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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Manuel de Jesus Ortega Melendres, et.
al.,

Plaintiffs,

v.

Joseph M. Arpaio, et al.,

Defendants.

No. CV 07-2513-PHX-GMS

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BRIEF**

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1 **I. INTRODUCTION**

2 During trial, Plaintiffs proved that the Maricopa County Sheriff's Office (MCSO)
3 is engaged in a policy and practice of violating the rights of Latinos under the Equal
4 Protection Clause and the Fourth Amendment. The MCSO's policies and practices in
5 connection with its "illegal immigration crackdown" have targeted Latinos¹ for traffic
6 stops and imposed extended detentions on them because of their race and ethnicity.

7 Plaintiffs proved that the MCSO's immigration enforcement activities were
8 carried out with discriminatory intent. From Sheriff Arpaio's decision to initiate
9 enforcement operations in response to racially inspired citizen complaints that described
10 no criminal activity, to his officers' admitted reliance on race as an indicator in
11 immigration investigations, and the circulation of overtly anti-Latino materials among
12 MCSO personnel, the MCSO's policy and practices offend the most fundamental
13 principles of equal protection. The MCSO's efforts to repudiate its own press releases
14 and to recast its saturation patrols as "general crime suppression," or to hide behind the
15 fig leaf of a "zero tolerance" policy, while refusing to adopt the most basic mechanisms
16 to detect and address racial profiling, further demonstrate its discriminatory purpose.
17 Plaintiffs have also presented ample evidence—in the form of rigorous statistical
18 analysis, arrest lists, and the experiences of Latinos subject to the MCSO's practices—of
19 the discriminatory effects of the MCSO's policies and practices on Latino drivers and
20 passengers both during saturation patrols and on non-saturation patrol days. These
21 MCSO actions tarnish this country's undisputed ideal, Trial Transcript ("Tr.") 449:15-19
22 (Arpaio), of non-discrimination based on race.

23 Plaintiffs also proved at trial that the MCSO continues to detain persons solely on
24 suspicion of civil immigration violations, in violation of this Court's prior injunction and
25 controlling Ninth Circuit case law. Furthermore, the MCSO routinely subjects
26 passengers to unreasonable detentions in order to verify their identity and unlawfully

27 _____
28 ¹ Plaintiffs intend the terms "Hispanic" and "Latino" to be synonymous.

1 arrests them for failing to carry identification, all in violation of the Fourth Amendment.
 2 Finally, the MCSO violated the Fourth Amendment rights of named Plaintiffs, as well as
 3 other class members who testified at trial.

4 An injunction is both warranted and appropriate.

5 **II. THE MCSO’S POLICIES AND PRACTICES VIOLATE THE**
 6 **FOURTEENTH AMENDMENT.**

7 **A. The MCSO Has an Admitted Policy of Relying on Race When**
 8 **Forming Reasonable Suspicion of Immigration Violations During**
 9 **Traffic Stops.**

10 As set forth below, the MCSO admits that it has a practice of considering apparent
 11 Hispanic descent as one among several indicators in forming reasonable suspicion to
 12 justify immigration-related investigatory detentions of drivers and passengers during
 13 traffic stops. This policy and practice, which is admittedly not limited to saturation
 14 patrols, clearly violates the Equal Protection Clause. Where, as here, an agency relies
 15 explicitly on racial classifications in law enforcement decisions, there is no need to
 16 inquire whether such policy was motivated by a discriminatory intent or has a
 17 discriminatory impact. *Cf. infra* Section II.B; *see also* *Wayte v. United States*, 470 U.S.
 18 598, 690 n.10 (1985) (“A showing of discriminatory intent is not necessary when the
 19 equal protection claim is based on an overtly discriminatory classification.”).

20 Under longstanding Ninth Circuit precedent, and according to the parties’ pretrial
 21 stipulation, this reliance on Hispanic appearance in immigration-related investigations is
 22 unconstitutional. “Hispanic appearance is . . . ‘of such little probative value that it may
 23 not be considered as a relevant factor where particularized or individualized suspicion is
 24 required.’” *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (en
 25 banc); Final Pretrial Order, Mar. 26, 2012, Dkt. No. 530 (“PTO”)(C.)(3.)(c.).² While

26 ² *Montero-Camargo* notes that “[t]he likelihood that in an area in which the majority—or
 27 even a substantial part—of the population is Hispanic, any given person of Hispanic
 28 ancestry is in fact an alien, let alone an illegal alien, is not high enough to make Hispanic
 appearance a relevant factor in the reasonable suspicion calculus.” 208 F.3d at 1132.
 Approximately 31.8% of the population of Maricopa County is Hispanic. *See, e.g.*, Tr.
 1301:4-8 (Camarota). Defendants’ expert Dr. Steven Camarota estimated that the
 (continued...)

1 *Montero-Camargo* was a Fourth Amendment case, it relied on equal protection
2 principles in reaching that result. *See id.* at 1134 (stating that “the Supreme Court has
3 repeatedly held that reliance ‘on racial or ethnic criteria must necessarily receive a most
4 searching examination to make sure that it does not conflict with constitutional
5 guarantees.’”) (internal citation omitted). In keeping with equal protection guarantees,
6 *Montero-Camargo* held that “[s]tops based on race or ethnic appearance . . . send a clear
7 message that those who are not white enjoy a lesser degree of constitutional protection—
8 that they are in effect assumed to be potential criminals first and individuals second.” *Id.*
9 at 1135. *See also Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979) (the
10 existence of “[a] racial classification, regardless of purported motivation, is
11 presumptively invalid and can be upheld only upon extraordinary justification.”) (citing
12 *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)).

13 At trial, MCSO officials—including supervisors in the Human Smuggling Unit
14 (HSU)—admitted to using race as a factor in immigration investigations. Sergeant
15 Palmer testified that MCSO deputies may “decide to initiate an [immigration]
16 investigation during a stop based on race or ethnicity, among other factors[.]” Tr. 716:8-
17 717:4; *see also* Tr. 725:8-726:15 (Palmer). Sergeants Palmer and Madrid took no action
18 in response to traffic stop incident reports containing narratives in which deputies
19 explicitly relied on race as a factor in “raising [their] suspicions” of an immigration
20 violation, as they were consistent with the MCSO’s policy. Tr. 717:9-18, 720:11-721:2
21 (Palmer); Tr. 1167:3-22, 1169:25-1170:17 (Madrid).

22 This express reliance on race as an indicator is also consistent with the views of
23 Sheriff Arpaio, the MCSO’s final policymaker. *See* Tr. 414:12-415:5 (Arpaio); Tr.
24 992:5-23 (Sousa). The Sheriff has publicly stated that his deputies can detain people
25 based on “what they look like, if they just look like they came from another country.”
26 Ex. 410B; *see also* Ex. 410C (stating that looking like you “just came from Mexico” is a
27 majority of this group—at least 67%—are legally present in the United States. Tr.
28 1301:9-21.

1 relevant factor in immigration investigations); Tr. 344:8-14 (“possible” that brown-
2 skinned people equate to illegal aliens); Tr. 438:17-442:2 (description of someone as
3 Mexican gives rise to possible immigration violation). The Sheriff also endorses
4 materials applauding the reliance on race in immigration enforcement and circulates
5 them to his command staff. *See, e.g.*, Ex. 185; Tr. 374:25-378:6; Ex. 187; Tr. 442:4-
6 444:15; *see also* Ex. 206; Tr. 367:17-374:3; Ex. 370; Tr. 378:7-382:7.

7 MCSO claims that the use of race for this purpose is permissible because that is
8 how U.S. Immigration and Customs Enforcement (ICE) trained certain MCSO officers,
9 but that claim fails as a matter of law.³ Even in a damages case (which this case is not), a
10 defendant’s subjective good faith belief in the lawfulness of his actions is no defense if
11 those actions were unconstitutional under clearly established law. *See, e.g., Pearson v.*
12 *Callahan*, 555 U.S. 223, 231-32 (2009). As of no later than 2000, it was clear in the
13 Ninth Circuit that the use of race is not permitted even as one factor among others in
14 immigration investigations. *See Montero-Camargo*, 208 F.3d at 1135. In any event, this
15 is an action for injunctive relief, not damages, and the MCSO cannot be allowed to
16 continue this unconstitutional practice based on some purported imprimatur by ICE in
17 the past. *See Morse v. Frederick*, 551 U.S. 393, 432-33 (2007) (qualified immunity
18 defense does not apply in suits for injunctive relief).

19 Because “[d]istinctions between citizens solely because of their ancestry are by
20 their very nature odious to a free people whose institutions are founded upon the doctrine
21 of equality,” *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943), this Court should
22 enjoin Defendants from such reliance on race.

23
24 _____
25 ³ The MCSO’s explicit reliance on apparent Hispanic descent as an indicator in
26 immigration investigations continues notwithstanding the loss of MCSO’s 287(g)
27 certification from ICE. PTO (C.)(1.)(51.). According to Lieutenant Sousa, MCSO
28 officers have not “turn[ed] off” their 287(g) training. Tr. 1007:6-11. MCSO relies on the
ICE indicators to determine whom to hold pending contact with ICE. Tr. 1225:17-
1226:11 (Madrid); *see also* Tr. 958:23-959:14 (Rangel). Except for not being able to
arrest individuals on suspicion of unlawful status alone, the MSCO continues to conduct
immigration investigations in the same way as before. Tr. 1226:12-17 (Madrid).

