had
22 training that applies directly to the -- being a detention
23 officer.

15:03:21

24 Q. Based on your experience in the national organizations that
25 you're a member of, former City of Dallas police chief, how

15:03:36

1 does the MCSO training at the academy, and then at basically
2 that mentoring program, the field training, how does that
3 compare to other programs nationally, in your judgment?

4 A. You know, I'd have to add one piece to that, and that's the
5 continuing training requirement under POST, and also the 15:03:57
6 proficiency training, ongoing proficiency training that's
7 required by Arizona POST.

8 But in looking at all of that, the Sheriff's Office
9 far exceeds what is required by Arizona POST. Arizona POST is
10 part of a 50-state organization. There's an association 15:04:16
11 that -- of police trainers. And they attempt to standardize
12 training to the extent it can be standardized between --
13 between states.

14 So when you look at Arizona POST standards, it's
15 basically the -- the standards that you would expect, minimally 15:04:37
16 expect a law enforcement officer to have. The Maricopa County
17 Sheriff's Office has got a training program that far exceeds
18 that.

19 Q. All right. Now, I want to come back to you, and I've made
20 notes, I want to come back to you and talk to you more about 15:04:51
21 the field training MCSO deputies get after the academy, and I
22 want to get back to you about the continuing education.

23 But first what I'd like to do is talk to you about
24 some specific policies. I'm going to show you Exhibit 1199,
25 which is in evidence. 15:05:18

1 Do you recognize, just generally, this document that
2 pops up on the screen, sir?

3 A. It's a lesson plan, it's an Arizona POST lesson plan that's
4 part of a basic curriculum.

5 Q. Okay. Is this something that is taught at the academy
6 about how to do patrols and make observations?

15:05:41

7 A. Yes, it is. I --

8 Q. You need me to blow anything up for --

9 A. No, I think that -- I guess my only -- I'm not sure how
10 much of this you're going to go through, but it's a 16-hour
11 block of instruction that would probably be given over a period
12 of a week or two, maybe in two- or four-hour blocks.

15:05:56

13 Q. Is it your understanding that every peace officer, wherever
14 they go, including MCSO, undergoes this Arizona POST training
15 on patrol and observations?

15:06:15

16 A. They are required to meet the performance objectives, and
17 that was the other part I was going to point out, is that every
18 lesson plan has got performance objectives. What is it that if
19 a person successfully completes this training program or
20 this -- this particular course, what is it you would expect
21 them to be able to do performance-wise.

15:06:31

22 So yes, it has to be -- this is part of the basic
23 curriculum, and would have to be satisfactorily completed as
24 part of -- before they could graduate from the academy.

25 Q. All right. Now, I'm going to turn to Exhibit 1201 which

15:06:48

1 has been admitted into evidence.

2 Do you recognize what this document is, generally,
3 sir?

4 And again, we're not going to go through all the
5 numerous pages. 15:07:00

6 A. Again, I -- as I stated earlier, it's a -- it's a -- the
7 lesson plan for -- for teaching traffic law, substantive
8 traffic law that's presented at the -- at the academy. It's a
9 15-hour block of instruction.

10 Q. And that is something also that every MCSO deputy, before 15:07:15
11 he ever gets put into the field training program, has to
12 undergo?

13 A. Yes.

14 Q. All right. Now, let's turn now to Exhibit 1203. This is
15 another Arizona POST training. 15:07:36

16 Would you read what the subject matter is on this,
17 please.

18 A. This lesson plan is titled Police and the Community.

19 Q. And what is your understanding of what this is?

20 A. The last 20 or 25 years there's been lots of emphasis on -- 15:07:49
21 on community policing, how to improve that relationship with --
22 between police and the community. And through that improved
23 relationship that you're going to have a better -- a safer
24 community.

25 Q. Why is teaching young men and women that are going to be in 15:08:09

1 law enforcement about community policing, why is that
2 important? If it's important.

3 A. It's extremely important.

4 I think it's to have the young officer -- this is at
5 the -- at the academy level -- to have the young
6 officer understand the importance of that relationship and what
7 can be accomplished, you know, in terms of community safety, in
8 terms of officer safety, in terms of reduced crime, all -- all
9 of that aspect. But what the community, how you can interact
10 with the community and let that community actually assist you
11 in doing what -- you know, that you haven't taken this job on
12 all by yourself, that there's a community out there that's
13 willing to help if you're -- if you create the right
14 environment for that.

15:08:31

15:08:56

15:09:08

15:09:26

15:09:48

15 Q. Is there any relation, in your judgment, between this
16 course that's taught at Arizona POST and the type of community
17 policing commendation that you received while you were at
18 Dallas?

19 You understand my question?

20 A. Well, I think I do. Yeah, I think it -- it has to do with
21 all those things I've just mentioned, that, you know, it's --
22 in the last 25 or 30 years where law enforcement's recognized
23 that without that, without a positive relationship between the
24 department and the community, your job's going to be a lot
25 harder.

1 Q. Okay. I'd like to now turn, if I could, please, to
2 Exhibit 1204 that is already in evidence.

3 And sir, this is another Arizona POST instruction
4 plan. Would you tell us what that instruction plan is about?

5 A. Yeah. This is a high-risk vehicle stop lesson plan that 15:10:09
6 deals with stopping vehicles in which there appears to be a
7 heightened safety risk, where the officer perceives that there
8 may be a heightened safety risk.

9 Q. And how many credit hours or hours does that take, sir?

10 A. This one is, I think it's 20 hours, and it -- some of it's 15:10:31
11 hands-on, where you're actually out stopping in scenarios that
12 are set up to actually stopping vehicles, but also in the
13 classroom to be able to understand. But everything from where
14 you position yourself to what you observe, the number of
15 officers or deputies that ideally you would have in this 15:10:54
16 situation, but really pointing out from experience what the
17 hazards are in stopping a vehicle that may be high risk to your
18 safety.

19 Q. For example, if you had someone that left a scene and
20 wouldn't pull over to your lights and siren and pulled into 15:11:10
21 somewhere unexpected, that might be included in a high risk?

22 A. Yes. Maybe not to the same extent as if you're just
23 stopping the car that robbed the bank and you're behind it and
24 you know the people are armed. But yes, it's going to -- a
25 person that won't stop, or the delayed stop, or you see 15:11:33

1 something going on in the vehicle as you try to stop them, yes,
2 this course would touch on why -- or what is the significance
3 or possible significance of that, and what precautions should
4 you take.

5 Q. Now, before we go on, this is a little bit different, but 15:11:48
6 hopefully somewhat related, is there -- in your experience, is
7 there some sort of caution, concern, or signal that comes to a
8 police officer when someone is not obeying, apparently can see
9 a signal to stop and is not obeying? Do you have any opinions
10 on what goes through a reasonable officer's mind? 15:12:14

11 A. I think you're not really sure. It's an unknown at that
12 point, but it's not common that a person would not obey or
13 comply. So, I mean, it's going to trigger somehow that there's
14 something unusual about this situation. Why is this person
15 doing that? Are they going to try to get to some location 15:12:38
16 that's more advantageous to them, either to escape or to
17 assault you in some manner? Are they going to at some point
18 run? Are they trying to hide a gun under the seat? Are they
19 trying to hide drugs under the car, to some other location? It
20 can trigger all of those. 15:13:00

21 But bottom line is safety. How do you -- how do you
22 address the potential safety issue? Something is amiss, and
23 the person's not complying, and you just need to use, as you're
24 taught in the academy -- that's certainly taught by experience,
25 too, on the street -- you need to use an increased level of 15:13:22

1 caution.

2 Q. Thank you very much.

3 So far, the lesson plans that we've gone through,
4 every MCSO deputy that's gone through academy training has
5 underwent that training?

15:13:35

6 A. That's correct.

7 Q. Okay. Now I'd like to turn to the next exhibit, which is
8 1205 that's already admitted into evidence.

9 A. You know, Counsel, I might just -- I'm not sure, I look at
10 the dates of these, and as I said earlier, a lot of the dates
11 of these are, I think, 2006, and I'm not sure when the deputies
12 all came on, and I guess it may be a minor point, but even
13 if -- and I think the oldest deputy was -- is it DiPietro, I
14 think is how he pronounces it, came on in 1988. I would
15 propose that he had a similar, if not identical, lesson plan,
16 but I'm not sure. This lesson plan's dated January --

15:13:47

15:14:06

17 Q. And I probably should be more precise.

18 Is it your testimony that whether it is this
19 particular exhibit I'm showing you, whether it's this one, it
20 would be something substantially similar to it that you believe
21 every MCSO deputy would have received during the course of his
22 or her training?

15:14:27

23 A. This lesson plan, as I look at it, was probably developed
24 in the, at least in its initial stages, in the early to
25 mid-1970s.

15:14:43

1 Q. Okay.

2 A. And something similar, if not identical to this, has been
3 in place since the early 1970s.

4 Q. Let's look at 1205 and let's go through these. Briefly,
5 would you just describe what the subject matter is of that.

15:14:56

6 A. This talks about pre-stop procedures. It deals again with
7 high-risk vehicle stops. It's a portion. I don't see --

8 Q. Does the Arizona POST training, does that spend a great
9 deal of time on traffic stops and the various stages of that
10 continuum?

15:15:25

11 A. Yes, I -- and the reason so much time's spent on that is so
12 much of your contact with citizens is going to be through
13 traffic stops, and as a result of that, just by the volume, a
14 lot of the risks that you may face out there, safety risks,
15 will be making traffic stops.

15:15:43

16 There are -- is another part of either this course or
17 it may be another lesson plan that talks about contacting
18 people at other than traffic stops, but very similar.

19 Q. So every MCSO deputy would have either received the
20 training we see in Exhibit 1205 or its substantial equivalent?

15:15:59

21 A. Yes.

22 Q. All right. I'm going to show you what's Exhibit 1206, and
23 this appears to be another part of high-risk vehicle stops but
24 adds another component of that.

25 Do you see what that is, sir?

15:16:19

1 A. Yes, this -- this deals with positioning of the police
2 vehicle.

3 Q. All right. Now, we have heard in this trial a particular
4 incident where one of the MCSO deputies made a traffic
5 patrol [sic] and parked a motorcycle behind a vehicle where he
6 testified its engine was still running. 15:16:32

7 Is that the type of vehicle positioning that this type
8 of lesson plan and Arizona POST talk about?

9 A. You know, I'm not sure that in that particular situation
10 I -- you know, trying to say how it's included in this lesson
11 plan. 15:16:56

12 Certainly, whether you ride a motorcycle or a car,
13 there -- you've still got to -- you're still trained in terms
14 of position. There may not be as much of an issue with a
15 motorcycle, because in the position of a motorcycle you're
16 still somewhat vulnerable. It's not going to provide the same
17 cover or protection that -- that a car would. But -- but yes,
18 it -- it would deal with motorcycles also. 15:17:11

19 Q. Now I'm going to turn to the next exhibit, which is 1207
20 that's admitted into evidence. And this exhibit deals with the
21 removal of subjects from the vehicle. And we've had some
22 testimony here to -- in fact, today and recently, about people
23 being removed or assisted in being removed from vehicles. 15:17:30

24 Why is that taught to every academy trainee?

25 A. To get the -- the new deputy to -- to consider their 15:17:53

1 personal safety, safety of the person in the car, perhaps other
2 people's safety, as to being able to evaluate the situation and
3 making a determination as to whether or not the person in the
4 vehicle presents a potential safety hazard.

5 If they do, it could be a drive-off, somebody decides 15:18:18
6 to drive off. Somebody decides to back into your vehicle. In
7 the vehicle they have access, if there is a gun in the vehicle,
8 they would have access to a gun or a weapon in the vehicle.

9 I think it's -- it's to educate the officer as to
10 looking for all those things that -- that they need to 15:18:38
11 evaluate, and as a result of that evaluation as to whether or
12 not this person needs to be removed from the -- from the
13 vehicle.

14 Q. Okay. I'm going to do a call-out on the performance
15 objectives. Would you read out loud the performance objective 15:18:52
16 number 1 that's stated there?

17 A. Yes. It's: Demonstrate or list the 12 tactical
18 considerations for the removal of subjects from the vehicle.

19 Q. And that's something you were just talking about of how you
20 might remove, under what circumstances, et cetera? 15:19:08

21 A. Yes.

22 Q. All right. Now, I'm going to turn to Exhibit 1208, which
23 is also in evidence.

24 What is the difference between what we just saw,
25 removal of a subject from a vehicle, and then clearing a 15:19:30

1 suspect vehicle?

2 A. Clearing the vehicle generally has to do with after you've
3 removed the driver or -- or perhaps a passenger or passengers,
4 is to where you're still not certain that there isn't someone
5 in the vehicle concealed in the trunk, concealed in the back
6 seat. 15:19:49

7 And again, a lot has to do with the situation,
8 evaluating the situation and making an informed -- coming to an
9 informed judgment about what type of, if any, potential risk
10 that this particular vehicle -- but again, it's based on best 15:20:06
11 practice and it's based on experience that the -- of instances
12 where officers have gotten the driver out, become complacent
13 because -- and not realizing that there's still someone in the
14 vehicle, and then wind up with that safety risk that that other
15 person in the vehicle presents to them. 15:20:28

16 Q. All right. Now, let me turn to one other area, and that is
17 Exhibit 1213. And I'm going to try to just do the call-out on
18 this whole section to make it larger for you.

19 What is the subject matter here?

20 A. Subject matter here is search and seizure. 15:21:01

21 Q. And with the Court's permission, I guess preliminary
22 leading, but it says under course content: Analysis of
23 constitutional requirements, statutes, and case law on search
24 and seizure.

25 Did I read that correctly, sir? 15:21:17

1 A. Correct.

2 Q. Why is it important to teach every trainee, who are not
3 lawyers, by and large, about constitutional requirements,
4 statutes, and case law on search and seizure?

5 A. Certainly they're all sworn to uphold or protect persons', 15:21:32
6 people's constitutional rights, and it's the foundation for so
7 much of what police officers do.

8 If there -- probably the three most common phrases
9 that are used in the academy throughout that period of time,
10 and then in continuing training, is reasonable suspicion, 15:21:54
11 probable cause, and reasonable force, and all those relate to a
12 constitutional requirement.

13 Q. Okay. And again, how many hours does this particular
14 course entail?

15 A. Yeah, this particular course entails 18 hours. And as I 15:22:13
16 look at the face sheet here, it appears to be search and
17 seizure for evidence. There's a separate course that deals
18 with the seizure of a person.

19 Q. Okay. Thank you very much, sir.

20 Is this something that every MCSO deputy has been 15:22:33
21 trained on?

22 A. Yes.

23 Q. Now, does an MCSO deputy -- I go through there, I take my
24 18 hours, I do this, how does Arizona POST know whether I've
25 learned what I've been taught? 15:22:51

1 A. Well, again it goes back to -- they've got to demonstrate
2 the -- that they can meet the performance objectives. And
3 that's probably, in training programs that I've helped evaluate
4 in other areas, is the lack of performance objectives. What is
5 it you want the student to be able to demonstrate or do at the
6 end of the training? They've gotta meet those performance
7 objectives.

15:23:08

8 Q. And how's that --

9 A. And that's through a -- through either demonstration or
10 examination.

15:23:19

11 Q. All right. Thank you, sir.

12 I'd like for you to pull out from your stack there a
13 document, Exhibit 1210 that is not in evidence, and let me know
14 when you find that.

15 A. I have it.

15:23:39

16 Q. All right. Why don't you take a look at it, please.

17 A. Yes.

18 Q. Can you tell me, what is Exhibit 1210?

19 A. It's a lesson plan for cultural awareness.

20 Q. And it's a lesson plan by whom or who?

15:23:56

21 A. It -- it's an Arizona Peace Officer Standards and Training
22 Board, the Arizona POST lesson plan.

23 Q. Are you generally aware about that, or of that cultural
24 awareness training section at Arizona POST?

25 A. Yes.

15:24:11

1 Q. And why is it important that law -- well, first of all,
2 sir, have you seen that document before?

3 A. Again, my -- the only qualification I'd have is that I'm
4 certainly aware the -- that the course exists. As to whether
5 or not this is a specific lesson plan I've seen, I couldn't sit 15:24:31
6 here and tell you.

7 Q. All right.

8 A. It looks like it's -- it is.

9 Q. All right. Is that the type of document that you, as an
10 expert in law enforcement, reasonably rely upon in forming your 15:24:45
11 opinions as to training of MCSO deputies in this case?

12 A. Yes.

13 MR. CASEY: Okay. Your Honor, I would move for
14 admission of Exhibit 1210.

15 MR. POCHODA: We object, Your Honor, on various 15:24:59
16 grounds. It was not mentioned as one of the documents that he
17 based any of his opinions on. And also, hearsay, relevance,
18 and foundation.

19 THE COURT: You're going to have to lay more
20 foundation if you want it in over some of exceptions for 15:25:20
21 hearsay and some other things.

22 MR. CASEY: That's fine, Your Honor. I'm going to
23 withdraw my motion to admit this.

24 BY MR. CASEY:

25 Q. Is every single deputy that -- MCSO deputy, does he or she 15:25:30

1 have to go through that cultural awareness training at Arizona
2 POST?

3 A. Yes.

4 MR. POCHODA: Objection, Your Honor. No foundation;
5 not part of his report. 15:25:42

6 THE COURT: Has there been more than one report
7 admitted for Mr. Click?

8 MR. CASEY: Just one report.

9 THE COURT: Is there anywhere in his report where he
10 talks about this being a basis for his opinion? 15:26:01

11 MR. CASEY: It's all the Arizona -- everything that is
12 under attachment number 1 is a basis for his opinion. He
13 discussed his training -- excuse me, his opinion on the
14 training. That included the -- included Arizona POST, included
15 CLE, or continuing law enforcement education -- 15:26:16

16 THE COURT: All right.

17 MR. CASEY: -- in the field.

18 THE COURT: All right. If you lay foundation for his
19 knowledge as to whether or not, I'll allow the question.

20 MR. CASEY: Thank you, Your Honor. 15:26:27

21 BY MR. CASEY:

22 Q. Sir, is this part of the Arizona POST requirement for a
23 peace officer to become certified and serve as a peace
24 officer in the state of Arizona?

25 A. Yes. 15:26:36

1 Q. Can Tim Casey go to the academy and fail this section and
2 still go out and become a sworn peace officer?

3 A. No.

4 MR. CASEY: Your Honor, with that foundation, I
5 believe that -- well, excuse me. Let me ask the question. 15:26:50

6 BY MR. CASEY:

7 Q. Sir, is every MCSO deputy that is certified by Arizona
8 POST, has he or she undergone this cultural awareness training?

9 MR. POCHODA: Objection, Your Honor, hearsay, and no
10 facts in front of this witness as to whether any of the 15:27:09
11 Arizona --

12 THE COURT: Overruled.

13 MR. POCHODA: -- deputies went through this course.

14 THE COURT: Overruled.

15 THE WITNESS: Again, I would sit here and I was just 15:27:17
16 looking at the dates. Certainly this is dated August 1995. I
17 believe this lesson plan, or its predecessor, was probably
18 created in the late '70s or '80s, and certainly everyone has
19 gone through the cultural awareness training.

20 This particular lesson plan, certainly all the 15:27:36
21 deputies since August of 1995 would have -- would have
22 completed this specific course under this lesson plan.

23 BY MR. CASEY:

24 Q. So even old-timers such as Chief Brian Sands may have even
25 undergone this? 15:27:48

1 A. If he came on -- I'm not sure when Chief Sands came on, but
2 if he came on anywhere after the mid-'70s, yes, he would have
3 had a course on cultural awareness.

4 Q. Why, in your judgment, is it important that law enforcement
5 undergo this type of cultural awareness training? 15:28:04

6 A. It's because we've got a society that's made up of many,
7 many cultures, and it's one of our strengths, but it's also one
8 of our challenges. And there's probably no other government
9 agency or official that is going to have more contact with the
10 various subcommunities out there, the minority communities, the 15:28:24
11 cultures, and it's extremely important that an
12 officer understand cultural differences and develop some
13 sensitivity to those differences.

14 It's important to -- we've talked about community
15 relations earlier. It's important from a community relations 15:28:42
16 standpoint that you need a good relationship with this --
17 whoever -- whatever of the group is, if you're going to do any
18 problem solving, if you're going to try to get their assistance
19 in terms of making your community safer. So it's an extremely
20 important course just by the very nature of our country. 15:29:01

21 Q. During the course of your evaluation of the MCSO deputies
22 in this case on the three different traffic stops involving the
23 five plaintiffs, did you find any evidence that would indicate
24 to you that there was any type of cultural insensitivity or a
25 lack of cultural awareness? 15:29:30

1 A. No.

2 Q. All right. We just -- we just talked about, Mr. Click,
3 your opinions about the training of MCSO patrol deputies and
4 the training they had to get at Arizona POST. You mentioned
5 field training. And what I understand is once you graduate
6 from the academy, before you're sent loose, MCSO has a
7 multiple-week mentoring program, is that correct?

15:29:48

8 A. Correct.

9 Q. Describe for us -- I know you mentioned already, and with
10 the Court's indulgence, what is the length of time of that
11 field training, and what does it entail, to your knowledge?

15:30:05

12 MR. POCHODA: Objection, Your Honor. I don't see that
13 anywhere in his report.

14 THE COURT: Overruled.

15 THE WITNESS: The field training program, which most
16 agencies have a field training program, there are
17 specially-trained deputies that serve in a training capacity
18 for new deputies. In most agencies they're even given extra
19 pay during that time that they're training a new deputy. And
20 I'm -- I'm not sure that's the case with the Sheriff's Office
21 or not, but in many agencies it is, because it's so important.

15:30:15

22 During that period of time, as I stated earlier,
23 generally, they're teaching the new officer how to apply the
24 knowledge that they gained in the academy to practical
25 situations on the street during that time. It's a formal

15:30:33

15:30:52

1 process. There's a sign-off sheet every day. There's a weekly
2 evaluation by supervisors, and people can flunk the field
3 training program, and they do, periodically.

4 But it focuses -- one of the things it puts primary
5 focus on is policies and procedures. And there's a sign-off 15:31:14
6 sheet as an officer displays knowledge and competence in
7 applying a particular policy or procedure. As a result of
8 that, the training officer looks for training opportunities,
9 may even go into adjacent beat areas when they hear a call
10 that -- that their trainee has not handled before. But it -- 15:31:36
11 it attempts to familiarize the -- the new deputy with policies,
12 procedures, practices.

13 It's generally divided into three phases, rides with
14 one deputy for four or five weeks, rides with a second deputy
15 for four or five weeks, rides with a third deputy for four or 15:31:57
16 five weeks, and then the final week is either with the trainee
17 deputy in plainclothes letting the new deputy handle
18 everything, or the new deputy working by themselves with a
19 training deputy in another car working an adjacent beat that
20 can respond if the new deputy has any questions. 15:32:24

21 But it's a very formal program reviewed weekly by
22 supervisors, reviewed daily by the training officer and the --
23 and the new deputy.

24 BY MR. CASEY:

25 Q. So this is anywhere from, do I understand correctly,

15:32:34

1 between 13 and 16 weeks of that field training?

2 A. I think the Sheriff's Office is 15 weeks of actual training
3 with the training officer, and then a 16th week that's more of
4 an observation week where the individual's being observed that
5 16th week.

15:32:53

6 Q. All right. A little bit of a different subject. You
7 mentioned to the judge, to the Court earlier when I was showing
8 you the Arizona POST lesson plan about search and seizures, and
9 you mentioned that one of the most important jobs -- and I'm
10 paraphrasing you, Mr. Click -- of police is the protection of
11 the rights of people.

15:33:09

12 Did I understand that, at least that idea?

13 A. Yes.

14 Q. Have you looked at the MCSO code of conduct?

15 A. I have.

15:33:21

16 Q. And what is significant to you about the MCSO code of
17 conduct relative to what you said was the most important thing
18 police can do?

19 A. It requires that -- that deputies protect people's
20 constitutional rights.

15:33:38

21 Q. Are you talking about just citizens?

22 A. No, I'm talking about all people.

23 Q. All people, whether they're in the country legally or
24 illegally.

25 A. Correct. It doesn't say "citizen." I think it says: You

15:33:49

1 will protect all people's rights.

2 Q. Is there an oath of office that law enforcement officers
3 take in the state of Arizona?

4 A. It's required by Arizona POST.

5 Q. And is every MCSO officer, before he goes out, or she goes
6 out, into the public, required to swear that oath? 15:34:07

7 A. They are.

8 Q. What is the oath of office?

9 A. Basically, that you will uphold the Constitution of the
10 United States and the Constitution of the State of Arizona; 15:34:24
11 that you will abide by all federal and state law.

12 Q. Now, let's turn to the other subject that you mentioned,
13 and that is continuing education. The Court and the counsel
14 here in our respective states have something called continuing
15 legal education. We have to get certain credit hours per year. 15:34:45

16 Are you telling me that there is an equivalent of
17 something like that for sworn peace officers?

18 A. There is.

19 Q. Explain what's required, per year or per cycle.

20 A. Arizona POST requires that -- and if you -- if you don't
21 meet these requirements you lose your certification so you're
22 no longer -- you no longer have peace officer authority --
23 that -- it requires that you have a minimum of eight hours of
24 continuing education each year. And they designate proficiency
25 training differently, that you will have a minimum of eight 15:35:24

1 hours of proficiency training every three years.

2 Q. Help me understand. I think I can -- I think I know, but
3 what is the difference between the continuing education per
4 year and the three years of having a minimum proficiency
5 training? 15:35:42

6 A. Let me explain, I think maybe to clarify it. Proficiency
7 training is showing proficiency in using a baton, as an
8 example, or using your Taser, for example. And this is
9 separate from your firearm. There's a separate requirement
10 that you qualify with your firearm every year, and that's not 15:36:03
11 part of those years. It could be proficiency in operating your
12 vehicle under emergency conditions on a track.

13 The continuing training is more classroom oriented,
14 update on new statutes, new law, some change in policy. It --
15 it can be a variety of things. 15:36:23

16 Sometimes the continuing training is -- is mandated.
17 There will be an issue that is so important that POST will
18 mandate a certain number of hours of continuing training to be
19 on a particular topic. One of them years ago that I can recall 15:36:40
20 is domestic violence that was required that you -- that as part
21 of the continuing training, that each agency would give a
22 certain number of hours of training in the area of domestic
23 violence. I use that as an example.

24 I think there was a few years ago one on bias
25 policing. 15:36:57

1 Q. What's bias policing?

2 A. You know, it's another name for -- for racial profiling.
3 If you -- and it's a broader term, because I think racial
4 profiling, it has to do with race, by its very definition.

5 Bias is are you showing a bias toward other groups, 15:37:14
6 and it includes race or ethnicity or color, but would it
7 include your homosexual community, as an example, or things of
8 that nature that -- that -- you know, that we do not do bias
9 policing. I mean, that's the gist of the -- of the training.

10 And I think Governor Napolitano was behind that push at the 15:37:35
11 time that that training be provided.

12 Q. Do you have any knowledge, based on the timing of that and
13 when Janet Napolitano was governor of our state, as to when it
14 would have been offered at the academy, or at part of the
15 continuing education? 15:37:57

16 A. Yeah. The continuing education, I think the Sheriff's
17 Office does do that primarily at their academy, although with
18 all the technology today some of that training could be done
19 online. But --

20 THE COURT: Well, I'm going to stop you. 15:38:07

21 Do you have any knowledge that the sheriff did this or
22 not?

23 THE WITNESS: No, I don't, Your Honor.

24 THE COURT: All right. Then I think we can move on.

25 MR. CASEY: Yes, sir. 15:38:15

1 BY MR. CASEY:

2 Q. Is it correct that each year eight hours of continuing
3 education must be obtained?

4 A. Correct.

5 Q. All right. What's the penalty for not complying with that
6 education?

15:38:24

7 A. You lose your certification. You're no long -- you no
8 longer have police powers.

9 Q. All right. Now, let me turn to an additional subject.

10 Are you aware of in this case that at some time in
11 2009 the federal government revoked what's called 287(g)
12 authority?

15:38:35

13 A. Yes, I am.

14 Q. Are you aware generally of what -- or specifically of what
15 training was provided to the MCSO deputies after that
16 revocation was made?

15:38:51

17 A. Well, as I understood from the materials, it would change
18 the procedure. They no longer had their own deputies that had
19 287(g) authority, so they had to do some training in terms of a
20 new policy that would define if -- if a deputy did have
21 reasonable suspicion to believe that a person was here
22 unlawfully, that they would call for an ICE officer, who -- who
23 does have the authority to enforce immigration law.

15:39:11

24 Q. You read Joe Sousa's, Lieutenant Joe Sousa's testimony at
25 trial in this case?

15:39:35

1 A. I did.

2 Q. And did you see where he talked about that there was online
3 training that was mandatory for all patrol deputies at
4 sergeant and below after the revocation?

5 A. Correct.

15:39:45

6 Q. And did you see that Joe Sousa testified that although he
7 was not required as a lieutenant to take it, he took it?

8 A. Yes.

9 Q. First of all, as to the mandatory nature of that training,
10 given the 287(g) revocation, do you believe that is a
11 reasonable, appropriate practice to implement?

15:39:56

12 A. Sure. I mean, you have -- you had a policy in place that
13 is no longer valid, because the 287(g) authority had been
14 revoked. So clearly you had to change policy, and with that
15 you had to make sure that you took reasonable steps to make
16 sure the deputies understood that and what the new policy was.

15:40:19

17 Q. Do you have any observation, comment, or opinion about what
18 it means, if anything, about Lieutenant Sousa not having to do
19 it as a requirement, but doing it because he's the head of HSU?

20 A. Yeah. I think because of his position, I think that's
21 commendable. He didn't have to do it, but I think it's
22 commendable, he -- for him to sit in on it. But it may apply
23 to his -- it didn't apply to his position so much perhaps
24 personally, but it certainly applied to his -- his function.

15:40:37

25 Q. All right. One final area, and that is, you've read the

15:40:52

1 materials, the witness depositions about 287(g) training.

2 Generally, do you have an understanding of the length
3 of that training, and generally what was taught?

4 A. Yeah. The training was five or six weeks long, and it, I
5 think, covered, as I understood it, covered the gamut of
6 immigration law, the authority that was necessary to enforce
7 immigration law, and the -- and emphasizing what authority that
8 287(g) gave to deputies.

15:41:19

9 Q. Do you know how many MCSO deputies underwent such ICE
10 training before the revocation?

15:41:42

11 MR. POCHODA: Objection, Your Honor. This witness has
12 already testified that he doesn't have information about
13 287(g), nor about the content of the training.

14 THE COURT: You know, Mr. Pochoda, I want one- or
15 two-word objections. Okay?

15:41:55

16 MR. POCHODA: Okay.

17 THE COURT: So if you had to distill that into one or
18 two words, what would --

19 MR. POCHODA: Foundation and hearsay, Your Honor.

20 THE COURT: Do you want to lay foundation?

15:42:03

21 MR. CASEY: I asked him if he knew.

22 THE COURT: Is that what the question was?

23 MR. CASEY: Yes, sir, Your Honor, I asked him if he
24 knew.

25 THE COURT: Overruled.

15:42:28

1 BY MR. CASEY:

2 Q. Let me repeat the question for you, Mr. Click. Do you know
3 how many MCSO deputies underwent ICE training before the
4 federal government revoked 287(g) authority?

5 A. The only specific number that I was made aware of was
6 Mr. Pochoda made me aware that 160.

7 Q. All right. Plaintiffs' counsel told you that?

8 A. Correct.

9 Q. All right. Now, let me ask you, assuming that that
10 representation by Mr. Pochoda was accurate, does the fact that
11 100 or 160 deputies received such training indicate anything to
12 you about MCSO?

13 A. It's a major commitment to take that large a number of
14 people and put them through five or six weeks of training.
15 It's a major commitment to the agency. That's a -- that in
16 itself is a tough decision to make, and yet the Sheriff's
17 Office made that decision because -- and I'm assuming here --
18 that they wanted to make sure their deputies were well informed
19 as to what their authority was under 287(g).

20 Q. Do you have any opinion as to whether or not that desire to
21 make sure they were well informed dovetails to the oath of
22 office and the MCSO code of conduct about protecting people's
23 rights?

24 A. Yes, a portion of that training, all the officers' or the
25 deputies' depositions that I read indicated that the training

15:42:40

15:42:59

15:43:24

15:43:46

15:44:05

1 covered the whole -- I think that racial profiling would not be
2 tolerated, was not allowed. That to stop an individual had to
3 be strictly for criminal activity, not on the basis of race,
4 color, national origin.

5 Q. All right.

15:44:29

6 MR. POCHODA: Objection, Your Honor, and ask that that
7 be stricken. Foundation as to the content of the course.

8 THE COURT: Remember what I told you about one or two
9 words, Mr. Pochoda?

10 MR. POCHODA: Apologize.

15:44:38

11 THE COURT: You want to give me one or two words?

12 MR. POCHODA: Foundation.

13 THE COURT: You know, I'm going to sustain that
14 objection.

15 BY MR. CASEY:

15:44:54

16 Q. Do you have an opinion, sir --

17 THE COURT: You've asked him if he has an opinion.
18 That is exactly what you asked him.

19 MR. CASEY: That is what I asked. Thank you, Your
20 Honor.

15:45:03

21 THE COURT: That is what you asked him.

22 MR. CASEY: Yes, Your Honor.

23 THE COURT: That he has an opinion doesn't mean that
24 there's foundation for this opinion.

25 MR. CASEY: I understand that.

15:45:09

1 THE COURT: Okay. So if you want me to hear his
2 opinion, I want some foundation for the opinion.

3 BY MR. CASEY:

4 Q. Would you explain for me what basis you have for that
5 opinion that you've expressed, and that is that there is a
6 relationship between the commitment to go to ICE training and
7 compliance with the code of conduct. 15:45:22

8 A. I would base my opinion on the -- the officers'
9 deposition -- depositions and -- or the deputies' depositions,
10 and I think comments, and I can't recall, I keep them 15:45:46
11 separated, the individuals that were in charge of the ICE
12 office here that also over -- basically gave a brief overview
13 of what -- of the specific function or the specific information
14 that was in that training that had to do with the prohibition
15 on racial profiling. 15:46:09

16 Q. Thank you, sir.

17 I'd like to turn to a different subject, Your Honor,
18 and that is the MCSO policies and procedures.

19 Mr. Click, have you formed any opinions on the quality
20 of the MCSO's written policies and procedures? 15:46:22

21 A. Yes. I -- again, in this case I -- I reviewed probably
22 eight or ten policies.

23 The policies that I reviewed certainly are -- are
24 reflective of best practices and standards that you would
25 expect on a national basis. 15:46:47

1 In previous cases I've also been able to review the
2 MCSO's -- various MCSO's policies in the area of the use of
3 force and arrest, and I also found them to be -- to meet
4 national best practices and standards.

5 Q. All right. I have pulled up from Exhibit 1070,
6 specifically page 37 of your report, and I've done a call-out
7 under your section entitled MCSO policies and procedures.

15:47:08

8 Do you see that, sir?

9 A. Yes, I do.

10 Q. And does that summarize your opinions?

15:47:25

11 A. Yes, it does.

12 Q. Does MCSO policy CP-2, code of conduct, do you believe that
13 that is a reasonable standard that meets and complies with the
14 national standards you've discussed?

15 A. I do. I don't think there's anything more important in the
16 code of conduct than the requirement that an individual, that a
17 deputy, would comply with the Constitution.

15:47:42

18 Q. Does MCSO policy GJ-3 on search and seizure, is that, in
19 your opinion, a reasonable and appropriate policy and procedure
20 for the MCSO to have?

15:48:03

21 A. Yes, and it relates directly to the Fourth Amendment of the
22 Constitution.

23 Q. Does that meet or exceed the national standard, sir?

24 A. It certainly meets it.

25 Q. And, sir, just for the record, I'm putting in there that

15:48:15

1 the search and seizure policy is specifically Exhibit 1116
2 admitted into evidence.

3 Now let me go to the next point on your report, and
4 that's MCSO policy EB-1, traffic law enforcement guidelines.

5 Is that, in your opinion, a reasonable and appropriate 15:48:35
6 standard for the MCSO to have in its office?

7 A. Yes.

8 Q. Does that meet or exceed the national standard, sir?

9 A. I think it meets it.

10 Q. All right. And for that particular traffic law enforcement 15:48:47
11 guidelines, for the Court's reference, is Exhibit 114, already
12 in evidence.

13 Now, the next thing I'd like to turn to is MCSO policy
14 EB-2, traffic violator contact. Do you have an opinion of
15 whether or not that is a reasonable and appropriate policy and 15:49:07
16 procedure for the MCSO to have?

17 A. It is. It, again, requires that deputies comply with
18 federal and state law.

19 Q. Does that meet or exceed the national standards in your
20 field? 15:49:20

21 A. It meets them.

22 Q. Okay. And for the record, that traffic violator contacts,
23 for citation issuance, is Exhibit 1115 in evidence.

24 Also let's turn to MCSO policy echo alpha 11, arrest
25 procedures. 15:49:41

1 Is that a reasonable and appropriate policy and
2 procedure for the MCSO to have?

3 A. Yes.

4 Q. Does that meet or exceed national standards?

5 A. It requires deputies to protect the rights of all
6 prisoners, and it meets the national standard.

15:49:53

7 Q. Is there, in your judgment, a recurring or dominant theme
8 in all the MCSO policies that you've reviewed in this case?

9 A. Yes.

10 Q. And what is that recurring theme?

15:50:10

11 A. That officers will protect people's constitutional rights.

12 Q. Now, the plaintiffs in this case, I want you to assume,
13 have suggested or criticized that there's a deficiency in the
14 MCSO policies and procedures by not having a separate
15 stand-alone policy about racial profiling defining it and
16 giving examples.

15:50:33

17 Are you generally aware of that type of criticism?

18 A. Yes.

19 Q. What is your opinion about that criticism?

20 A. I think the MCSO meets the standard. I recognize that many
21 agencies have, as I stated earlier, many of them today do not
22 limit it to racial profiling, they have policies specifically
23 on bias policing. But it really is a stand-alone policy that
24 that basically does the, I think as you pointed out, that the
25 recurring theme in MCSO's policy is that you will protect

15:50:45

15:51:09

1 people's constitutional rights.

2 Q. Let's turn to a different subject now.

3 THE COURT: You know what, Mr. Casey?

4 MR. CASEY: Yes, sir.

5 THE COURT: We took a break earlier in the afternoon 15:51:25
6 so you could fix your thing.

7 MR. CASEY: Yes.

8 THE COURT: I think everybody needs five or ten
9 minutes, so I'm going to take 10 minutes. We'll resume at
10 4 o'clock for the rest of the day. 15:51:34

11 MR. CASEY: Thank you, Your Honor.

12 (Recess taken.)

13 THE COURT: Please be seated.

14 Please continue, Mr. Casey.

15 MR. CASEY: Thank you. Your Honor, I have just a 16:01:36
16 few -- three more categories that are shorter than last, so we
17 should finish up here shortly.

18 BY MR. CASEY:

19 Q. Mr. Click, I'd like to turn to another and a different
20 matter, and that's the MCSO saturation patrol briefings and 16:01:52
21 operations plans.

22 First of all, you've read the deposition testimony of
23 the MCSO deputies that was taken in this case?

24 A. I have.

25 Q. Have you read their trial testimony? 16:02:04

1 A. Yes.

2 Q. Do you have any opinions on whether the MCSO deputies that
3 were to participate in MCSO saturation patrols were reasonably
4 briefed before those patrols began?

5 A. Yes.

16:02:18

6 Q. And what is that opinion?

7 A. They were reasonably briefed. They -- they understood
8 their purpose and their function during that patrol.

9 Q. Now, there is some criticism in this case that they did not
10 know specific crime data or statistics of why they were going
11 to a location. Is that at all important in your evaluation?

16:02:30

12 A. You know, I think each one you have to look, I think
13 certainly you need to -- there has to be a basis for addressing
14 some type of criminal activity, but -- and it can be a variety
15 of things. It can be surveillance; it can be intelligence from
16 talking to people; it can be statistical review, crime
17 analysis; it can be a combination of citizen complaints of
18 certain types of criminal activity.

16:02:56

19 So each one, I did not find any that I felt were
20 inappropriate. It was perhaps clearer on some than others as
21 to what the criminal activity was.

16:03:20

22 Q. Now, there is testimony in this case that before patrols,
23 when they were large-scale saturation patrols, that being
24 involving units other than HSU, there were operations plans
25 that made available, and there was oral instruction.