1 **B. The MCSO Has a Policy and Practice of Initiating Saturation Patrols**
 2 **and Selectively Enforcing Traffic Laws Based on Race.**

3 The MCSO also discriminates against Hispanics by selectively enforcing laws that
 4 are facially race-neutral. To prove an equal protection violation in this context, plaintiffs
 5 must show that the defendants' actions "had a discriminatory effect and . . . were
 6 motivated by a discriminatory purpose." *Rosenbaum v. City and County of San*
 7 *Francisco*, 484 F.3d 1142, 1152-53 (9th Cir. 2007); accord *Chavez v. Ill. State Police*,
 8 251 F.3d 612, 635 (7th Cir. 2001).

9 The Court has inquired as to the meaning of discriminatory intent or purpose in this
 10 context. "To show discriminatory purpose, a plaintiff must establish that the decision-
 11 maker . . . selected or reaffirmed a particular course of action at least in part 'because
 12 of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Rosenbaum*,
 13 484 F.3d at 1153 (internal citation omitted). Discriminatory purpose must be "a
 14 motivating factor in the [challenged] decision," but it does not "require a plaintiff to
 15 prove that the challenged action rested solely on racially discriminatory purposes." *Vill.*
 16 *of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977) (noting
 17 that "[r]arely can it be said that a legislature or administrative body operating under a
 18 broad mandate made a decision motivated solely by a single concern").

19 While Plaintiffs must demonstrate that the relevant decision-makers acted with an
 20 intent to discriminate, they need not show that the decision-makers themselves harbor
 21 hatred towards Hispanics. *See, e.g., infra* Section II.B.1. It is sufficient to show simply
 22 that the decision-makers purposefully intended to treat persons differently based on race.
 23 *See generally Arlington Heights*, 429 U.S. at 266.⁴

24 ⁴ Whether discriminatory purpose exists "demands a sensitive inquiry into such
 25 circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429
 26 U.S. at 266. This evidence may include the "historical background of the decision" that
 27 is challenged, "the specific sequence of events leading up to the challenged decision,"
 28 substantive and procedural departures from norms, the legislative or administrative
 history behind a challenged decision, and the impact of the challenged action. *Id.* at 266-
 68; *see also Navarro v. Block*, 72 F.3d 712, 716 (9th Cir. 1995) (restating *Arlington*
Heights factors for discriminatory purpose inquiry); *Washington v. Davis*, 426 U.S. 229,
 242 (1976) (finding that discriminatory purpose "may often be inferred from the totality
 of relevant facts").

1 ***1. The MCSO Initiates Immigration Enforcement Operations,***
2 ***Including Saturation Patrols, in Response to Race-Based***
3 ***Requests for Action from Some Members of the Public.***

4 Among the *Arlington Heights* factors for determining discriminatory purpose are
5 “the historical background” and “specific sequence of events leading up to the decision”
6 being challenged on equal protection grounds. *See id.*, 429 U.S. at 266-67. Sheriff
7 Arpaio’s decision to conduct immigration saturation patrols is especially revealing. As
8 recently as 2005, Sheriff Arpaio did not consider immigration to be a serious issue. Tr.
9 324:15-20. Then, in response to a letter that he received in late 2005 from the Phoenix
10 Chapter of the Minuteman Civil Defense Corps complaining about purported “illegal
11 aliens” standing on the street near day laborer sites (without explaining how one could
12 know a person’s legal status by observing him on the street), the Sheriff convened an
13 internal office meeting to “decide how to respond.” Ex. 385; Tr. 329:7-11. Although the
14 Minuteman letter and other constituent correspondence contained no information about
15 criminal activity occurring in a particular area, Sheriff Arpaio heard the frustrations of
16 his constituents and took action based on their demands. In July 2007, the Sheriff
17 announced a public crackdown on illegal immigration. *See* Ex. 328 (“We have heard the
18 people speak . . .”). The first several large-scale operations conducted by the MCSO
19 were in the very locations identified by the Minutemen as pick-up points for day
20 laborers. *Compare* Ex. 385 (suggesting intersections of Bell Rd. and Cave Creek and of
21 Thomas and 36th St. are day laborer pick-up points) *with* Ex. 310 *and* Ex. 311. When
22 announcing those operations, the Sheriff stated outright that they resulted from requests
23 by members of the public. *See* Exs. 310-11.

24 This practice of planning saturation patrols in response to racially-motivated
25 requests from the public is sufficient to demonstrate the MCSO’s discriminatory intent.
26 The Equal Protection Clause prohibits government officials from responding to racial
27 prejudice” by “effectuating the desires of private citizens” where officials are “aware of
28 the [racial] motivations of the private citizens.” *United States v. Yonkers Bd. of Educ.*,
837 F.2d 1181, 1224-25 (2d Cir. 1987) (internal quotations and citation omitted).

1 Plaintiffs may establish racially discriminatory intent if Sheriff Arpaio and his agency
 2 adopted policies in response to elements of public sentiment that were known to be
 3 racially inspired, whether or not Sheriff Arpaio held those same views himself. *See id.*;
 4 *accord United States v. City of Birmingham, Mich.*, 538 F.Supp. 819, 828 (E.D. Mich.
 5 1982).⁵

6 The record contains numerous examples of the MCSO's practice of initiating
 7 saturation patrols in response to race-based demands from constituents that the MCSO
 8 take action against Latino day laborers at specific locations.⁶ Contemporaneous
 9 statements of the MCSO's intent to conduct an operation in response to discriminatory
 10 constituent complaints provide the most reliable evidence of the MCSO's true purpose.
 11 *See Arlington Heights*, 429 U.S. at 266-68; *see also Yonkers Bd. of Educ.*, 837 F.2d at
 12 1224-25; *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 648 F.
 13 Supp. 2d 805, 810-12 (E.D. La. 2009) (analyzing planning commission's practice of
 14 taking into account race-based public comments under *Arlington Heights*). In addition,
 15 Chief Sands, the MCSO official in charge of planning saturation patrols, PTO
 16 (C.)(1.)(49.), testified that crime saturation patrols were historically part of the Sheriff's
 17

18 ⁵ It is unlawful for the MCSO to take action based on citizen correspondence that uses
 19 camouflaged racial expressions. *See Greater New Orleans Fair Housing Action Center*
 20 *v. St. Bernard Parish*, 648 F. Supp. 805, 810-12 (E.D. La. 2009) (finding discriminatory
 21 intent based on statements from residents that proposed housing development tenants
 22 would not share the same "values" and would threaten the community's "way of life");
 23 *Smith v. Town of Clarkton, N.C.*, 682 F.2d 1055, 1066-67 (4th Cir. 1982) (discussing
 with approval the district court's interpretation of phrase "influx of 'undesirables'" as
 coded race discrimination). Sheriff Arpaio received constituent letters expressing explicit
 and camouflaged racial animus and circulated them to Chief Sands, the MCSO official in
 charge of planning saturation patrols, PTO (C.)(1.)(49.). *See, e.g.*, Ex. 202; Tr. 394:21-
 395:6; Ex. 244; Tr. 416:12-417:11; Ex. 237; Tr. 428:9-15, 430:2-5.

24 ⁶ That some constituent requests and MCSO press releases referred to day laborers,
 25 rather than Hispanics generally, does not obscure their underlying basis in race. The
 26 citizen correspondence routinely conflated day laborers, Hispanics, Mexicans, and illegal
 27 immigrants. *See, e.g.*, Ex. 219; Ex. 223; Ex. 381. MCSO officials believe that most day
 28 laborers in Maricopa County are Hispanic. PTO (C.)(1.)(82.), (C.)(1.)(84.); *see also* Tr.
 436:17-442:3 (Arpaio admitting that he sent a letter describing Mexicans selling corn
 without a permit to his illegal immigration officers and that he does not recall sending a
 complaint concerning Caucasians selling things without a permit to his illegal
 immigration officers because that is not something that would occur to him).

1 response to citizen complaints. Tr. 809:13-15. Chief Sands acknowledged that Sheriff
 2 Arpaio suggested or discussed saturation patrol sites with him, that some suggestions
 3 may have come from members of the public, and that Sheriff Arpaio's suggestions were
 4 followed. Tr. 809:20-810:9; 893:8-24.⁷ Chief Sands also stated that he does what he can
 5 to be responsive to constituent complaints. Tr. 810:24-811:3.⁸

6 The following is a non-exhaustive list of examples of the MCSO's conducting
 7 immigration operations following receipt of racially-charged citizen complaints, together
 8 with citations to contemporaneous statements that demonstrate the MCSO's intent to
 9 take action in response to such citizen complaints:⁹

10 ***Town of Cave Creek:*** On September 27, 2007, the MCSO announced it would
 11 deploy a unit in response to complaints in an area near a day laborer center along Cave
 12 Creek Road. Ex. 307; Ex. 126 (email from Sergeant Madrid confirming operation in
 13 response to day laborer complaints).¹⁰ Chief Sands agreed that some day laborers were
 14 arrested during the operation on suspicion of being in the United States illegally, but that
 15 none were arrested for loitering or disrupting traffic in Cave Creek. Tr. 792:15-793:5.