16:03:42

1 Can you tell the Court what opinions you have about
2 the efficacy of the instructions given to people participating?

3 A. Yeah. What I reviewed, yes, it was -- it was adequate in
4 terms of what their function was and what was expected of them
5 during the -- the saturation patrol.

16:04:09

6 Q. Okay. Specifically what I'm going to do is I'm going to
7 pull up Exhibit 91, which is in evidence, and this is for a
8 Mesa saturation patrol document.

9 Do you see that on your screen?

10 A. I do.

16:04:25

11 Q. And I'm just going to flip through this quickly and go to
12 page 5 of this. I'm going to do a call-out, if I could,
13 Mr. Click, and highlight something here for you.

14 Have you formed any opinion as to whether the call-out
15 language in this saturation patrol plan is reasonable and
16 appropriate?

16:04:53

17 A. Yes, I think it's reasonable and appropriate.

18 Q. Why?

19 A. I think it's a reminder that -- that you're going to
20 conduct all these stops in conformance with MCSO policies and
21 procedures, which we've touched on, and that again -- and I say
22 "reminder." I -- I would be surprised anywhere in the United
23 States that you could find an officer today that didn't
24 understand that racial profiling was inappropriate and
25 unlawful. But it's a reminder that they will not use race as

16:05:13

16:05:36

1 the basis of stop -- for stopping somebody.

2 Q. Have you reviewed the saturation patrol plans that were
3 prepared by the MCSO and produced in this case?

4 A. Yes, I think I reviewed 51 plans, as I recall.

5 Q. Okay. And do you have an opinion whether the MCSO's
6 saturation plans were reasonable and appropriate and met the
7 standard of care in the law enforcement community?

16:05:53

8 A. Yeah. When I say I reviewed 51, some of those were -- I'm
9 not sure I would categorize them as saturation patrol. They
10 were small operations that involved the Human Smuggling Unit,
11 maybe six officers, I think, six or seven in some of those. I
12 think there were 18 of those that were large scale involving
13 numerous deputies, numerous personnel.

16:06:11

14 But, yes, I -- I did review those plans, and I think
15 based on the size, whether it was an HSU operation, which were
16 the same people each time, in some of those I don't think I saw
17 the admonition that -- that racial profiling would not occur,
18 that you would not stop a person on the basis of their race.
19 But again, you're dealing with people that had been through the
20 487(g) [sic] training, their academy training, and they had
21 done this before.

16:06:34

16:06:56

22 The large-scale operations, I don't recall that I saw
23 any of those that -- that did not have this admonition in it.

24 Q. Why, in your judgment, is it important to give an oral
25 admonition about racial profiling if you have already in

16:07:14

1 writing language like we see in the call-out in Exhibit 91,
2 page 5?

3 A. I think it's just a -- to -- a reminder to people that, you
4 know, be conscious of why -- be able to articulate why you stop
5 any particular vehicle, and that articulation cannot involve
6 race. 16:07:38

7 Q. Let's turn to a different subject, and that's the
8 supervision during saturation patrols.

9 We touched on this briefly when you first got on the
10 stand, but during your law enforcement career, either as a
11 patrol deputy or officer or as command staff, were you involved
12 in crime suppression operations or saturation patrols like --
13 generally like what we had -- have had in Maricopa County? 16:07:55

14 A. Yeah, I -- I've never been involved in one that -- that
15 was -- that dealt with immigration specifically, but I have no
16 way of knowing over 35 years, but my guess is that maybe a
17 hundred different saturation patrols, everything from drunk
18 drivers to high-accident locations to drug activity. 16:08:19

19 And some of these ran together. You would have a
20 saturation patrol to address, perhaps, gang activity, but you
21 would -- as part of that you would -- you know, you had
22 statistical evidence of gunshots fired, you had evidence of
23 drug -- drug activity, and all of it kind of run together. You
24 had gang activity, but -- but you've also found in that same
25 neighborhood, and perhaps the same individuals involved in 16:08:45
16:09:07

1 other kinds of criminal conduct.

2 Q. Are crime suppression, or saturation patrols, whatever
3 label is affixed to that, is that a technique that is
4 recognized in the law enforcement community?

5 A. It's used commonly. Here in the valley I think every
6 holiday we see a saturation patrol for drunk drivers, is an
7 example. But yes, it's a common tactic, particularly dealing
8 with neighborhoods that are beset with drugs, violence, gang
9 activity, things that are directly related to crime in that --
10 in that neighborhood.

16:09:24

16:09:47

11 Q. Based on what you've read from this trial and the dozens of
12 depositions you have, do you have an opinion as to how long it
13 would take the MCSO to conduct what the Court has heard is a
14 large-scale saturation patrol; that is, a patrol that involves
15 more than HSU, several units, like K-9, TOU, Lake Patrol?

16:10:10

16 Do you know how long it would take to schedule, plan,
17 and prepare that?

18 A. Yeah, I think it was -- I can use my own experience that
19 because you're pulling people in from other parts of the
20 agency, that -- and that takes some time to do that, depending
21 on the urgency of your saturation patrol, and usually they're
22 not urgent, but just the planning for that, and making sure
23 that you're not leaving yourself short in other areas or
24 creating other problems, would generally take at least -- at
25 least 30 days.

16:10:29

16:10:48

1 I think Chief Sands or Lieutenant Sousa had indicated
2 in the SO 30 to 60 days to get that organized. But it's really
3 because you're utilizing people that already have a full-time
4 job and you're pulling them in to -- to do the saturation
5 patrol for a day or two or whatever period of time that you're
6 going to do the saturation patrol. 16:11:05

7 Q. Based on all the testimony you've reviewed and the
8 documents you've reviewed, have you formed an opinion as to the
9 quality or nature of the supervision of deputies during
10 saturation patrols? 16:11:21

11 A. Yes. Well, what I -- again, from what I read, in terms of
12 the deputy -- from the deputies, their depositions, the
13 supervisors, the -- it was, I think, typical of a saturation
14 patrol. You've got a -- you've generally got a command post
15 that will have supervisors, and maybe a couple of levels of
16 supervision at the command post. And generally you have
17 supervision that's either available from the command post to go
18 into the field if a -- a deputy has a question, or the
19 supervisor's already in the field, just following in with what
20 deputies are doing. 16:12:01

21 Q. Now, there were a number of questions that have come up
22 during this trial of witnesses saying, But you -- to, say, a
23 sergeant, for example: But you weren't there during a stop.
24 How do you know?

25 Is it in law enforcement, whether it's a saturation 16:12:14

1 patrol or patrol, is it common to have supervisory officers
2 actually routinely participate in traffic stops?

3 A. Generally they're going to do that supervision through the
4 command post. And if the need arises -- and everybody's
5 equipped with radios today, or computers -- if the need arises, 16:12:33
6 you're going to go to the -- to the location if there's a
7 question or something happens that a supervisor needs to be
8 present.

9 But the other part is -- and I didn't see any
10 testimony as to the people, the -- the Human Smuggling Unit 16:12:48
11 that worked both the large-scale and the small-scale
12 operations, they were all experienced and would not -- you
13 would not anticipate that a problem would arise with -- with
14 those individuals.

15 But the decision has to be made. You put people out 16:13:07
16 there based on -- the level of supervision's going to depend on
17 the individuals' training, their experience, and their previous
18 performance, what your knowledge is of their previous
19 performance.

20 Generally when you select people for a detail like 16:13:23
21 this you're not going to select somebody that's had performance
22 problems. You're going to select people that have demonstrated
23 that they have the knowledge and the skill to function
24 independently, to do the job independently, with the knowledge
25 that they can call for supervision or they can ask a supervisor 16:13:38

1 that's readily available.

2 Supervision's readily -- readily available either by
3 phone, by radio, or generally these are smaller geographic
4 location and can respond within a matter of a few minutes.

5 Q. What is your opinion as to whether or not the quality of
6 supervision was reasonable and appropriate? 16:13:53

7 A. I felt it was reasonable. I did not see any instance in
8 which supervision or lack of supervision played a role.

9 Q. I'm going to turn to a related subject, and I'm going to
10 pull up Exhibit 79, which is in evidence. And this is from a 16:14:13
11 saturation patrol in March of 2008 near 32nd Street and Thomas.

12 And specifically, what I'm going to do is enlarge an
13 arrest list, to the extent I'm able to do that.

14 Are you able to see that on your screen?

15 A. Yes. 16:14:41

16 Q. And I just want you to assume that there have been
17 questions asked about the Latino surnames on the left vertical
18 column.

19 Do you see that?

20 A. I do. 16:14:52

21 Q. Okay. And I just want you to assume there's been a series
22 of questions asked about whether or not it troubles HSU
23 sergeants that there is a vast majority, if not significant
24 majority, of Latino surnames on arrest lists.

25 Will you assume that for me? 16:15:09

1 A. Yes.

2 Q. Based on the data that's contained in the arrest lists
3 you've reviewed, the fact that there may be a dominance of
4 Latino surnames, does that cause you any concern whatsoever?

5 A. Not -- not when you look at the entire document. 16:15:23

6 Q. Why?

7 A. I think if I was just looking at the surnames, yeah, it may
8 raise a question with me. I look over at the charge and, like
9 some of these, warrant, 287(g), 287(g), failure to ID, criminal
10 speed, open container, these are all -- these are all offenses 16:15:43
11 that are -- are race neutral, I guess, is the best way to put
12 it.

13 So I -- you know, I don't think you can control, you
14 know -- they're race neutral. I don't think you can control if
15 you stop someone and they have a failure to have a driver's 16:16:09
16 license or they've got a warrant, any of these, you're going to
17 arrest the person.

18 Q. Let's turn to a different subject, sir, and that's the MCSO
19 criteria for selecting sites for saturation patrols.

20 First of all, based on everything you've reviewed, who 16:16:37
21 actually selects the sites?

22 A. My understanding is that Chief Sands was the one that had
23 the responsibility. I think Lieutenant Sousa assisted him with
24 that, but I think Chief Sands had the responsibility to select
25 sites. 16:16:55

1 Q. When you were -- and I realize that Chief Sands is under
2 the elected sheriff, but when you were the boss, the chief of
3 police of the City of Dallas, Texas, did you ever select a site
4 for saturation patrols or crime suppression operations?

5 A. No.

16:17:10

6 Q. Who did that when you did have those?

7 A. It would be done generally, and I'm not sure how the ranks,
8 about two rank levels below me at the deputy chief level is
9 where that would generally occur.

10 Q. Do you have an opinion as to the reasonableness and
11 appropriateness of the MCSO's selection of sites to conduct
12 saturation patrols?

16:17:26

13 A. No.

14 Q. Based on the evidence that you have reviewed, do you have
15 any opinion as to whether or not there is any overriding basis
16 for the MCSO conducting a saturation patrol in a given area?

16:17:42

17 A. Could you repeat that, Counsel?

18 Q. Sure. Is there an overriding theme that you have gleaned
19 from all the evidence as to why the MCSO conducts a saturation
20 patrol in area A or area B?

16:18:02

21 A. I think all the testimony and evidence that I saw, they
22 were looking for criminal activity.

23 Q. All right. Now, let's turn to a different subject that
24 came up at the beginning of our trial, and that is letters that
25 come in to Sheriff Arpaio from citizens.

16:18:18

1 When you were the Dallas police chief did you receive
2 letters from citizens?

3 A. You receive lots of letters from citizens.

4 Q. Okay. What was your practice when you received letters
5 from citizens?

16:18:40

6 A. I would -- first of all, I had an administrative assistant
7 that would pretty much screen the letters, and some of them
8 were obvious: they needed to go to narcotics or they needed to
9 go to wherever.

10 But he would make a decision as to the ones that he
11 felt I needed to review and make a decision at that point what
12 to do with that particular letter. I mean, it wasn't a long
13 process. You glance at the letter and somebody had a new
14 theory on who killed President Kennedy, it didn't take long to
15 figure out where I was going to send it. I would send it to
16 the FBI.

16:18:53

16:19:12

17 But when you had letters that dealt with some type of
18 criminal activity, if it was a gang -- if it was a gang
19 complaint, it would go to our gang unit. Narcotics would go to
20 the -- to the drug unit. If it was a truancy issue, it would
21 go to our youth crimes unit. There would be a whole variety of
22 issues.

16:19:32

23 At that point, it would depend. I didn't have time to
24 assess them. Whoever I sent them to would assess them and make
25 a determination as to what should happen, if anything.

16:19:51

1 Q. All right. Let me make sure I'm understanding.

2 If you got something in, you would -- if something
3 jumped out of the page dealing with gangs or narcotics, do I
4 understand it correctly you would send it to the appropriate
5 people in the Dallas PD?

16:20:11

6 A. Yes.

7 Q. Do I understand what you're telling me is that you did not
8 put any independent value assessment, law enforcement
9 assessment, on that letter as to its merits?

10 A. No.

16:20:21

11 Q. Now, what happened if you got a letter from a citizen that
12 made it to your desk that had either racially insensitive
13 comments or were racially charged? How would you handle a
14 letter like that?

15 A. Well, again, Dallas had a lot of racial issues. And I had
16 some specific individuals, including our police chief here in
17 Phoenix today, he worked for me there as a deputy chief --

16:20:40

18 Q. Who's that?

19 A. Danny Garcia.

20 Q. Thank you, sir.

16:20:55

21 A. And these were individuals that had -- I depended on them,
22 because they had close relationships with the various
23 communities, and I would depend on them to evaluate the letter.

24 Certainly, I think there was an overriding
25 understanding that you're not going to allow the agency, your

16:21:12

1 police department or your sheriff's office to be used by some
2 individual who has their own particular agenda.

3 Some of the letters were very offensive in the manner
4 in which they -- the language that was used and what they were
5 suggesting that we needed to do as a police department. I
6 think all police agencies have those types of letters. 16:21:31

7 As a general rule we would try to at least acknowledge
8 each letter, I think as just part of good management and
9 community policing.

10 Q. What do you mean, acknowledge? 16:21:47

11 A. Send them a -- just a short letter back. It was
12 boilerplate: Thank you. I appreciate, you know, your support
13 for our department kind of a thing.

14 Q. Well, wait a second. Did that mean that you were agreeing
15 with the contents of that letter? 16:22:05

16 A. No. I think in most cases, and I'm talking about all the
17 letters now, not just the ones that were perhaps offensive in
18 terms of racially charged language, I'm talking about all of
19 them, I made no assessment.

20 But if somebody took the time to write a letter to the 16:22:22
21 police chief, I felt, and I think most chiefs feel, that in
22 most instances you're going to respond to those at least
23 acknowledging they received a letter.

24 Q. Were you elected?

25 A. No. 16:22:38

1 Q. You were appointed?

2 A. Yes.

3 Q. At the pleasure of the council in Dallas?

4 A. City manager, but yes, in effect the council.

5 Q. Was there ever a time during your career as the city police 16:22:47
6 chief of Dallas that you received some offensive letter and
7 that you wrote back to the person correcting them on either
8 their offensiveness, their stupidity, or their racism?

9 A. I can't recall that I did that, but I may well have had --
10 we had a unit in the department that dealt with racial issues, 16:23:12
11 and may well have had them either handle it personally with
12 personal contact, and with the understanding, again, that, you
13 know, we're not going to -- to support some individual out
14 there that is spouting some type of racial language, we're not
15 going to do that. 16:23:34

16 Q. A related subject: Would you regularly keep, you and your
17 department, keep letters that you received?

18 A. Yes.

19 Q. Why?

20 A. One of the reasons is just intelligence. You get some 16:23:42
21 chronic letter-writers. You get people that have mental
22 issues, and you keep those letters. And in some cases you
23 haven't responded back because it's nonsensical, or it's
24 perhaps just so offensive that it may be so offensive you're
25 not going to respond back. But you would keep those letters 16:24:03

1 just for future -- any possible future use that they might
2 have.

3 I'm just trying to think of an example. The Secret
4 Service interacts with police agencies all across the United
5 States, and one of the things they're interested in are
6 letter-writers that have certain language in their -- in their
7 letters that might be threatening to the President or
8 threatening the government or threatening things of that
9 nature.

16:24:22

10 But there's other reasons you'd keep a letter, too,
11 perhaps, that an individual that is obvious -- or appears to --
12 to be obviously -- there's some racial hatred, what comes
13 through the letter is just racial hatred, that you would hang
14 onto that just in the event something would happen down the
15 line, it would become evidentiary, perhaps.

16:24:35

16:24:55

16 Q. In this case there has been criticism that Sheriff Arpaio
17 has received letters of various quality and nature and
18 forwarded them on to Chief Sands.

19 Have you seen that?

20 A. I did.

16:25:04

21 Q. You read the testimony?

22 A. Yes.

23 Q. Do you have any criticism of Sheriff Arpaio forwarding on
24 letters to Chief Sands for whatever purpose Chief Sands will
25 attribute to them?

16:25:19

1 A. No. The sheriff, I think he's in the same position I was
2 in: He doesn't have time to deal with them himself. He needs
3 someone else to evaluate them and make some determination as to
4 what if any action needs to be taken based on that letter.

5 Q. Final area. There's been discussion about public comments 16:25:32
6 that Sheriff Arpaio has made and that it's trickling down into
7 the operations side and influencing that.

8 Based on all the testimony and the documents you've
9 read, do you have an opinion on whether or not public comments
10 made by Sheriff Arpaio, that you've been able to see any 16:25:51
11 demonstrable change or influence on operations by particular
12 deputies because of those comments?

13 MR. POCHODA: Objection, foundation, Your Honor.

14 THE COURT: Is there anything on the report on this?

15 MR. CASEY: No. I withdraw the question, Your Honor. 16:26:11

16 Those are all the questions I have for you, Mr. Click.
17 Thank you for your time and patience.

18 THE COURT: Cross-examination?

19 MR. POCHODA: Yes, Your Honor.

20 CROSS-EXAMINATION 16:27:06

21 BY MR. POCHODA:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Mr. Click, Mr. Casey asked you about whether you were an
25 elected official or not in Dallas, is that correct? 16:27:19

1 A. Correct.

2 Q. And you were not, is that right?

3 A. I was not.

4 Q. The sheriff here in Maricopa County is an elected official,
5 is that right?

16:27:27

6 A. Yes, sir.

7 Q. And as an elected official, you agree that he must run his
8 organization in a manner that responds to his constituency,
9 isn't that right?

10 A. I'm not sure I make that connection, because I -- I never
11 made that connection as I reviewed the -- the materials. But I
12 think an elected official, if they want to remain an elected
13 official, has to make a decision as to how they're going to
14 respond to their constituency.

16:27:43

15 Q. And as an elected official he has to be sensitive, and
16 indeed try to meet the needs and requests of his constituents,
17 is that -- isn't that correct?

16:28:04

18 A. Well, I'm not a politician, I haven't been, but yes, I
19 think an elected official has -- has a responsibility to try to
20 meet the needs of their constituency.

16:28:23

21 Q. And if a constituent tells -- a group of constituents relay
22 to this elected official, to the sheriff, that a particular
23 matter is important, the sheriff has a responsibility to
24 consider that input, is that right?

25 A. I think he has a responsibility to consider people's

16:28:41

1 concerns. As to what he does about it, then I guess that --
2 that becomes another question.

3 Q. Well, he would not last long as an elected official if he
4 did not generally meet the needs and concerns of his
5 constituents. Is that fair to say? 16:28:58

6 A. Well, I think as long as he can get 51 percent of the vote
7 he's going to -- he's going to stay in office.

8 There may be, and I think we see this in -- in all
9 political offices, where very seldom would you find an elected
10 official would have a hundred percent approval. 16:29:17

11 Q. No, I understand. But an elected official as compared to
12 appointed official must be more sensitive to the needs of his
13 constituents and requests from constituents. Is that fair to
14 say?

15 A. I think directly that's the case, but I can tell you 16:29:31
16 that -- that as a police chief, even though you may be two
17 positions removed from the -- from the city council, if you're
18 not sensitive to the constituents' concerns, you probably
19 aren't going to be the chief very long.

20 Q. You are aware, are you not, of the many statements made by 16:29:51
21 the sheriff, Mr. Arpaio, that the only votes that count are
22 those of his constituents; the only opinions that count to him
23 are those of his constituents, is that correct?

24 A. Did you say votes, Counsel?

25 Q. Opinions. I take that back. Opinions. Those of his 16:30:10

1 constituents, is that correct?

2 A. Well, he's going to -- he's going to consider. I don't
3 think it would serve much purpose that he's going to consider
4 the opinions of somebody in some other state or some other
5 county. He's the sheriff of Maricopa County, and -- and would 16:30:24
6 be, I think, sensitive -- maybe "sensitive's" not the right
7 word, but that he would know, at least be knowledgeable of the
8 concerns of his constituency here in Maricopa County.

9 Q. Well, you're aware, for example, that the sheriff in
10 Maricopa County has received significant criticism, increasing 16:30:45
11 criticism from the media, from litigation, from public
12 officials, about the manner in which he runs his immigration
13 enforcement operations. Is that fair to say?

14 A. There has been certainly a lot of public criticism.

15 Q. And you're aware that the sheriff's response to that is 16:30:59
16 that does not concern him, because he only cares about the
17 opinions of those who vote or do not vote for him. Is that
18 fair to say?

19 A. I'm not sure that I recall that statement that he made.

20 But again, as I said before, to be elected he has to get 16:31:15
21 51 percent of the vote, and if he gets 51 percent of the vote
22 he's -- he's elected again.

23 So I guess the concern, and to be knowledgeable about
24 the concerns of a constituency, yeah, it's -- if 49 percent of
25 the people disagree, yeah, I mean, that's significant. But it 16:31:35

1 still does not relate to him not being elected to office. He's
2 still elected to office.

3 Q. You're aware that prior to 2006 the sheriff's department
4 here in Maricopa County had not made immigration enforcement a
5 priority, is that correct? 16:31:52

6 A. Yeah, I'm not sure -- again, I'm not sure in the materials
7 it was clear to me. I think in -- somewhere in that time
8 period certainly there was discussion about immigration issues,
9 and then the discussion proceeded to the 287(g) certification
10 training that went with that. I'm not sure before that that I 16:32:15
11 really saw much material that addressed what was occurring
12 before that general time period.

13 Q. But certainly you're aware that at the end of 2006,
14 beginning of 2007, the sheriff made several pronouncements that
15 illegal immigration enforcement is going to be a priority of 16:32:34
16 the MCSO, is that right?

17 A. Yeah, I can't -- I don't recall the dates, but yes,
18 somewhere in that general time period that -- it's my
19 impression that he had indicated that that was going to become
20 an enforcement priority. 16:32:48

21 Q. And he also indicated, if you know, that that was what his
22 constituents wanted him to do, is that correct?

23 A. Again, I don't recall the specific -- any specific comment
24 that he made regards to that. I'd just be making an
25 assumption. 16:33:06

1 Q. But in any event, as an elected official, you agree that
2 the sheriff had the discretion to make immigration enforcement
3 his main priority for the agency, is that right?

4 A. Sure.

5 Q. And he had the discretion to use saturation patrols to
6 implement that policy, correct? 16:33:15

7 A. Yes.

8 Q. And he had the discretion to set up a hotline to implement
9 the immigration enforcement priority, and to receive tips from
10 people in the community concerning, quote, illegal aliens? 16:33:29

11 A. That's correct.

12 Q. You have some concern, given your experience, that race
13 could be a factor for the persons that are calling in such
14 tips, is that right?

15 A. I would -- I would use some caution about peoples' motives,
16 why someone would call in or write me a letter. 16:33:42

17 Q. And the sheriff had the discretion on these saturation
18 patrols to adopt the tactic of pretextual traffic stops, even
19 though the concern in a particular area was not a traffic or
20 vehicle violation, is that correct? 16:34:06

21 A. Yes. I think the county attorney had asked for a county
22 attorney's opinion and was told by the county attorney that --
23 that that was lawful.

24 Q. And in none of the large saturation patrols that you
25 reviewed was the concern in an area having -- had anything to 16:34:21

1 do with traffic violations, per se, or high collisions, or even
2 DUIs. Is that fair to say?

3 A. I don't recall those specifically, no.

4 Q. And the general information to officers and deputies on
5 these large saturation patrols was that this was an illegal
6 immigration enforcement effort, correct?

16:34:42

7 A. Again, I think it was clearly the deputies understood that
8 that was an enforcement priority for the MCSO overall. I
9 don't -- I don't recall, and I just don't remember, if during
10 the saturation patrols that there was -- during briefings,
11 during the information given out to the deputies working it,
12 that the focus was going to be illegal immigration.

16:35:05

13 Q. But they understood that, is that right?

14 A. Well, I think if you read the newspaper, the sheriff had
15 made it clear that that was going to be an enforcement priority
16 for the -- for the Sheriff's Office.

16:35:19

17 Q. But they understood that the goal of the specific large
18 saturation patrols was immigration enforcement, correct?

19 A. No, I'm -- I don't think that's correct. I think
20 Chief Sands had talked about some other factors that -- that he
21 considered in how they picked locations and what the criteria
22 was in picking those locations.

16:35:35

23 MR. POCHODA: May I approach with the depositions,
24 Your Honor?

25 THE COURT: You may.

16:35:49

1 BY MR. POCHODA:

2 Q. Mr. Click, you recall giving a deposition earlier in this
3 case, correct?

4 A. I do.

5 Q. And you were under oath at the time?

16:36:11

6 A. I was.

7 Q. And would that have been on March 18th, 2011?

8 A. Yeah, that's -- that's about right. It's dated March 18,
9 2011.

10 Q. If you could turn to page 295 of this deposition.

16:36:24

11 A. Yes.

12 Q. And starting with the line 13 on page 295, and towards the
13 end of that page, and then the beginning of 296, if you could
14 take a look at that.

15 The question is: "But here, in any -- Correct me if
16 I'm wrong. Did you see in any of the MCSO operational plans'
17 descriptions or mention of the particular underlying criminal
18 activity, other than illegal immigration, that they were
19 concerned about or descriptions of what they should be on the
20 lookout for?

16:37:02

21 "ANSWER: You know --"

22 This is line 21.

23 "-- I think there was maybe some that touched on
24 individuals in the roadway. I've said that several times
25 today. I'm not -- I couldn't identify it right sitting here

16:37:20

16:37:30

1 now where I saw that. But I think the general information to
2 the officers or to the deputies was that this is a -- an
3 illegal immigration enforcement effort."

4 Do you see that?

5 A. I do.

16:37:48

6 Q. And that was accurate testimony at the time?

7 A. Yes. I'm trying to put it in the context in which I
8 answered that. And I think --

9 Q. You're talking about saturation patrols?

10 A. Right. But I'm thinking it's in the context at that
11 particular time, the -- the officers still had 287(g)
12 certification.

16:37:59

13 Q. Okay. There may be qualifiers on why you answered it that
14 way, but I'm not asking that at the moment. I'm just saying
15 the question had to do with the MCSO operational plans for the
16 saturation patrols, correct?

16:38:16

17 A. Correct.

18 Q. And the answer was that the general information to the
19 officers or to the deputies was that this is an illegal
20 immigration enforcement effort, correct?

16:38:29

21 A. That's what I said, yes.

22 Q. Mr. Click, you are not aware of any specific saturation
23 patrols done by the MCSO prior to those that focused on this
24 immigration enforcement, were you?

25 A. I did not, just in the -- no, in previous cases I've not

16:38:49

1 been aware of that. I'm aware that on holidays they do
2 saturation patrols for drunk drivers, or people up at the lake.
3 But no, I have no personal knowledge, and there was certainly
4 nothing in the materials I reviewed that dealt with other
5 sat -- other saturation patrols that -- that were not provided 16:39:10
6 as part of the materials I reviewed.

7 Q. So you don't know if prior to the first sat -- large
8 saturation patrol that had to do once the immigration
9 enforcement priority was adopted, whether there were any of
10 that size to target any other type of criminal activity, do 16:39:25
11 you? In the MCSO.

12 A. I just don't have enough information to respond to that.

13 Q. Well, let me go more generally, then.

14 When you were chief in Dallas, at some times you would
15 in fact conduct large saturation patrols. Is that fair to say? 16:39:42

16 A. We would.

17 Q. And historically those saturation patrols would target
18 specific criminal activity that you were concerned about, is
19 that right?

20 A. It would target criminal activity. As I stated earlier, 16:39:54
21 some of it may not have been as specific. You target an area
22 where there's a lot of gang activity, but it's also drug
23 activity; people shooting their guns off; assaults; you know,
24 there was a combination of things. But yes, it's -- it's
25 criminal activity. 16:40:13

1 Q. It might be more than one crime, is what you're saying.

2 A. Correct.

3 Q. But you had testified, I believe, that the saturation
4 patrols have targeted gangs, alcohol, DUI, and curfew
5 violations. Is that your --

16:40:25

6 A. It's probably not just limited to that. I guess -- I think
7 we even did one on truancy one time.

8 Q. But if you were, let's say, for example, concerned about a
9 gang problem, a concern for gang activity in an area, you would
10 site that patrol in an area where those gangs were believed to
11 hang out. Is that fair to say?

16:40:46

12 A. Could you, I guess, expand on that, Counsel?

13 Q. If you were concerned about gang activity because of
14 reports you got, whether it's internally or externally, you
15 would try to site the patrol in the area where the gang
16 activity was alleged to be taking place. Is that fair to say?

16:41:07

17 A. Correct.

18 Q. And then you would give instructions to those officers who
19 were going to be involved in that patrol, correct?

20 A. Yes.

16:41:19

21 Q. And the instructions to the officers would be based on the
22 reason for that patrol. Is that fair to say?

23 A. The instruction in many, I won't say all, but I'm just
24 trying to think of any exceptions, is make as many contacts as
25 you can. Be as visible as you can, and make as many contacts

16:41:36

1 as you can. And of course, underlying that is that clearly
2 there -- they have to be lawful contacts.

3 Q. If you could turn to page 292 of your deposition, please.

4 A. Yes, sir.

5 Q. Starting on line 2:

16:42:07

6 "QUESTION: I'm talking about an affirmative
7 instruction when you have a saturation patrol that is set up
8 because of a serious reported gang problem. What would, in
9 your experience, when you did that, be the instructions given
10 to the officers participating in terms of what to be looking
11 for on that patrol?

16:42:26

12 "ANSWER: Well, I think the enforcement activity or
13 the enforcement priority. Why are we doing this saturation
14 patrol? If it's drunk drivers, I don't want somebody down
15 buying drugs at the park."

16:42:42

16 By the "somebody" you meant the officers, is that
17 correct?

18 A. Correct.

19 Q. So you wanted them to be focusing on the reason for the
20 patrol. Is that fair to say?

16:42:50

21 A. Correct.

22 Q. And then continuing on line 17, the question:

23 "So that the people involved in patrol would be told:
24 Our concern is gangs and they would be told if you knew the
25 M.O., or the description of gang members. Is that fair to say?

16:43:06

1 "ANSWER: Sure. I use that as an example. You might
2 have somebody from the gang unit come in and talk about the
3 local gangs, known gang members, who they are, where they live,
4 vehicles they drive."

5 Is that correct?

16:43:23

6 A. Correct.

7 Q. Because you want the patrol -- the patrol, to the extent
8 possible, to be focused on the underlying reason for the
9 patrol, is that correct?

10 A. Yes.

16:43:34

11 Q. And then going on to page 293, starting on line 3:

12 "And, for example, just for a hypothetical, to get
13 your input. If the reports are increased gang activity of a
14 very serious nature, in particular, a four- or five-block area,
15 the gang members are young males between 16 and 25, they're
16 Asian, and they wear a red bandana to identify themselves,
17 would the officers participating in that saturation patrol be
18 told this is what information we have about the nature of these
19 gang members?

16:43:56

20 "ANSWER: They would be given information about the
21 individuals that -- whether it's that specific or not, but
22 about the individuals that are of concern. Why are we doing
23 this? And what are they -- What's been their activity? What
24 are we out here trying to prevent or trying to put a stop to?

16:44:11

25 "QUESTION: And they would be given a BOLO, if you

16:44:28

1 will. Be on the lookout for people who meet that description.

2 Is that fair to say?

3 "ANSWER: It's probably not the right term. It's
4 usually for people that you actually -- an individual you are
5 actually looking for.

16:44:43

6 "Right. So to speak.

7 "ANSWER: They're going to be looking for people that
8 display behavior that is consistent with gang involvement."

9 Question. This is line 3 now on page 294.

10 MR. CASEY: Your Honor, this is improper impeachment.

16:44:57

11 THE COURT: Going way too long with this. I don't
12 know how in the world you expect anybody to understand a
13 question. If you want to read this into the record, you can
14 try and admit it. So I'm going to sustain the objection.

15 MR. POCHODA: We'll stop with the answer up to that
16 point.

16:45:11

17 BY MR. POCHODA:

18 Q. The point being that the persons involved in the patrol
19 were given descriptions and to be on the lookout -- and again,
20 if that's the right term -- for persons that meet that
21 description of gang members or might be involved in the
22 activity that was the reason for the patrol in the first place,
23 is that correct?

16:45:21

24 A. Correct. I think the only thing I would add to that is it
25 doesn't exclude other activity that the -- that the officer may

16:45:34

1 come across.

2 Q. Oh, of course. I didn't mean to imply that at all. But
3 that in your experience, when you had sat -- large saturation
4 patrols, historically from what you know in other law
5 enforcement, they were generally started because of a concern 16:45:52
6 of a particular crime problem in a -- in an area. Is that fair
7 to say?

8 A. A particular, perhaps, related crime that you could say is
9 related.

10 Q. These large-scale patrol operations involve significant law 16:46:10
11 enforcement resources, is that right?

12 A. Yeah, the larger -- I mean, it's just math. The larger the
13 operation, the more resources.

14 Q. And prior to permitting such a -- such an amount of
15 resources, you would want to have corroboration of any reported 16:46:27
16 criminal activity, is that right?

17 A. I would want to take and have information -- I think
18 there's two things you're looking at, you know, in -- content
19 of the information that you have, and you're looking at the
20 reliability of that information. But, yeah, you're going to -- 16:46:44
21 you're going to have some information. You just don't pick a
22 location and go out there for no reason and hope you find
23 something.

24 Q. Right. You would want to have some corroboration in some
25 form. I'm not limiting the form. 16:46:58

1 A. Correct.

2 Q. And you do not recall seeing one example in the materials
3 that you looked at, or the testimony, where the MCSO
4 corroborated reported criminal activity before doing a
5 large-scale saturation patrol, do you? 16:47:12

6 A. Well, again, I -- trying to think back, I think either
7 Lieutenant Sousa or -- or Chief Sands talked about how they
8 screened -- or how they determined location. And they talked
9 in generalities of the criteria that was used, that Chief Sands
10 I think primarily used, in picking that location. 16:47:35

11 Q. But in the materials that you reviewed making your report,
12 you did not see a specific example where they corroborated
13 reported criminal activity prior to doing a patrol, is that
14 right?

15 A. I can't recall. There may have been -- it comes to mind 16:47:49
16 there may have been some reference in one of them to
17 individuals standing in the roadway creating traffic problems.

18 Q. You recall one incident where there may have been some
19 corroboration of that before the patrol?

20 A. Well, I -- I don't see that to exclude there may have been 16:48:05
21 others, but I just don't recall. But I think there was at
22 least one that where the -- the information was that people
23 were standing in the roadway, and I'm not sure what they did,
24 do surveillance or just going out and checking or talking to
25 neighbors, as to how or if they corroborated that. 16:48:23

1 Q. But in any event, in terms of police practice, good police
2 practice, given the amount of resources, you would, in your
3 experience, would want that corroboration of reported criminal
4 activity before the patrol took place, correct?

5 A. Yeah, I think you're going to look -- you're going to look 16:48:42
6 at the criteria I think Chief Sands touched on before you
7 commit that type of resource, that level of resource as to a
8 location.

9 Q. And you did not see in any of the materials that you
10 observed -- let me back up a little bit. 16:48:59

11 You said you also read all of the transcripts from
12 this proceeding, is that right?

13 A. Correct.

14 Q. And did anything in any of the testimony that you read
15 alter or change in any way your opinions that you provided in 16:49:10
16 your report?

17 A. No.

18 Q. And you did not see any example of an after-the-fact
19 assessment, after a patrol was over, by MCSO concerning whether
20 that patrol had any positive impact on crime rates or 16:49:27
21 particular crime in that area?

22 A. Well, there was a reference, and which is pretty standard,
23 that you do a debriefing. Chief Sands didn't go into detail
24 what was covered in the debriefing after the -- and I think he
25 was probably referring more to the large operations, although 16:49:44

1 that wasn't clear, that they would debrief after the operation
2 to -- and again, I'm not sure what was covered in the
3 debriefing.

4 Q. But there's no testimony from anybody who ever participated
5 in such a debriefing, was there? 16:49:58

6 A. Well, I think Chief Sands -- it was either Chief Sands or
7 Lieutenant Sousa that said they participated and conducted the
8 debriefing.

9 Q. If you could turn to page 297 of your deposition, please.

10 A. Yes, sir. 16:50:19

11 Q. If you could look at line 13 through 19.

12 And the question is: "And, in fact, did you see at
13 any time after any of these saturation patrols any assessment
14 by MCSO or any portion of MCSO as to whether that particular
15 patrol had any positive impact on crime rates or a particular
16 crime problem in the area that was patrolled? 16:50:41

17 "ANSWER: I don't recall that I saw any."

18 Is that your testimony?

19 A. It is. And I think with the exception of seeing, again,
20 either Chief Sands' or Lieutenant Sousa's reference to a
21 debriefing, I think that's -- I would stand by that answer. 16:50:57

22 Q. And you don't know what form, whether it was formal or
23 informal debriefing that Chief Sands was talking about, do you?

24 A. No.

25 Q. Mr. Click, you're familiar with the phrase "driving while 16:51:33

1 black," is that correct?

2 A. I am.

3 Q. What does that mean?

4 A. It means that an individual, a black individual,
5 African-American, is likely to get stopped solely because
6 they're black. 16:51:44

7 Q. And do you recall when that phrase first became known in
8 the law enforcement community?

9 A. I would suspect probably maybe in the '60s.

10 Q. And that was a concern about improper use of race in law
11 enforcement decisions. Is that fair to say? 16:52:03

12 A. Fair to say.

13 Q. And while it was driving while black, the same concern
14 would be for stopping people who are Latino improperly, is that
15 right? 16:52:13

16 A. Yes. I think a person stopped for that reason -- it may
17 be -- it may be a little different in terms of -- and, you
18 know, we get into stereotypes, but -- but dark --
19 African-Americans generally have darker skin. It may be
20 more -- harder to differentiate color of skin with -- with a
21 Hispanic. 16:52:32

22 Q. They may look Caucasian, is that -- is that the point?

23 A. Sure.

24 Q. And the concern, the driving while black concept is that
25 people who were not Caucasian may well be discriminated against 16:52:45

1 in law enforcement decisions, correct?

2 A. Correct.

3 Q. And that's been a concern and discussion amongst law
4 enforcement agencies for many years now, is that right?

5 A. At least 25 or 30, yes.

16:52:58

6 Q. And a professional law enforcement agency will monitor
7 possible racial profiling on a day-to-day basis throughout the
8 entire organization, is that correct?

9 A. Well, I think every agency that I'm aware of will monitor
10 that in some manner. Because I -- I don't know of an agency
11 that would tolerate that today or condone that.

16:53:15

12 Q. And before knowing whether it's even possibly going on
13 there has to be some system in place to monitor whether it's
14 possibly occurring, is that correct?

15 A. Well, the system's in place. You have a complaint system
16 and you have a lot of advocates today. The systems may vary a
17 little bit, but the system's in place.

16:53:31

18 If you have an officer out there that is using race as
19 the basis to stop someone, it's going to come to your
20 attention. The obligation you have as an agency is to
21 investigate it and determine whether or not you can -- you can
22 either sustain or not sustain that complaint.

16:53:51

23 Q. Why are you so confident? I want to explore why it would
24 come to your attention. Let's use one of these patrols that
25 we've talked about, the large saturation patrols that were

16:54:12

1 concerned about immigration enforcement.

2 You've seen now some of the lists of the results of
3 those operations, and many persons, in terms of the result,
4 were in fact referred for immigration deportation proceedings,
5 correct?

16:54:31

6 A. Correct.

7 Q. And many of those persons, if not all, were Latinos, is
8 that correct?

9 A. If not all, certainly a significant percentage of them
10 were.

16:54:40

11 Q. And you would not expect that a person who is now facing
12 deportation proceedings and detained by ICE would be primarily
13 concerned about making a complaint to the MCSO about his or her
14 treatment while on the road. Is that fair to say?

15 A. I'm not sure it's fair to say. I think Mr. Melendres is an
16 example, but -- made that known --

16:54:56

17 Q. Mr. Melendres was a citizen, I mean was a lawful resident,
18 is that right?

19 A. But he was concerned about racial profiling.

20 Q. But he was released and he made his complaint after release
21 from detention, isn't that right?

16:55:11

22 A. Correct.

23 Q. The majority of these folks who were referred for
24 deportation may well have been deported, is that right?

25 A. I don't know what that process is, no.

16:55:23

1 Q. But it certainly would not be an indicator of whether there
2 was a problem with their underlying traffic stop if there was
3 not a complaint on the books from one of these people who was
4 perhaps deported a day or two later?

5 A. Well, sure. I mean, you can't -- you can't deal with what 16:55:37
6 you don't know.

7 Q. And there were plenty of complaints, if you will, about the
8 sheriff's activities about being racially motivated in terms of
9 his immigration enforcement, is that correct?

10 A. Well, I'm not sure. I guess you use a term "many 16:55:51
11 complaints." I think there were a lot of -- a lot of issues
12 that people brought up, and normally through the media, of
13 their opposition to the sheriff's enforcement priority, and --
14 and indicating that they felt that racial profiling was
15 occurring. 16:56:09

16 Q. There would be no doubt in your mind if you were the
17 sheriff of Maricopa County at the time starting from 2000 --
18 early 2007 on that the possibility of racial profiling is
19 something that many people in the community, including this
20 lawsuit, including public officials, including media reports, 16:56:23
21 were concerned that the policies that were being adopted in
22 fact resulted in racial profiling, is that right?

23 MR. CASEY: Objection, compound, Your Honor. It's
24 vague.

25 THE WITNESS: Could I get you to re-ask that, 16:56:36

1 Counselor?

2 MR. POCHODA: Sure.

3 THE COURT: Why don't you let me rule on the objection
4 first. I get to decide these things.

5 You want to rephrase the question? 16:56:51

6 MR. POCHODA: I would, Your Honor.

7 BY MR. POCHODA:

8 Q. You had indicated before that the monitoring is important
9 to let an agency head know that there may be racial profiling
10 taking place in his or her agency, is that correct? 16:57:07

11 A. Yes.

12 Q. And to then take whatever actions are appropriate if there
13 is such a possibility, is that right?

14 A. Correct.

15 Q. And one of the ways that an agency head might know is 16:57:15
16 because there are complaints from people who were subjected to
17 these law enforcement decisions, is that right?

18 A. That certainly would probably be the primary source.

19 Q. Well, again, you don't know what the percentages of people
20 who are in fact deported would be making complaints in any 16:57:33
21 state, given their situations of the immigration system, is
22 that right?

23 A. Correct.

24 Q. So you don't know if it's the primary way that people are
25 made aware of racial profiling in the immigration enforcement 16:57:46

1 area, correct?

2 A. I'm not sure I fully grasp the question, Counselor.

3 Q. Well, you don't know that any of these people were in a
4 position to make a complaint about what happened when they were
5 stopped in the road. 16:58:01

6 A. No, I -- I'm making an assumption here. I think you're
7 talking about poor people who are probably not well educated in
8 terms of our system. So I -- but I'm not sure. I'm just
9 making an assumption that that may be the case.

10 Q. As a general matter you're saying that when citizens or 16:58:19
11 residents in this country are subjected to bad practices by
12 police, they'll make a complaint. Is that your point?

13 A. I think many will, or they'll find out a means in which to
14 do that, yes.

15 Q. But you have no idea whether that's an accurate statement 16:58:33
16 that -- that for persons who in fact were racially profiled and
17 as a result were stopped and subjected to the immigration and
18 deportation proceedings, you don't know if there's any
19 significant percent of those persons who will make a complaint
20 about the underlying stop, correct? 16:58:51

21 A. Well, I don't know if there is or there isn't. I just
22 don't know.

23 Q. That's what I'm saying. So in this context you don't know
24 if that is the primary way for a law enforcement agency to find
25 out if there's a problem about racial profiling, correct? 16:59:01

1 A. It may be true, yes.

2 Q. So there has to be presumed -- and there are other
3 mechanisms that professional organizations will adopt to
4 monitor if there is even a suspicion of profiling going on in
5 their agency, is that right?

16:59:19

6 A. That's correct.

7 Q. And you did that when you were in Dallas, correct, as the
8 chief of police?

9 A. Did?

10 Q. Took steps to monitor to see if there was any possibly of
11 profiling going on, or improper decisions based on race.

16:59:33

12 A. We listened to any complaints from individuals and/or
13 organizations that had concerns in that area.

14 Q. And you would indicate to supervisors of the Dallas police
15 chief that racial profiling, starting with driving while black,
16 is a concern for large-scale professional police agencies, is
17 that right?

16:59:56

18 A. Well, I think you limited it to large scale. I think maybe
19 large scale --

20 Q. Large.

17:00:08

21 A. Large police agencies are probably no different than small
22 police agencies. I don't know of an agency out there of any
23 size that tolerates or condones racial profiling.

24 Q. And none of those agencies should be failing to make sure
25 that they took steps to monitor whether racial profiling was

17:00:24

1 occurring, whatever those steps may be?

2 A. Sure. I mean, you're going to be sensitive to it. It's
3 something that you do not want to have happen in your agency.
4 And if information comes from any source that that may be a
5 problem, you're going -- you're going to take some step to --
6 to look at that. 17:00:42

7 Q. Well, when you were in Dallas you had to discipline some
8 officers for improper racial decisions that affected their law
9 enforcement obligations, is that right?

10 A. I did. 17:00:58

11 Q. And that involved both white and black officers, is that
12 correct?

13 A. It did.

14 Q. And you would agree that the fact that you are a black or
15 Latino official does not mean you are incapable of using race
16 in an improper manner in your law enforcement decisions,
17 correct? 17:01:08

18 A. I'm just trying think of examples, if that's true, I -- I
19 think that the -- I think there may have been several black
20 officers that were disciplined for race related issues
21 involving non-black. So I'm not sure. 17:01:29

22 Q. You don't believe you can assume that officers of color may
23 not have an improper -- make an improper decision in law
24 enforcement, even if it's against other persons of color, is
25 that right? 17:01:54

1 A. I certainly think that's possible. I can't think of an
2 example off the top of my head, but I think that's possible.

3 Q. They're not immune from that possibility. Is that fair to
4 say?

5 A. Correct. 17:02:07

6 THE COURT: Mr. Pochoda, we've reached the end of the
7 day and past. I assume you're not ready to wrap this up.

8 MR. POCHODA: I am not, Your Honor.

9 THE COURT: Okay. Well, then we will resume tomorrow
10 at 8:30. 17:02:20

11 MR. POCHODA: Thank you.

12 THE COURT: Thank you. We'll see you tomorrow,
13 Mr. Click.

14 MR. YOUNG: Your Honor --

15 THE COURT: I'm going to ask Mr. Click to sit down, or 17:02:29
16 I'm going to let him go down, and then if you want to take up
17 housekeeping matters, you can. I am also stopping the clock.

18 All right. Go ahead.

19 MR. YOUNG: Yes. We talked this morning about
20 briefing, and you had given us a, I guess, a proposal with 17:02:45
21 respect to questions that you might ask us.

22 We've had a chance to talk among ourselves, and from
23 the plaintiffs' standpoint the procedure that you suggested is
24 fine with us and we would welcome that, that procedure. With
25 respect to your factual questions, I believe, in particular, as 17:03:03

1 well as your legal questions.

2 THE COURT: Mr. Casey, do you have a position on that
3 one way or the other?

4 MR. CASEY: I'm sorry, I was talking with Mr. Click.

5 (Off-the-record discussion between defendants'
6 counsel.)

17:03:10

7 MR. CASEY: Yeah, I think we expressed this morning
8 that we were in agreement with what the Court proposed.

9 THE COURT: Yeah, you were, but --

10 MR. CASEY: We have no change.

17:03:23

11 Your Honor, I also wanted to share with the Court, to
12 the extent it matters, the Court and counsel, we will not be
13 calling Scott Jefferys. With the conclusion of Mr. Click, if
14 there is -- finish the cross, then any redirect, then the only
15 thing that's remaining is to conclude Jason Kidd, the ICE
16 witness, his testimony, and we're probably 80 percent through
17 on that, and then Alonzo Pena.

17:03:42

18 The good news is that Ms. Gallagher and I worked on
19 narrowing Mr. Pena's testimony down. And I don't have a
20 number for you, but it's shorter.

17:04:01

21 THE COURT: Okay. And then do you anticipate
22 rebuttal?

23 MR. YOUNG: We do. We have at least one witness for
24 rebuttal, and I think we'll -- we'll notify defense counsel if
25 we have more, but we do have a -- a rebuttal.

17:04:17

1 MR. CASEY: Well, I will put on the record that I will
2 object to more, because we've had one witness disclosed to us
3 in the 24-hour time period, and the one witness that we have
4 we're prepared to deal with. But if there's more, we object.

5 MR. YOUNG: I hear that objection. 17:04:36

6 Relevant to that, and this is really just
7 housekeeping, I wonder, for our planning tomorrow, we have a
8 time calculation, I think, but if -- would the Court do us --

9 THE COURT: Do you want me to give you my total?

10 MR. YOUNG: That would be really helpful, Your Honor. 17:04:55

11 THE COURT: Well, I will do that tomorrow morning.

12 MR. YOUNG: Thank you.

13 THE COURT: I will say that since that I've given you
14 the proposal this morning that you've now agreed, I've had
15 substantial doubts about it. 17:05:04

16 But I will -- I will indicate where I think that you
17 can most -- I will indicate areas that I'm interested in. And
18 I will allow you to direct your briefing that way if you want
19 to.

20 I'm not going to change my page limits. I'm not going 17:05:23
21 to pay any attention to any attempt to supplement the record
22 factually unless you can stipulate to the facts. I want to
23 make that clear.

24 The only other thing that I may ask, and I may limit
25 my factual inquiries, as you know and appreciate, the number of 17:05:36

1 exhibits that I have admitted into evidence far exceeds what
2 you've done with those exhibits. And I am trying the best I
3 can to understand what I have and to read what I have, to the
4 extent that you deemed it sufficient to put into evidence. Or
5 the extent to which I'm interested in it.

17:06:08

6 So I may ask you questions about the nature of the
7 exhibits, and that's the sort of thing that I think you might
8 be able to stipulate to. It will save me some time and it will
9 allow you, perhaps, to focus my inquiries also in a useful way.

10 But as I indicated, to the extent that I'm going to
11 give you what I'm interested in, I'm not going to do it until
12 the evidence is closed, and that means the end of rebuttal.
13 And I'm not going to, as I've already said, allow any
14 supplementation of the record other than what you're going to
15 stipulate to.

17:06:28

17:06:44

16 Any other housekeeping matters?

17 MR. CASEY: None from defendants, Your Honor.

18 MR. YOUNG: None from plaintiffs, Your Honor.

19 THE COURT: All right. We'll see you tomorrow morning
20 at 8:30.

17:06:54

21 (Proceedings recessed at 5:07 p.m.)
22
23
24
25

C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 1st day of August, 2012.

s/Gary Moll

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) August 2, 2012
Joseph M. Arpaio, et al.,) 8:33 a.m.
8)
Defendants.)
9 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE G. MURRAY SNOW
17 (BENCH TRIAL DAY 7 - Pages 1727-1936)

18
19
20
21
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I N D E X

<u>Witness:</u>	<u>Page</u>
BENNIE R. CLICK	
Cross-Examination Continued by Mr. Pochoda	1731
Redirect Examination by Mr. Casey	1771
JASON DOUGLAS KIDD	
(By videotaped deposition)	1788
ALONZO R. PEÑA	
(By videotaped deposition)	1810
RALPH BRECKEN TAYLOR	
Direct Examination by Mr. Byrnes	1865
Cross-Examination by Mr. Liddy	1902
Redirect Examination by Mr. Byrnes	1914

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
1075	Memorandum of Agreement (16 pages) (Ex. 4 to A. Pena Depo)	1828
	Defendants rest and renew Rule 52(c) motion	1864
	Plaintiffs rest	1918

P R O C E E D I N G S

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THE COURT: Thank you. Please be seated.

THE CLERK: This is CV-07-2513, Melendres v. Arpaio,
on for continuation of bench trial.

THE COURT: All right. Mr. Pochoda, we're in the
middle of your cross-examination of Mr. Click.

But Mr. Young, you'd asked for me to do a calculation
of time you have left.

According to my time tabulation, you have exhausted 18
hours and 12 minutes of your time. That does not subtract the
20 minutes that is -- or 21 minutes or whatever it is that's
attributable to you from the Kidd video. I don't think we've
heard that portion yet.

I have defendants down as having exhausted 16 hours
and 34 minutes of their time.

Any questions on that, or is that vastly out of scale
to whatever your own tabulations have been?

MR. YOUNG: That seems fine to us, Your Honor.

MR. CASEY: It is agreeable and consistent with our
tabulations.

THE COURT: All right. That's good, 'cause as long as
it's sort of in the realm, I win, right?

So Mr. Pochoda --

MR. POCHODA: Thank you, Your Honor.

1 THE COURT: -- are you ready to begin your
2 cross-examination?

3 CROSS-EXAMINATION CONTINUED

4 BY MR. POCHODA:

5 Q. Good morning, Mr. Click.

6 A. Good morning.

7 Q. We had talked yesterday about when you were the chief in
8 Dallas of having on occasion to discipline some officers for
9 racially improper law enforcement decisions, is that correct?

10 A. Correct.

11 Q. If you could give us an idea of the range of disciplinary
12 actions you took, I'm not interested in specific persons or
13 names, but if you could inform us of what the scope of the
14 discipline actions were.

15 A. Yeah, I can't remember any -- I don't remember that I
16 terminated anybody, that I fired anyone for that. I can
17 remember one instance where I transferred the individuals with
18 some time off without pay.

19 I think there probably -- I think that was probably
20 the primary discipline that I used, was the -- was giving
21 people -- there was no past infractions of that nature, so
22 based on their entire performance would give them time off.

23 And I remember at least one instance where I
24 transferred, I think, three officers, that along with the other
25 discipline, transferred them to other assignments.

1 Q. You say there was no past infractions. So in that instance
2 where it was the first example of this particular violation or
3 error, people were transferred with some time off, is that
4 correct?

5 A. Correct. I -- I don't remember that there were any where
6 there was a -- a repeat infraction.

7 Q. And you were aware at the time that these officers knew
8 that it was wrong to racially profile or use race improperly at
9 the time that they did it, is that correct?

10 A. Yes, they were.

11 Q. It's fair to say that racial profiling then and now has
12 received significant publicity, and you would be hard pressed
13 to find any officer in any agency that did not know is wrong;
14 is that fair to say?

15 A. That's fair to say.

16 Q. An officer will not readily confess to using race
17 improperly if he or she does that, is that correct?

18 A. Well, again, I can't remember specifics, but I do think
19 there were officers that acknowledged what they did was
20 improper.

21 Q. Do you still have your deposition in front of you, sir?

22 A. I do.

23 Q. If you could turn to page 58, please.

24 A. Yes, sir.

25 Q. Starting on line 19 through 24.

1 MR. POCHODA: Oh, if you could --

2 THE WITNESS: Yes, sir, I've got it.

3 BY MR. POCHODA:

4 Q. Well, let me read it as we're getting it, and starting on
5 line 19, "QUESTION: And if an officer, in fact, did knowingly
6 use race as a factor improperly in making a law enforcement
7 decision, he or she would have an interest in not coming forth
8 and admitting that; isn't that right?

9 "ANSWER: True."

10 Do you recall answering it in that manner?

11 A. I do.

12 Q. And you agree with that statement today?

13 A. I do.

14 Q. And would you agree that there's a hesitancy of officers to
15 report bad acts by fellow officers?

16 A. I think there may be a hesitancy, but I think in most
17 agencies most of the reports of misconduct by other officers or
18 deputies come from other officers or deputies. From the day
19 they walk into the academy, we're well aware of, not just in
20 the police profession, I think you find it in all professions,
21 where there's a reluctance to report misconduct.

22 I sat on the board of the state bar for six years and
23 actually chaired the disciplinary committee, and it was one of
24 the big concerns within the legal profession, attorneys not
25 coming forth and reporting misconduct on the part of other

1 attorneys. I think that from the day we recognize that -- we
2 talk about the Blue Wall of Silence or the Code of Silence that
3 was coined back in the 1960s, we recognize that -- that it's a
4 cancer. It will destroy police agencies' integrity and
5 credibility.

6 As a result of that, literally from the day they walk
7 in the door, the ethics course really emphasizes it, what your
8 responsibility is, and what the dangers are in tolerating
9 misconduct on the part of other -- other officers.

10 And most agencies have a policy that require that you
11 report misconduct. And if you don't report that misconduct and
12 it's discovered, you may well face as severe discipline as the
13 misconduct itself.

14 Q. So in light of the experience in the past in police
15 agencies, this so-called blue wall of silence, you focus on
16 that from day one, as you said?

17 A. Absolutely. Just, it can't be tolerated. Are you able to
18 eliminate it completely? Probably not. I think there's some
19 human nature involved. But you certainly emphasize the -- that
20 it's not tolerated and what the -- and try to educate the --
21 the new officer as to why they can't tolerate or they shouldn't
22 tolerate it.

23 And I think as a result of that you do find most, or
24 certainly the majority of complaints about misconduct come from
25 other officers or deputies.

1 Q. But you would agree that there are complaints, I mean,
2 there are incidents where an officer will observe bad and
3 improper behavior by a fellow officer and he or she will not
4 report it, is that right?

5 A. I think that's true.

6 Q. And there's -- would you agree there's a disincentive for a
7 supervisor to acknowledge that there was racial profiling by
8 anyone in his or her unit?

9 A. Well, I think -- well, and I'm not sure how you separate
10 the supervisor. Supervisors go through some additional
11 training. They've made a choice, an affirmative choice to
12 become a supervisor, and through the supervisory training as to
13 what their responsibility is in enforcing department policy,
14 and certainly this is the one -- the one area that is
15 emphasized, too.

16 I'm not sure that I would -- that I would agree with a
17 disincentive. I think the incentive not to do it is you're
18 going to get disciplined; you're going to get fired; you're
19 going to get demoted. Something's going to happen to you if it
20 comes to light. So I think the incentive is that you carry out
21 your responsibilities the way you're supposed to.

22 I think, again, are there instances when that doesn't
23 happen? One of the things that most agencies do today is when
24 you have a disciplinary action, you look at training, whether
25 there was a training deficiency, you look at whether there was

1 a supervisory deficiency, and you look at whether there was a
2 policy deficiency that might have contributed to that
3 disciplinary action.

4 So I think it's recognized and you do look for that.
5 And I really have not seen that as a major -- a major problem.
6 I think supervisors by and large are pretty diligent in
7 carrying out their responsibility.

8 Q. But you would agree that there -- there would be
9 circumstances where the supervisor would be considered
10 deficient if persons in his or her unit were found to be
11 improperly using race, is that correct?

12 A. Well, yes, if a supervisor wasn't exercising proper
13 supervision, correct.

14 Q. Now, in addition to -- we talked about the officers who
15 intentionally disregard what they know are rules against racial
16 profiling. You would agree that some officers take actions
17 based on negative racial stereotypes that unconsciously creep
18 in, is that correct?

19 A. You know, I guess I struggle with this, because Mr. Stewart
20 touched on it in his opinions as to this issue of
21 unconsciousness. I've never had an officer tell me that --
22 that what he did was -- was done because he was not conscious
23 or aware of that. So, no, I think the officers that -- that
24 I've had to deal with and that I'm aware of, they pretty much
25 knew what they were doing, and they were acting upon their own

1 bias.

2 Q. So the ones that you actually disciplined were acting on
3 their own bias. You don't know if there were others in the
4 Dallas department at some point that acted based on their
5 unconscious internalization of stereotypes about race, do you?

6 A. No, I was never aware of that. No, I -- I think that we
7 found people where there may be some training deficiency in
8 terms of why they stopped somebody. They may have acted in an
9 inappropriate manner after they had stopped somebody, but --
10 but I'm not aware that it was somehow some kind of unconscious
11 bias that came into play.

12 Q. Because you don't know about the possibility that person
13 could have such internalized bias and act on it, do you?

14 A. No, I don't.

15 Q. If you could take a look at your deposition on page 69,
16 please.

17 A. Yes, sir.

18 Q. Starting on line 5.

19 "QUESTION: So it's also true that it happens
20 unconsciously sometimes, stereotyping; is that right?

21 "ANSWER: I think it's more from stereotyping as
22 opposed to a bias to a group that's stereotyped. That you make
23 some assumptions based on that stereotype.

24 "QUESTION: But it would be a negative stereotype? I
25 don't know if it's biased or not, but there were some actions

1 based on negative stereotypes that unconsciously creep in, is
2 that correct?

3 "ANSWER: It's a possibility, sure."

4 You see that?

5 A. I do.

6 Q. And that would be your testimony today as well, is that
7 correct?

8 A. Sure. I think it -- as I read this, you know, I think
9 probably the most publicized stereotype is the young black
10 male. To be a young black male in America there is a
11 stereotype I think that many people have. And even people in
12 the African-American community have expressed that same
13 stereotype.

14 And so whether it's an unconscious bias or whether
15 it's just the stereotype you've -- whatever selectively you've
16 seen in terms of the news or you've seen in terms of personal
17 experience because of the neighborhood you worked, now, is
18 it -- is it fair? You're acting on that stereotype without all
19 the legal bases. No, it's not fair.

20 Q. And you in fact, when you were in Dallas, implemented
21 training, regular training in racial and cultural sensitivity,
22 both to get at possible stereotyping as well as intentional
23 disregard, is that correct?

24 A. Yeah. I can't remember the specific training. It was
25 certainly in the forefront. Like I said yesterday, I think in

1 the forefront of most police agencies today the importance of
2 not having officers out there acting improperly, there's
3 nothing to gain from that and everything to lose in terms of
4 your agency.

5 I don't remember any specific -- the specific
6 training, but certainly from -- stereotypes are talked about
7 from, again, from the time you hire the individual throughout
8 their career.

9 Q. But in that training you would want to get at folks who
10 might be acting on internal stereotyping without recognizing
11 it, as well as folks who are intentionally violating the norm;
12 is that fair to say?

13 A. Everybody's going to get the training, yeah.

14 Q. And when you were in Dallas you adopted mechanisms to make
15 the -- the Dallas Police Department complaint process more
16 user-friendly, is that correct?

17 A. Yes, we did that while I was there. And not that that
18 hadn't been done before I got there. I think that I was
19 preceded by a chief out of Los Angeles, and he had taken a
20 number of things they'd done in Los Angeles, so -- but we tried
21 to extend on that or expand on that.

22 Q. And you did that by trying to make it more available to the
23 public, including putting complaint forms in public libraries
24 and notices in Hispanic and black newspapers and holding public
25 meetings, amongst other things, is that correct?

1 A. Correct.

2 Q. And have you seen any of such steps to make the complaint
3 process more user-friendly and available to the public in the
4 MCSO?

5 A. In the materials I reviewed, no, I did not see that.

6 Q. And did you read the testimony of some of the witnesses who
7 were stopped by the MCSO, some of the folks that came forth,
8 who testified about their difficulty in getting a complaint
9 even accepted by the MCSO? Did you hear that -- read that?

10 A. Yes. And I can't recall which -- there were one or two of
11 the individuals, at least I recall, that did indicate that they
12 had either attempted to complain and didn't feel that they
13 were -- that it was addressed appropriately, or that they
14 complained and they never heard anything back.

15 Q. Right, that it was not even a complaint that was taken in
16 the end; is that fair to say?

17 A. Well, I'm not sure it went that far. I think it was their
18 perception of how the complaint was handled, or whether it was
19 taken, or whether anybody responded to it was their -- what I
20 expressed was I think their perception.

21 Q. Well, some of the testimony involved folks who tried to
22 reach the MCSO and were not successful in getting a call back
23 to even discuss the complaint. Is that -- is that your
24 understanding?

25 A. Yes. There were one or two, I think, that expressed that.

1 Q. And without asking you whether those were accurate reports
2 or not, if an agency in fact makes it difficult, more difficult
3 to file a complaint, that would reduce the number of
4 meritorious complaints that that agency had in front of it,
5 wouldn't it?

6 A. It would.

7 Q. Mr. Click, you talked yesterday during the questioning of
8 your attorney, and in your report, about a large number of MCSO
9 policies. Do you recall that?

10 A. I do.

11 Q. Including in such areas as search and seizure and traffic
12 enforcement, is that correct?

13 A. Correct.

14 Q. And the great majority of those policies contain -- did not
15 contain any mention of racial bias or profiling or cultural
16 sensitivity, did they?

17 A. Not specifically, no.

18 Q. And you didn't purport that they did. They don't purport
19 to be policies that have to do with racial bias or racial
20 profiling, is that right?

21 A. Well, I think they per -- they don't use the language they
22 purport to be because they talk about constitutional rights.

23 Q. So to the extent that there's discussion of racial bias,
24 it's: You shall follow the Constitution. That would -- that
25 would apply whether it's excessive force or racial bias or

1 whatever, is that --

2 A. That's correct.

3 Q. But when you testified yesterday -- let's take one of the
4 examples, one of the policies, say, on high risk stops. And
5 you -- your opinion was that it met or exceeded accepted
6 standards.

7 You meant that within the universe of high-risk stop
8 policies in police agencies, the MCSO version was a good one,
9 is that -- is that correct?

10 A. Correct.

11 Q. And that would be true about your testimony of the other
12 standards that you discussed?

13 A. Correct.

14 Q. And you found that it was a good one both because of -- it
15 was good for the administration of the MCSO to put out such
16 policies, to make them known to the officers in the department,
17 is that right?

18 A. Sure. I think the primary way you give direction to -- to
19 officers is through policy and training.

20 Q. And you thought they were good because you thought they
21 were well written policies that gave instructions and
22 definitions to the officers about what was accepted or not
23 accepted?

24 A. Yes. And I base it on the language that is consistent with
25 policies and procedures that you see pretty much throughout the

1 United States and in terms of either best practice or
2 standards.

3 Q. And in fact, the administration of the MCSO is to be
4 commended by, in your opinion, because it did indicate to the
5 officers by putting out a policy in a particular area that it
6 was important that all officers follow that policy, is that
7 correct?

8 A. Well, I don't know that I would commend them. I would --
9 because I think it's -- it's the standard today that they would
10 have policies, and that I think they would -- it would be
11 negligent not to have those policies in place.

12 Q. In areas they considered important; is that fair to say?

13 A. Correct.

14 Q. They chose not to put out such a policy that focused on or
15 dealt with or defined racial profiling, did the MCSO?

16 A. There is no policy that I saw that -- that was directly or
17 specifically addressed the language that would be racial
18 profiling.

19 Q. And the policies that you did discuss and look at in these
20 areas such as traffic enforcement and search and seizure, those
21 are areas that were also covered in the, like the academy, the
22 Arizona POST instructions; is that fair to say?

23 A. Yes. Through the POST instruction and through the field
24 training officer program, and perhaps many of them through
25 ongoing continuing training.

1 Q. But you would say it's important to refresh and reinforce
2 any officer's understanding of what they were taught on their
3 way to becoming an officer at the MCSO, is that correct?

4 A. Yes. I think you have the initial training, and then I
5 think as you have ongoing training you try to address training
6 needs: What is going on? What's happening? Is there a
7 training need in this area?

8 I think to continue to train somebody where there's no
9 training need is frustrating both to the deputy that has to
10 attend that training, because it's not serving a purpose. Also
11 I think there's an ongoing process within agencies as to
12 determining the training needs as opposed to just automatically
13 covering items that really don't -- 'cause time is valuable,
14 it's expensive.

15 Q. Yeah, I obviously misstated the question. I was talking
16 about the policies. We had determined that the policies that
17 you said were above acceptable standards, such as in traffic
18 enforcement and search and seizure, were in areas that were
19 also in the curriculum of the Arizona POST academy training, is
20 that right?

21 A. Correct.

22 Q. And, indeed, in the academy, POST issues like search and
23 seizure or traffic enforcement were emphasized, is that right?

24 A. Correct.

25 Q. But that you felt it was a good idea to have policies, not

1 training I'm talking about, but these policies that reinforced
2 the lessons taught in the Arizona POST, is that correct?

3 A. Yes.

4 Q. And do you recall any testimony in this case when some of
5 the MCSO representatives were asked did they recall the
6 specifics of the lessons that they were taught about racial
7 profiling in the Arizona POST training, and they said they
8 couldn't at this time. Do you recall that?

9 A. I do.

10 Q. And you would agree that that initial training in the
11 Arizona POST is not effective if it is not remembered and
12 practiced on a daily basis; is that fair to say?

13 A. Yes. I think it's fair to say, though, that if you ask
14 officers specific questions about what they were trained in,
15 they may not be able to give you the specific answer.

16 I think what you look for, one of the things you're
17 certainly looking for, and I mentioned it yesterday, is in all
18 of that training are performance objectives, and is the
19 officer, or the deputy, demonstrating their knowledge of that
20 policy through their performance? Is there any performance
21 deficiency because they -- whether they remember the specific
22 training or not I think is secondary to whether their
23 performance reflects that training.

24 Q. So that it's important in MCSO as in any other agency that
25 there be some mechanism in place to assess performance, is that

1 correct?

2 A. Correct.

3 Q. And if it's racial profiling, some mechanism to assess
4 whether racial profiling might be occurring?

5 A. Sure.

6 Q. In any event, there is no requirement that any officer at
7 the MCSO take any continuing courses once they start their
8 chores as an officer in the area of racial bias or cultural
9 sensitivity, is that correct?

10 A. Well, it's -- I hesitate for a moment. It -- they're going
11 to be required to take the -- whatever the decision has been
12 made by the agency and by Arizona POST as to what the
13 continuing training consists of, and so they are required to
14 take and attend that continuing training whatever the
15 curriculum is.

16 As in this case, to become 287(g) certified they were
17 required to take some additional training that specifically
18 addressed that --

19 Q. Let me lead you off the 287(g)s for the moment and just
20 talk about the MCSO. There is a requirement that there be
21 eight hours of continuing education, if you will, each year, is
22 that correct.

23 A. Correct.

24 Q. But there's no requirement that any part of that has to be
25 in the area of racial bias or cultural sensitivity, is there?

1 A. Well, each year the -- the eight hours, and then, like I
2 said yesterday, MCSO exceeds this by about three times, as most
3 agencies do, because eight hours is just not sufficient.

4 So each year there's a different curriculum, but no, I
5 mean, up front, as I sit here right now, I'm not aware that
6 there's any requirement that part of that training be addressed
7 to racial profiling.

8 Q. And you're not aware as you sit here today if any
9 officer in the MCSO has taken additional required education
10 courses in those areas after starting on the job, leaving aside
11 287(g)?

12 A. No, I'm not.

13 Q. There was some mention yesterday of -- of the -- well, let
14 me start with 287(g). You indicated yesterday that you're not
15 very familiar with the workings of the 287(g) program; is that
16 fair to say?

17 A. It's fair to say.

18 Q. And you yourself are not familiar with the details of the
19 training given by 287 -- to become a 287(g) officer, are you?

20 A. No, the -- the training itself was not detailed in the
21 materials I reviewed. There was a general overview that
22 several people gave.

23 Q. But you yourself have no independent understanding of what
24 that training was?

25 A. I don't.

1 Q. And there was some mention yesterday of a -- I guess a
2 one-shot training when the 287(g) authority was lost by MCSO,
3 the patrol authority, is that correct?

4 A. Correct.

5 Q. And were you familiar with the contents of that training?

6 A. Only, I think, it was either Lieutenant Sousa or
7 commander -- Chief Sands that indicated that because of the
8 loss of the 280(c) -- 287(g) certification, that it required a
9 different procedure and that they needed to train to the new
10 procedure.

11 Q. That's the extent of your knowledge about what that
12 training was?

13 A. Well, I think it -- the detail was is that how do you, if
14 you have reasonable suspicion to believe somebody's here
15 unlawfully that you would no longer call for a 280(c) -- 287(g)
16 deputy because they were decertified, then you would call
17 for -- you would call the ICE office and -- and report it to
18 them and gain assistance, if possible, from ICE.

19 Q. You yourself did not listen to the tapes that contain that
20 training, did you?

21 A. I didn't.

22 Q. And you don't know what was contained in there in the areas
23 of racial profiling or cultural sensitivity, do you?

24 A. I don't.

25 Q. So that as we -- you testify today, you're not familiar

1 with the extent and the content of the training of any one MCSO
2 officer, is that correct?

3 A. I think in this particular case. I've had other cases in
4 which I did review officers' training records; I can't recall
5 that I did that in this case. So I do have some experience in
6 terms of -- or I guess knowledge in terms of training of other
7 deputies that I've reviewed training records. In this case,
8 no, I don't.

9 Q. You have been involved in other cases as an expert where
10 the MCSO has been a party, is that correct?

11 A. Yes, I think over the last 12 years, probably maybe --
12 maybe 10, 12 cases.

13 Q. And in all those you testified on behalf of the MCSO,
14 correct?

15 A. Yes.

16 Q. And you're saying in some of those you got some information
17 about training, but you -- that's not part of the record in
18 this case; is that fair to say?

19 A. That's fair to say.

20 Q. And you indicated that -- that it's good practice to review
21 an officer's record, or is it good practice, let me ask, to see
22 if he or she requires additional training in a particular area?

23 A. You depend on a supervisor to do that, and in law
24 enforcement that's generally the sergeant that oversees a group
25 of individuals, maybe six or eight or ten individuals, that

1 monitors them day to day and is required on a formal basis to
2 evaluate their performance or any training needs. But also
3 just day to day as he -- as he or she follows in on calls, as
4 they have discussions, there's some of this training that is
5 done very informally in briefings because before they go to
6 work they go to a short briefing, or it can be done more
7 formally.

8 But yes, it's a supervisory responsibility to identify
9 any training need that the person might have.

10 Q. And you did not see, did you, in the materials you reviewed
11 for this case, that within the MCSO that they did review an
12 officer's records in the area of racial profiling or cultural
13 sensitivity, did you?

14 A. No, I guess I would be making an assumption, but I think
15 it's a -- based on my experience as to the supervisory process
16 of law enforcement. But I did not see a specific reference
17 to -- to that.

18 But day to day, when a sergeant is literally working
19 almost side by side with you, they're well aware what your
20 activity is, your competence level, and would be aware, I
21 think, if -- if they're there, would generally be aware of any
22 training need that the person had.

23 Q. But you're not aware, in any of the documents that you
24 considered in formulating your report or in reading the
25 transcript, of any supervisor who specifically looked at,

1 whether informally or formally, looked at the practice of any
2 one of the persons in his or her unit to assess how that person
3 was operating in the area of racial profiling or cultural
4 sensitivity, did you?

5 A. It was not dressed -- addressed specifically, as I saw.

6 Q. And in order to assess an officer's performance generally
7 or specifically in a certain area, it's necessary to -- to
8 gather the information from that officer about what he or she
9 did during a shift; is that fair to say?

10 A. Yes, it's fair to say that in most police agencies there is
11 some either computerized or handwritten record of the officer's
12 activities.

13 Q. You would need some record that indicated the activities
14 during a shift, including interactions with the public, and
15 other activities; is that fair to say?

16 A. Correct.

17 Q. And did you see in this case, in any of the materials that
18 you reviewed, that the officers were required to turn in
19 information at the end of their shifts, a daily log or anything
20 of that nature, to their supervisors?

21 A. I don't believe in the materials that it was addressed one
22 way or the other.

23 Q. You did not see any such log?

24 A. No, I did not.

25 Q. You would agree that it's not generally acceptable practice

1 if there is no way for a supervisor in the MCSO to determine if
2 racial profiling may be occurring; is that fair to say?

3 A. Could you repeat that again?

4 Q. You would agree that it's not acceptable practice if the
5 supervisor has no way, no method, to document or determine if
6 racial profiling may be occurring in his or her unit?

7 A. Well, I guess your verbiage of having no way, I mean, just
8 by --

9 Q. Assuming there's no way, that would be unacceptable; is
10 that fair to say?

11 A. Well, if there was no way, it wasn't the supervisor's
12 fault, I mean, I'm not quite sure I fully understand your
13 question. I mean, if there's no way for that individual to
14 know something, I mean, I -- I guess -- maybe -- maybe I can
15 get you to reword your question.

16 Q. Let me withdraw it. Obviously, it wasn't clear.

17 If there was no testimony in this matter, or any of
18 the materials that you read, of any methodology or any way that
19 supervisors of the MCSO could determine if racial profiling
20 occurred in his or her unit, that would not be acceptable,
21 would it?

22 A. No, I -- I think the record that I reviewed reflects
23 otherwise. But, no, if the supervisor was not taking advantage
24 of the methods in which they're conducting their supervision,
25 sure, it would be -- it would be a deficiency on the part of

1 the supervisor.

2 As I said, that doesn't reflect what I saw in the
3 record.

4 Q. Well, you would agree that it would not be generally
5 acceptable for a supervisor to conclude that racial profiling
6 is not occurring in his or her unit because the supervisor
7 trusts his officers, trusts his brothers, and knows they'd
8 never profile. That would be unacceptable if that was the
9 basis for the conclusion by that supervisor that no racial
10 profiling was occurring.

11 A. I think if it was solely, "I trust them, so I therefore
12 don't have to monitor them," that would -- that would fall
13 below the -- the standard of care.

14 Q. And other than the one instance that we came up in this
15 case where Sergeant Madrid asked a deputy, one of his deputies
16 in the field, quote, How is it going? do you recall any
17 supervisor being on the scene when a deputy in his unit was
18 stopping a car or carrying out his duties when on a saturation
19 patrol?

20 A. I did not see that, but I also did not find that unusual.

21 Q. That wasn't the question. You did not see any occasion
22 where supervisors were able to assess the performance because
23 they were on the scene, other than that moment where
24 Sergeant Madrid asked one of his officers, How's it going? is
25 that correct?

1 A. Well, are we talking in general or we talking about --
2 there was -- I think Sergeant Madrid indicated that -- that --
3 when he responded to the Melendres stop, that -- I think in his
4 testimony that his standard practice was to stop, make sure
5 everything was okay, and generally would not stay while the
6 deputy processed or completed the activity, but that he would
7 respond and check and make sure everything was okay. I think
8 that was Sergeant Madrid's --

9 Q. What --

10 A. -- testimony.

11 Q. I apologize.

12 What was your understanding that Sergeant Madrid in
13 fact did when he reported to that location of the Melendres
14 stop?

15 A. Well, he's -- again, he's observing what's going on; he's
16 talking to the deputies that are there; he is --

17 Q. I don't want your surmise. What in fact did he do, in your
18 opinion? Was there information provided you of what he in fact
19 did?

20 A. I don't think it was that specific as to what he did. He
21 came, and, again, I made an assumption he's going -- he's got
22 two eyes and two ears and he understands what his
23 responsibility is.

24 Q. You generally are making assumptions that the MCSO
25 supervisors would use their eyes and ears and act properly; is

1 that fair to say?

2 A. Correct.

3 Q. And that's in part based on your prior experience with the
4 MCSO in other cases, isn't that right?

5 A. Yes. I think in the 10 or so cases that I've been involved
6 in I've not found supervisory deficiencies. I think the
7 supervisors have understood their responsibilities and have
8 carried them out.

9 Q. Do you recall any occasion in this case, based on the
10 materials or the testimony, where a deputy called a supervisor
11 to assist or review a stop while it was going on?

12 A. I don't recall in -- in the materials I reviewed that that
13 occurred.

14 Q. And did you see any mechanism in place in this case, in the
15 materials or in the testimony, that allowed supervisors to
16 check if MCSO deputies, the officers, were doing what they
17 should on saturation patrols?

18 A. No. Again, as I testified yesterday, I think the -- the
19 supervisory structure that was in place during saturation
20 patrols is what I would have expected through the command post,
21 and either supervisors are in the field or they're immediately
22 available, but any specific incident, no, I don't recall any
23 specific incident.

24 Q. Well, for example, the MCSO did not check after any
25 saturation patrol whether deputies were following a zero

1 tolerance policy, is that correct?

2 A. I did not see that that was the -- that there was an actual
3 specific check. I'm not quite sure how -- how you would do
4 that. I mean, if a deputy is -- decides not to stop somebody,
5 for whatever reason, maybe it's not practical to stop that
6 person, or maybe they just decided not to stop that person, I'm
7 not sure how you would know that.