16 ***Town of Queen Creek:*** On October 4, 2007, the MCSO conducted an operation
 17 in Queen Creek in response to constituent complaints regarding day laborers. *See* Ex.

18 ⁷ Sheriff Arpaio testified that he expects Chief Sands to do what the Sheriff tells him to
 19 do. Tr. 416:1-11.

20 ⁸ Because Sheriff Arpaio was the one who directed Chief Sands to conduct saturation
 21 patrols, his intent is relevant to prove the agency's discriminatory purpose. *See, e.g.,*
 22 *Wayte*, 470 U.S. 598 at 610 (discriminatory intent of "decisionmaker" is key inquiry);
 23 *Doe v. Vill. of Mamaroneck*, 462 F. Supp. 2d 520, 554-55 (S.D.N.Y. 2006) (examining
 24 intent of Mayor who instituted policing activities targeting day laborers). Lower-level
 25 MCSO personnel were not aware of the reasons saturation patrol sites were selected.
 26 *See, e.g.,* Tr. 666:1-17 (Palmer); Tr. 1221:3-6 (Madrid).

27 ⁹ As noted in the Court's order on Plaintiffs' motion for sanctions, the MCSO engaged in
 28 spoliation of evidence and it is therefore possible that there were additional race-based
 constituent complaints that were not available at trial. This Court, as finder of fact, may
 draw the adverse inference that there were complaints received by the MCSO prior to
 Aug. 31, 2008 about locations where the MCSO later conducted special operations that
 complained of "Mexicans," "day laborers" or "illegal immigrants" but did not identify
 any criminal activity. *See* PTO (C.)(2.)(c.)-(e.).

¹⁰ Defendants failed to produce the specific complaints that prompted the Cave Creek
 operation or provide a justification for the operation at trial. This Court, as finder of fact,
 may draw the adverse inference that the complaints did not identify criminal activity. *See*
 Order, Dec. 23, 2011, Dkt. No. 493, at 8.

1 308 (press release: “Sheriff Arpaio Goes After Day Laborers”); *see also* Ex. 129 (MCSO
2 email shift summary confirming patrol was conducted in response to emails from town
3 council). The constituent described no criminal activity, complaining only about
4 Hispanic men making people feel “uncomfortable.” Ex. 219; Tr. 388:6-19, 390:23-391:1
5 (Sheriff Arpaio admitting that he did not know whether the email described a crime).

6 ***36th St. and Thomas in Phoenix:*** On Nov. 19, 2007, a person named “Dr. J.”
7 emailed on behalf of the “36th St. & Thomas Rd. Business Coalition” to complain about
8 an “unpermit[ed] mariachi band” across the street from Pruitt’s Furniture Store. Ex. 202.
9 The email characterized the band as “illegal activists” who “are putting on a freak show
10 and getting away with it” but did not identify criminal activity or explain why the
11 mariachi band was believed to consist of undocumented individuals. *See* Ex. 202.¹¹ On
12 January 18, 2008, the MCSO issued a press release announcing a saturation patrol that
13 same day in Central Phoenix, Ex. 310, near Pruitt’s.¹² The press release and operations
14 plan confirm that the operation resulted from a constituent complaint. *See* Ex. 310 (press
15 release referring to “a letter to the Sheriff from business owners in the area”); Ex. 75
16 (operation plan); *see also* Tr. 795:11-25 (Sands testifying that complaint concerned day
17 laborers); Tr. 398:6-17 (Arpaio forwarded letter to Sands to take care of, which he did).
18 The press release also quotes Sheriff Arpaio stating that he anticipated many arrests for
19 illegal immigration at the operation site “because it was a popular site for day laborers.”
20 Ex. 310.¹³ Chief Sands testified that he did not know of any day laborers who were
21 arrested for the activities discussed in the complaints. Tr. 796:1-4, 16-20.¹⁴

22 _____
23 ¹¹ Sheriff Arpaio stated that he received the email and forwarded it to Chief Sands. Tr.
394:21-395:6.

24 ¹² Sheriff Arpaio admitted that the saturation patrol announced in this press release
related to the issue at Pruitt’s. Tr. 397:15-20.

25 ¹³ The MCSO carried out a second saturation patrol in the same area from March 21-22,
2008. Tr. 400:23-401:2 (Arpaio); *see also* Tr. 1149:8-11 (Madrid).

26 ¹⁴ Lieutenant Sousa also asked his staff to file a constituent complaint in a special file for
36th and Thomas that complained of “illegal” day laborers and described no crime.
27 (Lieutenant Sousa speculated that catcalling could be a crime, but provided no basis for
this claim.) Tr. 1079:24-1082:4. Though the complaint was not received until after the
28 MCSO conducted the saturation patrol at 36th and Thomas, it further demonstrates the
(continued...)

1 **Dysart Road:** An early 2008 saturation patrol in the Dysart Road area occurred in
 2 response to a complaint about day laborers. *See* Ex. 455; Tr. 1219:8-22 (Sergeant Madrid
 3 agreeing that request does not mention criminal activity by day laborers and that a
 4 subsequent saturation patrol occurred).

5 **Cave Creek and Bell Rd. in Phoenix:** On March 27, 2008, the MCSO issued a
 6 press release announcing an operation in the 25th Street and Bell Road area. Ex. 311.
 7 The press release indicates that the operation was in response to a written request by
 8 business owners to Sheriff Arpaio and concerned “the growing number of day laborers
 9 in the area.” Ex. 311.¹⁵ Chief Sands carried out the operation even though he was unsure
 10 whether anyone from his office interviewed the business owners or made any effort to
 11 verify the basis for the request. Tr. 798:2-15. In fact, Chief Sands testified that he could
 12 not recall the basis for the complaints. Tr. 798:2-5.¹⁶

13 **Mesa:** A June 26, 2008 sweep in Mesa followed a series of citizen complaints
 14 about day laborers or Mexicans in the area. *See* Ex. 375 (Sept. 20, 2007 telephone
 15 comment log including comment about Mexicans hanging out on Mesa Dr.); Tr. 406:20-
 16 407:17 (Sheriff Arpaio admitting to bracketing the comment in Ex. 375 and directing a
 17 copy to Chief Sands); Ex. 223 (letter to Sheriff Arpaio complaining about day laborers
 18 gathering in Mesa); Tr. 411:9-16, 412:1-3 (Sheriff Arpaio acknowledging requesting a
 19 thank-you letter in response to Ex. 223 and forwarding Ex. 223 to Chief Sands); Ex. 244
 20 (letter requesting Sheriff Arpaio “Do the Mesa sweep!” but identifying no law
 21 enforcement rationale for doing so and complaining about Mesa’s Hispanic “police
 22 union” head); Tr. 416:12-417:11 (Sheriff Arpaio acknowledging sending a copy of Ex.
 23 244 to Chief Sands and writing on the hard copy that “I will be going into Mesa”); Ex.
 24 316 (press release announcing saturation patrol). The Mesa operation, like others, was in

25 _____
 26 type of constituent correspondence that the MCSO deemed relevant to its decision-
 27 making.

28 ¹⁵ Chief Sands testified that Sheriff Arpaio suggested that Sands carry out the operation
 based on the business owners’ request. Tr. 797:13-798: 1.

¹⁶ Defendants did not provide this written request to Plaintiffs during discovery. This
 Court may draw adverse inferences about the written request’s content.

1 keeping with Sheriff Arpaio's "promises to the public." Tr. 422:23-423-6.

2 ***Sun City:*** The August 13-14, 2008 saturation patrol in Sun City occurred shortly
3 after a constituent demand for MCSO action based on people speaking Spanish at
4 McDonald's. *See* Ex. 237 (citizen complaint); Tr. 428:12-14, 430:2-5 (Sheriff Arpaio
5 acknowledging that he had the letter forwarded to Chief Sands with a note reading, "For
6 our operation" and requested a thank-you letter be sent); PTO (C.)(1.)(73.) (Sun City
7 saturation patrol); Tr. 806:2-21 (Chief Sands admitting that the Sheriff may have told
8 Sands to do a Sun City operation).

9 ***Surprise:*** The saturation patrol in Surprise followed a constituent complaint that
10 "[t]he area contains dozens of day workers attempting to flag down motorists seven days
11 a week." Ex. 235; Tr. 434:2-7, 434:25-435:4, 16-18 (Sheriff Arpaio acknowledging he
12 put a line next to that text, sent a copy to Chief Sands, and instructed his assistant to
13 write a thank-you letter); PTO (C.)(1.)(78.) (saturation patrol in Surprise).

14 While the MCSO regularly conducted operations in response to race-based
15 requests for action from constituents, it made no effort to subject the complaints to any
16 meaningful scrutiny before allowing them to influence the decision-making of the
17 agency. *See* Tr. 797:24-798:15 (Sands). The saturation patrol locations admittedly were
18 not selected based on a comparative crime analysis or necessarily on a crime increase.
19 Tr. 787:24-788:8 (Sands). This provides further evidence of the MCSO's discriminatory
20 design. *See, e.g., Mamaroneck*, 462 F. Supp. 2d at 531, 554 ("Village [officials] took no
21 steps to investigate and determine whether [resident] complaints were genuine . . .").

22 ***2. The MCSO's Implausible Explanations for the Results of Its***
23 ***Immigration Operations Reveal the Agency's True Intent To***
24 ***Target Hispanics for Traffic Stops Based on Race.***

25 Sheriff Arpaio and his office decided to respond to the demands of his
26 constituents by launching a series of highly publicized, large-scale immigration patrols.
27 Consistent with the substance of the constituent requests that prompted the Sheriff's
28 Office to launch operations in particular locations, the stated purpose of the patrols has
been to find and arrest large numbers of illegal immigrants. *See, e.g., Exs. 307-11, 328;*

1 Tr. 330:9-25 (Arpaio). In service of that goal, the patrols targeted Hispanics for traffic
2 stops. *See, e.g.*, Tr. 1310:6-1311:8 (Camarota) (stating that he would expect to see a
3 greater number of Hispanics stopped during saturation patrols because the patrols are
4 aimed at illegal immigration). Deputies who are tasked with going out and finding illegal
5 immigrants have targeted Hispanics for pretextual traffic stops based on low-level traffic
6 and equipment violations in order to maximize the number of opportunities to investigate
7 drivers and passengers in reference to their identity and immigration status. *See, e.g.*, Tr.
8 1142:10-23, 1148:8-1149:7, 1150:25-1151:11, 1152:5-14 (Madrid); Tr. 322:10-16
9 (DiPietro) (confirming that purpose of patrols is to make contacts with vehicle
10 occupants, including passengers).¹⁷ That practice resulted from the conflation within the
11 MCSO of Latino persons with likely immigration violators.

12 As Defendants' expert Bennie Click acknowledged, it is well known in the law
13 enforcement community that racial profiling is unethical and can carry serious legal
14 consequences. Tr. 1733:11-1737:13. Thus, with the exception of some MCSO
15 witnesses' candid admission to the use of race to develop reasonable suspicion of an
16 immigration violation, *see supra* Section II.A, Defendants have been reluctant to admit
17 that they rely on racial profiling. Instead, Defendants have put forth one unconvincing
18 explanation after another in an attempt to describe what is occurring on patrols. These
19 descriptions, which range from implausible to utterly nonsensical, are little more than
20 pretexts for systematic discrimination against Hispanics, and cannot explain the racially
21 skewed results of the patrols. *See infra* Section II.B.4. The MCSO's insistence on
22 advancing such rationales at all serves as further evidence that deputies are targeting
23 Hispanics both to initiate traffic stops and in the course of their investigations. *Greater*
24 *New Orleans Fair Hous. Action Ctr.*, 648 F. Supp. 2d at 814-19 (finding city's proffered
25

26 ¹⁷ Class members also reported that passengers were asked for identification on traffic
27 stops. Tr. 551:2-19 (Magos); 962:13-963:8 (Solis). Saturation patrol arrest lists also
28 show that many passengers were investigated. *See* Appendix A (collecting shift
summaries and arrest lists for patrols)

1 justifications for its actions factually unsupported and concluding that the challenged
2 governmental action therefore was pretextual and discriminatory motive could be
3 inferred).

4 First, some MCSO witnesses have tried to mask the true nature of the patrols by
5 claiming that the goal of the operations is not immigration enforcement, but general
6 crime suppression. *See, e.g.*, Tr. 843:4-13 (Sands). In fact, there is no real dispute that
7 the purpose of the patrols is immigration enforcement. *See* Tr. 1702:17-1704:21 (Click);
8 Tr. 1136:7-20 (Madrid); Tr. 1310:21-1311:3 (Camarota) (relaying Sousa's statement that
9 the patrols were aimed at illegal immigration). HSU, the unit within the MCSO focused
10 on enforcement of the illegal immigration laws, developed the operations plans for the
11 patrols, Tr. 994:12-995:5 (Sousa), led the briefings, Tr. 609:15-610:23 (Kikes); Tr.
12 685:16-686:4 (Palmer), Tr. 994:7-9 (Sousa), and maintained the arrest statistics for the
13 patrols, Tr. 1153:13-25 (Madrid). Indeed, the MCSO specifically tracked the number of
14 illegal immigrants arrested, Tr. 692:15-693:12 (Palmer), Tr. 1153:13-22 (Madrid); *see*
15 *also* Appendix A, so that the Sheriff could report to his constituents that the goal of the
16 operation had been met. *See, e.g.*, Tr. at 1132:19-1133:20 (Madrid); *see also* Tr. at
17 688:9-689:3 (Palmer) (stating his expectation of high numbers of immigration arrests).

18 It is not plausible that the MCSO would conduct saturation patrols in order to
19 conduct general crime suppression without any more specific goal. The agency invests
20 extraordinary resources in the patrols. Tr. 683:1-4 (Palmer); Tr. 1710:10-13 (Click). To
21 justify such a significant expenditure of resources, agencies typically focus their
22 operations on a particular criminal concern, usually violent crime, gang activity or a
23 traffic issue impacting public safety in a specific geographic area. Tr. 1705:14-25
24 (Click); Tr. 1839:2-18 (Pena); Tr. 1389:9-23 (Kidd).¹⁸ When "factors usually considered
25 important [to] the decisionmaker," in this case law enforcement, favor a different

26
27 ¹⁸ Prior to its most recent spate of saturation patrols focused on immigration, even the
28 MCSO's own saturation patrols did not reach the same scale. Tr. 1553:19-1555:6.

1 decision than the one taken, a court need not take the stated rationale at face value.”
2 *Arlington Heights*, 429 U.S. at 267. Such substantive departures from the norm instead
3 serve as evidence that “improper purposes are playing a role.” *Id.*

4 In this case, the MCSO also did not instruct deputies to investigate any specific
5 criminal activity during saturation patrols. *See* Tr. 603:20-604:4 (Kikes); Tr. 665:13-
6 666:7 (Palmer). *Cf.* Tr. at 1706:8-1710:9 (Click) (explaining the norm is for officers to
7 know whom they are supposed to go out and target). Nor did the MCSO conduct after-
8 action assessments to determine the impact of the patrols on any particular type of crime,
9 or on crime rates generally. Tr. 687:3-16 (Palmer); Tr. 1010:16-21 (Sousa); Tr. 1713:9-
10 21 (Click). These *procedural* departures from the norm can also be probative of
11 discriminatory intent. *Arlington Heights*, 429 U.S. at 267.

12 The weight of the evidence demonstrates that the saturation patrols do have a
13 specific purpose—to search out and to arrest undocumented immigrants. Officers
14 understand that that is what they were out there to do. *See* Tr. 1702:17-1704:21 (Click).
15 “General crime suppression” is a subterfuge used by Chief Sands and the other MCSO
16 witnesses to avoid conceding that the patrols are designed to look for suspected illegal
17 immigrants (because they are well aware that such a concession would be tantamount to
18 an admission of racial profiling). But the subterfuge is futile. The Sheriff has already
19 acknowledged he wanted his immigration program to be a “pure program”—deputies
20 could “go after illegals, not the crime first.” Tr. at 331:1-333:18, Ex. 410D. And the
21 patrols and HSU operations are clearly aimed at more than just human smuggling, and
22 include routine immigration enforcement. Tr. 1134:16-1135:3 (Madrid); *see also* Tr.
23 843:8-844:4 (Sands) (noting that patrols end up in the arrest of people who are in the
24 country illegally). The only factor deputies have to guide their discretion when trying to
25 identify “profile vehicles,” Ex. 328, when conducting such “pure” immigration
26
27
28

1 enforcement is race.¹⁹

2 In a further effort to camouflage Defendants' true discriminatory purpose, MCSO
 3 witnesses claim that there was a "zero tolerance" policy with regard to stops on
 4 saturation patrols, admittedly to deflect allegations of racial profiling. *See, e.g.*, Tr.
 5 694:2-12 (Palmer); Tr. 1155:14-1156:6 (Madrid). But the assertion that such a no-
 6 discretion policy was in place was flatly contradicted by MCSO witnesses' own
 7 testimony at trial. MCSO officers at various levels acknowledged that it is impossible to
 8 implement a zero-enforcement policy with regard to stops. Tr. 998:18-25 (Sousa); Tr.
 9 605:3-11 (Kikes); Tr. 1541:21-25 (Armendariz).²⁰ Some witnesses testified that to the
 10 extent that there was any zero tolerance policy in effect on large operations, it applied
 11 only to *arrests*, not to stops—thus contradicting other MCSO witnesses. *See, e.g.*, Tr.
 12 602:4-6, 612:14-23 (Kikes); Tr. 946:16-947:22 (Rangel); Tr. 996:18-25 (Sousa).

13 The MCSO admitted that the broader zero-tolerance policy was adopted as a fig
 14 leaf, in order to "avoid having the race card played." Tr. 694:13-22 (Palmer). Yet,
 15 despite doing nothing to check whether deputies were in fact complying with such a
 16 policy, Tr. 1756:14-1757:18 (Click), MCSO supervisors claimed that, so long as the
 17 policy was nominally in place, they could rely on it as conclusive evidence that no
 18 profiling was occurring. Tr. 694:23-695:3 (Palmer). In these circumstances, however, the
 19 MCSO's insistence that there was a zero-tolerance policy only lends further support to
 20 the notion that improper purposes were playing a role. *Arlington Heights*, 429 U.S. at
 21 267.