8 Q. But you didn't see any attempt on the part of MCSO
9 supervisory up the line to assess whether their zero tolerance
10 policy on saturation patrols was being followed?

11 A. No. I think it was the general feeling the supervisors,
12 what -- from what I got from the material is the supervisors
13 did not feel that there was any abuse of -- of that order.

14 Q. And who testified to that?

15 A. I think -- well, I'm not sure it was directly testified to.
16 Certainly, there was no testimony of any of the supervisors
17 that -- that deputies were not complying with the zero
18 tolerance policy.

19 Q. I understand that. And the adoption of the zero tolerance
20 policy on the saturation patrols by MCSO was to avoid
21 accusations of picking and choosing, to blunt criticism that
22 the deputies were in fact selecting and possibly profiling, is
23 that right?

24 A. Yes, I think yesterday we touched on the -- clearly, I
25 think deputies understood the -- the criticism that some people

1 had of saturation patrols and immigration enforcement, and they
2 were attempting -- I think they did a couple of things, and one
3 of them, to try to blunt that, to try to counter that. And one
4 of them was the zero tolerance to take away discretion, and the
5 other one was that if you do stop a vehicle, you'll question
6 everybody in the vehicle, not just single someone out. I think
7 it was an attempt, according to either captain -- commander --
8 excuse me, Chief Sands or Lieutenant Sousa to try to counter
9 the criticism that there was abuse of discretion.

10 Q. And that there was racial profiling, correct?

11 A. Certainly, yes.

12 Q. And, therefore, in order to ascertain whether in fact it
13 was an effective method of countering racial profiling, you
14 would have to know as a member of the MCSO what the
15 understanding was of that zero tolerance policy amongst the
16 officers, and if they were following it, is that correct?

17 A. Yes, I -- I think it's pretty elemental, or fundamental
18 that, you know, you have to understand what -- what zero
19 tolerance is, and I don't think that's a very complicated
20 concept.

21 And to know whether they were following it, you'd
22 almost have to have a supervisor in the car with them to -- to
23 know that they were following the policy.

24 Q. You've heard the tes -- read the testimony in this case,
25 did you not?

1 A. I did.

2 Q. You would agree that different persons who testified --
3 sergeants, lieutenants -- had different understandings of how
4 the zero tolerance policy was to be applied on saturation
5 patrols; is that fair to say?

6 A. It's fair to say, I think, as I recall, there was some
7 discussion about the practicality. I mean, it can't be you're
8 going to stop everybody. I mean, if somebody -- if you're
9 going to have to run a red light or do something that's
10 dangerous, or there's some other reasonable cause not to stop
11 someone, I think that would be acceptable. But no, I -- I
12 don't think, from my understanding, that there was any real
13 confusion over what zero tolerance was.

14 Q. Well, you recall testimony from some folks involved in
15 patrols that to them, zero tolerance meant stop whenever they
16 saw a traffic violation, no matter what the violation was, is
17 that correct?

18 A. Well, zero -- yeah, I think -- I think it -- zero
19 tolerance, but you certainly have to have a lawful reason. You
20 don't just stop everyone; you have to have a lawful reason to
21 stop somebody.

22 THE COURT: Let me -- let me interrupt here,
23 Mr. Click.

24 You describe in your expert report having a zero
25 tolerance policy described to you by Lieutenant Sousa.

1 Do you recall that in your report?

2 THE WITNESS: I do.

3 THE COURT: And did you listen to Lieutenant Sousa's
4 testimony in which he described the zero tolerance to this
5 Court?

6 THE WITNESS: Yes, sir, I did.

7 THE COURT: Did you see any difference in the policy
8 as he testified to it in this court, and in the policy as you
9 described it in your report as having received it from
10 Lieutenant Sousa?

11 THE WITNESS: You know, I can't distinguish that I can
12 right now, Your Honor.

13 THE COURT: I'm sorry, what?

14 THE WITNESS: I said I can't distinguish any
15 differences. I guess I'd have to look back at my report first.

16 THE COURT: Thank you.

17 BY MR. POCHODA:

18 Q. In any event, Mr. Click, you agree that deputies need to
19 have enforcement priorities, and, therefore, they must have
20 discretion on patrol, saturation patrol, as to when and who to
21 stop; is that fair to say?

22 A. Well, I think it's fair to say that -- that discretion, to
23 the extent that I think they're still, I think, expected to
24 comply with the -- I can't think of the term. They understand
25 that zero tolerance, they understand you have to have a lawful

1 reason to stop somebody, but there may well be other factors
2 that come into play where you would have to take and exercise
3 some discretion. Get two vehicles, both of them are committing
4 violations. Which one do you stop? I don't think you can
5 completely take all discretion away.

6 Q. And Mr. Click, in your opinion it would violate your
7 definition of racial profiling if MCSO personnel took apparent
8 Mexican ancestry or ethnicity into account, amongst other
9 factors, in finding reasonable suspicion to investigate
10 someone, is that right?

11 A. I'm sorry, could you repeat that, Counselor?

12 Q. It would violate your definition of racial profiling if
13 MCSO personnel took apparent Mexican ancestry or ethnicity into
14 account, amongst other factors, in finding reasonable
15 suspicion?

16 MR. CASEY: Objection, Your Honor, it's vague.

17 THE COURT: Overruled.

18 THE WITNESS: I think if the -- the police action
19 that's being initiated has anything to do with race or
20 ethnicity or national origin, I think it's improper, it's
21 unlawful.

22 BY MR. POCHODA:

23 Q. So that would violate your definition of racial profiling
24 if that occurred?

25 A. Well, it would violate my definition, it might support my

1 definition --

2 Q. I may be phrasing it wrong. But if it was taken into
3 account in this formula for reasonable suspicion, Mexican
4 ancestry or ethnicity was taken into account, that would
5 violate racial profiling norms, is that correct?

6 A. Yes.

7 Q. Mr. Click, you were asked by counsel yesterday, or you were
8 shown the results of a saturation patrol, a list of names. Do
9 you recall that?

10 A. I do.

11 Q. And those were almost all Latino names; is that fair to
12 say?

13 A. I think maybe all of them were Latino surnames on what I
14 was shown yesterday.

15 Q. And you were asked, should that be a cause for concern?

16 Do you remember that?

17 A. Yes.

18 Q. And do you recall counsel had also asked such questions of
19 other MCSO witnesses, is that right?

20 A. Yes.

21 Q. And they responded they were not concerned because of the
22 nature of the charges that were ultimately brought against
23 these persons, is that right?

24 A. Correct.

25 Q. And they explain that they weren't concerned because the

1 charges that were brought were racially neutral charges. Is
2 that your understanding?

3 A. Correct.

4 Q. That the actual crime that people were charged with was a
5 racially neutral crime. Is that what we're talking about?

6 A. Yes.

7 Q. That there was nothing in the definition of the crime that
8 singled out a particular race; is that what we mean, you mean
9 by racially neutral?

10 A. I think the -- the crime would apply -- the crime would
11 apply regardless. If you stop somebody for drunk driving, it
12 doesn't make any difference what race or ethnicity they are.
13 They are going to be treated the same.

14 Q. Well, let's go back. The charge itself, I mean, there are
15 no racially discriminatory crimes on its -- on their face, are
16 there? Let me give an example.

17 There's not a crime of speeding that says speeding is
18 if you drive over the -- the posted limit and you're black.

19 A. Correct.

20 Q. And if that -- anyone tried to pass such a law, it would
21 quickly be struck down as unconstitutional on its face,
22 correct?

23 A. Correct.

24 Q. So that all of the charges brought, whether it's driving on
25 a suspended license or speeding, would, by definition, be

1 racially neutral crimes, correct?

2 A. Yes.

3 Q. So if the MCSO was doing as they appeared to be, assessing
4 whether there was the potential for racial profiling based on
5 whether the charges used were racially discriminatory, they
6 would never come up with an answer "yes," would they?

7 A. No, I think you have to look beyond that. I think you have
8 to look -- determine whether or not the stop itself, how did
9 you discover the offense? Whether the stop itself was -- was
10 lawful.

11 Q. Correct. And when you mean lawful, did it -- do you mean
12 was there probable cause for the stop?

13 A. Correct.

14 Q. And if there was probable cause -- let's use speeding as an
15 example. That's a racially neutral crime, of course, because
16 we only have racially neutral crimes. And let's assume that
17 there was probable cause that the individual was going 75 in a
18 65 mile zone, and you assess that as the supervisory personnel
19 at MCSO, all of these names in fact are associated with charges
20 and there was probable cause for that particular stop. Would
21 that end your inquiry as to whether there was racial profiling
22 or possibility of racial profiling in that circumstance?

23 A. Unless there was something else that would trigger, no. I
24 guess to look at the bigger picture, how many people did the
25 either individual deputy stop or how many were stopped, how

1 many total people were stopped during the patrol? I think to
2 look at it in a broader context, I'm not a statistician. I'm
3 not sitting up here telling you that I somehow could evaluate
4 that. But I think as just a supervisor I think you're going to
5 consider it in the whole -- total context. What was the nature
6 of the neighborhood that we're working?

7 I know in the past I've personally had to deal with
8 issues that -- where everybody the officer stopped was of a
9 particular race, but when you look at the neighborhood where
10 the officer worked, virtually everyone in the neighborhood, it
11 was an ethnic neighborhood, was of that same race, and -- so I
12 think there are other factors that have to be considered. But
13 I think anything that would raise the specter of racial
14 profiling needs to be investigated and looked at further.

15 Q. But you would agree that in assessing this sheet of names,
16 which as you said were entirely Latino, you have to go beyond
17 looking at what they were ultimately charged with; is that fair
18 to say?

19 A. Yes.

20 Q. And it's possible that even if there was probable cause,
21 that a particular officer or all of the officers were targeting
22 that particular vehicle because they observed that the
23 occupants of that vehicle were Latino. Is that a possibility?

24 A. I don't think it could be excluded just based on that. I
25 guess in terms of the specific facts, you had supervisors,

1 again, as we've already discussed, that were not available --
2 certainly were not present at every stop or -- and we really
3 don't know what their presence was.

4 But you've got supervisors who were also at least
5 involved in the operation that -- and I think it's another
6 factor as to how a supervisor's going to evaluate the
7 statistical information that you've gathered in the end. And
8 so part of that analysis is going to be the supervisor's own
9 observations and experience dealing with that particular
10 operation.

11 Q. In some ways, whatever they are, and I'm not asking for
12 those at the moment, you would have to go beyond the results on
13 that paper to determine if racial profiling was occurring or
14 not, is that correct?

15 A. Yes, I think so.

16 Q. And I'm not going to get into these, but your report also
17 covered your opinions about the three stops of the named
18 plaintiffs in this case, correct?

19 A. I'm sorry?

20 Q. Your opinions about the stops of the named plaintiffs in
21 this case was part of your report, is that right?

22 A. It is.

23 Q. And you yourself had no expertise or information about the
24 mindset, the motivation of the officers involved in the -- in
25 the stops, did you?

1 A. Other than what -- what is contained in the record as to
2 why the officer made the stop, or the deputy.

3 Q. You were able to determine that there could have been a
4 nonracial reason, or that there was a nonracial reason for the
5 stop, correct?

6 A. Correct.

7 Q. You could not determine whether the officer in fact would
8 have acted differently if the persons in front of him were
9 Caucasian as opposed to Latino. You did not have the
10 information or expertise to do that, correct?

11 A. I think based on the record, I think I certainly have the
12 expertise. I think based on the record in all three instances
13 it was reasonable -- I think I reached a reasonable conclusion
14 that the officer had a -- a lawful reason to stop the
15 individual that was stopped.

16 Q. Correct, there was a nonracial reason. But you don't know
17 if in fact Mr. Beeks, for example, would have in fact pointed
18 his gun as he did at the occupants of the car with the Meraz
19 and the Nieto stop if those persons had been Caucasian. You
20 don't know that for a fact?

21 A. No. All I can testify to is what the standard police
22 practice or what the best practice would be in that same
23 circumstance as it was described.

24 Q. And in coming to your conclusion, you accepted in all these
25 instances the version of what took place that the officers put

1 forth, is that right?

2 A. Well, in my report -- no, I don't pick and choose. I think
3 I included information in there from both sides and attempted
4 then to determine, basically to develop my opinion, to
5 determine what I felt, in my opinion, occurred, and whether or
6 not it was appropriate.

7 Q. But in making that determination, you would agree that in
8 no case did you discredit or not believe to any degree any of
9 the versions of what occurred that the officers put forth, and
10 you did discredit some of the versions that the plaintiffs put
11 forth; is that fair to say?

12 A. I think it's fair to say that I found in my opinion that
13 the -- the officers that made the stop acted appropriately in
14 all three instances.

15 Q. Correct. But in coming to that conclusion you were
16 dependent on the folks on the scene to give you information,
17 right? You weren't there.

18 A. Sure.

19 Q. Let me give an example. You talked about one of the stops,
20 again the Meraz/Nieto stop, and a lot of that depended on what
21 in fact Mr. Armendariz said on the CAD dispatch, is that right?

22 A. Correct.

23 Q. You did not attempt to listen to that dispatch or read the
24 dispatch, did you?

25 A. I don't believe I did.

1 Q. So you were depending on the officers when they said, "I
2 heard that a car tried to run Mr. Armendariz over," correct?

3 A. I'm depending on that, but also I guess evaluating that
4 from my own experience. Can you determine from an officer's
5 radio transmission that there's a potential problem? And
6 certainly in my experience, I mean, you can.

7 Q. So based on your own understanding and experience on
8 listening to CAD reports, you assumed this might have been the
9 same thing that led you in those prior cases to conclude there
10 was an officer in trouble, an officer who perhaps had been the
11 target of a car running him over, is that right?

12 A. Yes. And again, I think as part of that evaluation it was
13 not only one -- one deputy that interpreted that way; it was at
14 least two deputies interpreted it that way. I think both
15 Deputy Kikes and Deputy Beeks both interpreted it that way and
16 responded.

17 Q. And as I said -- I won't go into it again.

18 You have three children, as you mentioned, adult
19 children who are all in law enforcement here in Maricopa
20 County, is that correct?

21 A. I do.

22 Q. And you would agree that they would be made uncomfortable
23 if their father was seen as publicly criticizing the MCSO or
24 the sheriff, correct?

25 A. No, I have -- I'm not sure at this point what the stage of

1 the case is, but there was just a case involving the MCSO in
2 which I was critical of them.

3 My uncomfortableness in why I think I have a personal
4 conflict is where three, as you stated, three of our kids are
5 in law enforcement, and they interact with other law
6 enforcement agencies, and by and large I will not take a -- a
7 case that -- against -- now, do I turn cases down? Certainly,
8 I turn cases down.

9 But I think in the last couple of years there's
10 probably only been a couple of instances in which I've offered
11 critical opinions, and one was of a detective in the Scottsdale
12 Police Department. One of them was the chief of police in
13 Surprise, Arizona, in which I was critical of. And the third
14 one is the MCSO case that is still in litigation, and I don't
15 know as it's proper for me to discuss it, which --

16 Q. The public records case?

17 A. I'm sorry?

18 Q. Is that the public records case?

19 A. No, that was the Surprise, Arizona, police department's
20 case. But the current MCSO case in which I felt that a deputy
21 acted improperly.

22 Q. Let me, if we --

23 MR. POCHODA: Well, I have no further questions for
24 you.

25 THE COURT: Redirect?

1 MR. CASEY: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. CASEY:

4 Q. Good morning, Mr. Click.

5 A. Good morning.

6 Q. A few areas. You were asked questions about whether or not
7 the MCSO has a separate stand-alone written policy about racial
8 profiling. You remember those series of questions?

9 A. I do.

10 Q. Is there a national standard that -- in law enforcement
11 that uniformly requires every law enforcement agency to have
12 policies and procedures on every conceivable subject?

13 A. No.

14 Q. Let's focus on racial profiling. Is there a national
15 standard in your field of expertise that requires an agency the
16 size of MCSO to have a separate stand-alone policy prohibiting
17 racial profiling, as Mr. Pochoda addressed, where it defines
18 racial profiling, gives examples of racial profiling, and then
19 says it's prohibited?

20 A. As I testified yesterday, I think many agencies today, it's
21 not a standard. I think we talk best practice. I don't think
22 there's any requirement that an agency have that policy, that
23 many agencies do have policies and many of them are not titled
24 racial profiling. They're broader than that. They try to
25 address more constitutional issues. And one of them is the --

1 the gay and lesbian community has pushed hard.

2 So there are policies, many agencies have policies
3 that address bias policing that -- where the officer, or
4 deputy, demonstrates a bias, that that's prohibited, that you
5 will not act upon that bias. And racial profiling is within
6 that, that definition of bias policing.

7 Q. Well, you mentioned a couple things. You mentioned
8 standard and best practices. Explain what is -- when you use
9 the word "standard," what you mean by that, and if you could,
10 explain what you mean by "best practices."

11 A. Yes. I think a standard is something that's mandated
12 either by court decision, by statute, by some governmental
13 regulatory agency such as POST, Arizona POST. Those are
14 standards. You don't have a choice.

15 Q. What about -- let me interrupt you. What about, at least
16 in the negligence setting, what about a reasonable standard of
17 care? Is that also part of it in addition?

18 A. Yes.

19 Q. Okay. Now, what is best practices?

20 A. Best practice is where there's been some consensus from
21 your professional police organizations that -- of what a -- a
22 policy, what kind of direction and training should be done in
23 terms of any particular issue or law enforcement function.

24 Q. Okay. So I -- do I understand your testimony correctly
25 that a best practice may include a separate stand-alone broad

1 policy dealing -- dealing with bias issues?

2 A. Correct.

3 Q. But that is not what the standard of care or the standard,
4 as you mentioned or defined, requires?

5 A. Yes.

6 Q. Do you have any criticism about the MCSO not having what
7 the plaintiffs' lawyers have suggested they should have in
8 terms of a separate stand-alone policy?

9 A. No. And I say no because as we touched on yesterday, just
10 the policy we looked at, and we didn't look at all the policies
11 that deal with different constitutional issues, is the
12 continual emphasis in policy on protecting constitutional
13 rights, which I think is the bottom line.

14 But it -- the whole issue of constitutional rights is
15 broader than just racial profiling. Where we see, perhaps, the
16 most litigation today is either in the area of arrest or use of
17 force. Use of force may well be the primary area of litigation
18 in terms of violation of constitutional rights.

19 Q. Let's turn to a different subject. You were asked a series
20 of questions about supervision of deputies.

21 Is it a standard practice to have a supervisor attend
22 or monitor a deputy or an officer's traffic patrol stops?

23 A. No, I -- the supervisor needs to -- and I think I did
24 yesterday testify that he has to make a decision based on how
25 closely an individual needs to be supervised based on their

1 training, their experience, and their past job performance. If
2 it's a relatively new deputy, they're -- I think it's just
3 clear they're going to perhaps need more supervision, more
4 oversight, until they can gain more experience.

5 If it appears that there's some training deficiency,
6 clearly, there -- the supervisor needs to pay attention to
7 that.

8 If there's been previous performance problems with a
9 particular deputy -- and I think these apply to probably any
10 profession or occupation -- you're going to pay more attention
11 to that person that's had performance problems, at least you
12 should. That's your supervisory responsibility to do that.

13 Q. Are you aware, sir, in the United States, of any law
14 enforcement agency the size of, for example, the MCSO, where on
15 regular traffic patrols or on special operations there is
16 actually a supervisor that goes out and monitors the actual
17 traffic stops to determine compliance with policy,
18 constitutional law, or anything else?

19 A. No. It's impractical.

20 Q. Why?

21 A. Well, several reasons. One of them is I think the -- I
22 mean, if you're -- if you're going to do that, you might as
23 well just make everybody a supervisor.

24 And then the question comes up: Well, if you can't
25 trust that supervisor, maybe you have to get another level of

1 supervisor. I think as I stated earlier, pretty quick you got
2 a bus driving down the street because nobody trusts anyone
3 else. But no, I'm not aware. It's just -- it's not practical.

4 There are some other factors that come into play. I
5 know -- and I single them out only because I try to make my
6 point, is the Arizona Department of Public Safety has such vast
7 areas, particularly in Northern Arizona, to cover, that the
8 supervisor generally only sees the officer once or twice a week
9 because they may live a hundred miles apart, or be assigned an
10 office a hundred miles apart, unless there's an issue.

11 If a supervisor's needed, clearly every officer, I
12 think, in every law enforcement agency in the country has the
13 ability to call for a supervisor to come.

14 The Sheriff's Office has a little bit of that same
15 dynamic. It's a very large county and there are some areas in
16 this county that are fairly remote. And so there's a practical
17 side to it to how often.

18 Now, is a supervisor in most agencies expected to, on
19 a random basis, follow in? Certainly. To follow in and
20 observe just on a random basis.

21 And then you're dealing with -- and we touched on this
22 yesterday about complaints. One of the ways you become aware
23 of some deficiency, perhaps some performance deficiency, is
24 either through citizen complaint or through fellow officers or
25 fellow deputies complaining about an individual, the conduct of

1 an individual.

2 Q. Now, during the course of your examination, attachment 1,
3 you told us, were all the materials that you received in
4 formulating your opinions, which are part of your report in
5 evidence, Exhibit 1070, true?

6 A. Correct.

7 Q. You received all the depositions of the MCSO personnel?

8 A. I did.

9 Q. And did you read the deposition of Sergeant Palmer?

10 A. Yes, I did.

11 Q. What about Sergeant Madrid?

12 A. Yes.

13 Q. Lieutenant Sousa?

14 A. Yes.

15 Q. And I think each one of those may have been deposed twice.

16 Did you read all of the depositions?

17 A. I don't know that I recall twice. I read the depositions I
18 was -- I was provided.

19 Q. Okay. Now, there was a question asked of you about
20 supervision. Do you remember the testimony, either what you
21 read from here at trial or in the transcripts, about what
22 Sergeants Madrid and Palmer testified how they would handle
23 supervision between the two of them during saturation patrols?

24 A. I think there was some testimony that one would pretty much
25 stay at the command post and handle any issues there, and keep

1 track of the data, the enforcement data that was coming in
2 as -- as arrests were made or detentions were made, and the
3 other would either be available or be out in the field
4 observing what was going on.

5 Q. Let's just assume the evidence the Court has heard is that
6 Manuel Madrid mostly stayed at the command post and
7 Sergeant Palmer would go to scenes where there were stops made
8 by deputies. Just assuming that that's what the Court has
9 heard, is that, in your judgment, a reasonable and standard
10 practice as a supervisor?

11 A. Yes. And our discussion yesterday about saturation patrols
12 or these types of operations, that is standard practice.
13 You're going to have supervisors at the command post and you're
14 going to have supervisors in the field.

15 Q. Is that type of supervision, assuming that was the
16 evidence, of Sergeant Brett Palmer on a saturation patrol going
17 to various stops as they're occurring, is that something that's
18 reasonable and standard in your judgment?

19 A. Yes.

20 Q. Is that the type of supervision that you believe is
21 appropriate to determine whether or not laws, statutes, and
22 policies are being complied with?

23 A. Yes.

24 Q. Now, this is also related to this. You were also asked
25 some questions -- and I don't know if it was prefaced within a

1 perfect world or not, but the question related -- at least
2 according to my notes -- was about documenting information
3 about contacts, traffic stops.

4 Is it a standard reasonable practice that every time a
5 law enforcement officer has a contact with a person, either a
6 traffic stop, or I bumped into Ann and we had an interaction,
7 that I document that in writing in some fashion?

8 A. I think today in most instances, in some fashion it is
9 documented, either in the deputy's notes, in a daily log. It
10 will vary by agency. Many agencies today have gone to complete
11 computerization. But there -- in most agencies I think there
12 is some -- something that is documented by the -- the deputy or
13 the officer.

14 Q. In the years 2007 until the end of 2009, was that a
15 reasonable and standard practice that you expected of the MCSO
16 for every contact?

17 A. Yes.

18 And yet I -- let me qualify that. I mean, there's
19 some where somebody flags you down because they've got a flat
20 tire and they don't have a cellphone. I mean, there may be
21 some -- most non-law enforcement related contacts you may not,
22 I mean they're very brief and you may not document.

23 Q. The next issue that I'd like to address with you is what
24 the plaintiffs talked about was the method of detecting racial
25 profiling, and specifically you were asked a series of

1 questions about mechanisms to determine racial profiling.

2 Do you have an opinion as to whether or not the MCSO
3 had a mechanism, a methodology of some form, to determine
4 whether or not its officers were racial profiling?

5 A. Yes.

6 Q. And what was that?

7 A. I think it reflects probably what occurs in most police
8 agencies in the United States through the policies, procedures,
9 the training, the supervision, the dependence on reporting of
10 any alleged misconduct. I think it's a combination of all
11 those things that we've touched on that are in place in the
12 Sheriff's Office, and that the majority of police agencies in
13 the United States I think utilize those same mechanisms.

14 Q. Okay. And explain for me why you believe the methodology
15 and the mechanism that's in place, from what you just
16 described -- the training, the supervision, the interaction --
17 why you believe that's reasonable and appropriate.

18 A. Well, I think that -- I think just the result, I'm not
19 aware, and I certainly didn't come to the conclusion. I would
20 probably have another response to this if there was a pattern
21 and practice of factual, where you've got factual information
22 that racial profiling -- there's a pattern and practice of
23 racial profiling, then, yeah, I think you could -- I would come
24 to the opinion that the system was failing.

25 I did not come to that conclusion, that there's a

1 pattern and practice within the Sheriff's Office of racial
2 profiling. From that I -- I would propose that the current
3 systems that are in place are working.

4 Q. All right. Well, let's talk about that for a minute. I
5 understand that's your opinion, but the plaintiffs' lawyers
6 have suggested in this trial that we don't make contact and
7 document every -- strike that.

8 The plaintiffs' lawyers have suggested, Mr. Click,
9 that we don't contact -- I'm sorry, I'm having a brain cramp.
10 I'm going to start for the third time.

11 Plaintiffs' counsel has suggested that in this case,
12 that because we don't, at MCSO, document everything about every
13 contact we make, and that we don't have a stand-alone policy on
14 racial profiling, defining it and describing it, and that
15 because we don't go and supervise every traffic stop, and
16 because we don't go through every single reason for the traffic
17 stop or for an arrest, that there's absolutely no mechanism to
18 determine whether racial profiling exists or not.

19 Do you agree, assuming that's even remotely similar to
20 what they're suggesting in this case, do you agree with that?

21 A. No, I don't agree with that.

22 Q. Why is that?

23 A. Well, again, as I stated, I -- I did not find information
24 that led me to believe there was a pattern and practice of
25 racial profiling. And from that it leads me to believe that

1 the -- the training -- and we've not talked about the hiring
2 process. I mean, it's a very critical hiring process that
3 we've not touched on, at least in my testimony, of how you try
4 right up front, through psychological screening, through
5 polygraphs, screening people out that have certain biases, to
6 the extent that's possible with today's knowledge. But I think
7 through those entire processes it led me to believe that the
8 current process is working.

9 We talk about the lack of -- of documentation, and
10 yes, I think most agencies do in some manner document.

11 Now, sometimes as I state, it's in the officer's
12 notes, that's kind of informal, keep them in case something
13 comes up. A few days later, if there's nothing there, you
14 throw them away, there's nothing that -- no reason to keep
15 them.

16 But logs, I think we need to look at the purpose of
17 many agencies. Now, we could take those, and I guess somebody
18 could try to interpret what they mean if -- if logs are kept of
19 every contact.

20 But daily logs are kept primarily for performance
21 purposes. You know, you have an officer or deputy out there
22 that's not performing, one way you try to determine that is
23 through whether or not -- you know, what are they doing with
24 their time? It's not really focused as to whether or not
25 they're stopping whoever. It just has to do with how they're

1 spending their time and trying to account for their time.

2 And a lot of those logs that are kept are strictly
3 license plates numbers of their traffic stops. Stopped a
4 vehicle, its license number. It doesn't have any other data
5 there in many agencies.

6 Q. Is there, in your mind, based on everything you reviewed
7 and all your experience, any concern that you have that the
8 MCSO is using race or ethnicity in any manner that is
9 inappropriate?

10 A. No.

11 Q. Now, you were asked a series of questions, and during one
12 of your answers you said there was no incentive to racially
13 profile. And the questioner then began to go on to a different
14 subject, and I'd like to talk to you about that.

15 Explain for the Court, in your judgment, why there is
16 no incentive to use race in law enforcement in the MCSO.

17 A. Well, I think part of it is it's going to get you in
18 trouble. Could get you fired. Lose your livelihood. Under
19 federal statute, 'cause you can be -- and perhaps even under
20 state statute, but certainly under federal statute you can be
21 charged criminally. It's a federal felony. There's been
22 officers that's gone to prison for this. This is all part of
23 the training that -- that officers receive.

24 And I think to just make them aware that not only is
25 it damaging to you or your reputation, as I stated, it's going

1 to cost you your job, perhaps, or it's going to damage the
2 agency's reputation; it's going to damage your relationship
3 with the community.

4 There's a lot of disincentives. To go to prison or to
5 lose your job is a major disincentive if you are inclined to --
6 to racially profile.

7 Q. It sounds like what you're describing for me, based on your
8 experience, that those are very deeply personal incentives not
9 to do something like that.

10 A. Correct. It goes beyond the policies and procedures and
11 those kinds of things that there's some potential personal loss
12 that is -- I think would discourage most people, even if they
13 were inclined to racially profile.

14 Q. You were asked a question about the disincentive of
15 supervisors to identify racial profiling, and I'd like to have
16 you address for me a little bit more about why you think
17 that -- that that doesn't exist, a disincentive.

18 And specifically -- first of all, I want you to tell
19 me a little bit about that.

20 A. Well, I mean, I think most -- most -- and not just in
21 reference to law enforcement, I think most people are proud of
22 who they are and what they do and their jobs. But beyond that,
23 I mean, to know what your job function is and not to carry that
24 out, and as a supervisor to hold your people accountable to the
25 agency's policies, to the law, to get demoted, the

1 embarrassment that comes with that, I think most people are
2 pretty sincere, a great majority are very sincere about
3 carrying out their function.

4 We talked about the oath of office and, you know, it
5 sounds kind of hokey up front. But when you really talk to
6 people about what they took an oath to do and they promised to
7 do, most people take that very seriously. I think that applies
8 to supervisors, that -- that it would be a personal
9 embarrassment. But it also could cost them, can cost them
10 their job, can cost them their livelihood, could result in a
11 demotion. And within agencies, I mean, there's a real stigma
12 attached to that.

13 Q. Let me -- what about -- let's say Mr. Liddy and I are two
14 cops. And I think he's doing something wrong, but he is very
15 well connected to my superiors, he's very well connected in
16 inter-office politics, and he has the ear of the powers that
17 be, what about -- do I -- are you aware of protections that
18 would be provided to someone like me who said, All right. I'm
19 going to go against this powerful fellow cop because I think
20 he's doing something wrong?

21 A. Yes. I think that we've built in protections legally for
22 whistle-blowers, people that bring forth alleged misconduct
23 within an agency, and there's a process to be followed to do
24 that just to address this particular scenario that you just
25 presented.

1 But I think, as I stated earlier with Mr. Pochoda,
2 that maybe within the first few days they walk in the door, the
3 code of ethics, the ethics training is done almost -- I'm not
4 sure it's in that first week, but it's very early in the
5 academy, as to what your responsibilities are. And what are
6 your -- and we talk about the Code of Silence and the Blue
7 Wall, and how damaging and how that's destroyed the reputation
8 of some very large agencies in this country, and what their
9 responsibility is and what the consequences are if they don't
10 follow through.

11 There are scenarios built into the ethics training as
12 to what you should do, or what you will do, are expected to do,
13 if you observe various types of misconduct. And what you're
14 expected to do is you're going to bring that to a supervisor's
15 attention. And if you don't, the consequences for you, as I
16 stated earlier, may be as severe as the person that actually
17 was involved in the inappropriate action.

18 Q. Let's turn to a different subject. One of the -- one of
19 the end questions that Mr. Pochoda asked you was about
20 essentially in this context. There's probable cause for the
21 stop, there may have been probable cause for an arrest, but you
22 really don't know what was going on in the mindset of the
23 officer.

24 Do you remember that?

25 A. Correct.

1 Q. Okay. You mentioned earlier to me when I started this
2 redirect about some type of screening of officers. Back at the
3 hiring level, you mentioned polygraphs as well.

4 Explain for me what you meant by screening, and how
5 that plays a role into I guess that subjective intent of an
6 officer.

7 A. Over the last -- I'm just thinking back, probably 30 years
8 ago, started in San Jose, California, with a psychologist, and
9 since it has expanded, there's a whole association today of
10 police psychologists. And they were looking for the ideal
11 profile for a police officer. And, of course, one of the
12 primary things they were looking at was any biases.

13 Everybody's going to bring biases, but to hire people that are
14 not going to act on those biases.

15 Now, it looks at a number of other things, too. But
16 looking at whether or not -- and this is used today by many
17 agencies, including here in Arizona, that you not only take a
18 polygraph -- one of the few occupations. As a matter of fact,
19 I'm not sure there's any other occupation that -- in many
20 instances, you go through not only the polygraph exam to make
21 sure that there's nothing in your background that you haven't
22 revealed; and secondly, to go through the psychological
23 evaluation that is required, and it's to make sure that you're
24 weeding people out that aren't suited, that do not fit that
25 profile.

1 And I think it's been very successful. I think it's
2 like a lot of areas, it's not as hard a science as we'd like.
3 We start talking about psychological makeup and those kinds of
4 things, but -- but it's certainly been an effective tool in
5 weeding out individuals right up front that aren't suited.

6 Q. It's not a hard science, is what you're telling us, but
7 it's a tool that helps identify people that may not be suitable
8 to have a badge, a gun, interacting with the community?

9 A. Correct.

10 MR. CASEY: Okay. Those are the questions I have for
11 you, Mr. Click. I thank you and the Court for your patience.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you. I believe you may step down.
14 Thank you for your testimony.

15 Mr. Casey, where next?

16 MR. CASEY: Your Honor, I would like to continue with
17 the remaining portion of -- of Mr. Jason Kidd, the ICE
18 employee. Pursuant to the Court's direction, we will begin
19 with Mr. Pochoda's -- most of his examination at page 132, line
20 7.

21 THE COURT: All right. Now, I understood, if I recall
22 correctly, that 21 of the minutes are to be allocated to the
23 plaintiffs, is that correct?

24 MR. CASEY: That's correct.

25 THE COURT: All right. I will allocate that.

1 How many minutes left do we have on that videotape?

2 Can you tell?

3 MR. CASEY: Your Honor, I cannot tell you accurately.

4 THE COURT: Okay.

5 MR. CASEY: I would suggest, perhaps, maybe we take
6 a -- if it's appropriate for the Court to take a recess.

7 THE COURT: All right. Well, we will take the morning
8 break at this time and we'll resume and begin with the
9 videotape at 10:20. Thank you.

10 (Recess taken.)

11 THE COURT: Thank you. Please be seated.

12 Mr. Casey.

13 MR. CASEY: Yes, Your Honor. Jason Kidd, the
14 continuation, beginning at 132, line 7.

15 (Videotaped deposition of Jason Douglas Kidd
16 commences.)

17 "BY MR. POCHODA:

18 "QUESTION: Mr. Kidd, this was an exhibit that you had
19 looked at before, and it's an e-mail that has certain
20 statistics.

21 "Do you see that?

22 "ANSWER: Yes.

23 "QUESTION: And are those the -- what -- the program
24 total is what, the total number of -- of -- of folks turned
25 over to ICE from the MCSO, is that correct?

1 "ANSWER: I believe so.

2 "QUESTION: Now, of that total number -- well,
3 let's -- let's stick to the fiscal year '08 total of 18,302.

4 "Do you see that?

5 "ANSWER: Yes.

6 "QUESTION: Of that total number, how many of those
7 were due to a -- persons that were processed by 2 -- 287(g)
8 during crime suppression operations by the MCSO?

9 "ANSWER: I have no way of knowing.

10 "QUESTION: Do you know approximately how many of
11 those were due -- of that number was due to the jail
12 operations?

13 "ANSWER: I don't know.

14 "QUESTION: Do you have any sense of which is larger,
15 the number that was processed by the jail operations or those
16 processed for the -- by crime suppression operations? Do you
17 know which was larger?

18 "ANSWER: Yes.

19 "QUESTION: Which was larger?

20 "ANSWER: The jail operations.

21 "QUESTION: And before when you talk about another
22 e-mail that said, gee, this -- we're embarrassing the rest of
23 the country, you were referring to the large numbers from jail
24 operations at the MCSO, is that correct?

25 "ANSWER: I was referring to the total number.

1 "QUESTION: And -- and do -- you do -- you are aware
2 of some sense of what the total numbers were, is that correct?

3 "ANSWER: Yes.

4 "QUESTION: And you are aware that the total numbers
5 for the jail operations were significantly greater than those
6 for the 287(g) during the suppression operations?

7 "ANSWER: Can you restate that?

8 "QUESTION: That the jail operation referrals were
9 much greater than the -- those for the 287(g) operations.

10 "ANSWER: The jail operations are 287(g). You mean
11 for the task force?

12 "QUESTION: Yes, for the task force.

13 "ANSWER: Yes, they're greater.

14 "QUESTION: So the great majority of this program
15 total that's mentioned here in this Exhibit 34, the great
16 majority of those numbers would continue even now even though
17 the Maricopa County Sheriff's Office is not utilizing task
18 force 287(g)s, is that correct?

19 "ANSWER: The -- the number would be very similar
20 because of the fact that they're still doing saturation patrols
21 and interdiction patrols based on human smuggling laws.

22 "It's kind of a difficult number to break down because
23 of the fact when the saturation patrols or the interdiction
24 teams would take place, many of the people arrested would go to
25 the jail, and then the jail people would process those even

1 though they came from a saturation patrol or an interdiction.

2 "QUESTION: Uh-huh. You talked about earlier the --
3 the fact that the -- you did receive some reports about
4 operational plans by MCSO. Those would include crime -- the
5 so-called suppression sweeps and saturation patrols, is that
6 right?

7 "ANSWER: I -- I did get report -- or the shift
8 summaries of saturation patrols.

9 "QUESTION: And that was -- that was to alert you in
10 case any of those might involve, when they took place, the need
11 for 287(g) authority?

12 "ANSWER: That's correct.

13 "QUESTION: You did not review those with an eye
14 towards giving an up or down or okay to the Sheriff's Office to
15 go ahead with those plans or not, did you?

16 "ANSWER: That's correct.

17 "QUESTION: And you had -- did not review them with an
18 eye towards assessing whether any of the information contained
19 in those operational plans were accurate or not?

20 "ANSWER: I did work with them on inserting language
21 into operational plans and making sure that things were being
22 done to make sure that we were doing -- the 287(g) portion
23 kicked in after state crimes.

24 "QUESTION: Okay. Let me give you an example. If the
25 report said we're going to go to Mesa because we've been asked

1 to go there by these eight elected officials, would that be
2 something you would review to see if that was an accurate
3 statement or not?

4 "ANSWER: No.

5 "QUESTION: And you didn't do an independent
6 verification about what the -- if there really was, in fact, a
7 criminal problem in the area that was stated in the -- in the
8 operational plan?

9 "ANSWER: No.

10 "QUESTION: And you didn't do any assessment
11 afterwards whether the operational plan had any impact on the
12 crime rates in that particular area, did you, as ICE?

13 "ANSWER: No.

14 "QUESTION: You -- you said that you were present at
15 two of the saturation patrols in the field itself, is that
16 right?

17 "ANSWER: Yes.

18 "QUESTION: And so the -- you were aware -- do you
19 have any sense of how many saturation patrols that the
20 Sheriff's Office, MCSO, engaged in starting with 2007 to the
21 date you left the Phoenix ICE office?

22 "ANSWER: A number. Probably greater than a dozen.

23 "QUESTION: It might have been upwards of 20? Is that
24 possible?

25 "ANSWER: It's possible.

1 "QUESTION: You had mentioned something along the
2 lines of that there was such patrols, that there was law
3 enforcement that used those before. Could you give us any
4 other example when a law enforcement agency concerned about a
5 particular criminal activity in the area would flood the area
6 in order to stop every car or vehicle that they saw that had an
7 infraction?

8 "ANSWER: I've talked to other 287(g) programs who --
9 who -- in Florida that have talked about using these -- these
10 types of methods for gangs. ICE uses this mess -- method for
11 gang enforcement and things of that nature.