22 The MCSO's typical practice—consistent with that of other law enforcement
 23 agencies—is to prioritize the enforcement of traffic rules that have a greater impact on
 24

25 ¹⁹ MCSO witnesses also stated that they believed most illegal immigrants are from
 26 Mexico. Tr. 359:11-360:8, Ex. 357 (Arpaio) ("Where do you think 99 percent of the
 people come from?"); Tr. 902:7-12 (Rangel).

27 ²⁰ The Court may also infer that the stat sheets that were destroyed would have suggested
 28 that officers on saturation patrols are not following a zero-tolerance policy. PTO
 (C.)(2.)(b.).

1 public safety. *See* Ex. 132. On saturation patrols, however, deputies make many stops for
 2 cracked windshields, broken taillights, lane change violations and the like; such
 3 violations are considered low-level and discretionary. Tr. 605:12-607:9 (Kikes); *see*
 4 Appendix A. This incongruity with an agency’s traffic enforcement guidelines would
 5 typically serve as a red flag, indicating pretextual stops motivated by possible racial
 6 profiling. But the “zero-tolerance policy” provides MCSO supervisors a way to explain
 7 away the unusually high number of low-level traffic stops deputies are making.

8 The practice of conducting pretextual traffic stops in order to make contact with
 9 the vehicle occupants is not limited to the large saturation patrols in this case. For
 10 example, the driver of the vehicle that Mr. Ortega Melendres was riding in was
 11 pretextually stopped for speeding, and was not ultimately cited. Tr. 244:11-246:8
 12 (DiPietro). Daniel Magos was stopped for an alleged problem with the license plate on
 13 the back of his truck, but he was never cited. Tr. 552:9-17, 555:4-12 (Magos). And
 14 Lorena Escamilla was purportedly stopped for not having a rear license plate light, but
 15 was never cited for that reason. Tr. 1601:13-15, 1626:18-20 (Gamboa). Such behavior by
 16 officers has been found to be probative of racial profiling. *See Farm Labor Org. Comm.*
 17 *v. Ohio State Highway Patrol*, 308 F.3d 523, 535-36 (6th Cir. 2002) (officer questioned
 18 driver and two passengers about their immigration status after deciding not to issue a
 19 speeding citation).

20 In sum, the MCSO’s disingenuous explanations and departures from traffic stop
 21 norms are further evidence of the MCSO’s true purpose on these operations—to use
 22 traffic stops to single out Hispanics for possible immigration investigations.

23 **3. *The MCSO’s Refusal To Adopt Adequate Policies, Supervision***
 24 ***and Training Demonstrates the Agency’s Intent To Conceal***
 25 ***Racial Profiling While Allowing It To Continue.***

26 The Sheriff’s public statements—in his book,²¹ his press conferences, and

27 ²¹ Sheriff Arpaio testified that he disagreed with some of his public statements, *see, e.g.*,
 28 Tr. 363:14-365:4, 365:13-23, but this testimony is implausible, and the Court as finder of
 fact may discredit it. *Cf., e.g.*, Tr. 349:10-350:5, 350:24-351:13 (Arpaio testifying that
 (continued...))

1 elsewhere²²—set the tone in his agency that singling out Mexicans or Hispanics for
 2 comment, ridicule, or law enforcement action is acceptable. Lower level supervisors and
 3 deputies also regularly circulated emails disparaging Hispanics and Spanish-speaking
 4 people. *See e.g.*, Tr. 733:20-737:18 (Palmer); Exs. 5, 7, 17, 18; 29, 31, 45, 46.

5 Under such circumstances, it is not enough for supervisors to simply assume their
 6 deputies never do wrong and fail to have any mechanism to detect even the possibility of
 7 racial profiling. Adequate training, policy guidance and meaningful monitoring are
 8 necessary; the MCSO has not implemented any of these. The MCSO’s refusal to institute
 9 even the most basic safeguards to address racial profiling constitutes a departure from
 10 law enforcement norms and further indicates discriminatory intent. *Arlington Heights*,
 11 429 U.S. at 267. The total failure to adopt generally accepted measures to detect racial
 12 profiling necessarily results in concealing unlawful practices and implicitly allows them
 13 to continue. *See Chavez v. United States*, No. 01-245, 2010 WL 3810629, at *4 (D. Ariz.
 14 June 21, 2010) (noting it would be “a stretch for the Court to find a plausible non-
 15 discriminatory reason” for certain policies based, in part, on plaintiffs’ allegations that
 16 supervisors’ failure to require documentation “not only deviate[d] from agency routines
 17 in analogous circumstances, but constitute[d] deliberate patterns and practices, designed
 18 to conceal or obfuscate” the unconstitutional practice), *reversed on other grounds*, 683
 19 F.3d 1102 (9th Cir. 2012).

20 **a. MCSO Supervisors Improperly Rely on Trust.**

21 Rather than use of traditional forms of training and supervision, MCSO officers
 22 testified that they simply trust their officers not to racially profile. Lieutenant Sousa
 23 testified that he knows that arrests are not based on race solely because he trusts his
 24 people and believes that racial profiling never does, and never could, occur in the HSU.
 25 Tr. 1023:14-22. Echoing this approach, Sergeant Madrid also testified that he simply

26 _____
 27 his co-author wrote a paragraph in the book *Joe’s Law* about Arpaio’s parents), 357:8-
 358:21.

28 ²² *See, e.g.*, Exs. 357, Ex. 396, Ex. 410B, Ex. 410C.

1 trusted his deputies and therefore did not believe there was any need to discuss racial
2 profiling with them, or to review incident reports to check whether racial profiling was
3 occurring. Tr. 1172:1-24; *see also* 1754:4-13 (Click). In fact, Sergeant Madrid has never
4 once even spoken to a deputy under his supervision about whether that deputy had
5 impermissibly used race on a traffic stop. Tr. 1172:1-5. Sergeant Palmer had similar
6 “trust” in his deputies. Tr. 780:15-18. The general attitude of MCSO officers of “I trust
7 them, so I therefore don’t have to monitor them” falls below the standard of care, even
8 according to Defendants’ police practices expert. Tr. 1754:4-13 (Click).

9 **b. The MCSO's Insistence that Traffic Violations and**
10 **Charges are "Race Neutral" Indicates Improper**
11 **Purposes.**

12 Even when confronted with evidence that revealed greatly skewed racial results
13 and on its face indicated use of discriminatory practices, MCSO sergeants refused to
14 consider the possibility that racial profiling may be occurring, so long as there was some
15 identified probable cause for the stop. Tr. 1172:20-24 (Madrid). These MCSO
16 supervisors never considered the possibility that the probable cause was developed—as
17 is easy to do for any car—after the occupants were targeted because they were seen as
18 Hispanic. When arrests lists were placed in front of Sergeants Palmer and Madrid
19 indicating that on a given patrol the large majority of individuals arrested, as many as 17
20 out of 20 or 42 out of 43, had Hispanic names, neither saw any need to follow up. Tr.
21 677:23-678:4 (Palmer); Tr. 1178:21-1179:2 (Madrid). They made the bizarre claim that
22 no racial profiling could have occurred because the violations these people were cited
23 for—whether driving on a suspended license or speeding—were “race neutral.” Tr.
24 740:18-743:19 (Palmer); Tr. 1184:10-19 (Madrid). This claim is nonsensical and serves
25 as an indication that “improper purposes are playing a role.” *Arlington Heights*, 429
26 U.S. at 267. Although Defendants’ expert Bennie Click at first tried to credit the
27 explanation of “race neutral” violations, Tr. 1689:7-17, he had to acknowledge that any
28 law that was not race-neutral would be unconstitutional on its face. Tr. 1763:14-23.
Thus, charging a person under a “race neutral” criminal statute does not demonstrate the

1 absence of racial profiling, and the racially skewed arrest lists should have triggered the
2 need for further investigations. Tr. 1763:24-1765:19. It is undisputed that no such
3 investigations are done at the MCSO, as a matter of policy and practice.

4 **c. The MCSO's Oversight and Monitoring Are Inadequate.**

5 Defendants' own expert testified that it is important in any agency that there be
6 some mechanism to assess performance and to assess whether racial profiling may be
7 occurring. Tr. 1746:4-1747:5 (Click). But the MCSO has no mechanism in place to
8 conduct effective oversight.

9 With respect to saturation patrols, Lieutenant Sousa testified that he relies on his
10 Sergeants to monitor individual traffic stops, Tr. 1028:23-1029:11. However, Sergeant
11 Madrid testified that he was generally not on the scene of individual traffic stops and
12 was at the command post 95% of the time. Tr. 1160:2-14. Although one of the HSU
13 Sergeants, Madrid or Palmer, was typically designated as "in-field supervisor" on
14 saturation patrols, that in-field supervisor was preoccupied with conducting his own
15 stops and responding to citizen complaints or dealing with the media, leaving little time
16 to deal with the 80-100 people out on patrol during a large operation. Tr. 683:7-9,
17 759:2-25 (Palmer); Tr. 1001:1-12 (Sousa). Further, even if such supervision occurred, it
18 would be ineffective to prevent racial profiling, as supervisors receive no training in how
19 to detect racial profiling and are unaware of any method for doing so. Tr. 1171:19-22
20 (Madrid).

21 The absence of procedures in place to detect racial profiling was not limited to
22 saturation patrols. Deputies do not submit documentation regarding the race of
23 individuals stopped during their daily activities and after a shift, and superior officers
24 make no attempt to collect or analyze any data to determine whether racial profiling
25 occurred. Tr. 687:7-16, Tr. 832:17-19 (Palmer); Tr. 1022:17-21 (Sousa). Because racial
26 profiling is considered to be a "nonissue," the MCSO as a whole does not track race or
27 ethnicity. Tr. 1022:12-16 (Sousa). Lieutenant Sousa testified that he also does not review
28 citations or other documents to determine whether racial profiling is occurring within the

1 HSU because to him it is a “nonissue.” Tr. 1012:17-24.

2 Not a single MCSO deputy has ever been reprimanded in any way for racially
3 profiling. Tr. 834:1-4 (Sands); Tr. 1023:23-25 (Sousa). In the one instance of discipline
4 in the record, Sergeant Palmer was allegedly disciplined, albeit in an unknown form, for
5 sending around racially insensitive and inappropriate emails as a supervisor within HSU,
6 but he was not spoken to about racial profiling and he remained a Sergeant. Tr. 737:8-18.
7 And numerous witnesses testified that citizen complaints about racial profiling were
8 ignored— a particularly stark indication of the MCSO’s disinterest in detecting or
9 preventing racial profiling when one considers the emphasis placed on citizen
10 complaints in choosing the locations and enforcement priorities of MCSO operations in
11 the first instance. Tr. 556:6-12 (Magos); Tr. 979:10-22 (Escamilla); Tr. 1114:12-16
12 (Guzman); Tr. 1715:12-17, 1742:1-6 (Click).

13 **d. The MCSO Does Not Have an Adequate Policy on Racial**
14 **Profiling.**

15 The MCSO has no agency-wide written policy on the use of race in law
16 enforcement decisions, despite following standard practice and putting out written
17 policies in other areas considered to be important. Tr. 1744:3-18 (Click). Instead, MCSO
18 witnesses sought to rely on alleged written prohibitions on profiling found in some other
19 documents, including saturation patrol operations plans, as well as alleged oral
20 admonitions not to use race in making stops. In around 2008, Lieutenant Sousa directed
21 the addition of language to the operation plans stating some variation of the following
22 language: “At no time will MCSO personnel stop a vehicle based on the race of the
23 subjects in the vehicle (racial profiling is prohibited).” Tr. 1075:18-1076:6 (Sousa); *see*,
24 *e.g.*, Exs. 86, 87, 90, 91, 92, 97, 101. This language does not state that any use of race is
25 prohibited, and indeed MCSO deputies working these patrols incorrectly believe that the
26 use of race, among other factors, was acceptable. *See supra* Section II(A.). MCSO
27 officers admitted that the language does not prohibit initiating immigration
28 investigations based on race. Tr. 782:8-16 (Palmer). Without further explanation, this

1 type of prohibition offered little guidance as to what is and is not acceptable in terms of
 2 the use of race during a traffic stop, particularly where such traffic stops are used as a
 3 mechanism to initiate immigration investigations as done by the MCSO.²³

4 Inexplicably, those that did see the language in the operations plans were
 5 essentially instructed by Lieutenant Sousa that, even though he included the warning, he
 6 knew what they were doing was not racially profiling. Tr. 1025:3-11, 1053:5-19. In fact,
 7 the only reason the language was added, and the oral prohibitions given, was to combat
 8 perception and media reports about racial profiling and to enable Lieutenant Sousa to
 9 testify about the prohibition in court. *See* Tr. 1025:12-1026:7.

10 The MCSO's bare statements prohibiting racial profiling do not constitute
 11 training programs, and they are inadequate for purposes of preventing racial profiling.
 12 They add to the problem by simplistically and incorrectly defining racial profiling, and
 13 leaving open the possibility that deputies could consider race as one factor among others,
 14 or that they could consider race in immigration investigations, but not as a factor in
 15 initiating traffic stops. A proper written definition of racial profiling would have made
 16 clear to MCSO officers that *any* reliance on race or ethnicity is inappropriate, even in
 17 immigration investigations, unless it pertained to a specific suspect description. *See*
 18 *Chavez*, 251 F.3d at 647 (existence of a policy prohibiting racial profiling not sufficient
 19 if message is "not always clear What really matters, ultimately, is how official
 20 policies are interpreted and translated into actual practice[]") (quoting *State v.*
 21 *Ballard*, 752 A.2d 735, 744) (N.J. Super. Ct. App. Div. 2000)).

22 **e. The MCSO Does Not Adequately Train its Officers with**
 23 **Respect to Racial Profiling.**

24 MCSO witnesses attempted to rely on the limited and generalized training regarding

25 ²³ Further, there is evidence that some deputies participating in saturation patrols never
 26 even saw the written prohibition, and that HSU deputies do not attend the briefings at all,
 27 in part because they believe it is unnecessary for them to be instructed not to racially
 28 profile. *See* Tr. 995:17-24 (Palmer explaining that operations plans were not distributed
 but rather read when a deputy signed in); 1501:1-1502:25 (Armendariz acknowledging
 HSU deputies did not attend briefings).

1 the use of race that the deputies received when in the academy, as well as the training
2 that formerly 287(g)-certified deputies received as part of that certification. However,
3 deputies and supervisors consistently testified that they could not recall the specifics of
4 that racial profiling training nor the definition of racial profiling they were provided. Tr.
5 899:1-10, 933:12-16, 948:11-23 (Rangel); Tr. 320:3-5 (DiPietro); Tr. 1188:14-22
6 (Madrid). Further, they did not conclude from their training on racial profiling that any
7 of the MCSO's past practices were problematic. Tr. 320:12-16 (DiPietro). MCSO's own
8 police practices expert, Bennie Click, noted this testimony and agreed that initial training
9 is not effective if not remembered and practiced on a daily basis. Tr. 1746:4-23.

10 **4. *The MCSO's Operations Had and Continue To Have the Desired***
11 ***Discriminatory Effect.***

12 There was clear evidence at trial that MCSO's immigration enforcement
13 operations have had a discriminatory impact on Latino drivers and passengers in
14 Maricopa County. Plaintiffs demonstrated the discriminatory effect of the MCSO's
15 practices at trial using statistical analysis, operations documents, and through the
16 presentation of testimony of plaintiffs and class members. Such evidence also provides
17 additional evidence of discriminatory intent. *See Arlington Heights*, 429 U.S. at 266;
18 *Bradley v. United States*, 299 F.3d 197, 206 & n.11 (3d Cir. 2002); *Chavez*, 251 F.3d at
19 637-45; *State v. Soto*, 734 A.2d 350, 360-61 (N.J. Super. Ct. 1996) (finding un rebutted
20 statistical evidence of racial profiling established discriminatory purpose).

21 **a. *Statistical Evidence***

22 Courts have recognized that statistical evidence can be used to show "whether one
23 class is being treated differently from another class that is otherwise similarly situated."
24 *Chavez*, 251 F.3d at 638. Plaintiffs' expert Dr. Ralph Taylor analyzed MCSO's
25 Computer Aided Dispatch (CAD) database and confirmed that the MCSO targets
26 Hispanics during saturation patrols. His findings include that:
27
28

- 1 • MCSO officers are 26% to over 39% more likely to stop Hispanics on
2 saturation patrol days than on control days. Tr. 59:17-21, 60:3-10, 60:19-
3 61:1, 91:18-25, 93:15-94:11, 1870:25-1871:16.
- 4 • MCSO officers actively working on a saturation patrol are approximately
5 50% more likely to stop Hispanics than other officers working that very
6 same day. Tr. 59:22-25, 60:11-61:1, 95:2-24, 96:8-20, 1871:23-1872:13.
- 7 • MCSO officers actively working on a saturation patrol are 34% to 40%
8 more likely to stop Hispanics than officers who have never been involved
9 in a saturation patrol making stops on non-saturation patrol days. Tr.
10 96:21-97:8, 97:21-98:5, 99:14-100:16, 1872:20-1873:11.

11 Each finding was highly statistically significant and persisted across a number of
12 different probability thresholds for determining whether a name is Hispanic. Tr.
13 1871:23-1874:8.

14 In addition, Dr. Taylor's findings show that Hispanics suffer the effects of the
15 MCSO's discriminatory actions even on non-saturation patrol days:

- 16 • Stops involving Hispanics are about 22% longer on average than other
17 stops, controlling for whether there was a citation or an arrest. Tr. 61:3-
18 62:5, 104:2-5, 106:15-107:19, 1873:20-1874: 13.
- 19 • MCSO officers who have been involved in at least one saturation patrol are
20 15% more likely than other officers to stop Hispanics across all days. Tr.
21 100:17-101:14.

22 These findings too were highly statistically significant using the 60%, 70%, 80% and
23 90% probability thresholds for determining whether a name is Hispanic. Tr. 100:17-
24 101:14, 1873:20-1874:13.