12 "QUESTION: And the ICE -- when ICE uses it, their --
13 their method is to tell their employees, their -- the officers
14 in the field to stop every car, whether that car is suspected
15 of criminal activity or not, if there's a traffic violation?

16 "ANSWER: Not to stopping the cars, but for other --
17 for encounters and for like a zero tolerance type thing.

18 "QUESTION: Right. If they were concerned, for
19 example, about gang activity, they would be observing for
20 people who were suspected of gang activity, is that fair to
21 say?

22 "ANSWER: And talking to whoever they could.

23 "QUESTION: Are you aware of that finding in the
24 Goldwater report?

25 "ANSWER: I don't recall the exact wording, but that

1 sounds accurate.

2 "QUESTION: And was that something that was discussed
3 in the ICE office here in Phoenix upon that report going
4 public?

5 "ANSWER: I believe I discussed it with my supervisor
6 at the time.

7 "QUESTION: And what was the reaction in the ICE
8 office, if any, once that report was made public?

9 "ANSWER: I don't think there was anything.

10 "QUESTION: The fact -- that fact, whether true or
11 not, did not impact your role as ICE in terms of running --
12 supervising or monitoring the 287(g) program here in Maricopa,
13 is that right?

14 "ANSWER: Correct.

15 "QUESTION: I won't continue. So there's a
16 number more on this page and on the other pages.

17 "When you were out there looking at -- at the -- the
18 operations of the MCSO during suppression hearings, was -- was
19 your function as ICE to assess whether they were valid stops
20 made of the cars?

21 "ANSWER: No.

22 "QUESTION: And so you wouldn't take a look at it and
23 say, no, in fact, it was not actually speeding when it said
24 speeding? That was not your job, was it?

25 "ANSWER: Correct.

1 "QUESTION: And it was not your job to assess what the
2 motivation was of any particular MCSO who stopped --
3 officer who stopped anyone during a crime suppression hearing,
4 was it?

5 "ANSWER: No, that wasn't my...

6 "QUESTION: And, as we sit here today or even then,
7 you don't know if any one of these stops listed on the -- on
8 this page was made by an MCSO officer because of the
9 observation of Latino race of the driver or passengers, do you?

10 "ANSWER: I don't know.

11 "Oh, sorry.

12 "QUESTION: It was not ICE's job or function at the
13 time to look into whether there were racial motivations that
14 caused any one of these particular stops by an MCSO officer,
15 right?

16 "ANSWER: That's correct.

17 "QUESTION: So there's no basis for ICE to -- to be
18 able to conclude one way or the other whether there was racial
19 profiling in these state traffic violations during a crime
20 suppression operations by the MCSO?

21 "ANSWER: Correct.

22 "QUESTION: And you were not asked at any point during
23 your tenure here as an ICE official in Phoenix to look into
24 whether there was racial profiling involved in the stops made
25 by MCSO during crime suppression operations, is that correct?

1 "ANSWER: I don't recall being asked that.

2 "QUESTION: Mr. Kidd, the -- you've been given what's
3 been marked as Exhibit 55.

4 "Do you have that?

5 "ANSWER: Yes.

6 "QUESTION: And the -- that's a -- an article from The
7 Arizona Republic from March 2nd, 2007, by Richard Ruelas, is
8 that correct?

9 "ANSWER: Yes.

10 "QUESTION: Now, we'd -- you had talked before in
11 answer to a question from Mr. Liddy about pure immigration
12 programs. And I direct your attention to the middle of this
13 first page, and there's starting with the sentence that says,
14 'Arpaio said his deputies.'

15 "Do you see that?

16 "ANSWER: Yes.

17 "QUESTION: And it continues: 'Would go after illegal
18 immigrants no matter the offense.'

19 "And then in quotes, 'Ours is an operation where we
20 want to go after illegals, not the crime first,' he said.

21 'It's a pure program. You go after them, and you lock them
22 up.'

23 "Is that what you were referring to before in answer
24 to Mr. Liddy when you said that the sheriff had the authority
25 to do pure immigration enforcement?

1 "ANSWER: No. I was referring to the MOA. In the
2 statement -- in the MOA, it does not limit the type of
3 enforcement, the first MOA.

4 "QUESTION: That -- the MOA is -- is -- is -- is --
5 well, let me ask you: When is the MOA authority supposed to be
6 utilized by a local enforcement agency as they go about doing
7 criminal investigations?

8 "ANSWER: Are we talking about the 2007 MOA?

9 "QUESTION: Yes.

10 "ANSWER: The 2007 MOA basically had the 287(g) -- the
11 statute 287(g) cut and pasted right into it. And it did not
12 delineate when the authority necessarily was able to be used,
13 only that -- that what it was -- the different task forces and
14 things like that were to be used.

15 "QUESTION: Correct. But they didn't -- did it
16 envision or require that the MOA was used in the course of a
17 criminal activities and investigations by the local enforcement
18 agency?

19 "ANSWER: Did it envision that they would use the --

20 "QUESTION: The --

21 "ANSWER: -- the MOA?

22 "QUESTION: -- 287 authority only as part of criminal
23 investigations under state law by that local enforcement
24 authority.

25 "ANSWER: That is not what the 287(g) statute says.

1 "QUESTION: So that if they just suspected a person on
2 the street of being in this country -- an MCSO deputy, being in
3 this country illegally but had no other reason to stop the
4 person, the MOA would allow that deputy to just go up and use
5 the 287(g) authority to detain that person, is that correct?

6 "ANSWER: The MOA basically gave the -- anyone that
7 was cross-designated the same authority that an ICE
8 officer has. That ICE officer still has to develop reasonable
9 suspicion and move forward into the continuum before -- you
10 know, before they contact someone, they have to have a
11 reasonable suspicion and to continue that contact.

12 "QUESTION: And if, in fact, that law enforcement
13 encounter included a traffic stop, you would want that traffic
14 stop to be at the -- prosecuted first before you use the 287(g)
15 authority, is that correct?

16 "ANSWER: That's correct.

17 "QUESTION: But, in fact, during the MCSO crime
18 suppression operations, they generally did not, in fact,
19 prosecute the traffic violations before the 287(g) authority
20 was used.

21 "Is that your understanding and experience?

22 "ANSWER: No. That's incorrect. They did prosecute
23 or cite in general the -- for the traffic violations, they made
24 arrests, they cleared warrants and were able to arrest many
25 people on criminal warrants prior to the execution of 287(g).

1 "QUESTION: In all of these cases, for example the
2 ones I read earlier about speeding or a cracked windshield,
3 it's your understanding that first there was some sort of a --
4 a -- a disposition of that traffic violation before the 287(g)
5 authority kicked in?

6 "ANSWER: That's correct.

7 "I relied primarily on the shift summaries that would
8 come to me --

9 "QUESTION: Uh-huh.

10 "ANSWER: -- that would say a certain alien was
11 stopped for a certain state violation. That state violation
12 was then cited. And then following that, they were interviewed
13 and detained based on 287(g) authority.

14 "A fact sheet was put on there for people and programs
15 that might be interested in starting a 287(g) program within
16 their jurisdiction and answered a few questions that they may
17 have of how 287(g) were to be used.

18 "QUESTION: And this is put out by ICE?

19 "ANSWER: It was an ICE employee wrote up the -- some
20 of these fact sheets.

21 "QUESTION: And they were posted then on the ICE
22 website, is that correct?

23 "ANSWER: Yes.

24 "QUESTION: And this was to give information about
25 what an MOA does or does not do, is that fair to say?

1 "ANSWER: Yes.

2 "QUESTION: It says on the bottom of page 21 of 41 --
3 do you see that? If you could turn to 21 of 41. It's page 3
4 of 7 of the fact sheet.

5 "ANSWER: Uh-huh.

6 "QUESTION: The -- the bottom entry's -- the heading
7 is, 'What is the program designed to do?'

8 "Do you see that?

9 "ANSWER: Yes.

10 "QUESTION: And it says, 'The 287(g) program is
11 designed to enable state and local law enforcement personnel
12 incidental to the lawful arrest and during the course of their
13 normal duties to question and detained individuals for
14 potential removal from the United States if these individuals
15 are identified as undocumented illegal aliens and they are
16 suspected of committing a state crime.'

17 "Do you see that?

18 "ANSWER: Yes.

19 "QUESTION: Is that your understanding of what the
20 MOA's supposed to do -- the 287(g) program? I'm sorry.

21 "ANSWER: I'm not crazy about the wording, but it's
22 somewhat accurate.

23 "In our implementation of the program in Arizona, we
24 did focus on at least having some sort of state crime for the
25 initial contact.

1 "QUESTION: That would be -- require a crime and not a
2 civil violation, is that correct?

3 "ANSWER: No, that's not correct.

4 "QUESTION: So it didn't matter to you whether it was
5 a civil or a low-level, low-impact criminal activity or even a
6 civil violation and -- and as a focus of the 287(g) program?

7 "ANSWER: What mattered was that there was a
8 legitimate law enforcement encounter. So it could be anything
9 from a traffic violation to a criminal -- criminal violation
10 that they were able to encounter those people that was a
11 legitimate law enforcement encounter.

12 "QUESTION: You talked about the situation at
13 Cave Creek and Mr. Ortega Melendres's arrest, correct?

14 "ANSWER: Yes.

15 "QUESTION: Did you have any information about how
16 that car was stopped in the first place that
17 Mr. Ortega Melendres was riding in?

18 "ANSWER: Yes.

19 "QUESTION: And you're aware that they were concerned
20 about a day laborer site in Cave Creek that was run by a church
21 there, is that correct? Were you aware?

22 "ANSWER: Yes.

23 "QUESTION: And you were aware that there was
24 undercover activity by the sheriff's department to observe the
25 activities of cars entering and leaving that day laborer center

1 in Cave Creek, is that right?

2 "ANSWER: I was aware of that.

3 "QUESTION: And on the occasion of the date of
4 Mr. Ortega's detention, you were aware that the MCSO had
5 observed a car leaving that Mr. Ortega was in the day laborer
6 center, is that accurate? If you are aware.

7 "ANSWER: I was told about the incident and how that
8 came -- came to be, yes.

9 "QUESTION: And were you told that after they
10 identified this car as leaving the day laborer center and
11 picking up the day laborers, they, the MCSO folks, waited until
12 there was probable cause in the form of a speeding violation?

13 "ANSWER: I don't recall what the violation was, but I
14 was told that once the traffic stop -- that there was a traffic
15 stop made.

16 "QUESTION: And do you recall what the specifics were
17 in terms of the request to increase whether it was the level or
18 the type of supervision that you exercised?

19 "ANSWER: I don't recall which reports. It just
20 states -- some of these reports state that ICE supervision
21 is -- needs to be more, and so we made corrective actions to
22 make sure we supervised more.

23 "QUESTION: So that it's -- is it fair to say that the
24 thrust of the GAO report is that there needs to be better
25 controls over the program in order to increase effectiveness,

1 is that fair?

2 "ANSWER: It seems to be the title.

3 "QUESTION: If we could continue under what GAO found
4 a couple of sentences down, it states, 'ICE officials stated
5 that the objective of the program is to address serious crime
6 such as narcotics smuggling committed by removable aliens.

7 "And is it fair to say that at least as to the extent
8 that the 287(g) or any of the MCSO officers were exercising
9 their authority to investigate or process solely state crimes,
10 the ICE office would not be involved in terms of supervising?

11 "ANSWER: Are you saying I would not be involved in
12 supervising state crime violations? Or actually --

13 "QUESTION: Or enforcement by MCSO.

14 "ANSWER: That's correct. I don't get involved in the
15 state crime -- or ICE did not get involved in the state crime
16 violations.

17 "QUESTION: And I was just asking, what steps, if any,
18 were taken by ICE to ensure that there was no racial profiling
19 that came into play in decisions made that led to the use of
20 287(g) authority here in Arizona?

21 "ANSWER: Okay. Fine. We had the initial training,
22 which was the training on the use of race and the proper use.
23 And following that, there was reviews of the different
24 operations, whether it be internal or speaking with Maricopa.
25 We had additional verbiage put into some of their documents,

1 including that SOP and the other document where it states, and
2 their operational plans. Myself and Joe Sousa, we collaborated
3 on several of those to say race will not be used, it will not
4 be tolerated -- use of race will not be tolerated. It's in
5 many of their written documents.

6 "QUESTION: So what was done specifically as one,
7 there's part of the training curriculum. Do you know how many
8 hours were devoted to racial profiling or racial sensitivity
9 issues in the training for 287(g) certification?

10 "ANSWER: I know that use of race -- DOJ use of race
11 is at least one hour, it may be two. And then there's another
12 couple of hours in the same vain.

13 "QUESTION: And there was no required continuing
14 education in the area of racial profiling or racial sensitivity
15 by 287(g) as a requirement, was there?

16 "ANSWER: None. None that I know of.

17 "QUESTION: And the second that you mentioned is that
18 they put in the -- to operational plans at some point, you
19 shall not racially profile? Is that -- is that fair to say,
20 the statement?

21 "ANSWER: It's in their operational plans as we -- as
22 the program evolved, it was put in their operational plans,
23 their SOP and their other documents and briefed. The reason it
24 was put in the -- in the operational plan is because it's
25 briefed. Every time there's an operation, the briefing takes

1 place, and they go over the operational plan.

2 "QUESTION: Right. And there's a statement that says,
3 you shall not racially profile, in those plans?

4 "ANSWER: Yes, there is.

5 "QUESTION: Anything else that was done to ensure that
6 there was no racial profiling during the use of 287(g)
7 authority here in Maricopa?

8 "ANSWER: Not that I can recall at this time.

9 "QUESTION: As we sit here today, you are not in a
10 position to know what the motivation of any particular MCSO
11 officer was when he or she made a stop that led to the use of
12 287(g), is that -- is that a fair statement?

13 "ANSWER: Correct.

14 "QUESTION: The -- if I get back just through some of
15 this suppression patrols. I -- just to confirm, ICE was not
16 involved in selecting or approving the locations of those
17 patrols, is that -- is that accurate?

18 "ANSWER: I would -- yeah, I was not involved or ICE
19 was not involved in starting those.

20 "QUESTION: Was ICE concerned if it appeared that
21 there was a predominance of -- of patrols in -- in
22 neighborhoods with heavy Latino concentrations?

23 "ANSWER: We saw it in the media reports, but the
24 truth didn't really bear out to where the report -- where
25 the --

1 "QUESTION: Did you under --

2 "ANSWER: -- saturation patrols were.

3 "I was born and raised here, so I know the
4 neighborhoods. And so we would talk -- I would talk with
5 the --

6 "QUESTION: And, in your opinion, the statement that
7 they were predominantly in neighborhoods with a higher levels
8 of Latino population was not an accurate statement?

9 "ANSWER: That's correct.

10 "QUESTION: And as an example of that, Fountain Hills
11 is -- is -- has a uniquely low percentage of Latinos as a
12 neighborhood, is that a fair statement?

13 "ANSWER: That would be fair.

14 "QUESTION: Are you aware that the overwhelming
15 majority of the persons stopped by MCSO during their crime
16 suppression operation in Fountain Hills were Latino?

17 "ANSWER: I don't know who were stopped, so...

18 "QUESTION: So that's not something that ICE looked
19 into, the percentages?

20 "ANSWER: No.

21 "QUESTION: And it would not be troubling to you that
22 in a predominantly white neighborhood if the overwhelming
23 number of people stopped when they -- as a predicate for using
24 the 287(g) were, in fact, Latino? That was not a concern for
25 the ICE office?

1 "ANSWER: It was not a surprise.

2 "QUESTION: Why would it not be a surprise in an
3 overwhelmingly white neighborhood that the majority of people
4 stopped for traffic violations were Latino?

5 "ANSWER: It just wouldn't be a surprise that
6 that's -- that's what would happen based on the time and date,
7 the time -- the time of the operation, when they were and how
8 they were conducted on vehicle traffic stops. It wouldn't be a
9 surprise.

10 "QUESTION: It was my understanding that the officers
11 of MCSO who went on the suppression hearings were told to stop
12 any car they saw violating any traffic or vehicle law.

13 "Is that your understanding?

14 "ANSWER: Yes.

15 "QUESTION: And it's your testimony that even with
16 those instructions, it's not surprising that during any given
17 day, they would stop an overwhelming number of Latino drivers
18 as compared to white drivers in Fountain Hills?

19 "ANSWER: No.

20 "QUESTION: And that's because Latino drivers are
21 worse drivers? Or why would that be? Explain. I don't -- I
22 don't understand.

23 "ANSWER: It's just the way -- like I said, the time
24 and date, those -- that's who's going to be out driving around.

25 "QUESTION: And why would there be such a higher

1 percentage of Latinos in Fountain Hills streets when the
2 neighborhood is predominantly white? In your experience.

3 "ANSWER: I wouldn't know. I just...

4 "QUESTION: Okay. But you don't know if it was, in
5 fact, because there was a higher percentage of Latino drivers
6 or the MCSO people selected Latino-looking drivers to, in fact,
7 stop for traffic violations?

8 "You don't know one way or the other as we sit here
9 today?

10 "ANSWER: I just know what their operation orders
11 were.

12 "QUESTION: But ICE -- it was not an issue that ICE
13 got involved in one way or the other, whether local law
14 enforcement in that area wanted MCSO to come in to use its
15 287(g) or didn't? It was not an area -- an issue that ICE was
16 concerned about?

17 "ANSWER: Correct.

18 "QUESTION: I'm asking you, in terms of the results of
19 the arrests of any particular suppression operation, you or ICE
20 knew if those arrests were based on animus towards Latinos.

21 "ANSWER: No.

22 "BY MR. LIDDY:

23 "QUESTION: Did there come a time where the priorities
24 of the 287(g) program changed?

25 "ANSWER: Yes.

1 "QUESTION: Was that before or after January 20th,
2 2009?

3 "ANSWER: I believe it was after 2000 -- January
4 2009."

5 (Videotaped deposition of Jason Douglas Kidd
6 concluded.)

7 MR. CASEY: Your Honor, that concludes the deposition
8 testimony of Mr. Kidd.

9 The defendants would now call via video deposition ICE
10 witness Alonzo Péna, and I will queue that up.

11 THE COURT: You and Ms. Gallagher work out the time
12 allocation?

13 MR. CASEY: Your Honor, I believe -- Your Honor, I
14 believe the plaintiffs may be reduced to five minutes and 40
15 seconds and defendants are at an hour and 20 from a little --
16 almost an hour and 50 minutes. So it looks like I have -- I
17 can't be more precise than that, unfortunately, but it looks
18 like we have a total run time of one hour and 23 minutes. And
19 this is after further editing from our basically
20 two-and-a-half-hour designation.

21 THE COURT: So the total time is what?

22 MR. CASEY: An hour and 23 minutes, and I believe
23 plaintiffs may be only 5 minutes and 40 seconds.

24 MS. GALLAGHER: We're happy to take only 5 minutes and
25 40 seconds, Your Honor, but my understanding was that we -- we

1 removed five minutes and 40 seconds of an original time that
2 was around 20 minutes, so --

3 MR. CASEY: Okay.

4 MS. GALLAGHER: But we're happy to take the five
5 minutes.

6 MR. CASEY: Your Honor, Ms. Gallagher may be very
7 correct. I can just tell the Court that we have a total run
8 time of an hour and 23, according to this.

9 THE COURT: All right.

10 (Videotaped deposition of Alonzo R. Peña commences.)

11 "QUESTION: Mr. Peña, where are you currently
12 employed?

13 "ANSWER: I'm currently employed in Washington, D.C.,
14 with the Department of Homeland Security Immigration and
15 Customs Enforcement.

16 "QUESTION: How long have you been working for the
17 Department of Homeland Security?

18 "ANSWER: Since its creation in 2003.

19 "QUESTION: And prior to the creation of the
20 Department of Homeland Security, where were you employed?

21 "ANSWER: I was employed by the Department of Treasury
22 with the U.S. Customs Service. And prior to that, I was part
23 of the Treasury Department as well as under Bureau of Alcohol,
24 Tobacco and Firearms.

25 "QUESTION: Okay. Now, you've stated that you're

1 currently employed in the Department of Homeland Security
2 office in Washington, D.C. And prior to working there, where
3 were you -- where was your duty station?

4 "ANSWER: In Mexico City at the U.S. Embassy.

5 "QUESTION: And when were you there?

6 "ANSWER: I believe I was there from July the 9th,
7 2008, till May of 2009. I believe that's the -- those are
8 the -- the period of time.

9 "QUESTION: And do you speak Spanish?

10 "ANSWER: Yes.

11 "QUESTION: Prior to a posting in Mexico City with the
12 U.S. Embassy, where were you posted?

13 "ANSWER: Here in Arizona.

14 "QUESTION: And specifically where?

15 "ANSWER: At -- at the Office of the Special Agent in
16 Charge for Immigration and Customs Enforcement in Phoenix.

17 "QUESTION: Now, is SAC, S-A-C, an acronym for the
18 special agent in charge?

19 "ANSWER: Correct.

20 "QUESTION: And was that your title?

21 "ANSWER: Yes.

22 "QUESTION: So you were the SAC?

23 "ANSWER: Yes.

24 "QUESTION: And how long were you posted as the
25 special agent in charge in Phoenix, Arizona?

1 "ANSWER: I believe the dates were -- I arrived in
2 October of 2006 and departed in March -- end of March of 2008.

3 "QUESTION: And was your departure due to a normal
4 rotation as professionals in -- in your -- in your career path?
5 Was there some event that led to your choosing to change duty
6 stations?

7 "ANSWER: They created for the first -- the Department
8 of Homeland Security created the first attaché for the
9 department in Mexico City, and I was asked to apply for that
10 position.

11 "QUESTION: Okay. When you were serving as the SAC in
12 Phoenix, what were your duties?

13 "ANSWER: At -- I was the -- as a special agent in
14 charge, I was in charge of the District of Arizona, which
15 included offices in Phoenix, Tucson, Nogales, Douglas, Yuma,
16 Sells. And we had approximately 400 employees, and I was the
17 principal in charge of administering the immigration and
18 customs investigative activities for the entire district and
19 also the -- administering the administrative responsibilities
20 as well.

21 "QUESTION: And would it be fair to say that those 400
22 employees were organized in the Department of Homeland Security
23 in which they had leaders to whom they answered that were
24 between you?

25 "ANSWER: Yes, sir.

1 "QUESTION: And who were the -- who were the
2 responsible persons in leadership positions directly below you?

3 "ANSWER: Well, I had two deputies: One here, deputy
4 special agent in charges. One was Troy Henley. He was
5 assigned here in Phoenix. The second deputy was assigned in
6 Tucson, Richard Crocker. Underneath those deputies are
7 assistant special agent in charges. And I believe it was Pat
8 Schmidt, Terri Tollefson. And shortly after I arrived, there
9 was a third special -- assistant special agent in charge added
10 to the roster here in Phoenix, and that was Angel, Angel,
11 Rascon. And in Tucson, Deputy Crocker had, I believe, two
12 ASACs as well.

13 "QUESTION: At the time you were serving at the SAC,
14 were you familiar with the 287(g) program generally?

15 "ANSWER: Generally, yes.

16 "QUESTION: Would you in your own words tell us what
17 287(g) stands for and what the 287(g) program is generally.

18 "ANSWER: The 287(g) program is a -- is referred to by
19 a -- the -- the statute of -- of federal law that was, I
20 believe -- I can't remember if it was '96 -- 1996, '98, when it
21 was -- was enacted. And it was under the Department of Justice
22 where -- during the old INS where it was a statute of law that
23 based on certain training and supervision, that ICE could -- or
24 at the time it was the Department of Justice under Justice
25 Immigration and Naturalization could cross-designate the

1 authorities of -- of -- of immigration officers to state and
2 local law enforcement agents, again, based on a particular
3 training and supervision.

4 "QUESTION: Do you -- do you recall how the Maricopa
5 County Sheriff's Office first got engaged with 287(g)?

6 "ANSWER: No.

7 "QUESTION: Once local law enforcement seeks to
8 become -- to have some of its officers qualified under 287(g),
9 how are the local law enforcement officers certified to work
10 under the program?

11 "ANSWER: Once an agreement's been signed and entered
12 into and -- and the program's been accepted?

13 "QUESTION: Yes. That's my question.

14 "ANSWER: Yeah. There is a -- a training course.
15 It's divided into two different areas. One is a task force
16 model, and one is a jail model. The officers, they have --
17 there's a certain criteria, I think the amount of time that
18 they've been on duty. There's a back -- background provisions
19 that -- that are done.

20 "And -- and so once the -- the personnel has been
21 identified and they've cleared the background, this training,
22 dependent on whether they're going to be a task force
23 officer on the street, an investigator patrolman, or they're
24 going to be in the jail model, they -- they receive training
25 that's provided by -- by ICE and -- and I don't remember

1 whether it's -- what -- the -- the task force model is a little
2 longer than the jail model. I don't know, but one's 10 weeks
3 and one's 12 weeks or there's a different -- but it -- I do
4 know that the task force model gets a little additional
5 training than -- than the jail model.

6 "And then they during that -- during the course of
7 training, there's certain exams that have to be passed. And --
8 and based on -- on -- and I don't know what the -- the --
9 the -- the cutoff pass -- pass grade is. But those that
10 complete the training -- successfully complete the training are
11 then certified as -- as 287(g) officers.

12 "QUESTION: Who are the trainers? Who teaches the
13 classes?

14 "ANSWER: It's -- it's -- some of them are taught by
15 staff from Glynco, Georgia, from our Federal Law Enforcement
16 Training Center. Some are -- some -- it's a -- it's a
17 combination of -- of -- of officers -- maybe agents from the
18 existing offices and from the -- but it's -- it's coordinated
19 by the training center, and so they're the ones that -- that
20 actually are, you know -- who -- who -- who get the curriculum
21 and ensure that who -- who the instructors are.

22 "So I'm not sure how the -- you know, in particular
23 they go about picking the instructors, but -- but it's the
24 responsibility of the training center to ensure that the
25 instructors are -- are -- are knowledgeable and -- and have the

1 right background to teach the courses.

2 "QUESTION: Are you aware of where the 287(g)
3 certified law enforcement officers of the Maricopa County
4 Sheriff's Office were certified?

5 "ANSWER: I believe that the first class was here
6 in -- in Phoenix for Maricopa. And, now, that was, I think,
7 the initial 100 -- approximately about 160 were trained here
8 in -- in Phoenix.

9 "QUESTION: So, just to be clear, not every state or
10 local law enforcement department that applies to the 287(g)
11 program is accepted?

12 "ANSWER: Correct.

13 "QUESTION: Can you tell me what are some of the
14 variables the Department of Homeland Security looks at when
15 they are -- when they are evaluating a local law enforcement
16 application to determine whether it's appropriate to accept and
17 certify people from that law enforcement agency or not.

18 "ANSWER: One would be, do we have the -- do we have
19 the -- the sufficient staffing to supervise the program?
20 Another one would be, is there sufficient activity in that
21 jurisdiction that would merit us having a program with them?
22 Another would be, is there another program that best fits the
23 needs of that department and not a 287(g) program?

24 "So those are -- those are...

25 "QUESTION: Okay. Is the SAC in Phoenix -- let me

1 rephrase that.

2 "Was the SAC in Phoenix a decision maker when the
3 determination was made to accept the Maricopa County Sheriff's
4 Office's application for participation in the 287(g) program?

5 "ANSWER: The -- the decision to accept Maricopa
6 County Sheriff's was made in Washington, D.C. --

7 "QUESTION: Was it --

8 "ANSWER: -- not by the -- not by the SAC Phoenix.

9 "QUESTION: Right. Was it made with input from the
10 SAC?

11 "ANSWER: Yes.

12 "Well, let me -- let me clear that answer. The
13 position that I had that -- now, whether it was -- I don't know
14 that -- that it was used, but I can say that I did believe that
15 it would be an appropriate program here, and I did convey that
16 to Washington.

17 "QUESTION: When the decision was made to have an
18 agreement with Maricopa County and to certify, were you the
19 SAC?

20 "ANSWER: Yes.

21 "QUESTION: Okay. Were you familiar with the
22 curriculum that was taught to those who were being certified
23 under 287(g)?

24 "ANSWER: In general, generally. And I -- you know,
25 not -- I didn't review the materials or -- you know, in detail.

1 And I don't recall attending -- I think I -- I walked into one
2 of the classes to say -- to visit and say hello. And then,
3 again, I said I -- I attended the graduation. But I -- I just
4 had a very general...

5 "QUESTION: So you were familiar with the curriculum,
6 but you would not hold yourself out as an expert in the
7 curriculum?

8 "ANSWER: Correct.

9 "QUESTION: And at any time, did you participate in
10 teaching any of the curriculum to any of the Maricopa County
11 Sheriff's Office employees that were 287(g) certified?

12 "ANSWER: No, I did not.

13 "QUESTION: Okay. To your knowledge, does the
14 training include prohibition of using race as a consideration
15 or a factor for developing probable cause or reasonable
16 suspicion?

17 "ANSWER: Yes, I believe it does.

18 "QUESTION: Is the phrase racial profiling ever used
19 in the certification process?

20 "ANSWER: Yes. It's -- there is -- from -- from my
21 understanding of the curriculum, racial profiling and civil
22 rights issues are part of the curriculum of the 287(g) program.

23 "QUESTION: What is racial profiling?

24 "ANSWER: Racial profiling, the way I understand it,
25 is that where a law enforcement officer picks an individual for

1 some type of enforcement action based solely on his race and no
2 other particular criteria. Just -- just based on the person's
3 skin color or speech or -- or what -- what may be...

4 "QUESTION: Okay. Is it your understanding that
5 racial profiling is an act by a law enforcement officer who
6 uses solely the factor of race in determining whether to
7 approach a suspect and not in conjunction with other factors?

8 "ANSWER: My understanding of racial profiling is
9 where that's -- that is the sole factor that is used in -- in
10 whatever action that officer takes. That it was based on the
11 person's race.

12 "QUESTION: My question was, is racial profiling by
13 law enforcement unacceptable and in the law enforcement
14 community?

15 "ANSWER: From my experience, absolutely.

16 "QUESTION: Is racial profiling, from your experience,
17 unacceptable in the 287(g) program?

18 "ANSWER: Absolutely.

19 "QUESTION: I am going to hand you a document --

20 "Which let me hand it to you first and ask you that
21 you mark it as Exhibit Number 3.

22 "Let me show it to you first. This is a letter that
23 was purportedly written by you to Benjamin Miranda. And it is
24 marked in this litigation as Melendres MCSO 071805 through
25 071807.

1 "Is this letter familiar to you?

2 "ANSWER: Yes, it is.

3 "QUESTION: Did you write this letter?

4 "ANSWER: No, I did not.

5 "QUESTION: Okay. If you would go to the final page
6 of this document, which is MCSO 071807.

7 "ANSWER: Yes.

8 "QUESTION: Is that your signature on the signature
9 line there?

10 "ANSWER: Yes, it is.

11 "QUESTION: Who wrote the document?

12 "ANSWER: I -- I don't know exactly who -- who wrote
13 it. It would have most likely been a collaboration of members
14 of my staff with --"

15 (Videotaped deposition of Alonzo R. Peña paused.)

16 MR. CASEY: Your Honor, may I pause briefly?

17 I would just like to point out that Exhibit No. 3 is
18 Exhibit 1074 with the Court.

19 Is that admitted in evidence?

20 At this -- I don't believe it is admitted into
21 evidence. At this time we would move it for admission.

22 MS. GALLAGHER: Your Honor, it's correct it is not
23 admitted into evidence, and plaintiffs object on the basis of
24 hearsay, foundation.

25 THE COURT: What's the purpose you're seeking to have

1 it admitted?

2 MR. CASEY: Actually, just -- I don't think we need
3 it, actually, Your Honor. To be candid with you, it's to allow
4 him to address his response to specific allegations that were
5 made in here, and the process in which he evaluated the
6 allegations as part of the supervision of MCSO. So -- Your
7 Honor, I'm going to withdraw the motion at this point. I may
8 renew it.

9 THE COURT: Okay.

10 MR. CASEY: Okay. Thank you, Your Honor.

11 (Videotaped deposition of Alonzo R. Peña resumes.)

12 "ANSWER: -- review and possibly with our chief
13 counsel's office here.

14 "QUESTION: And you did sign this letter?

15 "ANSWER: Yes, I did.

16 "QUESTION: Okay. And you were familiar with all of
17 its contents when you signed it?

18 "ANSWER: Yes, I was.

19 "QUESTION: And at the time that you signed it, did
20 you believe that everything stated in this letter was true?

21 "ANSWER: Yes, I did.

22 "QUESTION: And at this time today, do you believe
23 that everything that is in this letter is true?

24 "ANSWER: Yes.

25 "QUESTION: Would you tell me what the circumstances

1 were in which this letter was written and you signed it.

2 "ANSWER: Ben Miranda, the State representative,
3 had -- I had had the opportunity to meet with him on a few
4 occasions, and so we were introduced. And he was familiar with
5 who I was, and I was familiar with who he was. And we had had
6 an ongoing dialogue whenever issues would come up within --
7 with our agency. And I believe he had sent me a letter with
8 some concerns about Maricopa County, and this was in response
9 to his concerns.

10 "QUESTION: I mean, were you serving at the -- as the
11 SAC at the time that you had these conversations with
12 Representative Miranda?

13 "ANSWER: Yes.

14 "QUESTION: Did you assign your staff the task of
15 drafting this letter to Mr. Miranda?

16 "ANSWER: Yes.

17 "QUESTION: Okay. The individuals that wrote this
18 letter, how did they learn the information that they put in the
19 letter?

20 "ANSWER: You're asking me the -- the purpose -- the
21 people that helped draft this?

22 "QUESTION: Yes.

23 "ANSWER: What?

24 "QUESTION: How did they come to know the information
25 that they put in the document?

1 "ANSWER: I -- I don't remember.

2 "QUESTION: I'll direct your attention to paragraph 4,
3 which is the last paragraph on the first page of this letter,
4 MCSO 071805.

5 "ANSWER: Okay.

6 "QUESTION: If you'll follow along with me, at the
7 beginning of that paragraph it says, 'The Sheriff was correct
8 in stating that his offices now have broad powers, with their
9 new authority to enforce federal immigration laws, in
10 conjunction with their state criminal investigations,' period.

11 "How did you learn that that was a fact?

12 "ANSWER: I know that because his officers were
13 trained and they had 287(g) authority, that that authority
14 broadened what they had under their state authorities.

15 "QUESTION: Okay. And, if you will, in the same
16 paragraph, the third sentence begins on the fourth line, 'The
17 training includes instruction on how to avoid civil rights
18 violations as well as cautions against so-called 'racial
19 profiling,' which is in quotations.

20 "And how did you learn that that was part of the
21 instruction?

22 "ANSWER: Because we -- I had had conversations
23 with -- with my staff and with the people that were at -- at --
24 on the curriculum of this -- of the program, and I knew that it
25 had racial profiling sections in it.

1 "QUESTION: I'll direct your attention to the next
2 page, which is 071806, the third paragraph down, seven lines up
3 from the bottom of that paragraph, the sentence that begins,
4 'At this point.'

5 "Do you see that?"

6 "ANSWER: Yes, I do.

7 "QUESTION: If you'll follow along with me. It says,
8 'At this point, I am pleased to say that there have been no
9 issues in the interpretation or implementation of the MOA that
10 have been significant enough to be raised to my level of
11 attention, something fairly remarkable in light of the
12 number of officers trained and the speed of implementation of
13 the program within Maricopa County.'

14 "Can you tell me upon what basis you signed a letter
15 that said that.

16 "ANSWER: Because I -- I had not had issues that --
17 that -- that were brought to my attention that were in
18 violation of the MOA that were significantly as it states
19 there. I -- I knew that as a fact.

20 "QUESTION: Okay. And it is your experience that that
21 was remarkable, quote, unquote, in light of the number of
22 officers in Maricopa County that were involved in 287(g)
23 program?"

24 "ANSWER: Yeah. Yes, I -- I believe that it -- it
25 was -- we had trained quite a few officers in a -- in a very

1 short period of time. Well, I wouldn't say a short period of
2 time. I think what -- because the training was the same
3 training everybody got. But as far as us being able to bring
4 it in and implement it and get it going, yes.

5 "QUESTION: And was it remarkable that there had not
6 been any problems brought to your attention at that time?

7 "ANSWER: I would say that it was, you know -- yes,
8 I -- I would say that it was pretty significant that we had
9 not -- we trained a lot of -- of officers, a lot of work. Yes,
10 I'd say.

11 "QUESTION: That document which you've just been
12 handed, which is designated as Exhibit Number 4, is that
13 document familiar to you?

14 "ANSWER: Yes, it is.

15 "QUESTION: And what is that document?

16 "ANSWER: This is the Memorandum of Agreement that was
17 entered into between ICE and Maricopa County Sheriff's
18 Department allowing for the creation of a task force model and
19 a jail model in which 100 -- I believe it was 160 officers were
20 trained by ICE and eventually certified to perform the -- the
21 duties of -- under the 287(g) statute, which allowed them with
22 certain -- with supervision of ICE to perform immigration
23 activities.

24 "QUESTION: Would it be fair to describe this document
25 as the governing document that would govern the activity of the

1 287(g) certified personnel of the Maricopa County Sheriff's
2 Office operating in Maricopa County underneath the supervision
3 of the Department of Homeland Security's Phoenix office?

4 "ANSWER: This is -- yes. This -- it would be fair to
5 say that this document is the framework for that relationship.

6 "QUESTION: Okay. You mentioned two phrases which I'd
7 like to inquire about. One is task force model, and the other
8 is?

9 "ANSWER: Jail model.

10 "QUESTION: Jail model.

11 "Would you please describe for me the task force
12 model. What did that mean, and how is it operating under
13 287(g)?

14 "ANSWER: The task force model is the designation of
15 law enforcement officers, either state or local, that are --
16 that are either investigators or patrolman who work outside the
17 detention facilities on -- on -- on a daily basis doing either
18 routine patrol or -- and mainly it's -- and investigative --
19 and investigative work.

20 "And the jail model are either corrections officers,
21 or depending on the -- the jurisdiction, whatever title they
22 have, officers that work inside the -- the detention facilities
23 and institutions, correctional institutions.

24 "QUESTION: So it would be fair to say that the task
25 force would be law enforcement officers on the street operating

1 under their 287(g) certification?

2 "ANSWER: Yes.

3 "QUESTION: Is it your understanding that the 287(g)
4 certified officers that operated under the task force model
5 were supervised by Department of Homeland Security personnel?

6 "ANSWER: The -- the program calls for supervision of
7 the task force model. And that definition of supervision, I
8 think, is where I want to be -- be clear that I'm explaining
9 this. Is -- is it does not -- you know, it does not require
10 that -- that, you know, we're side by side everywhere they go.
11 I mean, it is oversight supervision available to, you know, for
12 consultation and discussion and -- and advice.

13 "So I just want to -- but, we -- there is a
14 responsibility and oversight supervision responsibility of ICE
15 with the -- with the model."

16 (Videotaped deposition of Alonzo R. Peña paused.)

17 MR. CASEY: Your Honor, at this point I'd like to move
18 into evidence, offer for evidence, admission, Exhibit 4,
19 which -- from the deposition, which is Exhibit 1070 marked as
20 an exhibit. It's the memorandum of agreement between ICE and
21 Maricopa County and the Sheriff's Office.

22 MS. GALLAGHER: Your Honor, I believe it's actually
23 Exhibit 1075, and with that correction, we have no objection.

24 MR. CASEY: Excuse me. You have no objection?

25 MS. GALLAGHER: To 1075, not to 1070, which is not

1 what he was talking about.

2 MR. CASEY: I -- I misspoke. It is 1075, and we move
3 that into evidence. Sorry.

4 MS. GALLAGHER: No objection.

5 THE COURT: Exhibit 1075 is admitted.

6 (Exhibit No. 1075 is admitted into evidence.)

7 MR. CASEY: Thank you, Your Honor.

8 (Videotaped deposition of Alonzo R. Peña resumes.)

9 "QUESTION: May I direct you to Exhibit Number 4,
10 which is the MOA.

11 "ANSWER: Okay.

12 "QUESTION: On the bottom of the first page, which is
13 the fourth paragraph underneath the heading Roman numeral III,
14 Policy. The fifth line down, about midway through the column
15 there, if you'll read along with me.

16 "ANSWER: Yes.

17 "QUESTION: 'For the purposes of this MOA, ICE
18 officers will provide supervision for participating MCSO
19 personnel only as to immigration enforcement functions. MCSO
20 retains supervision of all other aspects of the employment and
21 performance of duties of participating MCSO personnel.'