25 Dr. Taylor structured his study in part to draw strength from the use of internal
26 benchmarking. *See Chavez*, 251 F.3d 644-45 (discussing importance of accurate
27 benchmarking); *Anderson v. Cornejo*, 355 F.3d 1021, 1024 (7th Cir. 2004) (same). That
28 is, instead of comparing MCSO traffic stop patterns to some external measure—such as

1 the overall percentage of Hispanics in Maricopa County—Dr. Taylor’s models compare
2 (1) MCSO stop activity on certain days, *e.g.*, saturation patrols days, to MCSO stop
3 activity on other days, and (2) MCSO stop activity by certain officers, *e.g.*, saturation
4 patrol-active officers, to stop activity by other MCSO officers. Tr. 149:18-151:18, Tr.
5 1878:4-19. Taylor’s methodology controls for various factors, such as socioeconomic
6 status, differential rates of offending or exposure to law enforcement officials by
7 Hispanic individuals, and the units to which officers are assigned, because such factors
8 are likely to remain constant as between saturation patrol days and non-saturation patrol
9 days, as well as long-term temporal trends. Tr. 165:11-18, 167:12-19, 1878:4-1879:6,
10 1884:2-8.

11 The Court has inquired whether its acceptance of Dr. Taylor’s use of non-
12 saturation patrol days as a control would mean that it must also find that MCSO’s
13 practices on non-saturation patrol days serve as an acceptable benchmark for MCSO
14 conduct and do not implicate racially biased policing. As an initial matter, the fact that
15 the MCSO is significantly more likely to stop Hispanics on saturation patrol days does
16 not mean that it is not racially profiling on other days as well. More importantly, Dr.
17 Taylor’s findings concerning stop length, citations, and the behavior of saturation patrol-
18 involved officers every day, as well as the experience of class members on non-
19 saturation patrol days, demonstrate that MCSO officers are much more likely to stop and
20 investigate Hispanic individuals more closely in an effort to find undocumented
21 immigrants whether or not there is a saturation patrol in progress.

22 Dr. Taylor’s basic conclusions are undisputed. Defendants’ statistical expert, Dr.
23 Steven Camarota, a researcher for the Center for Immigration Studies, a think tank that
24 advocates for greater restrictions on immigration, Tr. 1299:22-1300:4, does not directly
25 refute Dr. Taylor’s findings. Indeed, he did not try to replicate Dr. Taylor’s analysis of
26 the effect of saturation patrols on Hispanic stop rates. Tr. 1307:8-11. Dr. Camarota
27 acknowledges, however, that insights about MCSO’s activity can be found by examining
28 the CAD database. Tr. 1304:22-1305:6. Far from disputing that MCSO officers are more

1 likely to check Hispanic names on saturation patrol days, Dr. Camarota admitted that
2 disparity. Tr. 1309:22-1310:14, 1316:16-21. Dr. Camarota also agrees, and in fact
3 expects, that MCSO stops involving Hispanic persons last longer than stops involving
4 non-Hispanics. Tr. 1316:22-1318:1.

5 Indeed, Dr. Camarota's testimony demonstrates the disproportionate impact of the
6 MCSO's policies and practices not only on undocumented immigrants, but on Latinos
7 who are U.S. citizens and lawfully admitted non-citizens. While 308 Latinos who were
8 alleged illegal immigrants were arrested during saturation patrols, between at least 1004
9 and 1680 Hispanics who were not illegal immigrants were also stopped. Tr. 1313:24-
10 1314:7 (Camarota). Further, Dr. Taylor found that Hispanics, while more likely to be
11 stopped by the MCSO, are significantly less likely to receive traffic citations during a
12 saturation patrol. Tr. 1887:18-1888:22. These statistics demonstrate that the MCSO's
13 discriminatory practices are impacting Latinos who have committed no violation and/or
14 are legally present in the United States.

15 Other statistical evidence corroborates Dr. Taylor's findings. According to
16 Lieutenant Sousa, most, if not all, of those arrested during saturation patrols are
17 Hispanic. Tr. 1004:7-15. For example, 17 of 20 people arrested in the May 2008
18 Fountain Hills small saturation patrol had Hispanic surnames. Tr. 677:23-678:7
19 (Palmer); Tr. 798:16-799:9 (Sands); Ex. 108. Likewise, at least 41 of 43 people arrested
20 in a March 2008 saturation patrol operation in North Phoenix appeared to have Hispanic
21 surnames. Tr. 1174:2-1178:24 (Madrid); Ex. 79. These disparities suggest that Hispanics
22 are being stopped and investigated with greater frequency.

23 In sum, the traffic stop patterns in the MCSO's CAD database reveal that
24 Hispanics are stopped at significantly greater rates and for a longer duration than would
25 be expected in the absence of discriminatory conduct. It is difficult to imagine more
26 direct evidence of discriminatory impact than the extensive statistical analyses conducted
27 by Dr. Taylor, and Defendants put forward nothing, beyond gross speculation unfounded
28 in record evidence, that refutes these results.

1 **b. Individual Experiences**

2 Finally, the MCSO's practices have exacted a human cost. The testimony of
3 Plaintiffs and class members shows they were treated differently than non-Hispanics, on
4 both saturation patrol and non-saturation patrol days:

5 Plaintiff Ortega Melendres was detained during a smaller operation targeting day
6 laborers in Cave Creek in September of 2007. Tr. 239:20-240:9, 908:3-11. After an
7 undercover officer radioed to Deputy DiPietro to stop the truck carrying Mr. Ortega
8 Melendres, Deputy DiPietro followed the truck and stopped it for speeding. While not
9 issuing a citation to the Caucasian driver, he detained the Latino passengers, including
10 Mr. Ortega Melendres, for further investigation into their immigration status. Tr. 240:23-
11 242:16, 245:22-246:8, 256:9-258:20 (DiPietro); Tr. 914:19-915:19 (Rangel). When
12 Deputy Rangel arrived on the scene after Deputy DiPietro called for a 287(g) officer, Tr.
13 909:12-910:2 (Rangel), Deputy Rangel questioned Mr. Ortega Melendres and took him
14 into custody, even though Mr. Ortega Melendres had both a B1/B2 visa and his I-94. Tr.
15 914:19-915:4 (Rangel); Ex. 1093.

16 While out off-roading near Bartlett Dam on a non-saturation patrol day, Plaintiffs
17 David and Jessika Rodriguez were stopped and cited while other, non-Hispanic drivers
18 were not, even though they had committed the very same traffic violation Mr. Rodriguez
19 had committed. Tr. 217:8-218:1 (Rodriguez); Tr. 1370:1-14 (Ratcliffe); Ex. 51. It is
20 uncontested that David Rodriguez, who was driving, was the only motorist that Deputy
21 Ratcliffe issued a citation to on December 2, 2007. Tr. 1365:16-19 (Ratcliffe). While
22 Deputy Ratcliffe offered various explanations as to why the MCSO cited Mr. Rodriguez
23 and not the others, Tr. 1360:11-21, it is clear that Deputy Ratcliffe was aware of Mr.
24 Rodriguez's race and nothing more when he made the decision to give Mr. Rodriguez a
25 citation. Deputy Ratcliffe testified that he already knew he was going to give Mr.
26 Rodriguez a citation as he walked up to the vehicle and before talking with him. Tr.
27 1370:22-1371:17.

28 During the March 2008 saturation patrol in North Phoenix, Plaintiffs Manuel

1 Nieto and Velia Meraz were stopped just blocks away from the operation's command
2 post at Cave Creek and Bell Roads. Tr. 569:23-571:2, 614:8-16 (Kikes); Tr. 628:14-24
3 (Nieto). They had gone to a nearby gas station convenience store on their lunch break,
4 but as soon as they pulled up with Spanish music playing, Deputy Armendariz, who was
5 in the course of detaining two Hispanic individuals on a different traffic stop, ordered
6 them to leave the premises. Tr. 1518:3-13, 1527:19-1528:25, 1537:17-21 (Armendariz);
7 Tr. 628:25-631:6 (Nieto); Tr. 649:11-651:5 (Meraz). Although MCSO witnesses
8 acknowledge that Mr. Nieto and Ms. Meraz had committed "no crime," Tr. 584:5-15,
9 601:20-603:1 (Kikes), they were pursued by multiple MCSO units at Deputy
10 Armendariz's direction as they left the gas station and were accosted at gunpoint so that
11 officers could check Mr. Nieto's identification. Tr. 569:23-571:2, 596:16-599:4 (Kikes);
12 Tr. 1443:15-1444:3, 1465:16-1468:8 (Beeks); Tr. 632:2-634:9, 635:1-11 (Nieto);
13 651:19-653:25 (Meraz).

14 Sixty-seven-year-old Plaintiff Daniel Magos was subjected to a traffic stop and
15 thorough pat-down search that made him feel "[h]umiliated, [w]orthless [and]
16 [d]efenseless." He ultimately received no traffic citation and the MCSO deputy who
17 stopped and searched Mr. Magos defensively stated that the stop "had nothing to do with
18 racial profiling." Tr. 554:6-7, 555:13-17. The MCSO declined to present the testimony
19 of the officer who stopped Mr. Magos and his wife Eva.