22 "So when you described in the response to the last
23 question the various aspects of supervision, is that what you
24 were referring to, that provision of the MOA?

25 "ANSWER: That is part of it, yes.

1 "QUESTION: So I believe you've already said that as
2 the SAC, you were directly involved with the supervision of the
3 task force model 280(c) -- 287(g) officers?

4 "ANSWER: That is correct.

5 "QUESTION: If I can direct your attention to the
6 second page of the MOA. It falls underneath Roman numeral IV,
7 Assignments. The second paragraph, three lines down, there is
8 a reference to Community Action Teams, open parens, CAT, close
9 parens.

10 "What are Community Action Teams?

11 "ANSWER: From my understanding of that Community
12 Action Teams, this is teams that would be designated to assign
13 certain areas within the community where there was a need to
14 conduct law enforcement operations based on either intelligence
15 or referrals and for -- regarding security and public safety in
16 that area.

17 "QUESTION: Okay. Did these CAT teams operate under
18 the task force model?

19 "ANSWER: Yes.

20 "QUESTION: Just so I'm clear, these CAT teams operate
21 in areas where local law enforcement learned of intelligence or
22 federal law enforcement learned of intelligence or both?

23 "ANSWER: It could be both. But, primarily, I -- I
24 believe in this particular case, it would -- it would have been
25 that the state and local officers believed they needed to

1 enforce laws.

2 "QUESTION: Now, under the 287(g) program, the
3 certified officers are enforcing federal law, is that correct?

4 "ANSWER: Under 287(g)?

5 "QUESTION: Yes.

6 "ANSWER: That is correct.

7 "QUESTION: So with regard to intelligence of ongoing
8 criminal activity that would warrant requests for CAT team
9 support, would that be for the enforcement of federal law, such
10 as smuggling personnel or moving drugs across the border, that
11 sort of thing?

12 "ANSWER: From what I understand, CAT teams could get
13 information regarding certain criminal activity that could be
14 state jurisdictional matters, but that -- that -- but at the --
15 at the same time, there could be a -- a -- a segue or a -- into
16 federal statutes for -- for -- for -- so it could be -- it
17 could initially start off that they were going to be doing a
18 state activity that -- but as they got there and they get more
19 information, it could lead to federal violations.

20 "QUESTION: Okay. And, in your experience, what were
21 some of the federal violations that warranted CAT team
22 involvement?

23 "ANSWER: It would be alien smuggling. It would be
24 narcotic smuggling. It could be gang activity with -- with
25 foreign nationals that were here illegally. It could -- it

1 could be major -- it could be a -- a group -- you know, a major
2 false document activity.

3 "QUESTION: May I direct your attention to the next
4 page of the MOA. Under Roman numeral 5, Designation of
5 Authorized Functions, you'll see there are a list of items
6 designated by an individual bullet there. And the second
7 bullet down, if you'll read with me. 'The power to arrest
8 without warrant any alien entering or attempting to unlawfully
9 enter the United States, or any alien in the United States, if
10 the officer has reason to believe the alien to be arrested is
11 in the United States in violation of law and is likely to
12 escape before a warrant can be obtained.'

13 "In your experience, what are the indicators that
14 would give rise to a law enforcement officer's reason to
15 believe that an alien to be arrested is in the United States in
16 violation of the law?

17 "ANSWER: It would require several factors in
18 combination, such as the person doesn't possess valid documents
19 or possesses false documents. It could be that the -- in
20 combination with the location the -- the individual's at, such
21 as, you know, proximity to the -- to the border. It could --
22 it could be a factor. It could be the language could be a
23 factor. A particular knowledge of -- of information regarding
24 specific issues that somebody would be knowledgeable of that --
25 that is here illegally. It could be a factor -- a -- the --

1 the other one -- I'm trying to remember. The -- the
2 self-admissions made by the -- the individual could.

3 "So, but it -- again, I just want to emphasize that it
4 is a combination of these factors, not one. So they don't --
5 they don't stand alone. It would have to be in combination
6 with numerous of these -- of these factors to make a
7 determination that somebody is unlawfully in the country.

8 "QUESTION: So, is it your experience that no one of
9 those factors you mentioned would be enough to give rise to a
10 reason to believe?

11 "ANSWER: No, I -- I don't think that one alone
12 would -- would be sufficient.

13 "QUESTION: Now, you did not mention in that series
14 that you just gave us race or ethnicity. Is that because you
15 forgot and left it out, or is it because race and ethnicity is
16 not an indicator to give reason to believe, in your experience?

17 "ANSWER: It -- it could be used, but, again, it
18 couldn't -- it is not to be used solely. It is never to be
19 used just as a -- as a individual factor.

20 "QUESTION: You mentioned that location is an
21 indicator, and you --

22 "ANSWER: Could be an.

23 "QUESTION: Could be.

24 "You mentioned that location could be an indicator and
25 you mentioned proximity to the border.

1 "Would location also be an indicator, or could it also
2 be an indicator if it was not necessarily close to the border
3 but in a known corridor for the trafficking and -- of illegal
4 immigrants?

5 "ANSWER: I -- again, I would just need a little bit
6 more clarification what you refer to as a corridor. I mean, if
7 you're talking about something that has been established by --
8 by law enforcement that known that -- known smugglers use that
9 corridor --

10 "QUESTION: Yes. That's exactly what I'm referring
11 to. A corridor that has been established by law enforcement
12 officers as a known avenue for traffickers in either narcotics
13 or undocumented immigrants.

14 "ANSWER: I would say that, again, with -- in
15 combination with other factors, that could be also.

16 "QUESTION: Mr. Peña, Exhibit 4, I believe, was the
17 MOA, the Memorandum of Agreement. And I just want to ask, for
18 the record, did ICE enter into a Memorandum of Agreement with
19 the Maricopa County Sheriff's Office regarding 287(g)
20 participation?

21 "ANSWER: ICE entered into an agreement with -- it was
22 signed by our assistant agent, Julie Myers, and the Maricopa
23 County, I believe, the board of supervisors and the sheriff.
24 The -- the agreement was between the -- the sheriff's
25 department and ICE.

1 "QUESTION: And, to your knowledge, when was that
2 agreement reached?

3 "ANSWER: I believe the signature date for Julie Myers
4 was February 24th of 2007.

5 "QUESTION: 2007?

6 "ANSWER: Yes, sir.

7 "QUESTION: Okay. And, to your knowledge, when did
8 that agreement become operational?

9 "ANSWER: At the completion -- to my -- to my
10 understanding, it was at the completion of -- of the training,
11 but -- but the training could begin at the execution of the
12 document.

13 "QUESTION: Specifically with regard to 287(g) and the
14 Maricopa County Sheriff's Office, what was your role?

15 "ANSWER: My role was, again, as the person
16 responsible for the district activities, to have myself and my
17 staff ensure compliance with the -- with the -- with the
18 agreement, that -- and to ensure that it was providing the --
19 the results that we would -- and monitor and supervision and --
20 and -- and oversight of the agreement.

21 "Again, with me at the -- with me at the top and
22 having subordinate staff under me -- underneath delegated and
23 to -- you know, on the -- more on the daily activities and --
24 and -- and then also reporting to Washington any issues and
25 successes of the program.

1 "QUESTION: Would racial profiling on the part of
2 Maricopa County Sheriff's Office participants be deemed by you
3 as noncompliance?

4 "ANSWER: Racial profiling is not allowed under the
5 MOA.

6 "QUESTION: So if a 287(g) participant racially
7 profiled, that would be in violation of the MOA, as you
8 understand it?

9 "ANSWER: Yes. It would be, because racial profiling
10 is not allowed.

11 "QUESTION: So would it be fair to describe racial
12 profiling in 287(g) as noncompliance?

13 "ANSWER: Again, I -- I'll have to say that that
14 287(g) agreement does not allow for racial profiling. It does
15 not accept it. It does not allow it. It does not...

16 "QUESTION: Okay. So in your role as supervising and
17 ensuring compliance of the MOA, what actions would you have
18 taken had there been racial profiling from a participating
19 local law enforcement officer?

20 "ANSWER: It would be a -- reported to the -- first of
21 all, it would be confronted with the jurisdiction, unless there
22 was some type of -- of -- of effort to assist in an
23 investigation by the Department of Justice. We'd notify the
24 Department of Justice, because they're responsible for
25 investigating civil rights violations.

1 "So it would be -- it -- again, it -- dependent on the
2 circumstances if it was -- if it was something that we thought
3 that -- that it was best not to notify the agency right away so
4 that the Department of Justice could investigate. But I would
5 think in -- in most cases, if we became aware, we would want to
6 confront the -- the agency and bring it to their attention, to
7 the management and the supervision of that if it was a
8 particular individual officer or -- or whatever the factors
9 were.

10 "So it -- it's -- it -- it would be -- I mean, I can't
11 say exactly how it would be -- dependent on the circumstances,
12 but it would -- again, it would be reported, and it would be
13 investigated.

14 "QUESTION: While you were serving as the SAC here in
15 Phoenix, did you ever report an MCSO 287(g) officer for racial
16 profiling?

17 "ANSWER: No, I did not.

18 "QUESTION: Did you ever confront the Maricopa County
19 Sheriff's Office for one of its officers racial profiling?

20 "ANSWER: No, I didn't.

21 "QUESTION: And did you ever notify ICE headquarters
22 that there was racial profiling on the part of a 287(g)
23 certified officer at the Maricopa County Sheriff's Office?

24 "ANSWER: I never notified Washington that there was
25 incidents of racial profiling in Maricopa County.

1 "QUESTION: Is it your understanding that MCSO
2 personnel participating in the 287(g) program would be
3 exercising their immigration related authorities during the
4 course of criminal investigations involving aliens that they
5 encounter within Maricopa County?

6 "ANSWER: I mean, I would need a -- you know, like
7 a -- a more specific -- I mean, did they have the authority
8 they were -- to administer immigration law during the course of
9 criminal investigations if they encountered immigration
10 violations? Those that were trained and certified did.

11 "QUESTION: Yes, they did?

12 "ANSWER: Those that were trained and certified could
13 use the authority that they possessed.

14 "QUESTION: And to your knowledge, did they?

15 "ANSWER: I -- I don't know the -- the specific
16 incidents that -- that they did use it. I -- because in --
17 with Maricopa and Arizona somewhat unique, they had state
18 authority in many cases. So I'm just -- I know that there was
19 certain statistics that we kept, I don't recall what they are,
20 of -- of when they used the federal authorities versus when
21 they were using their state authorities.

22 "So what I'm trying to answer for you here is that
23 the -- they did possess it. They could use it. Exactly how
24 many instances when, I don't know the -- that answer.

25 "QUESTION: Okay. To your knowledge, is human

1 smuggling a crime in Arizona?

2 "ANSWER: Yes.

3 "QUESTION: Could you answer again so we have a clear
4 record.

5 "ANSWER: Yes.

6 "QUESTION: To your knowledge, is identity theft a
7 crime in Arizona?

8 "ANSWER: Yes.

9 "QUESTION: Now, the sentence that I just read said,
10 'Officers indicated that ICE typically reviews the actions of
11 the HSU members after they have exercised their 287(g)
12 authority.'

13 "Is that your recollection of the operations?

14 "ANSWER: During my -- during my tenure as SAC here,
15 ICE and Maricopa had established communications on operations
16 and, in most instances, were practical. ICE was notified, and
17 the -- and discussed the operations, and then there were times
18 where MCSO officers could have encountered activity, you know,
19 just in the -- in the course of their duties that led to 287,
20 and then they would subsequently notify us. So that would --
21 that would be correct.

22 "QUESTION: When you were serving as the SAC in
23 Phoenix, were you aware that the Maricopa County Sheriff's
24 Office conducted operations that it called crime suppression
25 patrols or saturation patrols?

1 "ANSWER: Yes, I was.

2 "QUESTION: Would you describe for me your
3 understanding of what a crime suppression patrol or saturation
4 patrol was.

5 "ANSWER: It was an -- a law enforcement technique in
6 which either based on reporting or intelligence or -- or
7 observations by the -- by the department of criminal activity
8 in a certain area, that they would respond to that area with
9 resources to address whatever the criminal activity that was
10 alleged to be taking place in that -- in that particular area.

11 "QUESTION: In your experience, have other law
12 enforcement organizations used this technique?

13 "ANSWER: I -- I don't have -- I -- it -- that term.
14 I know that as a member of the Texas Department of Public
15 Safety as a trooper, we would have certain tasks, we'd call it
16 a task force, and we'd saturate a certain area. And -- and it
17 could be enforcement of -- of a -- you know, DWIs, or it could
18 be enforcement of seat belt laws or some type of -- of law.

19 "So, I mean, I...

20 "QUESTION: So, in your experience in law enforcement,
21 this tactic was not unique to Maricopa County?

22 "ANSWER: I do not believe it is.

23 "QUESTION: While you were serving as the SAC in
24 Phoenix, did -- do you recall some of these operations
25 resulting in complaints?

1 "ANSWER: Yes.

2 "QUESTION: Would you tell me about those you recall.

3 "ANSWER: The -- the ones that come to mind and -- and
4 probably were activities involving the -- a -- what I'll refer
5 to as the Pruitt's Furniture location. I believe there was --
6 I don't know where the location was, but it involved corn
7 vendors. And another one was, I believe, in either -- I get
8 them mixed up, but I think there was in both locations, but I'm
9 not sure of the particular facts to each one. Cave Creek and
10 Queen Creek areas.

11 "QUESTION: Were these complaints brought to the
12 attention of you at the time, or did you learn about them
13 later?

14 "ANSWER: I learned about them -- the complaints. I
15 learned about the complaints after they had taken place.
16 The -- about the complaints. I learned about the operations
17 prior to them taking place.

18 "QUESTION: Well, let me ask you about both of those
19 but just one at a time.

20 "As SAC in Phoenix, did you investigate any of the
21 complaints arising out of the Pruitt's Furniture saturation
22 patrols?

23 "ANSWER: I had my subordinate staff make inquiries
24 and -- and -- and -- and meet with the sheriff's department
25 and -- and -- and look into allegations to see that they were

1 in compliance. If they were using our authorities, that they
2 were in compliance if -- if, in fact, they were using 287(g).
3 If they were not -- if they were operating within their state
4 authorities and doing their state, that was not my
5 responsibility. I was interested in were they using 287(g)
6 authorities and were there abuses or -- or -- or noncompliance
7 with that.

8 "QUESTION: Did your subordinates that conducted this
9 inquiry find that the Maricopa County Sheriff's Office
10 personnel were using their 287(g) authority with regard to
11 Pruitt's?

12 "ANSWER: What I believe we found was that they were
13 using their state authorities conducting operations at Pruitt.
14 If they encountered somebody and they arrested that person and
15 he was put in -- into the county jail, he very -- that person
16 very well may have come under then the task force model of our
17 287(g) authorities.

18 "QUESTION: While you were serving as SAC in Phoenix,
19 did you ever express in writing to the Maricopa County Sheriff
20 or the Sheriff's Office any concern that you had over the use
21 of criminal complaints as the basis for conducting suppression
22 patrols?

23 "ANSWER: No. I don't think I ever wrote a -- a
24 correspondence to the sheriff that stated that.

25 "QUESTION: You -- you previously had testified that

1 Sheriff's Office personnel may be engaged in enforcing local
2 law, and circumstances would arise at which they may employ
3 their 287(g) authority, is that correct?

4 "ANSWER: In relationship that what I said was they
5 could initially start using their state authorities --

6 "QUESTION: Right.

7 "ANSWER: -- and they could encounter what could turn
8 out to be a major alien smuggling operation, and they could --
9 they could work with us on that, and their offices could use
10 their authorities working with us.

11 "They could also be enforcing -- using their state
12 authorities, encounter somebody that is apprehended and that
13 person ends up, you know, under a state charge in the jail.
14 And then that person, if he's illegal, he could become under
15 our jurisdiction where their deputy identify -- their 287(g)
16 deputy identified that person in the screening process.

17 "So my answer is could -- yes, they could be initially
18 starting an -- an activity using their state authority that
19 could migrate into the -- the 287(g) authorities.

20 "QUESTION: While you were serving as SAC in Phoenix,
21 did you ever express in writing to the Maricopa County Sheriff
22 or the Sheriff's Office any concern over the use of community
23 leaders' requests for saturation patrols as the basis for
24 conducting a saturation patrol?

25 "ANSWER: No.

1 "QUESTION: While you were serving as the SAC here in
2 Phoenix, did you ever express in writing to the Maricopa County
3 Sheriff or anyone at the Sheriff's Office any criticism of the
4 use of crime suppression patrols for any reason whatsoever?

5 "ANSWER: I -- in writing I never expressed that, no.

6 "What I was aware of is that Arizona had its -- its
7 own authorities that they could elect to use at -- in lieu of
8 federal authorities.

9 "QUESTION: And did that authority include the
10 enforcement of traffic violations?

11 "ANSWER: As I understand, the sheriff's -- the
12 sheriff's department here in Maricopa has the authority to
13 enforce traffic laws.

14 "QUESTION: When you served as SAC Phoenix, did you
15 ever express in writing any concern to the Maricopa County
16 Sheriff or the Sheriff's Office regarding the identification of
17 aliens during civil traffic stops?

18 "ANSWER: Let me just say that, you know, most of my
19 contact with the sheriff was verbally; I mean, either on the
20 phone, a meeting in person, you know, attending meetings. It
21 was not through written correspondence. And -- and sometimes
22 I'm -- I met with my staff and had discussions regarding -- I
23 would be briefed regarding the sheriff's department's
24 activities.

25 "And so the question you're asking me now is, did I in

1 writing express concern? Was that --

2 "QUESTION: Yes, that's correct.

3 "ANSWER: I -- like I said, most of the -- most of my
4 contact if -- was -- was going to be, again, verbal contact
5 with the sheriff and -- and his staff --

6 "QUESTION: Okay.

7 "ANSWER: -- as well.

8 "QUESTION: Would it be fair to say that if while
9 serving as SAC Phoenix you had a concern that 287(g) certified
10 Maricopa County Sheriff's Office employees who are identifying
11 aliens during civil traffic stops and that in so doing put them
12 out of compliance with the MOA, that you would have reported it
13 in writing?

14 "ANSWER: If there was violations of the MOA, if there
15 was an abuse of the -- of -- and a noncompliance, I would have
16 probably -- again, going back to my previous answer, based on
17 what the circumstances were and the allegations were and what
18 was in the best -- how would you be the best to proceed, I
19 would either -- either verbal -- you know, spoken with the
20 sheriff or his representatives or -- or pursued other,
21 through -- you know, again, depending on the circumstances,
22 through the Department of Justice and -- and reported it to
23 headquarters. And, if necessary, I would have put it in
24 writing if I felt that that was the best course to -- you know,
25 to -- to -- to express to the sheriff -- sheriff's department

1 that they were in noncompliance. But, again, it just depended
2 on what that noncompliance was and those circumstances.

3 "But just to hopefully be clear, it would have not
4 been tolerated. I -- and it -- there would have been action
5 taken. But exactly what that action, that would, again, be
6 dependent on the circumstance.

7 "QUESTION: If a non-287(g) certified deputy had a
8 traffic stop and then determined that the person stopped was
9 not violating any Arizona state laws but did suspect that the
10 person did not have legal status, he could then call a T -- a
11 287(g) certified officer to the scene?

12 "ANSWER: What is critical is that -- that he has to
13 have the legal basis to detain that person on his own state
14 charges. And it has to be reasonable, the amount of time
15 reasonable in -- in -- in requesting assistance to come make a
16 determination regarding the status.

17 "QUESTION: As SAC, do you recall ever expressing in
18 writing any concern that Maricopa County Sheriff's Office
19 employees that were not 287(g) certified were detaining
20 individuals that were determined not to have violated the
21 Arizona state law and were calling 287(g) certified officers to
22 the scene to determine whether there's legal status?

23 "ANSWER: I never put anything in writing that
24 addressed that, as you stated it there.

25 "QUESTION: While you were serving as SAC Phoenix,

1 were you aware that the Maricopa County Sheriff's Office
2 routinely notified ICE when planning and executing activities
3 where the Sheriff's Office anticipated the possibility of using
4 its 287(g) authority?

5 "ANSWER: That is the agreement that we had with
6 Maricopa, was that if they -- if they believe that there would
7 in the course of their activities would use the 287(g)
8 authority, to in advance, where practical, to discuss it with
9 our -- with our officers, with our -- with our 287(g)
10 coordinator.

11 "QUESTION: And, as you sit here today, do you recall
12 that that was the practice?

13 "ANSWER: In -- in the majority of the cases, yes.
14 I'm -- sorry.

15 "QUESTION: I direct your attention to Bates
16 number ICE 775, which is the first of these three pages.

17 "ANSWER: Yes, sir.

18 "QUESTION: The second-to-last line of the second
19 paragraph, which begins, 'SAC Peña commended MCSO activities
20 and cooperation with his office.'

21 "Is that a correct statement?

22 "Is that correct? Did you commend MCSO activities and
23 cooperation with your office?

24 "ANSWER: I -- as I said earlier, I -- I do not recall
25 this specific interview. I -- I see that it says that I was

1 interviewed, so most likely I was. I don't remember this
2 specific, you know, this comment, but I do -- do recall at --
3 and whether it was here in this context, having said that MCSO
4 was to be commended for the assistance they provide our agency.

5 "QUESTION: On the next page, ICE 776 --"

6 (Videotaped deposition of Alonzo R. Peña paused.)

7 MR. CASEY: Your Honor, I just want to make reference
8 for the Court that the document being referenced, ICE Bates
9 label 775 through 777, is Exhibit 1081.

10 THE COURT: Has that been admitted?

11 MR. CASEY: It is -- I do not believe it is admitted.
12 I just wanted to reference it for the record.

13 THE COURT: Thank you.

14 (Videotaped deposition of Alonzo R. Peña resumes.)

15 "QUESTION: -- at the very last paragraph, which is
16 subtitled number 2, it begins 'Approximately 30 miles southwest
17 of Phoenix was a day laborer site in the Queen Creek area.'

18 "Does that refresh your recollection as to whether or
19 not incidents at the Queen Creek area day laborer site came to
20 your attention while you were SAC Phoenix?

21 "ANSWER: Yes.

22 "QUESTION: What do you recall as you sit here today
23 the issues were back then regarding the Queen Creek area day
24 laborer site?

25 "ANSWER: Well, this is refreshing my memory. I

1 remember there was one incident where there was complaints of
2 the lewd comments, the young girls passing, and harassment at
3 one of the -- one of the locations. That was an issue that --
4 where complaints had been received and that -- that the
5 sheriff's department was going to take action regarding that.

6 "QUESTION: While you were SAC Phoenix, were 287(g)
7 officers reminded before each saturation patrol not to use or
8 consider race in developing probable cause?

9 "ANSWER: That's a very -- well, I can't answer that
10 question. I mean, it's a broad question. I mean, reminded by
11 who? By -- by their own personal -- I don't know. I wasn't
12 out there on the scene before they went outside. I can't
13 answer that question.

14 "QUESTION: So are you aware of ICE personnel
15 reminding 287(g) officers from the Maricopa County Sheriff's
16 Office before they went out on a saturation patrol not to use
17 race as a consideration for developing probable cause?

18 "ANSWER: Yeah. I wasn't out there, so I don't know.

19 "QUESTION: Did you ever attend an MCSO saturation
20 patrol?

21 "ANSWER: No, I did not.

22 "QUESTION: Did you ever personally observe any
23 violations of the MOA?

24 "ANSWER: The -- there was what I believe to be a
25 violation of one of the provisions where it had to do with

1 coordination of -- of media, the press, without working to --
2 to -- together with us. And I think there was a couple, one or
3 two times that the sheriff independently held press events
4 discussing 287(g) without the -- what we believe to be the
5 coordination on that issue.

6 "QUESTION: Are you aware of any other ICE personnel
7 from the Phoenix office other than Mr. Kidd who attended any of
8 the MCSO saturation patrols?

9 "ANSWER: Again, I'm -- I don't know -- and if I
10 stated it, let me correct myself. I don't know that Mr. Kidd
11 did himself. He may have. I -- he -- I -- you'd have to ask
12 him. I -- I -- I -- I don't recall with specificity --
13 specifically that he did.

14 "QUESTION: That's consistent with your last answer --

15 "ANSWER: Okay.

16 "QUESTION: -- so you didn't misspeak.

17 "And, but are you aware of anyone other than Mr. Kidd
18 who attended?

19 "ANSWER: No, I'm not.

20 "QUESTION: Generally, what is the role of ICE in its
21 supervising capacity of MCSO 287(g) certified personnel
22 exercising their 287(g) authority?

23 "ANSWER: Generally, it is to ensure that the
24 personnel that are executing the -- the duties are -- are
25 personnel that were trained and certified and -- and in current

1 standing. Ensure that the activities that they are performing
2 are consistent with the -- the frame of the MOA. That the --
3 that -- that the -- that the efforts that are being undertaken
4 are consistent with our priorities, ICE's priorities. That
5 there's a consistency with our priorities as well. And that at
6 the -- at the end of the day, that we are -- are confident that
7 we are bringing public safety to the community that we serve.

8 "QUESTION: So specifically with regards to ICE
9 Phoenix, that community would be the entire state of Arizona?

10 "ANSWER: Well, for that -- that agreement would be
11 within -- where we -- and my answer to that question was it
12 would be within the jurisdiction that Maricopa County had.

13 "QUESTION: Were you aware of a complaint of racial
14 profiling while you were SAC Phoenix?

15 "ANSWER: I received concerns from several angio
16 groups and also from State Representative Ben -- Ben Miranda
17 that there was concerns about the sheriff's department's use of
18 287(g). And it -- it was more -- it was -- I don't believe it
19 was ever expressed specifically that it was racial profiling.
20 I think it was expressed that fear in the community. It was
21 expressed as, you know, disruptive type -- to -- but I -- I
22 don't recall that anybody made a specific claim to me that said
23 of a specific incident where -- where there was a racial
24 profiling. I -- I -- let me go back and think this.

25 "I -- I know that there was -- there -- there was some

1 discussions regarding their sheriff's deputy doing traffic
2 stops and that some of those traffic stops were for minor
3 violations and there were Hispanics involved in those traffic
4 stop, but I -- I cannot recall that anybody used the term and a
5 charge that there was racial profiling.

6 "I mean, there was a heavy emphasis on that the
7 community was -- was concerned that Hispanic -- that the
8 Hispanic community was concerned about the activities that the
9 sheriff's department and then when I was -- was conducting.
10 But when we drilled down on those, there weren't -- there were
11 usually, in most cases, in -- issues involving the state
12 authority, not the 287(g) authorities.

13 "QUESTION: Do you recall the purpose of the meeting?

14 "ANSWER: It was to inform MCSO that there was a
15 decision had been made in Washington to terminate their task
16 force model of the 287(g) program. And that basically that it
17 would not be renewed, I should say, which would result in a
18 termination.

19 "QUESTION: Do you recall that there had been a change
20 in priorities for the 287(g) program within the Department of
21 Homeland Security?

22 "ANSWER: Yes.

23 "QUESTION: And did that change in priorities produce
24 a new proposed Memorandum of Understanding?

25 "ANSWER: When the new administration took office,

1 there was a -- a change in focus and priority of the -- of ICE
2 and -- and -- and in that change, they -- all 287(g) agreements
3 were reviewed. I think it was a 90-day period that they were
4 all going to be renewed to see which ones would be renewed and
5 which ones would not be renewed to be -- and to ensure that
6 they were going to be consistent with the new priorities set
7 forth by ICE.

8 "QUESTION: Were you a decision maker in 2009 when the
9 decision was made to terminate the MCSO field authority under
10 the old MOA?

11 "ANSWER: I was not the decision maker.

12 "QUESTION: Would it be accurate to describe your role
13 as a messenger?

14 "ANSWER: Yes.

15 "QUESTION: Do you know the specific reasons and the
16 factual bases for the decision by the Department of Homeland
17 Security to discontinue the task force model MOA in Maricopa
18 County?

19 "ANSWER: No, I do not.

20 "QUESTION: At any time while you served as the
21 special agent in charge in Phoenix, had the Maricopa County
22 Sheriff's Office violated any portion of the Memorandum of
23 Understanding -- excuse me -- Memorandum of Agreement other
24 than what you previously referred to involving press
25 availabilities and press conferences?

1 "ANSWER: To my knowledge, no, I was not aware of any
2 other, other than the one I mentioned as you described."

3 (Videotaped deposition of Alonzo R. Peña paused.)

4 MR. CASEY: Your Honor, we're at the noon hour and
5 we're now at a good point where some questioning of plaintiffs'
6 counsel begins. We can continue, we can break, whatever Your
7 Honor desires.

8 THE COURT: Well, as I gather, it's about 15 minutes
9 left?

10 MS. GALLAGHER: I don't -- I don't know precisely
11 since they're interwoven, our designations and theirs, but --

12 THE COURT: Well, I'll tell you --

13 MS. GALLAGHER: -- I don't believe there's much more
14 than that.

15 THE COURT: I'm on a roll. I'd rather finish.

16 MS. GALLAGHER: Thank you, Your Honor.

17 MR. CASEY: The roll will continue.

18 (Videotaped deposition of Alonzo R. Peña resumes.)

19 "BY MR. POCHODA:

20 "QUESTION: Okay. Then turning on to page -- the next
21 page, under the -- the top under the heading, 'What is the
22 program not designed to do,' in reading that, it says, 'The
23 287(g) program is not designed to allow state and local
24 agencies to perform random street operations.'

25 "Continuing: 'It is not designed to impact issues

1 such as excessive occupancy and day laborer activities. In
2 outlining the program, ICE representatives have repeatedly
3 emphasized that it is designed to identify individuals for
4 potential removal who pose a threat to public safety as a
5 result of an arrest and/or conviction for state crimes.'

6 "Was that your understanding in 2007 of what the
7 287(g) program -- was -- was directed at?

8 "ANSWER: I understand that the program was designed
9 to -- in the -- specifically as it was stated there, to
10 produce -- to reduce the threats to public safety and bring
11 security to communities.

12 "QUESTION: And did you have any instructions about
13 whether it mattered to the -- the folks in the headquarters of
14 your agency whether it was a low-impact of civil violation or a
15 criminal activity for which the 287(g) was used for?

16 "ANSWER: Our -- our priority for the resources that
17 we had here in Arizona were to not pursue low -- low-level
18 civil types of -- of immigration violations.

19 "QUESTION: And that would include civil traffic
20 violations, is that correct?

21 "ANSWER: That's -- that -- that's correct. But I --
22 and I will -- but I will state that at -- there had been formed
23 by the -- a -- what was called a Law Enforcement Response Team,
24 a LEAR team --

25 "QUESTION: Or put it another way, put it in the way

1 that it's stated here, it says they -- that -- that the
2 officers trained and certified in the 287(g) program may use
3 their authority when dealing with someone suspected of state
4 crime that is more than a traffic offense.

5 "When you were then the head of SAC, did you approve
6 use of the 287(g) authority by the MCSO when they were only
7 dealing with traffic offenses?

8 "ANSWER: When I was the -- the agent in charge,
9 there -- we were not using 287(g) officers to make traffic
10 stops.

11 "QUESTION: No. But this is about the 287(g) program.

12 "Did you in any way indicate to the 287(g) officers in
13 the MCSO that if only a traffic offense is involved, the 287(g)
14 authority should not be used? Did you ever say that?

15 "ANSWER: No, I did not say that.

16 "While they were using their state authorities, not
17 287(g) authorities. That's what -- I just want to be clear I
18 said that, that they -- that the sheriff's department has their
19 own state authorities. And they would use their state
20 authorities, not 287(g) authorities. 287(g) authorities were
21 not used to conduct traffic stops.

22 "QUESTION: So if they were using their state
23 authorities to make traffic stop saturation patrols and as a
24 result of making the stops they would call in the 287(g), that
25 was consistent with what you believed the program should be

1 used for, is that right?

2 "ANSWER: If they made a traffic stop and there was a
3 reasonable suspicion that that person may be and they wanted
4 further inquiry, just like any other police agency here in
5 Arizona could, they -- they could call us. But -- but instead
6 of calling ICE to come to the scene, they would call their own
7 287(g) officer who had received training.

8 "QUESTION: And so did -- you did not know one way or
9 the other if the sheriff's people were making traffic stops in
10 order to bring in 287(g) people? You had no way to know that,
11 did you?

12 "ANSWER: I did not go to the scene and see the
13 traffic stops, if that's your -- you know, the question. It's,
14 no, I was not on the scene to see the traffic stops.

15 "QUESTION: This has been marked as Exhibit 16. And
16 if you look on the second page of this article, Mr. Peña, page
17 51, it states in the middle of the page -- of the -- of the
18 page, there's a quote from you. And let me ask you if that was
19 the gist or the accurate -- the quote.

20 "The quote in the middle, do you see this? 'That's
21 not the purpose of this agreement to use it in that manner,'
22 Peña said. 'It's to go after gang members, smugglers, people
23 who committed crimes.'

24 "Have you -- do you see that?

25 "ANSWER: Yes, I do.

1 "QUESTION: Would that be something that you said at
2 that time?

3 "ANSWER: Yes, it would.

4 "QUESTION: And it continues -- not continues. I'm
5 sorry. The paragraph above, it states, 'Alonzo Peña, Special
6 Agent in Charge of ICE investigations in Arizona, confirmed
7 that federal authorities are negotiating an agreement with
8 Arpaio. But he seemed surprised that Arpaio plans to use
9 deputies designated as immigration officers in such a broad
10 scope, including possibly routine traffic stops.'

11 "Do you see that?

12 "ANSWER: Yes, I do. And to be clear, my answer is
13 that they would not be using 287(g). The deputies that were
14 trained could -- he could use them for whatever else he wanted
15 to use them for. That's not my -- under my jurisdiction of
16 what he could use them for.

17 "But so I -- just to be clear, I would -- this is not
18 in any way saying that he was going to use our 287(g) training
19 officers to do routine traffic stops that -- for under the
20 287(g) umbrella. Whether they're using their state authority
21 to do traffic stops...

22 "QUESTION: Correct. I believe you have said a couple
23 of times that -- that Arizona, in particular, was using some of
24 the 287(g) people and other personnel for state crimes, is that
25 correct?

1 "ANSWER: No. I never said -- what I -- what I said
2 is they use their state authority to enforce their state laws.

3 "QUESTION: Yes. That's what I meant. I didn't mean
4 to imply anything else.

5 "And -- and the ICE would not be concerned about
6 supervising operations where they were enforcing state laws, is
7 that correct?

8 "ANSWER: That's not our responsibility.

9 "QUESTION: Did you at any time investigate whether
10 they had reasonable suspicion or probable cause for any of
11 those stops that led to 287 authority?

12 "ANSWER: Again as I said, the -- the traffic stops,
13 whether they were made, were not being made under 287(g)
14 authority.

15 "QUESTION: Correct. And I just want to clear that
16 for the record.

17 "So that -- that if, for example, a particular
18 sheriff's officer stopped a car because that person had people
19 of color in it, you wouldn't know one way or the other if that
20 occurred or not?

21 "ANSWER: Again, I -- I was not on the scene, the
22 scene where the traffic stops were being made. I -- and my
23 inquiry when I -- there was -- when these incidents were
24 brought to our attention, we had -- I had my officers inquire
25 to make sure that these were legal -- legal traffic stops being

1 made pursuant to state authorities.

2 "QUESTION: Is it -- are you saying that you in some
3 way had a method -- had a method to investigate whether any
4 particular traffic stop was -- was -- was attributable to
5 racial animus by an officer?

6 "ANSWER: What I'm -- what I'm -- what I'm saying is
7 that when allegations surfaced regarding Maricopa County, I did
8 ask my staff to look into those allegations and to see what
9 authorities were being used, if our 287(g) authorities were
10 being used; and, if there were, you know, were they in
11 compliance. And I was never -- I was never informed that any
12 of the traffic stops were based on 287(g) authority.

13 "QUESTION: You, ICE, when you were here, did not know
14 one way or the other the motivation in any particular MCSO
15 officer in making a particular traffic stop?

16 "ANSWER: I personally did not.

17 "QUESTION: Would it be a concern to ICE and you when
18 you were in charge of ICE here if the Sheriff's Office was, in
19 fact, using these stops of traffic violators as a pretext for
20 getting folks who may be here illegally?

21 "ANSWER: I would definitely be concerned if traffic
22 stops were being used as a pretext, yes.

23 "QUESTION: So when you got information like this from
24 another stop when you were on -- in charge, would you have
25 asked anyone on your staff to assess whether these were

1 accurate statements of the probable cause?

2 "ANSWER: While I was here, what I asked my staff was
3 to look into these operations. And, again, to -- if they were
4 using our authority, and in the majority of these cases that
5 I'm aware of, they were not. They were either using their own
6 authorities to enforce whatever laws, whatever state laws and
7 their own human smuggling laws, not ICE's 287(g) authorities.

8 "QUESTION: Correct. So then you -- you didn't have
9 the same supervisory responsibilities at that stage?

10 "ANSWER: At that stage, no, sir.

11 "QUESTION: 'Therefore, ICE agents decided that they
12 did not need to be present for these operations or approve
13 related operational plans.'

14 "Do you see that?

15 "ANSWER: Yes, I do see that.

16 "QUESTION: Okay. And then continuing, 'ICE is
17 statutorily required to supervise agencies participating in the
18 287(g) program, and internal control standards require an
19 agency's organizational structure to clearly define key areas
20 of authority and responsibility.'

21 "Continuing: 'Defining the nature and extent of the
22 agency's supervision over this large and growing program would
23 strengthen ICE's assurance that management's directives are
24 being carried out.'

25 "Was that discussed?

1 "ANSWER: Not in my conversation with Mr. Stana, no.

2 "QUESTION: 'Finally' -- continuing -- 'while ICE
3 states in its MOA that participating agencies are responsible
4 for tracking and reporting data to ICE, in 20 of 29 MOAs GAO
5 reviewed, ICE did not define what data should be tracked or how
6 it would be collected and reported.'

7 "Was that discussed?

8 "ANSWER: No.

9 "QUESTION: And you didn't ask your staff to compare
10 the percent of Latinos in a particular location that the
11 suppression operation took part in and the percentage of
12 Latinos who were, in fact, stopped by MCSO in that location?

13 "ANSWER: No, I did not ask that.

14 "QUESTION: So that during these crime suppression
15 sweeps, would you agree that the MCSO officers could not use
16 race or ethnicity in deciding which motorists to pull over?
17 Would you agree with that?

18 "ANSWER: I would agree that that would be illegal, to
19 use race as a -- as the sole factor for conducting a traffic
20 stop.

21 "QUESTION: It can be a factor in combination with
22 other factors?

23 "ANSWER: I -- I -- for -- I -- I -- I would see no --
24 no -- no reason that a race would be used to stop for -- for a
25 traffic violation, to use race.

1 "QUESTION: And do you know while you were here as
2 the -- in the position as SAC what steps MCSO took to prevent
3 racial profiling amongst its officers during these crime
4 suppression sweeps?

5 "ANSWER: I -- I do not know what the sheriff's
6 department's procedures are in that.

7 "QUESTION: Do you know if there are any procedures in
8 the agency at MCSO to monitor or deter racial profiling amongst
9 its officers?

10 "ANSWER: I'm not familiar with the MCSO's procedures
11 in that regard.

12 "QUESTION: And you were not aware of whether the MCSO
13 requires any continuing education in the area of racial
14 profiling or racial sensitivity, do you?

15 "ANSWER: No, sir, I do not.

16 "QUESTION: And did not at the time?

17 "ANSWER: No, sir, I did not at the time.

18 "QUESTION: But you had indication, did you not, at
19 the time that you were with SAC that one of the goals of the
20 crime suppression sweeps was to reduce the number of illegal
21 immigrants here in Arizona?

22 "ANSWER: I don't know what his -- what his -- you
23 know, the -- what his goals were, again, when he was using the
24 state authorities. I -- I don't know.

25 "QUESTION: And, again, that was the state authority

1 area, so you didn't have to intensely look into that?

2 "ANSWER: That's correct.

3 "QUESTION: Okay. But so you don't know as we sit
4 here today -- and we can ask Mr. Kidd -- if -- if any of those
5 287(g) MCSO officers, in fact, primarily directed their -- or
6 stops towards traffic violations in order to use their MC --
7 287(g), do you?

8 "ANSWER: I -- I don't.

9 "QUESTION: And you're not in a position as we sit
10 here today to know if any of those 287(g) officers, in fact,
11 stopped a car because of racial considerations?

12 "ANSWER: I -- again, I -- I don't know personally,
13 no.

14 "QUESTION: And he says, quote, that -- is quoted as
15 saying, 'At the end of the day I determined the sweeps and
16 immigration enforcement of Maricopa was not consistent with new
17 priorities, which is removing severe criminal offenders who
18 pose a danger to society.'

19 "Do you see that?

20 "ANSWER: Yes, I do.

21 "QUESTION: So assuming this is accurate, the
22 authority was removed because Maricopa County Sheriff's Office
23 was not focusing on serious criminal offenders in use of the
24 duties under 287(g), correct?

25 "ANSWER: And, as I stated, I do not personally know

1 why that agreement was not renewed.

2 "QUESTION: Okay. Do you have any reason to doubt
3 that this was a statement made by Mr. Morton?

4 "ANSWER: No, I do not."

5 (Videotaped deposition of Alonzo R. Peña concluded.)

6 MR. CASEY: Your Honor, the defense rests its case.

7 At this time we would renew our Rule 52(c) motion on
8 the same grounds that were tendered at the close of the
9 plaintiffs' case.

10 THE COURT: Okay. Thank you. That motion is denied.

11 Are we going to have a rebuttal case?

12 MR. YOUNG: Yes, we will, Your Honor.

13 THE COURT: Okay. Why don't we start at -- well, I'm
14 going to give you two hours. I think that defendants have even
15 on their own time reserved time for cross-examination, and I
16 indicated to them if they needed it I'd give them more.

17 How long do you think your rebuttal case is going to
18 take?

19 MR. YOUNG: I don't think we'll use the whole two
20 hours. I'll have to talk to Mr. Byrnes as to exactly how long
21 it will be.

22 THE COURT: All right. Let's be back at 1:30.

23 (Lunch recess taken.)

24 THE COURT: Please be seated.

25 Who's doing the rebuttal witness for the plaintiffs?

1 MR. BYRNES: Yes, Your Honor. Your Honor, before I
2 call our rebuttal witness, the clerk has requested that I state
3 the following on the record. That is, that Exhibits 130 and
4 207, while admitted by the Court earlier in the proceedings,
5 are in fact exhibits that were withdrawn and therefore should
6 not be included -- are unavailable to be included in the record
7 and therefore should not be.

8 THE COURT: All right. Thank you.

9 MR. BYRNES: Your Honor, plaintiffs call Dr. Ralph
10 Taylor in rebuttal.

11 THE COURT: You're still under oath, Dr. Taylor.
12 You're still under oath. You can take the stand, but you're
13 still under oath. Understand?

14 MR. BYRNES: Your Honor, may I proceed?

15 THE COURT: You may.

16 RALPH BRECKEN TAYLOR,
17 recalled as a rebuttal witness herein, having been previously
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BYRNES:

21 Q. Dr. Taylor, were you present in the courtroom for
22 Dr. Camarota's testimony?

23 A. Yes.

24 Q. Did you hear Dr. Camarota testify regarding your
25 conclusions?

1 A. Yes.

2 Q. Do you -- did you understand that Dr. Camarota agreed with
3 any of those conclusions?

4 A. Yes.

5 Q. With which of your conclusions do you believe Dr. Camarota
6 agreed?

7 A. He agreed with my findings concerning the impact of
8 saturation patrol days on name checking patterns, and he agreed
9 with my finding regarding the impacts of Hispanic name checking
10 on stop lengths.

11 Q. Dr. Camarota testified that the CAD data are irregular and
12 organized in a confusing way. Are you concerned that the type
13 and organization of the CAD data prevented you from conducting
14 a scientifically valid analysis of the data?

15 A. No.

16 Q. Why not?

17 A. Because I was able to extract the information that I needed
18 to answer the questions that I was examining.

19 Q. Dr. Camarota testified that approximately 30 percent of the
20 incidents in the CAD database had no name of the person
21 stopped. What, if any, significance does your not considering
22 incidents without names have for the validity of your analysis?

23 A. It's not -- not necessarily known at this point whether
24 that would make my findings more or less valid. The key point
25 is that I concentrated on the outcome variables that -- that

1 were available, and that would be the scholarly approach.

2 Q. What outcome variables -- on which outcome variables did
3 you focus?

4 A. There were two -- two outcome variables. One was whether
5 or not a name checked was Hispanic, and the other one was stop
6 length.

7 Q. Did your decision not to consider the incidents without
8 names introduce selection bias into your study?

9 A. No, that -- that term has been -- no.

10 Q. Why didn't it introduce selection bias?

11 A. Selection bias refers to a very specific outcome of a
12 specific selection process, and as that's been described by
13 Dr. Camarota, that's not what's going on here with these data.

14 Q. Dr. Camarota testified that it is difficult to accurately
15 determine which names are included in the data.

16 How did you extract names from the CAD database?

17 A. I started by looking at hundreds and hundreds of records,
18 focusing on different fields, but also specifically the comment
19 field, which is a large text field, and the names appear in
20 there in different patterns and in different positions.

21 So I looked at those visually and then wrote programs
22 to extract the names and put them into a column for names, and
23 then I went back and looked again for additional ways that
24 names would be test -- would be nested in that field, and again
25 wrote other programs to extract more names.

1 And having done that to the best of my ability through
2 several programs, and followed by examination, I then pulled
3 200 random records, and then I looked to see if the names in
4 those records, specifically in the comment fields, were treated
5 appropriately by my programs, and they all were.

6 Q. Is the approach that you used to extract names one that's
7 generally accepted in your field?

8 A. Yes.

9 Q. Dr. Camarota testified that he would want to inquire about
10 certain variables in evaluating whether Hispanics are
11 disproportionately targeted for traffic stops, including
12 whether Hispanics are more likely to drive or come into contact
13 with police.

14 Did you consider those variables?

15 A. I did not consider those variables directly, but my
16 analysis controlled for those factors as well as possible,
17 given the data we have available.

18 Q. How did your analysis control for those factors?

19 A. It controlled for those factors by examining the difference
20 between saturation patrol days and three types of comparison
21 days: all nonsaturation patrol days, nonsaturation patrol days
22 occurring either a week before or a week after a saturation
23 patrol day, and contrasting saturation patrol days with
24 comparison days a year earlier.

25 Q. How did your consideration of saturation patrol days

1 contrasted with control days control for whether Hispanics are
2 more likely to drive or come into contact with police?

3 A. Right. Well, if we're looking at name checking patterns on
4 a saturation patrol day at a particular day of the week and
5 we're also comparing that to the same day of the week a week
6 earlier or a week later, a plausible presumption generally is
7 that Hispanics' driving patterns would be comparable on the
8 saturation patrol day compared to a week earlier or a week
9 later.

10 Q. Dr. Camarota testified that the MCSO did not QC the CAD
11 data. Do you recall that testimony?

12 A. Yes.

13 Q. Does the MCSO's failure to QC the CAD data impact your
14 analysis?

15 A. Not -- not necessarily. Would have been better -- I was
16 able to find the variables that I needed and to extract the
17 information that I needed so I could answer the questions --
18 questions of interest.

19 Q. Is it typical in your field to draw conclusions from data
20 that has not been QC'd?

21 A. This often -- this often happens. In criminal justice
22 there are many data sets that I and my colleagues work with,
23 and we always complain about data quality issues.

24 Q. Did you conduct your analyses using a 70 percent
25 probability threshold for determining whether a name is

1 Hispanic?

2 A. Yes.

3 Q. I'd like to show you a number of demonstrative exhibits
4 that you saw when you testified several weeks ago.

5 MR. BYRNES: Your Honor, may I display Demonstrative
6 Exhibit 399H?

7 THE COURT: Yes.

8 BY MR. BYRNES:

9 Q. Do you see the exhibit on your screen, Dr. Taylor?

10 A. Yes.

11 Q. Using the 70 percent probability threshold and the
12 re-processed data, what proportion of the names checked by the
13 MCSO were Hispanic?

14 A. 32.2 percent.

15 Q. Is there a statistically significant difference between
16 your findings using the 70 percent probability threshold and
17 your findings using the 60, 80, and 90 percent probability
18 thresholds?

19 A. No.

20 Q. I'd like to show you Demonstrative Exhibit 399A.

21 MR. BYRNES: Your Honor, may I show the witness and
22 the gallery?

23 THE COURT: You may.

24 BY MR. BYRNES:

25 Q. Dr. Taylor, using the 70 percent probability threshold,

1 what did you find about the likelihood of Hispanic name
2 checking on saturation patrol days as compared with control
3 days?

4 A. First of all, if I may, we've got three different types of
5 control days, but the clearest and I think the strongest in
6 comparison is using the control days a week earlier or a week
7 later.

8 So if we focus on -- on that row, using the 70 percent
9 minimum probability threshold, what we see is that if a name
10 was checked using a 70 percent minimum probability threshold
11 for classifying a surname Hispanic, if a name was checked on
12 the saturation patrol day compared to a day a week earlier or a
13 week later, it was 34.4 percent more likely to be a Hispanic
14 name. And the column right next to that shows, with the .001,
15 tells us that we would be unlikely to get a result like this
16 just due to chance more than one time in a thousand.

17 Q. Dr. Taylor, I'm going to show you another demonstrative
18 exhibit. This is 399C.

19 MR. BYRNES: Your Honor, may I show the witness and
20 the gallery?

21 THE COURT: You may.

22 BY MR. BYRNES:

23 Q. Dr. Taylor, using the 70 percent probability threshold,
24 what did you find about the likelihood of Hispanic name
25 checking on saturation patrol days by saturation patrol active

1 officers as compared with officers who were not active in a
2 saturation patrol on that day?

3 A. What I found was that if a name was checked, it was
4 53.5 percent more likely to be a Hispanic surname if it was
5 checked by the saturation patrol officer active on the
6 saturation patrol day.

7 Q. Was there a statistically significant difference between
8 your findings using the 70 percent probability threshold and
9 your findings using the 60, 80, and 90 percent thresholds?

10 A. No. As you can see here in the column P less than, all of
11 these results are statistically significant at P less than
12 .001, which means that the chance of something like this just
13 coming up randomly are less than one in a thousand.

14 Q. I'd like to show you, Dr. Taylor, Demonstrative
15 Exhibit 399D.

16 MR. BYRNES: Your Honor, may I show the witness and
17 the gallery?

18 THE COURT: You may.

19 BY MR. BYRNES:

20 Q. Dr. Taylor, using the 70 percent probability threshold,
21 what did you find about the likelihood of Hispanic name
22 checking on saturation patrol days by saturation patrol active
23 officers as compared with officers who had never been involved
24 in saturation patrols and were making a stop on nonsaturation
25 patrol days?

1 A. What I found using the 70 percent threshold was that the
2 first group of officers was 39.4 percent more likely to check a
3 Hispanic name.

4 Q. Was there a statistically significant difference between
5 your findings using the 70 percent probability threshold and
6 your findings using the 60, 80, and 90 percent thresholds?

7 A. No. When we go to the models that control for many
8 factors, all -- the impact of this variable, regardless of the
9 threshold used, is statistically significant at P less than
10 .001, which means that it's unlikely to occur just due to
11 chance more than one time in a thousand.

12 Q. Dr. Taylor, I'd like to show you Demonstrative
13 Exhibit 399F.

14 MR. BYRNES: Your Honor, may I show the witness and
15 publish to the gallery?

16 THE COURT: Yes.

17 BY MR. BYRNES:

18 Q. You see it on your screen, Dr. Taylor?

19 A. Yes.

20 Q. Using the 70 percent probability threshold, what did you
21 find about the impact of checking one or more Hispanic names on
22 the length of stops?

23 A. What I found was that checking one or more Hispanic names
24 resulted in a stop that averaged two and a half minutes longer,
25 and that this was 22 percent longer than the stops where no

1 Hispanic names were checked.

2 Q. Was there a statistically significant difference between
3 your findings using the 70 percent probability threshold and
4 your findings using the 60, 80, and 90 percent thresholds?

5 A. No. And regardless of the threshold, this particular
6 impact was always significant at the .001 level, which means
7 that it's unlikely to have occurred just due to chance more
8 than one time in a thousand.

9 Q. Dr. Taylor, did you control for whether the stop resulted
10 in a citation?

11 A. Yes.

12 Q. Did you control for whether the stop resulted in an arrest?

13 A. Yes.

14 Q. Moving to a different topic, Dr. Taylor. Dr. Camarota
15 testified at some length about goodness of fit.

16 Did you measure goodness of fit, Dr. Taylor?

17 A. Yes.

18 Q. Did you use the fitstat command in the Stata statistical
19 software program about which Dr. Camarota testified?

20 A. No, I did not. It was not necessary to use the fitstat
21 command. That's a command you issue after running a logit
22 model. I did not need to run that because the logit model
23 itself generated a goodness of fit measure called Wald,
24 W-a-l-d, chi, c-h-i, squared.

25 Q. Why did you not include the Wald chi-squared -- well,

1 actually, let me ask, did you include the Wald chi-squared data
2 in your reports?

3 A. I did not include it in my reports.

4 Q. Why didn't you?

5 A. Because having confirmed to myself that all these models
6 provided significant fit, I then moved on to focus on -- focus
7 on the important -- having satisfied that that was the case,
8 move on to the important question, which is what's happening
9 with the particular key predictors of interest for these
10 outcomes?

11 Q. Is that approach that you just -- about which you just
12 testified, that is, using the Wald chi-squared measure of
13 goodness of fit but not including it in this -- this particular
14 type of report, is that consistent with the typical approach in
15 your field?

16 A. Yes.

17 Q. Other than the Wald chi-squared measure, did you conduct
18 any other tests of the robustness of your model?

19 A. Yes. As we've been talking about, I checked to see what
20 would happen if we used different minimum probability
21 thresholds for defining a name Hispanic, and in addition to
22 doing analyses with the full set of data, I took random
23 50 percent samples for each analysis and replicated the
24 analysis.

25 Q. Dr. Taylor, Dr. Camarota testified that you excluded from

1 your analysis one-seventh of major saturation patrols by
2 analyzing 11 of 13 of them. Why didn't you include the other
3 two major saturation patrols in your analysis?

4 A. There were two different reasons. One of the major
5 saturation patrols occurred in November 2009, and the data I
6 had available ended October 31st, 2009.

7 The other major saturation patrol that I did not treat
8 as such was the January 2008 saturation patrol. And I did not
9 treat that as a saturation patrol because I did not have
10 complete information about which officers were active. I did
11 not have both the arrest list and the sign-in roster.

12 Q. What are the ramifications for your analysis that you
13 considered 11 of these 13 saturation patrols?

14 A. Well, the -- the implication is that my analysis for the
15 time period -- January 1, 2007, through October 31st, 2009 --
16 is conservative in the sense that I've uncovered a certain
17 difference or discrepancy between patterns on saturation patrol
18 days and on nonsaturation patrol days. And had I included the
19 saturation patrol day in -- the January 2000 [sic] saturation
20 patrol day and the other saturation patrol days, it would have
21 increased the differences that I see.

22 Q. Dr. Camarota also testified that your reliance on sign-in
23 rosters to identify officers participating in saturation
24 patrols was of concern because not all officers may sign in
25 using those forms.

1 Did you rely only on sign-in rosters as Dr. Camarota
2 claimed?

3 A. No.

4 Q. On what else did you rely in determining officers
5 participating in saturation patrols?

6 A. I also relied on the arrest lists from the saturation
7 patrols.

8 Q. Assuming, as Dr. Camarota appears to, that you've missed
9 some saturation patrol active officers, what are the
10 ramifications for your analysis if you included some officers
11 who were actually participating in saturation patrols in the
12 category of officers who were not?

13 A. The implication is that the comparison that I see between
14 what active saturation patrol officers were doing and nonactive
15 saturation patrol officers, as I've classified them, that
16 comparison would be even larger if I had correctly gotten every
17 single one of the saturation patrol officers in the correct
18 group.

19 Q. Are you -- are you certain that there are officers that
20 you've miscategorized?

21 A. No, I am not certain of that.

22 Q. On to a different topic.

23 Dr. Camarota testified that the rates that Hispanics
24 had their names checked in 2005, 2006, 2007, 2008, and in 2009,
25 is roughly the same or even lower than the proportion of

1 Hispanics in the population.

2 Do you recall that testimony?

3 A. Yes.

4 Q. Do you agree with Dr. Camarota's conclusion that this shows
5 that Hispanics are not being targeted by the sheriff?

6 A. No.

7 Q. Why don't you agree with Dr. Camarota?

8 A. Dr. Camarota's approach uses an approach that scholars who
9 study these things have criticized. It's called external
10 benchmarking. The external benchmarking approach that
11 Dr. Camarota has taken cannot distinguish between three
12 potentially separate dynamics that are at work here.

13 Q. What are the three dynamics that Dr. Camarota's failed to
14 account for?

15 A. The three -- the three dynamics are the exposure of
16 Hispanics versus non-Hispanics to law enforcement; secondly,
17 potential differences in the rate at which Hispanics versus
18 non-Hispanics violate laws; and third, possible differentials
19 in police activity.

20 Q. Dr. Camarota testified that at some point in time he had
21 read a report by Ridgeway that you had cited in your expert
22 reports. In your view, is Dr. Camarota's analysis consistent
23 with Dr. Ridgeway's approach?

24 A. No.

25 Q. How does it differ?

1 A. Dr. Ridgeway, and many of the other current scholars in the
2 field, recommend an internal benchmarking approach, which
3 attempts to separate out these three dynamics I've described,
4 rather than the external benchmarking approach that
5 Dr. Camarota took, and he -- he didn't do that, Dr. Camarota
6 didn't do that.

7 Q. Well, Dr. Camarota testified that he did use internal
8 benchmarking because he was making comparisons of this data for
9 successive years, 2005 to 2009.

10 Do you agree with him that that is internal
11 benchmarking?

12 A. I think his exact term was internal comparisons, and the
13 internal comparisons are not internal benchmarking. He's got
14 external benchmarking in 2007, external benchmarking in 2008,
15 external benchmarking in 2009.

16 Q. And do you get internal benchmarking if you combine five
17 successive years of external benchmarking?

18 A. No.

19 Q. I'd like to direct your attention to demonstrative exhibit
20 399I.

21 MR. BYRNES: Your Honor, may I display it to the
22 witness and to the gallery?

23 THE COURT: Yes.

24 BY MR. BYRNES:

25 Q. Dr. Taylor, you may remember that Dr. Camarota spent some

1 time on this particular demonstrative exhibit. I'm going to
2 direct your attention to, I believe, the same parts of the --
3 of the demonstrative that he was looking at. Maybe with some
4 help from Mr. Braun we'll direct everyone's attention to those
5 sections.

6 So looking at the top half of the demonstrative, which
7 corresponds to using 90 percent probability threshold for
8 Hispanic name, you see that for -- on a nonsaturation patrol
9 day, under the column No, 21.82 percent of the names checked
10 were Hispanic.

11 Am I reading that correctly, Dr. Taylor?

12 A. Yes.

13 Q. Okay. And then on saturation patrol days that percentage
14 increased almost 4 percent to 25.8 percent.

15 Do you see that?

16 A. Yes.

17 Q. And is that an accurate depiction? Am I accurately
18 characterizing the exhibit?

19 A. Yes.

20 Q. Below, using the 60 percent probability threshold, the
21 percentage of Hispanic names checked on nonsaturation patrol
22 days according to this exhibit appears to be 33.33 percent.

23 Is that an accurate characterization, Dr. Taylor?

24 A. Yes.

25 Q. And on saturation patrol days, just to the right there, the

1 percentages of Hispanic names checked is 39.09 percent.

2 Again, is that accurately characterizing the exhibit?

3 A. Yes.

4 Q. And just to do some quick math that I believe Dr. Camarota
5 did as well, if you compare under the 90 percent probability
6 threshold for Hispanic names, am I correct that there is almost
7 exactly a 4 percentage point difference between the percentages
8 of Hispanic names checked on saturation patrol days versus
9 nonsaturation patrol days?

10 A. Yes.

11 Q. And challenging my math even further, looking below, is it
12 correct that it's roughly just shy of 6 percentage point
13 difference between the percentage of Hispanics whose names were
14 checked on nonsaturation patrol days versus saturation patrol
15 days using the 60 percent probability threshold?

16 A. Yes.

17 Q. And Dr. Camarota, in his testimony, found it significant
18 that if you sub -- if you look at the 90 percent probability
19 threshold and subtract the Hispanic percentages based on
20 saturation patrol day you get 4 percent, whereas if you do the
21 same subtraction in the 60 percent probability threshold you
22 get almost 6 percent.

23 Do you agree with Dr. Camarota that comparing those
24 differences in percentage points is informative?

25 A. No.

1 Q. Do you agree with the conclusion he derives that based on
2 the fact that 4 is small -- is smaller than 6, that is, the 4
3 percentage point difference with regard to 90 percent is
4 smaller than the 6 percentage point difference with regard to
5 60 percent, that that difference means that the more certain
6 that a name is Hispanic, the smaller the difference between
7 saturation patrol days and nonsaturation patrol days?

8 A. No.

9 Q. Why isn't the fact that 4's smaller than 6 dispositive of
10 this question?

11 A. The issue here is the ratio between the two percentages.
12 So, for example, just to do a little bit of rounding, if I may,
13 if we take for the 90 percent threshold and we take 26 percent
14 over, let's say, 22 percent, that's roughly -- that's roughly a
15 20 per -- no, 15 to 20 percent difference.

16 If we do 30 -- going down to the 60 percent threshold,
17 if we look at the 39 percent over the 33 percent, that's also a
18 difference of about 18, 19, 20 percent. So the ratios are the
19 same, roughly.

20 Q. Is there a statistically significant difference with regard
21 to the percentage of Hispanic names checked comparing any of
22 the probability thresholds that you've used in your analysis?

23 A. In the analysis the odds ratios, that is, the odds of a
24 Hispanic name being checked or not checked on an official
25 saturation patrol day, all of those odds ratios for the

1 different thresholds with population data were significant at
2 P less than .001, which means there's less than one chance in a
3 thousand that those results could have occurred due to chance.

4 Q. Dr. Taylor, Dr. Camarota, referencing one of his tables or
5 his charts in his report that showed data over -- purported to
6 show data over time, talked a lot about long-term trends.

7 Did you control for long-term trends in your analysis?

8 A. Yes.

9 Q. And how did you do that?

10 A. I controlled for three different types of long-term trends.
11 First of all, you'd look at what months did this occur in to
12 control for linear trend. If you square the number of months,
13 you're controlling for if things are changing faster or slower,
14 earlier or later. And you can also put in another control in
15 case the way that things are changing changes direction.

16 Q. And did you control for the trends in the way you've just
17 described?

18 A. Yes, I did.

19 Q. Dr. Camarota testified about how there can be, as he put
20 it, spurious correlation in data. And he used as an example
21 the relationship between foot size and income, which, according
22 to Dr. Camarota, requires an investigator to control for an
23 additional factor, in this example, gender.

24 In your analysis did you control for factors that
25 might otherwise introduce a spurious correlation in your data?

1 A. Yes, I did, in the -- I controlled for several factors.

2 Q. Can you provide some more detail for the Court on how you
3 controlled for these factors.

4 A. Well, first of all, as just mentioned, we're controlling
5 for three long-term trends. And we're also controlling for
6 whether or not the stop took place on a weekend day or a -- or
7 a weekday. And for the analysis of names, I'm also controlling
8 for the clustering of multiple names within a single incident.

9 For the analyses of stop length, I'm controlling for
10 the long-term trends again. I'm also controlling for the
11 number of people in the vehicle, and then for whether there was
12 an arrest or a citation. So these are all attempts to take
13 care of the concern about possible confounds.

14 Q. Now, did Dr. Camarota himself control for such factors?

15 A. I did not see such controls in his report.

16 Q. Switching gears a little bit, Dr. Camarota testified about
17 analyzing stop data by operational area, by geographic
18 districts within the county.

19 Do you believe that it's informative to review the
20 data geographically?

21 A. Not given the approach he took in his report.

22 Q. Well, why wouldn't it be informative to look at the data by
23 these geographic districts?

24 A. Because with an external benchmarking approach you're
25 increasing the problematic nature of your benchmark by focusing

1 on smaller areas, since this is a study where the clients of
2 interest are driving.

3 Q. Why would the fact that the -- that we're dealing with
4 traffic stops and driving here have any impact on what
5 geographic area we choose to do the analysis?

6 A. Because it makes it increasingly likely that there will be
7 a discrepancy between the Hispanic population in that subarea
8 and Hispanic name checking in that subarea.

9 Q. Dr. Camarota also testified that -- he testified 70 percent
10 of the stops during saturation patrols were made by either the
11 Human Smuggling Unit or the Lake Patrol.

12 Dr. Taylor, did you consider to which unit a
13 particular officer making a stop was assigned?

14 A. A data file, no, I did not.

15 Q. And why didn't you consider that?

16 A. Because the data file that I received did not have that
17 field.

18 Q. Did the data file you received contain unit assignment
19 information?

20 A. No.

21 Q. Has Dr. Camarota provided evidence showing the rate at
22 which HSU officers checked Hispanic names -- let me rephrase.

23 Has Dr. Camarota provided evidence showing that the
24 rate at which HSU officers checked Hispanic names on saturation
25 patrols is higher than the rate at which those officers check

1 Hispanic names on nonsaturation patrol days?

2 A. No.

3 Q. Has Dr. Camarota provided evidence demonstrating that Lake
4 Patrol officers on nonsaturation patrol days check Hispanic
5 names at lower rates than they do on saturation patrol days?

6 A. No.

7 Q. Did you conduct any analysis that controls for the unit to
8 which the officer is assigned?

9 A. No.

10 Q. In your analysis of comparing Hispanic name checking on
11 saturation patrol days versus nonsaturation patrol days --

12 You with me?

13 A. Okay.

14 Q. How, if at all, does the unit to which -- how could -- how
15 could the unit to which an officer is assigned impact your
16 findings with regard to saturation patrol days versus
17 nonsaturation patrol days?

18 A. Well, it would not affect the overall finding.

19 Q. In that sense did you control -- does that analysis then
20 control for the unit to which the officer is assigned?

21 A. Yes. I have in my analysis there is -- in the reports
22 there's a table that separates out the impact of a saturation
23 patrol officer being active on a saturation patrol day. Once
24 that's separated out, one can also examine the impact of the
25 saturation patrol day itself so you are, in effect, controlling

1 for the units to which the officers are assigned.

2 Q. Dr. Taylor, Dr. Camarota criticized you in his testimony
3 for not considering the socioeconomic status of those whose
4 names were checked by the MCSO during traffic stops.

5 Do you recall that testimony?

6 A. Yes.

7 Q. Do you agree with Dr. Camarota that someone with lower
8 socioeconomic status is more likely to drive a vehicle that is
9 out of compliance with vehicle codes?

10 A. No.

11 Q. Why do you disagree with that?

12 A. I have seen no data specific to this -- to this population
13 that demonstrates that to be the case.

14 Q. Do you agree that Hispanics' lower socioeconomic status
15 might explain why they're pulled over more often during
16 saturation patrols?

17 A. No.

18 Q. Why do you disagree with that?

19 A. I disagree with that because the analysis that I ran and
20 showed that if a Hispanic was pulled over on a saturation
21 patrol day by a saturation patrol active officer, he or she was
22 less likely to receive a citation. And on the presumption that
23 on saturation patrol days officers are looking particularly for
24 vehicle violations, then the Hispanics should have been more
25 likely to receive a citation.

1 Q. Are you familiar with scholarship in the field concerning
2 potential racial profiling in traffic stops by law enforcement?

3 A. Yes.

4 Q. Are there studies of racial profiling in traffic stops that
5 do not include the socioeconomic status of the driver?

6 A. Yes.

7 Q. Are those studies published in refereed journals?

8 A. Yes. They are.

9 Q. Excuse me. I want to return briefly to your testimony with
10 regard to likelihood of Hispanics receiving citations.

11 Were the results that you found concerning that
12 likelihood statistically significant?

13 A. Yes, they were.

14 Q. And how much less likely were Hispanics to receive
15 citations?

16 A. It would depend a little bit on the threshold, but it would
17 be around 25 to 30 percent less likely.

18 Q. And what are the chances that such findings could be
19 obtained due simply to chance?

20 A. I think for those findings it was less than one in a
21 hundred. I can't recall specifically if it was less than one
22 in a hundred or less than one in a thousand.

23 Q. Dr. Taylor, using American Community Survey data,
24 Dr. Camarota testified that Hispanics are far more likely than
25 non-Hispanics to speak English, quote, less than very well.

1 Do you recall that testimony?

2 A. Yes.

3 Q. Do you agree with his conclusion that many Hispanics'
4 limited English language skills could account for longer stop
5 duration?

6 A. No.

7 Q. Why do you disagree with him?

8 A. Because I can easily -- well, first of all, I have, you
9 know, no data specific to that that I've read about.

10 And second, it's quite plausible to imagine the
11 reverse. If during a saturation patrol operation officers are
12 seeking to gather intelligence, and if they stop -- stop a
13 vehicle and the driver is quite fluent in English, it's quite
14 plausible that diligent officers would seek to engage that
15 driver in conversation to extract additional -- additional
16 intel, and therefore resulting in a longer stop.

17 Q. Dr. Camarota also testified that a person's being foreign
18 born could be correlated with a longer stop.

19 Do you agree with him?

20 A. No.

21 Q. Why do you disagree?

22 A. Again, there are -- are no data on that, and again I can
23 imagine alternate, you know, plausible -- plausible scenarios.

24 Q. With regard to being foreign born, what alternate plausible
25 scenarios can you envision?

1 A. Well, for example, I mean if -- we haven't specified where
2 their -- where their foreign birthplace was. And if somebody
3 was born in the Philippines, or somebody was born in a foreign
4 country where English is the first language, or a country where
5 there's lots of good English instruction, we would expect their
6 fluency to be comparable.

7 Q. Switching gears a bit here, Dr. Taylor, Dr. Camarota
8 testified that there is evidence that Hispanics are more likely
9 to hyphenate their surnames than non-Hispanics. And for
10 purposes of this question I want to have you assume that that's
11 true.

12 Even assuming Hispanics are more likely to have
13 hyphenated names, does that explain the difference in stop
14 length between Hispanics and non-Hispanics?

15 A. I don't think so.

16 Q. And why do you doubt that that explains the difference?

17 A. Because after looking at hundreds of these comment fields,
18 one sees not only, and as has been mentioned in previous
19 testimony, multiple name checks as officers reverse first and
20 last surnames, but many, many instances where they take a name
21 that's just one last name and run it repeated times through
22 multiple databases going to different states or to different
23 database sources.

24 Q. Dr. Camarota, among other criticisms, criticizes you for
25 using in your analysis of stop length a variable to predict

1 stop length when at least one Hispanic name was checked.

2 Why did you choose to use such a variable?

3 A. There are a couple of -- a couple of reasons.

4 One is that if I define the variable to say, Let's
5 classify the stop as Hispanic if at least one name was checked,
6 then I can apply that to all of the stops, regardless of how
7 many -- how many people -- how many names were checked in that
8 stop.

9 Secondly, using that variable keeps the name checking
10 pattern separate from another factor, or Dr. Camarota would say
11 another potential confound, which is the number of names
12 checked during the stop. So I can keep the name checking
13 patterns and the number of names separate.

14 And number three, this was a -- the logic here was
15 that this is a conservative approach in the sense that I'm
16 saying even if only one Hispanic name was checked, here's the
17 impact on the stop length difference.

18 Q. Testifying here at trial, Dr. Camarota suggested a
19 different approach; essentially, I think the converse approach.
20 He suggested that one could examine whether there was any
21 impact by considering whether one non-Hispanic name was checked
22 and using that as a variable.

23 Do you recall that testimony?

24 A. Yes.

25 Q. Did you conduct an analysis of the variable that

1 Dr. Camarota suggested here at trial?

2 A. Yes.

3 Q. And what did you find?

4 A. I found the exact reverse of what I found with the original
5 coding that I had used; that is, if at least one non-Hispanic
6 name was checked during a stop, controlling for arrest or
7 citation, controlling for the number of names checked, the stop
8 averaged about two and a half minutes shorter.

9 Q. Just to make sure I understand, was it your conclusion that
10 when one non-Hispanic name was checked, the stop was shorter?

11 A. Right. If at least one of the names checked was
12 non-Hispanic, the stop was two and a half minutes shorter on
13 average.

14 Q. And did you find that result across the 60, 70, 80 and
15 90 percent probability thresholds?

16 A. Yes, I did.

17 Q. Was that a statistically significant finding?

18 A. Yes, it was.

19 Q. Dr. Taylor, did you hear Dr. Camarota's testimony about
20 Mr. Jefferys' role in providing him with the data set he used
21 in conducting his analysis?

22 A. Yes.

23 Q. How did the arrangement between Dr. Camarota and
24 Mr. Jefferys affect, if at all, your view of the -- of
25 Dr. Camarota's findings?

1 A. I would have been happier if Dr. Camarota had done all of
2 his data processing himself.

3 Q. I appreciate your levels of happiness. Let me ask the
4 question a different way: How did the arrangement between
5 Dr. Camarota and Mr. Jefferys affect your view of the
6 scientific validity of Dr. Camarota's findings?

7 A. It raises potential concerns.

8 Q. Why does that arrangement raise concerns for you?

9 A. Because it's one thing to have the administrative agency
10 providing the data to provide the raw data, to have discussions
11 with the investigator as the investigator seeks to understand
12 what's in those data, and that's something that I and my
13 colleagues, those are the kinds of arrangements we -- we often
14 have. But it's a different thing if the agency itself
15 prepares -- prepares all the -- all the variables.

16 Q. Does Dr. Camarota's use of the data that Mr. Jefferys
17 provided impact another investigator's ability to replicate
18 Dr. Camarota's findings?

19 A. Yes.

20 Q. Is the ability to replicate a study's findings important
21 for its scientific validity?

22 A. Yes.

23 Q. In your research projects that have dealt with data from
24 criminal justice agencies, have you ever had anyone from the
25 criminal justice agency prepare the final data files on which

1 your analysis was based?

2 A. No.

3 Q. Are you aware of any scientific studies whose purpose was
4 to evaluate a police department where the data extraction and
5 extensive processing was carried out by personnel affiliated
6 with that agency?

7 A. No.

8 Q. Dr. Taylor, have you received the data file that
9 Mr. Jefferys provided Dr. Camarota?

10 A. Yes.

11 Q. When did you receive that file?

12 A. Subsequent to submitting my two reports and subsequent to
13 my deposition.

14 Q. What did you receive?

15 A. I received a disk, and it had on it the following types of
16 files. It had on it the Microsoft Access database. It had on
17 it also what appeared to be the list of names that Mr. Jefferys
18 had provided to Dr. Camarota.

19 It also had on it files of e-mail correspondence
20 either between Mr. Jefferys and Dr. Camarota or Mr. Liddy and
21 Dr. Camarota. And it also had on it some files that appeared
22 to have been prepared by Mr. Jefferys in which he was either
23 describing features of the MCSO data or, in one particular
24 file, comparing the MCSO data to my data.

25 Q. You stated at the end that one of the files on the disk

1 that you were provided was a file prepared by -- apparently
2 prepared by Mr. Jefferys that compared the MCSO data to your
3 data. Can you -- can you explain what you mean by the
4 comparison between the MCSO data and your data?

5 A. Right. What the spreadsheet had was information for the
6 number of incidents total, and the number of incidents with
7 names; and then it would give a count by year for 2007, 2008
8 and 2009; and then there would be a count for what came from
9 the MCSO file, Mr. Jefferys' file, and what I had in my file
10 that had been released -- released to MCSO and Dr. Camarota.

11 Q. So you appear to be making a distinction between data from
12 the MCSO and your data. Do you -- what -- what do you
13 understand to be the origin of the data you used for your
14 analysis?

15 A. Well, what I'm -- what I'm speaking to in that last -- that
16 last question was that when I had finished my analyses, I then
17 sent my data files back -- back to you and your co-counsel, who
18 then forwarded them to the appropriate parties, and that that
19 data -- the data that I had worked with found its way back
20 to -- found its way back to Mr. Jefferys. And so then he was
21 comparing the original MCSO data that he had prepared for
22 Dr. Camarota with my files.

23 Q. And your data -- from the data that you used, the CAD data,
24 where did that data come from initially?

25 A. Well, that was originally from MCSO, the MCSO database

1 that -- that you provided me.

2 Q. Did you evaluate what, if any, differences there were with
3 regard to the incidents in Dr. Camarota's data file and the
4 incidents in your data set in terms of numbers of incidents?

5 A. Yes.

6 Q. And what did you find?

7 A. What we found is that our numbers just about perfectly
8 matched in terms of the total number of incidents, and if we're
9 looking at incidents with names, my numbers were -- were lower
10 than his were.

11 Q. Let me ask you about that. Dr. Camarota testified on that
12 point that there were 16,804 more names with final call types
13 910 or T that were included in his data set than were included
14 in your data set.

15 Do you recall that testimony?

16 A. Yes.

17 Q. Was Dr. Camarota comparing the number of names in each data
18 set?

19 A. I think he -- I think what he was comparing was the
20 number -- the number of incidents with names.

21 Q. Are you aware of any comparison of the number of names in
22 each data set?

23 A. Yes.

24 Q. Okay. And where -- where did the comparison of the
25 number of names appear?

1 A. Oh, I'm sorry. Could you repeat the question, please?

2 Q. Sure. Are you -- you've just testified about incidents
3 with names and that comparison. I'm asking you to focus on
4 names. Are you aware of any comparison of the number of names
5 in each of the data sets; that is, your data set and
6 Dr. Camarota's data set?

7 A. No.

8 Q. You mentioned earlier that there was a file in this disk
9 that Mr. Jefferys had prepared concerning the differences that
10 he found between your and Dr. Camarota's data.

11 Did Mr. Jefferys' comparison specify the difference in
12 the number of incidents with names between your re-processed
13 data set and the data set Dr. Camarota used?

14 A. Yes.

15 Q. And what was that difference?

16 A. That difference was 16,354.

17 Q. That difference wasn't 16,804?

18 A. No.

19 Q. As I mentioned, Dr. Camarota focused on names with final
20 call types or incidents with final call types 910 or T. Did
21 you use final call type 910 or T to determine the incidents to
22 include that in your analysis?

23 A. No.

24 Q. What field did you use?

25 A. I looked at final call type description.

1 Q. Dr. Taylor, what, if any, significance does your having
2 considered fewer incidents have for your analysis?

3 A. The -- it's not -- it's not clear what the implications
4 are. The point is that given the information that's available,
5 given the information available, the only plausible scientific
6 alternative is you concentrate on where your -- your outcome is
7 available, and those are the records on which I concentrated.

8 Q. When you say your outcome is available, what do you mean by
9 "outcome" there?

10 A. I mean the Hispanic name. I need the Hispanic name as an
11 outcome for my name checking analysis, and I need it as the
12 predictor in the stop length analysis.

13 Q. Dr. Taylor, did you attempt to replicate your analysis
14 using Dr. Camarota's data file?

15 A. Yes, I did.

16 Q. Were you able to do so?

17 A. Yes, I was.

18 Q. How did you go about replicating your analysis?

19 A. What I did was I took the name file that Mr. Jefferys had
20 apparently provided to Dr. Camarota and then I linked it up
21 with my incident file. And then focusing on my original scope
22 of incidents, traffic stops or traffic violations, I was able
23 to replicate significant impacts of saturation patrol days
24 versus comparison days on name checking patterns, and I was
25 able to replicate the significant impacts of one or more

1 Hispanic names checked on stop lengths using his, Mr. Jefferys'
2 slash Dr. Camarota's name file.

3 Q. What specifically did you find using Dr. Camarota's data
4 file regarding the likelihood of Hispanic name checking on
5 saturation patrol days when compared with other days?

6 A. What I found was that Hispanic names were significantly
7 more likely to be checked on saturation patrol days in
8 comparison to either all nonsaturation patrol days or
9 saturation patrol day -- I'm sorry, nonsaturation patrol days a
10 week earlier or a week later, or nonsaturation patrol days a
11 year earlier.

12 Q. Were your findings statistically significant?

13 A. Yes, they were.

14 Q. And using Dr. Camarota's data file, what did you find
15 regarding the impact of Hispanic stop -- Hispanic name checking
16 on stop length?

17 A. I was able to replicate my original set of findings that
18 appeared in my rebuttal report showing that if at least one
19 Hispanic name was checked, the stop lasted, on average, about
20 two and a half minutes longer, controlling for other factors.

21 Q. And were those findings statistically significant across
22 the probability thresholds that a name was Hispanic?

23 A. Yes, these were significant results for the 60, 70, 80, and
24 90 percent probability thresholds.

25 Q. Dr. Camarota testified that for his analysis of his data,

1 he included incidents with certain final call types that you
2 excluded when you analyzed the data you received. Those
3 included driving on a suspended license; DWI, or driving while
4 intoxicated; and felony possession of alcohol and drugs.

5 Why did you exclude those incidents from your analysis
6 of the data you used for your expert report?

7 A. Because the type of incidents on which I concentrated,
8 traffic stops and traffic violations are the classes of
9 incidents that allow the most potential for officer discretion.

10 Q. When you analyzed Dr. Camarota's data, what types of
11 incidents did you include?

12 A. Well, after I had replicated my initial results focusing
13 just on traffic stops and traffic violations, I then added into
14 that, using his name file, all DWIs, all suspended licenses,
15 and just about all drugs and alcohol types. If the alcohol
16 involved an accident or injury I didn't include that, there
17 were a small number of those, but all the other drug and
18 alcohol type mentions.

19 Q. Including those incidents -- that is, driving with a
20 suspended license, driving while intoxicated, the alcohol and
21 drug offenses you've mentioned, as well as traffic stop and
22 traffic violation -- what percentage of the incidents with
23 names in Dr. Camarota's data file did you analyze?

24 A. 94.3.

25 Q. Using Dr. Camarota's data file and including the incidents

1 about which you've just testified, what did you find regarding
2 the likelihood of Hispanic name checking and traffic stops?

3 A. I found that a Hispanic name was more likely to be checked
4 on a saturation patrol day relative to either all nonsaturation
5 patrol days or relative to saturation patrol days a year
6 earlier or relative to sat -- I'm sorry, nonsaturation patrol
7 days a year earlier, or nonsaturation patrol days a week
8 earlier or a week later. All of those findings were
9 statistically significant at all four name probability
10 thresholds.

11 Q. Using -- actually, let me ask: Were the magnitude of the
12 differences -- that is, the increased likelihood of Hispanic
13 name checking -- how did the magnitude of that difference
14 compare with the findings that you -- when you used your data?

15 A. Yes. Generally, the magnitude was around 80 to -- 80 to
16 90 percent of what I had originally found, if not slightly
17 higher. On average, if you look at all the odds ratios, which
18 is our basic measure of impact, those odds ratios averaged
19 about 94 to 95 percent of the original odds ratios observed.

20 Q. Using Dr. Camarota's data file and including the types of
21 incidents you mentioned, including driving with a suspended
22 license, driving while intoxicated, and the alcohol and drug
23 related incidents, what did you find regarding the impact of
24 Hispanic name checking on stop length?

25 A. If one or more Hispanic names were checked, the stop lasted

1 longer, significantly longer.

2 Q. Was there any difference in the magnitude of the length of
3 the stop in this analysis versus the analysis you and conducted
4 on the data that you had received?

5 A. On the analysis that includes over 94 percent of the
6 incidents with names, the stop difference between those stops
7 where no Hispanic names were checked and at least one Hispanic
8 name was -- was checked, the difference was a little over three
9 minutes, whereas with the original analysis the difference was
10 only about two and a half minutes.

11 MR. BYRNES: Pass the witness.

12 THE COURT: Mr. Liddy?

13 MR. LIDDY: Thank you, Your Honor.

14 May I ask the clerk to retrieve this witness's
15 deposition?

16 THE CLERK: Is it dated March 21st, 2011?

17 MR. LIDDY: I believe it is.

18 MR. BYRNES: He doesn't have it, Tom.

19 CROSS-EXAMINATION

20 BY MR. LIDDY:

21 Q. Doctor, do you have that deposition in front of you?

22 A. Yes.

23 Q. Were you deposed in relation to this litigation?

24 A. Yes.

25 Q. Do you recall that deposition?

1 A. Yes.

2 Q. Would you please turn to page 149.

3 Doctor, are you there on page 149? If I can direct
4 your attention to line 9.

5 Did you have an opportunity to review the transcript
6 of your deposition?

7 A. Yes, I did.

8 Q. Did you review it?

9 A. Yes, I did.

10 Q. Did you find it to be accurate?

11 A. There were a few corrections that I sent in.

12 Q. To -- you sent them in, sent them in to your counsel?

13 A. Yes.

14 Q. Would you read along with me, starting at line 9:

15 "QUESTION: Then why did you choose not to include --"

16 Well, let me -- let me go up a little bit further
17 there.

18 MR. LIDDY: Your Honor, I apologize. Let me direct
19 you to the page earlier, page 148, line 21.

20 BY MR. LIDDY:

21 Q. Are you there?

22 A. Yes.

23 Q. Okay. Line 25:

24 "QUESTION: Are the goodness of fit measures included
25 in your report?

1 "ANSWER: They are not included in my report. And
2 it's important to know that there is a variety of disagreement
3 about which goodness of fit measures to include.

4 "QUESTION: Are you referring to a disagreement in the
5 field?

6 "ANSWER: Yes.

7 "QUESTION: Or disagreement regarding this report?

8 "ANSWER: I'm referring to there is no consensus in
9 the field on the best fit indicator measured for cluster logic
10 models."

11 Scroll down to page 149.

12 A. If I just may, that should read -- I think I sent in this
13 correction -- that should read "clustered" logit model.

14 Q. Okay. Thank you for that correction.

15 Now, on page 149, line 9:

16 "QUESTION: Then why did you choose not to include
17 that in your report?

18 "ANSWER: In part, but not wholly, in order not to run
19 up more billable hours."

20 Did I read that correctly?

21 A. Yes, you did, but if -- if I may.

22 Q. Please do.

23 A. May we go back and follow the -- the thread of this -- of
24 this discussion, 'cause there are different -- there are
25 different points that are of concern here, and --

1 Q. Well, I'm interested in whether or not you stand by your
2 testimony that you did not include the goodness of fit model
3 because you didn't want to run up the bill.

4 Is that accurate or is that not accurate?

5 MR. BYRNES: Objection, Your Honor. For
6 completeness --

7 THE COURT: Overruled. You will be allowed to
8 redirect.

9 THE WITNESS: If you would read the section right
10 before that, because there are different fit measures that are
11 under discussion in this -- at this point in the deposition.

12 BY MR. LIDDY:

13 Q. Okay. Doctor, I do want to be fair and I will get back to
14 that.

15 A. Okay.

16 Q. I'd like you to respond to my question first.

17 Is that -- did I accurately read that transcript?

18 A. You read that, but this is in the context of a very
19 particular type of prediction for a case level. This is
20 different from overall model fit.

21 Q. Did you include a goodness of fit statistic in your report?

22 A. No.

23 Q. Did you include a goodness of fit statistic in your
24 rebuttal report?

25 A. No.

1 MR. LIDDY: Your Honor, I would like to -- excuse me,
2 Your Honor. I would like to call up Exhibit 399.

3 THE COURT: Straight 399, or --

4 MR. LIDDY: Straight 399.

5 THE COURT: Okay.

6 BY MR. LIDDY:

7 Q. Now, Doctor, just moments ago during your rebuttal
8 testimony you were shown this exhibit.

9 Do you recall that?

10 A. Yes.

11 Q. And your attention was directed to the 90 percent column
12 here?

13 A. Yes.

14 Q. And do you see where it says here proportion Hispanic,
15 22 percent. Did I read that correctly?

16 A. Yes.

17 Q. And if we go down on this column to 60 percent and scroll
18 over, where you see proportion Hispanic, 33.6 percent. Am I
19 correct in that reading?

20 A. Yes.

21 Q. Now, the difference between 33.6 percent and 22 percent is,
22 give or take, 11.6 percent. Would you agree with me?

23 A. Yes.

24 Q. Would you consider that difference statistically
25 significant?

1 A. I wouldn't ask about statistical significance.

2 Q. You would?

3 A. I would not.

4 Q. You would not. Okay. Thank you.

5 Would you understand while someone else in your field
6 might ask about the statistical significance of such a
7 disparity?

8 A. Yes.

9 Q. Earlier in your testimony I believe you testified that
10 Dr. Camarota's findings with regard to the likelihood of a
11 Hispanic surname to be stopped in a saturation patrol versus a
12 nonsaturation patrol by a saturation patrol officer was similar
13 to your own.

14 Do you remember that testimony in your rebuttal?

15 A. Could -- could you say specifically?

16 Q. You were asked if Dr. Camarota agreed with any of your
17 findings.

18 Do you recall that?

19 A. Yes.

20 Q. And you testified that he agreed with your findings about
21 the increased likelihood of a Hispanic surname to be checked by
22 a saturation patrol officer on a saturation patrol day when
23 compared to a saturation patrol officer on a nonsaturation
24 patrol day.

25 Do you recall that testimony?

1 A. Yes.

2 Q. Do you recall Dr. Camarota ever testifying that he analyzed
3 those figures for saturation patrol officers on saturation
4 patrol days and nonsaturation patrol officers on saturation
5 patrol days?

6 A. No, but I recall him saying in his testimony just the other
7 day that that first statement that you gave, he certainly found
8 that plausible.

9 Q. Found it plausible.

10 A. And he did not disagree with it.

11 Q. He agreed that those were your findings, correct?

12 A. He did not disagree with it.

13 Q. And he stated under oath that he did not do similar
14 analysis, correct?

15 A. Correct.

16 Q. Would you agree with me that you did your very best to
17 identify all of the names in the comments section of the CAD
18 data report that were related to incidents in the CAD data?

19 A. Yes.

20 Q. And you would agree with me that it was a difficult task to
21 do.

22 A. Yes.

23 Q. And did you hear Dr. Camarota say that he was able to
24 extract -- extract an additional 6,000 plus names from the
25 comments section of CAD data from final stop T and 910s?

1 A. An additional -- yes, an additional 16,000. And when I
2 analyze his name file with those additional 16,000, I generate
3 the same pattern of findings that I found with my earlier name
4 file.

5 Q. I believe you just testified in rebuttal, I want to get
6 this correct, that Dr. Camarota wanted to control for other
7 variables but your analysis controlled for the best variables
8 that were probably given that data.

9 Is that your testimony?

10 A. Yes.

11 Q. If you had the ability to get the other variables, would it
12 have been helpful in your findings to obtain them and control
13 for them?

14 A. Not necessarily.

15 Q. And by "not necessarily" do you mean maybe yes?

16 A. What I mean by "not necessarily" is it depends on the
17 scholarship in the field. It's possible -- what one wants to
18 do in a study of this nature is one wants to look at the
19 scholarship, and look at the types of predictors and outcomes
20 that are used and the way that the scholarship understands
21 these dynamics and processes, and use those relevant variables.
22 And that's what I've tried to do.

23 Q. Okay. Would people that are in the field, the scholars,
24 would they understand that "not necessarily" means yes, it
25 might; no, it might not?

1 A. They might -- they might understand that.

2 Q. Would you understand if laymen -- not scholars, not in the
3 field -- would interpret "not necessarily" as maybe yes, maybe
4 no?

5 A. I can understand that, and if you would allow me to give
6 you an example.

7 Q. Sure.

8 A. Suppose I came up to a -- a layperson and said, I have a
9 model that predicts a hundred percent of the variation in
10 whether the name checked is Hispanic or non-Hispanic. A
11 hundred percent. The layperson would be -- you as a typical
12 layperson would probably be quite excited about that.

13 Q. Unless I study metaphysics and I want certitude.

14 A. Well, certitude, if I explain a hundred percent of the
15 outcome variation, that is certitude.

16 Q. For a statistician.

17 A. Right, not for -- not for a metaphysician.

18 But for a layperson, if I came up to a layperson and
19 said, I have a model that can explain a hundred percent of the
20 variation in this outcome that is important to you, I would
21 think a layperson would be excited.

22 However, that model would also be nonsensical. I
23 can -- for any outcome that I'm given, I can create a model
24 that predicts a hundred percent of that outcome. But the model
25 would be nonsensical.

1 Q. But if you had more data available to you to control for
2 more variables, would you or would you not have more confidence
3 in the analysis that resulted?

4 A. No, not if those variables were not relevant. And I may go
5 back -- just bear with me a minute. If I may go back to my
6 example here.

7 With this data set I could have conducted an analysis
8 that would have given me a hundred percent explanation for
9 Hispanic name checking patterns.

10 Q. Did you control for all the possible variables that may
11 have contributed to increased length of traffic stops when
12 Hispanic surnames were found by saturation patrol officers
13 during saturation patrols?

14 A. Yes, given the scholarship in the field, I have controlled
15 for the appropriate variables.

16 Q. Okay. But I didn't ask you about the scholarship in the
17 field, and I didn't even ask you about the appropriate
18 variables; I asked you if you controlled for all the possible
19 variables that may have controlled the outcome other than
20 chance or statistical noise.

21 A. No, and I could have, but it would have made no sense.

22 And just let me play out my example here. This will
23 only take a second, if I may -- if I may.

24 If I have 123,000 names, let's say, I'm going to make
25 up a -- I'm going to make up 122,999 variables, one variable to

1 capture each person. Could I do that? Yes. Could I do that
2 with these data? Yes. Economists do this kind of thing all
3 the time.

4 And then if I put it in my model to predict my
5 outcome, my explained variation, my goodness of fit would have
6 been a hundred percent. It would make no sense.

7 Q. To scholars in the field?

8 A. To anybody.

9 Q. Are you sure it wouldn't make any sense to anybody? It's a
10 big world out there.

11 A. If I've got a model with 122,999.01 variables, it's kind of
12 hard to explain to make sense of that.

13 Q. Did you control for poverty?

14 A. No, I did not.

15 Q. If a scholar in the field said, quote, I disagree because I
16 have seen no data that shows that correlation, end quote, would
17 it be permissible for a layman to infer that if the scholar did
18 have data that the scholar would want to see it?

19 A. I'm sorry, I missed the question. No correlation -- you
20 just gave me a quote about no correlation between what and
21 what?

22 MR. LIDDY: May I ask that the question be read back
23 to the witness.

24 (The record was read by the court reporter.)

25 THE WITNESS: Yes.

1 BY MR. LIDDY:

2 Q. In your rebuttal testimony you testified that you theorize
3 that a traffic stop of a Spanish speaking driver would go more
4 quickly during a saturation patrol because the officer would be
5 able to gather intelligence more quickly.

6 Do you recall that testimony?

7 A. No, I don't think that's exactly what I said.

8 Q. Do you recall what you did say?

9 A. I think what -- what I said was that I can imagine a
10 scenario where if an officer encounters a fluent English
11 speaking driver during a saturation patrol, and the officer is
12 seeking to gather background information, that the stop might
13 last longer as the officer engages the driver or a passenger in
14 conversation.

15 Q. And that's your theory?

16 A. It's a plausible scenario.

17 Q. Have you ever tested that theory on the CAD data?

18 A. I -- there's no way I can test that -- well, actually, what
19 I've test -- give me a second.

20 What I -- what I've shown is that if at least one
21 non-Hispanic name is checked, the stop lasts shorter.

22 Q. Have you been in the courtroom when the MCSO deputies that
23 were actually making the stops testified?

24 A. Not for all of them, but I was here for Officer Armendariz
25 and Gamboa and DiPietro, and I think that was it.

1 Q. How about Sergeant Madrid, Manuel Madrid?

2 A. I was not here for that.

3 Q. Did you read his testimony?

4 A. No, I have not.

5 Q. How about Carlos Rangel?

6 A. I have -- was not here for that, nor have I read his
7 testimony.

8 Q. Well, if an MCSO officer who actually conducts those stops
9 testified that stops in Spanish tend to take longer than stops
10 in English, would you have any reason to disagree with that?

11 A. No.

12 MR. LIDDY: I have no further questions. Thank you,
13 Doctor.

14 THE COURT: Thank you.

15 Redirect?

16 REDIRECT EXAMINATION

17 BY MR. BYRNES:

18 Q. Dr. Taylor, I was told that I was speaking so loud that
19 some folks had their ears cleaned out, so I'm going to talk a
20 little -- I'll talk a little bit softer and maybe you can talk
21 a little bit louder, we'll even each other out.

22 I'd like to direct your attention back to
23 Demonstrative Exhibit 399H.

24 MR. BYRNES: Your Honor, may I display it to the
25 witness and the gallery?

1 THE COURT: Yes.

2 MR. BYRNES: Thank you.

3 BY MR. BYRNES:

4 Q. And this is a table that Mr. Liddy had referred to.

5 He asked you whether -- about the statistical
6 significance between the proportion of Hispanic names checked
7 under the 90 percent probability threshold and the 60 percent
8 probability threshold and those differences.

9 You testified that you wouldn't ask about statistical
10 significance, but understood why others in the field would do
11 so.

12 Could you please explain why you wouldn't ask about
13 statistical significance between those two figures?

14 A. The purpose of showing these -- these numbers in terms of
15 the proportion of Hispanic names checked with re-processed data
16 is it's descriptive. It's not asking about a statistical
17 difference.

18 The purpose is simply to say: If I define -- if I use
19 different minimum probability thresholds to define a surname as
20 Hispanic, here is a percentage of names that are checked
21 classified Hispanic. And it simply shows how those percentages
22 vary, depending upon the minimum probability threshold used.

23 So this is simply a way of describing the different
24 outcome -- the different ways I have of cutting my outcome, my
25 outcome variable. Asking about -- if I may be permitted just a

1 short analogy.

2 Suppose somebody is analyzing the height of people and
3 somebody decides, Okay, let's classify somebody who's, you
4 know, six feet or higher as tall, so that will give us a
5 certain percentage of people who are tall.

6 Oh, well, let's also look at the outcome if we
7 classify somebody who's six foot two or higher as tall. Is
8 that going to give us a difference -- different percentage?
9 Sure it is, because we're using a different cutoff.

10 It's simply a different way -- this is simply showing
11 that the population of interest varies, depending upon how you
12 define the minimum probability to classify Hispanics --
13 classify a surname as Hispanic.

14 Q. Why would others in your field ask about statistical
15 significance of the data you've just described?

16 A. Well, there might be some reason why they would -- they
17 would want to do this, but -- in other words, there might be
18 some in my field who would do that, but I cannot imagine that
19 most of them would want to do that.

20 I mean, you might say does -- if I go 5 percentage
21 points does my percent, you know, differ significantly, you
22 know? Is my percentage if I use 85 significantly higher than
23 if I use 90? Somebody might want to do that.

24 Q. Don't need the exhibit any more.

25 Finally, Dr. Taylor, during your cross-examination you

1 testified about a model that would explain a hundred percent, a
2 hundred percent of the -- of the variation, if any, between
3 Hispanic name checking patterns in terms of saturation patrols
4 and other variables.

5 A. Um-hum.

6 Q. And you -- but you stated that such a model would be
7 nonsensical. Can you explain why you wouldn't -- and I'm -- as
8 a layperson, I am one of those excited laypeople about such a
9 model.

10 Can you explain why, in your field, such a model would
11 be nonsensical and would not be undertaken?

12 A. It -- it would be nonsensical in two -- in two regards.

13 First of all, what you've simply done is you've
14 created a predictor variable that matches each observation. So
15 I simply -- for every outcome score, except for one, for every
16 outcome score except one, I have a predictor variable for each
17 outcome score. So, therefore, I have one predictor, one score,
18 all the scores are explained.

19 The reason -- the reason this wouldn't make sense in
20 the field is because now I've generated a statistical model
21 that has an extremely large number of predictors. And in our
22 social science model, even in regular science models, we try to
23 develop prediction models which are relatively -- relatively
24 simple. The word is parsimonious.

25 You want a theory that, you know, doesn't have

1 hundreds, or even dozens of factors, but a theory or an
2 approach to understanding the real world that uses just a
3 relatively small number of factors to capture a significant
4 amount of the outcome differences that you're interested in.
5 And you can always add in more predictors, but then your model
6 is no longer simple or theoretically appropriate.

7 Q. Dr. Taylor, is the analysis that you undertook in this
8 case, in your view, the -- a statistically valid model using
9 generally accepted techniques in your field?

10 A. Yes.

11 MR. BYRNES: No further questions. Plaintiffs rest.

12 THE COURT: Thank you.

13 All right. You may step down, Dr. Taylor. Thank you.

14 I've already indicated what the briefing schedule will
15 be. Let me just ask, and I indicated that I would go over some
16 things that I may be interested in if you have an opinion on
17 them.

18 Before I begin that, let me ask what the parties
19 contem -- and I haven't begun to weigh the evidence in this
20 case, but I certainly will be in the -- begin the process of
21 doing that while you are writing up your briefs.

22 But I guess I want to ask if in fact the result of my
23 analysis is that some sort of injunctive relief is appropriate,
24 do the parties want to be heard again on the nature and scope
25 of that injunctive relief, the appropriate nature and scope?

1 MR. YOUNG: Your Honor, plaintiffs would appreciate
2 that -- oh, plaintiffs would appreciate that opportunity, Your
3 Honor.

4 MR. CASEY: Defendants would as well.

5 THE COURT: All right. I have indicated that I'm
6 going to tell you basically how I -- mostly, it will be the
7 legal questions I'm interested in. There are a few factual
8 questions that I'm going to point you to. I'm not going to
9 change the page limits I've given you, so if there's -- if you
10 want to write more, too bad. Put it in the page limits.
11 You're just going to have to make choices.

12 But I did indicate that I would -- one of the things
13 that I have an idea I'll be interested in is the actual arrest
14 records and the actual operational plans, and to some extent,
15 shift summaries.

16 I have, for small -- I've gone through the record with
17 my staff and we've identified lots of duplicates of the -- of
18 the same arrest records, and duplicates of operational plans
19 throughout this. And so what I've tried to do is give exhibits
20 that -- that identify different plans.

21 I want to tell you what those exhibits are. And if
22 I've missed summaries, arrest records, or arrest summaries,
23 that have individual arrest names, individual officers' names
24 and individual arrestees -- more important than anything is
25 individual arrestees' names on them -- then I would like and

1 invite you to supplement. Or if I've erroneously repeated
2 some.

3 But on small-scale saturation patrols, I have
4 Exhibit 80 for a November 29th, 2007, patrol. Exhibit 81 for a
5 December 5th, 2007, patrol. Exhibit 76 for a December 14,
6 2007, patrol. Exhibit 114 for a January 14, 2008 patrol.

7 Exhibit 5 appears -- I'm sorry. Another part of
8 Exhibit 14 appears to deal with a January 31st, 2008,
9 small-scale saturation patrol.

10 Exhibit 108 for a May 6 and 7, 2008, small-scale
11 saturation patrol. Exhibit 109 for an August 19, 2008,
12 small-scale saturation patrol. Exhibit 112, September 4, 2008.
13 I've been referring to them as small-scale saturation patrols.
14 I realize that these may be more correctly identified as HSU
15 operations and not saturation patrols at all, but whatever.

16 As for large-scale saturation patrols that include
17 arrest summaries with officer names, I have Exhibit 77, which
18 refers to a January 18 and 19, 2008, large-scale saturation
19 patrol. I have Exhibit 79, which refers to a March 21st and
20 22nd, 2008, large-scale saturation patrol. I have Exhibit 82,
21 which refers to a March 27 and 28, 2008, large-scale saturation
22 patrol. I have Exhibit 87, which refers to an April 3rd and
23 4th, 2008, large-scale saturation patrol. I have Exhibit 90,
24 part of which refers to a June 26th and 27th, 2008, saturation
25 patrol.

1 Now, I will tell you, and you can correct me if you
2 look at this and find that I'm wrong, while I believe it refers
3 to a June 26 and 27, 2008, large-scale saturation patrol, the
4 document actually has 6 slash 27 slash 07. But I think that
5 the written handwriting must be an error, and if I'm wrong
6 about that, if you can stipulate and let me know.

7 Exhibit 97 has documents in it pertaining to a July
8 14, 2008, large-scale saturation patrol. Document 102 has
9 documents referring to an August 13 and 14, 2008, large-scale
10 saturation patrol. Exhibit 110 refers to a January 9th and
11 10th, 2009, large-scale saturation patrol. Exhibit 111 refers
12 to an April 3rd and 24th, 2009, large-scale saturation patrol.

13 Exhibit 168 refers to a July 23rd-24th, 2009,
14 large-scale saturation patrol. And that is also replicated,
15 apparently, in Exhibit 128 titled ICE Refusals, but unless
16 there's information in one that's not in the other, I don't
17 need to know about that.

18 Exhibit 169 refers to a September 5, 2009, large-scale
19 saturation patrol. Exhibit 174 refers to an October 16 and 17,
20 2009, large-scale saturation patrol.

21 Exhibit 178 refers to an undated saturation patrol
22 which appears to be of large scale. The surrounding material
23 suggests that it would be November 16, 2009, but I can't be
24 sure about that.

25 And Exhibit 180 is also undated, but the surrounding

1 material suggests that that would be the next day, so November
2 17, 2009. So I presume that it would be two days of the same
3 saturation patrol, but I don't know that.

4 Now, let me talk to you about how I tend to view this
5 case -- well, before I get to that, it also occurs to me, as --
6 as you've noted earlier, this case has been with me for a
7 while, and it was with me through the summary judgment stage.
8 In the summary judgment stage all parties submitted statements
9 of fact in which they cited to various deposition transcripts,
10 and sometimes cited to portions of those transcripts which have
11 not been reviewed at trial.

12 I will tell the parties right now that I'm not aware
13 of any significant difference between deposition transcripts
14 and trial transcripts in terms of anything that would give me
15 pause, but I find sometimes that when I'm going through things
16 carefully and doing statements of fact I might want to refer to
17 something that the parties have referred to me in the
18 deposition transcripts that didn't come up at trial.

19 Is there any party that feels that it would be
20 inappropriate for me to consider those matters?

21 MR. CASEY: Defendants have no objection to you using
22 the statements of facts submitted to the Court in our summary
23 judgment motions and in our responses to their summary judgment
24 motion.

25 MR. YOUNG: Plaintiffs also have no objection, Your

1 Honor.

2 THE COURT: All right.

3 MR. CASEY: Your Honor, the only thing I would point
4 out is the only objection that we would have is the Melendres
5 deposition, I believe, is used, Mr. Melendres's, and
6 Ms. Rodriguez's I think are submitted in the summary judgment
7 motions. That, obviously, they did not come to trial, and we
8 would have -- we preserve our objection on the use of that
9 testimony.

10 THE COURT: All right. Let me tell you that if you
11 want to spend some of your pages, or at least a footnote in
12 your briefing, I did a little legal research to see if I could
13 consider those matters, and I didn't spend a long time on it.
14 The little research I reviewed suggested that I can. If you
15 find contrary authority, Mr. Casey, I'd invite you to drop that
16 in one of your footnotes or somewhere in part of your written
17 briefing, but I'll note that you've preserved your objection to
18 my doing so.

19 At least as it -- if I understand you, at least as it
20 pertains to Jessika Rodriguez and Mr. Ortega Melendres, and
21 that is because they didn't appear at -- or didn't testify at
22 trial?

23 MR. CASEY: That is correct, Your Honor.

24 THE COURT: All right. Now, it seems to me that the
25 complaint basically has a statutory cause of action and two

1 what I'll call 1983 causes of action that are a little bit
2 multifaceted. The 1983 causes of action, though, for the most
3 part, are based on a Fourth Amendment violation with a
4 Fourteenth Amendment violation.

5 I believe we've already resolved this through summary
6 judgment, but I'm just going to state some things that if you
7 have a different point of view, I invite you to brief them.

8 First is if I find through the evidence submitted --
9 and there's been, without commenting on how I find the evidence
10 either way, there has been evidence presented from which the
11 Court could find, if I -- depending on how I weigh the
12 evidence, that the defendants have violated and are violating
13 the Fourth Amendment rights of members of the class.

14 If I were to find that, my understanding of the law is
15 that I need not find any subjective intent element on the part
16 of the defendants before injunctive relief is appropriate. I
17 can just enjoin what I find to be Fourth Amendment violations.

18 Is there any disagreement about that?

19 MR. CASEY: On behalf of defendants, your statement is
20 correct.

21 THE COURT: All right.

22 Plaintiffs?

23 MR. YOUNG: We agree, Your Honor.

24 THE COURT: All right. Then we move to what I will
25 call the Fourteenth Amendment, or the equal protection claims.

1 And the Fourteenth Amendment claims are different than the
2 Fourth Amendment claims, as I understand it, because in
3 addition to finding that there is an equal protection
4 violation, before I can enter injunctive relief I have to find
5 a certain element of intent.

6 Is there any disagreement about that?

7 MR. YOUNG: No, Your Honor.

8 MR. CASEY: There is not.

9 If I could add one element. The law that we cited,
10 and I believe both parties cited, was discriminatory intent,
11 discriminatory purpose described often as racial animus. And
12 that, I believe, is the intent standard. It's not --

13 THE COURT: Well, that's really what I'm going to get
14 to. That is what I'm going to get to in terms of what I would
15 be interested in briefing. Because it seems to me that -- and
16 I haven't done intense research on this, but it seems to me,
17 for example, if I were to find that the Sheriff's Office were
18 deliberately indifferent, that may not rise to the level of
19 intent required for me to enter injunctive relief.

20 However, deliberate indifference strikes me as being,
21 for example, different than deliberate ignorance. Certainly,
22 in a criminal context if I find that some -- someone is
23 deliberately ignorant, I can find that they acted knowingly and
24 with the requisite level of intent.

25 But I will tell you that this is an area that is not

1 particularly clearly briefed, and that's why I invite the
2 parties to consider addressing it in their briefing, which is:
3 Do I have to find racial animus? Or is there something less
4 than racial animus but more than deliberate indifference that
5 constitutes intent? And I would like to know what the cases
6 say on that, and invite the parties to address it from their
7 various positions.

8 MR. CASEY: And Your Honor, so I'm clear, that is
9 included in our 17 pages?

10 THE COURT: It is.

11 MR. CASEY: Thank you, sir.

12 Be more than happy to provide you separate pages.

13 THE COURT: Well, I'll consider that. I'll consider
14 it. Just a second. There is a -- there is a refinement to
15 that. Because, as I've indicated, I am not accepting any more
16 testimony or factual argument. So I'm going to now go into
17 something different. Or not something different, but something
18 quite a bit more precise.

19 In the parties' joint pretrial statement, or joint
20 pretrial order, which I accepted and signed, and which cannot
21 be varied unless you can convince me there's manifest
22 injustice, the parties stipulated to something, a legal
23 proposition, and I don't think it's a "gotcha" legal
24 proposition; I think both parties knowingly stipulated to it.
25 And they knowingly stipulated that since the year 2000, in the

1 Ninth Circuit Court of Appeals, because of law set down in an
2 immigration context, race cannot be considered as any factor in
3 forming reasonable suspicion or probable cause.

4 I haven't misstated that, I don't think. Have I
5 misstated that?

6 MR. CASEY: Did you say year 2000?

7 THE COURT: I think it's year 2000. It's the
8 Montero-Camargo case. I think you've cited -- I think you
9 cited it. I think you cited Montero-Camargo, and I cited it in
10 my order on motion for summary judgment. I don't think it's a
11 surprise to anybody. That's why I wasn't really surprised to
12 see the stipulation to that as a proposition of law that the
13 parties agreed to in the joint pretrial statement.

14 But let me tell you, it seems to me, and I'm not going
15 to character -- I've heard a number -- I've heard testimony
16 from a lot of people that under certain circumstances race can
17 be and is considered as a factor by the Maricopa County
18 Sheriff's Office. And that doesn't mean I credit that. I've
19 heard testimony on both sides.

20 But for example, I will tell you Agent Peña's
21 testimony today I think we heard clearly ICE say, or an ICE
22 officer say that race could be considered as a factor among
23 other factors in certain contexts. Well, to the extent that
24 ICE said that, it seems to me that they're dead wrong in the
25 Ninth Circuit.

1 So assuming -- is there any -- is there any
2 disagreement about that proposition? And if there is, I invite
3 you to brief that, and to brief how in the world you think --
4 how that isn't foreclosed by the stipulation you've already
5 made in the joint pretrial statement as a proposition of law.
6 But if you have -- if you have a view that that is distinct,
7 then I want you to brief it. And I may expand the page number,
8 since I'm giving you some specific stuff on which I expect your
9 briefing will be helpful.

10 But now I want to get to an even more precise point
11 when we deal with intent. Let's say that I determine -- and
12 again, I'm not trying to foreshadow anything, but it seems to
13 me a possibility, in light of testimony I've heard. If I
14 determine that MCSO believed and did and continues to use race
15 as one factor among many in making certain law enforcement
16 decisions in certain contexts, does it matter, when they intend
17 to and do use race as a factor, is the intent requirement for
18 injunctive relief satisfied? Even though they may have had,
19 some officers or all officers may have had a good faith belief
20 that they were acting in compliance with the law if they were
21 wrong.

22 Do you understand what I'm asking you?

23 MR. CASEY: May I paraphrase you to see if I
24 understand?

25 THE COURT: Yes.

1 MR. CASEY: As I understand what you've asked, if an
2 officer uses race as one component to determine reasonable
3 suspicion or probable cause, for example, maybe an unlawful
4 presence situation, is that factor alone sufficient to meet the
5 racial animus standard --

6 THE COURT: Well, keep in mind, Mr. Casey --

7 MR. CASEY: I'm sorry.

8 THE COURT: Keep in mind, Mr. Casey, I'm not sure that
9 racial animus is the standard. But there has to be an intent
10 requirement.

11 MR. CASEY: Right. Is that sufficient to prove
12 whatever standard the par -- the Court is going to adopt --

13 THE COURT: Well --

14 MR. CASEY: -- is that sufficient to meet that intent
15 element?

16 THE COURT: Correct. In other words, if you intend
17 and know you intend to use race as a factor, does it matter
18 that you didn't intend to violate the law?

19 MR. CASEY: Okay. Right.

20 THE COURT: All right. Now, that's the second -- I
21 realize that all of these ways of looking at the 1983 part of
22 the case are some -- to some degree intertwined, because some
23 of the evidence pertaining to whether or not there's Fourth
24 Amendment violations blends into some of the evidence whether
25 there's Fourteenth Amendment violations, and vice versa.

1 But there's another way to look at Fourteenth
2 Amendment violations, which is, frankly, what all the press is
3 interested in and I haven't focused on yet.

4 Mr. Casey, did you want to talk about something?

5 MR. CASEY: Yes. I think this directly relates to
6 that issue of briefing. Is the inquiry of the Court as to
7 specific officers and, in addition, to a policy, pattern, or
8 practice?

9 THE COURT: Well --

10 MR. CASEY: I assume it is both.

11 THE COURT: You know, I'm not going to answer that
12 question, because the evidence is closed, and I am going to
13 consider what specific officers have said in -- well, I guess I
14 can answer this, and maybe this is your question, without being
15 unfair.

16 I am going to determine what the Maricopa County's
17 office -- I am going to be determining what the policy --
18 policies of the Maricopa County Sheriff's Office are. I am
19 also going to be determining what the practices of the Maricopa
20 County Sheriff's Office are, regardless of what the policies
21 state or may or may not state.

22 MR. CASEY: Right.

23 THE COURT: And I will be considering, in considering
24 what their practices are, the testimony of individual deputies
25 as well as the testimony of -- as to policies.

1 MR. CASEY: All right. Thank you, sir. That helps
2 me.

3 THE COURT: All right.

4 It seems to me, when I'm considering injunctive
5 relief, however, that I can't lose sight of the fact that I
6 have certified a specific class that relates to persons in
7 vehicles, and that I have to keep in light -- I have to also
8 take into account the evidence actually offered.

9 Now, I realize that to the extent that the standard
10 used by the Maricopa County Sheriff's Office, or the definition
11 of what racial profiling is, and the extent to which they may
12 or may not be wrong as a matter of law, may have larger
13 implications for other operations. And I realize that the
14 standard, or legal practices pertaining to the Fourth Amendment
15 may have larger application.

16 But here's a question I have for plaintiffs. I
17 realize that there has been testimony on both sides of what I
18 will call the Dr. Taylor issue, Dr. Taylor/Dr. Camarota issue,
19 about whether -- and I will tell you that I'm interested in
20 both aspects of their testimony, but I'm principally interested
21 in this question, in the aspect that pertains to his work
22 pertaining to numbering of Hispanic names run during saturation
23 patrols. And I realize that there are a few exceptions in his
24 statistical analysis.

25 But if I accept his statistical analysis and the

1 internal benchmarking, and if I am to find that the internal
2 benchmarking is appropriate, don't I then also have to find
3 that because of the nature of the internal benchmarking, all
4 nonsaturation patrol days operated by the Maricopa County
5 constitute an acceptable baseline and do not implicate racially
6 biased policing outside of a saturation patrol?

7 Do you understand my question?

8 MR. YOUNG: Yes, Your Honor. And I take it you're not
9 seeking an answer now?

10 THE COURT: I am not seeking an answer now, but I'm
11 inviting you to consider that in your briefing.

12 MR. YOUNG: Thank you.

13 THE COURT: All right. Those are my principal
14 questions that I'd appreciate that you address in your
15 briefing.

16 And I'm not saying there aren't others. There are
17 really quite a few others, but it just won't do for me to list
18 them all, and I've given you the major ones.

19 MR. CASEY: Perhaps risking laughter, let me share
20 with you what my thought is on briefing.

21 My experience is is, you know, to argue the case
22 factually, and that is a factual thing. I'm not used to
23 usually arguing the law. That's usually in the briefs.

24 What I would hope is that the Court would allow us to,
25 if the Court were so inclined, to give us 17 pages, or make it

1 15 pages to argue the facts to the Court and then have another,
2 whatever you decide, to address the legal issues you have,
3 because these legal issues can consume 17 pages without any --

4 THE COURT: All right. How about I give you 35 pages,
5 both sides?

6 MR. CASEY: That's all I can ask for. Thank you.

7 MR. YOUNG: Thank you, Your Honor.

8 THE COURT: And I'll give you, then, 17 pages in
9 response. And I'm not going to change the deadline. If you
10 can get it done in a week, I'd like it done in a week.

11 MR. CASEY: We will get it done in a week, Your Honor.

12 MR. YOUNG: Yes, Your Honor. Thank you.

13 THE COURT: All right. Let me ask you, if you want,
14 I'll allow you to --

15 When is the last one due?

16 MR. CASEY: On the 16th.

17 THE COURT: Do we have any time on the 17th?

18 (Off-the-record discussion between the Court and the
19 clerk.)

20 THE COURT: All right. I will accept your briefing.
21 I will make a decision. If it's my determination that any
22 injunctive relief is appropriate I will set forth in my
23 findings of -- I will try and be detailed in my findings of
24 fact and conclusions of law.

25 If I have supplemental questions that I just really

1 don't feel I can answer without your help, I may issue
2 supplemental requests for briefing. But if I feel like I can
3 proceed, I will do detailed findings of fact and conclusions of
4 law on all of the points that we just addressed.

5 By the way, I didn't address the statutory cause of
6 action, but please feel free to address whatever relevant
7 authority you feel like you want me to consider in the
8 statutory cause of action.

9 I will try and be, as I said, detailed, and if I
10 should determine that any injunctive relief is appropriate, I
11 will request the parties and give them the opportunity to be
12 heard on that. But it will be as well, I hope, expeditious.

13 Any other questions?

14 MR. CASEY: Is it presumptuous to ask if the Court has
15 a time period in which it thinks it may try to issue something?

16 THE COURT: Yes.

17 MR. CASEY: Thank you, Your Honor.

18 THE COURT: What I can tell you is that I will do my
19 best. But I can't tell you how long that will take until I get
20 into it.

21 MR. CASEY: Thank you, Your Honor.

22 THE COURT: All right.

23 I also would like to say, because from here on out we
24 get into results and results aren't fun, that I would commend,
25 as I have during the course of these proceedings, that I would

1 commend the attorneys for their cooperation and
2 professionalism, and I do appreciate it. And with that, I'll
3 see you when next I see you.

4 (Proceedings concluded at 3:22 p.m.)

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2 C E R T I F I C A T E
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7 I, GARY MOLL, do hereby certify that I am duly
8 appointed and qualified to act as Official Court Reporter for
9 the United States District Court for the District of Arizona.

10 I FURTHER CERTIFY that the foregoing pages constitute
11 a full, true, and accurate transcript of all of that portion of
12 the proceedings contained herein, had in the above-entitled
13 cause on the date specified therein, and that said transcript
14 was prepared under my direction and control.

15
16
17 DATED at Phoenix, Arizona, this 2nd day of August,
18 2012.

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21 s/Gary Moll
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