20 Class member Lorena Escamilla, who was five months pregnant when she was
21 stopped, was brutally slammed against her car, detained for ninety minutes, and
22 ultimately cited for failing to provide identification despite the fact that she had provided
23 it multiple times. She is now so fearful of being pulled over by the MCSO that she has
24 changed her driving route home. Tr. 972:8-973:5, 977:2-11, 981:8-17.

25 An MCSO deputy stopped witness Diona Solis and the Hispanic driver of the
26 vehicle in which she was riding as they returned from a Boy Scout outing to the Grand
27 Canyon. Upon hearing Solis and her companion speaking Spanish, the deputy asked both
28 if they were citizens, interrogated them about where they were coming from, and spoke

1 to them in a mocking tone. Everyone in the vehicle was asked for identification,
 2 including four Boy Scouts (ages eight to eleven). Tr. 961:9-964:18. The MCSO also
 3 declined to present any testimony from the officer involved in this stop.

4 Finally, David Vasquez was stopped by Deputy Ratcliffe during the June 26,
 5 2008 saturation patrol in Mesa, purportedly for a crack in his windshield. The first
 6 question Deputy Ratcliffe asked Mr. Vasquez after stopping him was whether Vasquez
 7 spoke English. When it became clear that Mr. Vasquez spoke perfect English, and after
 8 Deputy Ratcliffe checked out his documentation, Deputy Ratcliffe released him without
 9 any citation. Tr. 200:15-201:6. Mr. Vasquez's description of events is uncontested.

10 The stops of class members Magos, Escamilla and Solis, in addition to the
 11 Rodriguezes, on non-saturation patrol days demonstrate the discriminatory impact of the
 12 MCSO's policies and practices even when it is not conducting a saturation patrol.

13 **III. THE MCSO'S POLICIES AND PRACTICES VIOLATE THE RIGHT TO**
 14 **BE FREE FROM UNREASONABLE SEIZURES UNDER THE FOURTH**
 15 **AMENDMENT AND ARTICLE II, SECTION 8 OF THE ARIZONA**
 16 **CONSTITUTION.**

17 **A. The MCSO Continues To Unlawfully Detain Individuals Based Only**
 18 **on Suspicion of a Civil Immigration Violation.**

19 The evidence at trial demonstrates that the MCSO is continuing to extend the
 20 stops of drivers and passengers during traffic stops on suspicion of unlawful immigration
 21 status without any state law basis to detain those individuals. As this Court has held
 22 based on controlling case law, the MCSO has no authority to effectuate such detentions.
 23 *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 993 (D. Ariz. 2011). The MCSO's
 24 ongoing policy and practice of extending traffic stops for civil immigration purposes
 25 therefore violates the Fourth Amendment and this Court's prior injunction order.

26 Notwithstanding the MCSO's loss of federal authority to enforce civil
 27 immigration laws outside of jails on October 16, 2009, PTO (C.)(1.)(51.), and this
 28 Court's December 23, 2011 order enjoining MCSO from detaining persons based solely
 on suspicion that they are not lawfully present in the United States, MCSO personnel at
 all levels testified candidly that they continue to extend traffic stops based on such

1 suspicion. Sheriff Arpaio testified that, when the MCSO comes across people it suspects
 2 of civil immigration violations, it detains them. Tr. 502:12-21. Sergeants Palmer and
 3 Madrid testified that since the termination of 287(g) authority, MCSO deputies have
 4 continued to detain persons on suspicion of unlawful immigration status. Tr. 698:8-11
 5 (Palmer); Tr. 1161:7-1162:25, 1225:23-1226:11 (Madrid). In fact, Sergeant Madrid
 6 conceded that “[t]he loss of the 287(g) authority does not mean that the MCSO now has
 7 to let a suspected illegal immigrant go . . . [a]ll it means now is that once the deputy has
 8 a suspicion the person is an illegal immigrant, they have to call ICE.” Tr. 1226:5-11.

9 Under the authorities cited in this Court’s December 23, 2011 order, the MCSO’s
 10 practice of detaining people solely to effectuate an investigation of their immigration
 11 status violates the Fourth Amendment. That the MCSO imposes such extended
 12 detention while awaiting a response from federal authorities does not excuse the
 13 practice. Indeed, the Supreme Court recently re-affirmed that local or state officers
 14 cannot “delay the release of some detainees for no reason other than to verify their
 15 immigration status” and that extending a state-law detention for purposes of awaiting
 16 federal verification of immigration status “would raise constitutional concerns.” *Arizona*
 17 *v. United States*, 132 S. Ct. 2492, 2509 (2012).²⁴ The MCSO admits that it has a policy
 18 and practice of imposing detention precisely for this forbidden reason.

19 The MCSO cannot justify such seizures by connecting them to enforcement of
 20 any state criminal laws. As a factual matter, MCSO personnel testified that their policy
 21 and practice of detaining individuals based on suspicion of illegal immigration status
 22 applies even when there is no connection to Arizona’s human smuggling statute or any
 23 other state criminal law.²⁵ Moreover, as a matter of law, officers are not permitted to

24 The Supreme Court rejected the federal government’s facial challenge to Arizona’s
 25 mandatory immigration status check provision (Section 2 of Arizona Senate Bill 1070,
 26 codified at A.R.S. § 11-1051(B)) on the ground that the statute could be read only to
 27 require notification to the federal government, without extending any seizure pending the
 28 outcome of such notification. *Arizona*, 132 S. Ct. at 2509-10.

²⁵ Madrid testified that the MCSO holds people even during traffic stops that do not
 involve a suspected human smuggling load. Tr. 1225:23-1226:11. Sergeant Palmer also
 (continued...)

1 extend a traffic stop beyond the time reasonably necessary to effectuate its original
 2 purpose, absent reasonable suspicion of additional *criminal* activity. *Illinois v. Caballes*,
 3 543 U.S. 405, 407 (2005) (“A seizure that is justified solely by the interest in issuing a
 4 warning ticket to the driver can become unlawful if it is prolonged beyond the time
 5 reasonably required to complete that mission.”). An officer who merely suspects that a
 6 detained driver is unlawfully present in the United States has only suspicion of a
 7 violation of federal civil immigration laws. *See Ortega-Melendres*, 836 F. Supp. 2d at
 8 993. Because MCSO officers have no power to enforce such federal laws absent federal
 9 statutory authorization, MCSO’s policy and practice violates the Fourth Amendment.

10 **B. When the MCSO Extends Detentions on Suspicion of Unlawful Status,**
 11 **It Relies Upon Generalizations that Cast Suspicion on Large Segments**
 12 **of the Law-Abiding Population and Therefore Do Not Amount to**
 13 **Reasonable Suspicion.**

14 Moreover, even if the MCSO had federally-conferred authority to enforce federal
 15 civil immigration laws—which it has not had outside of jails since termination of its
 16 287(g) power in October 2009—its policies and practices violate the Fourth Amendment
 17 for the independent reason that it seizes individuals without legitimate justification.
 18 MCSO testimony and documents reveal that the agency relies on factors such as
 19 apparent Hispanic ethnicity, speaking only Spanish or having a thick accent, presence at
 20 an illegal alien locale, and appearing to be a day laborer as reasonable suspicion of an
 21 immigration violation. Tr. 720:19-721:2, 725:8-726:15 (Palmer); Tr. 1162:23-1164:12
 22 (Madrid); Ex. 11; Tr. 249:16-250:13 (DiPietro). In fact, Deputy DiPietro testified that he
 23 detained Mr. Ortega Melendres for immigration investigation solely because he appeared
 24 to be a day laborer. *See* Tr. 242:17-243:7; 244:2-6, 254:20-255:6 (DiPietro). At the
 25 point he held Mr. Ortega Melendres for interrogation by a 287(g) deputy, Deputy

26 _____
 27 conceded that deputies “might develop reasonable suspicion that a person in the car
 28 [during a traffic stop] is an undocumented immigrant ... [e]ven if it’s not a [human]
 smuggling load,” and that, following termination of the 287(g) agreement, a deputy now
 “[h]as to wait for contact with an ICE agent.” Tr. 697:3-8, 698:5-11; *see also* Tr.
 958:23-959:14 (Rangel); 844:16-845:22 (Sands); 1007:6-11 (Sousa).

1 DiPietro had only observed that Mr. Ortega Melendres and the other passengers were
 2 “Hispanic males” who were “dressed to work.” Tr. 295:11-18. Deputy DiPietro
 3 conceded that he had no “probable cause to believe that the passengers had engaged in
 4 any state crimes” Tr. 256:9-11. This detention violated the Fourth Amendment
 5 because “proximity to the border, apparent ethnicity, inability to speak English, and
 6 appearance as being a work crew” on their own, or even together, do not establish
 7 reasonable suspicion of an immigration violation. *United States v. Manzo-Jurado*, 457
 8 F.3d 928, 940 (9th Cir. 2006).²⁶

9 The MCSO continues this practice of detaining individuals for immigration
 10 investigation based on these impermissible factors to this day. Sergeant Madrid
 11 acknowledged that the loss of 287(g) authority has changed the MCSO’s practices only
 12 in that deputies who suspect a person of being an illegal immigrant now detain the
 13 person while waiting for ICE, rather than arresting the person themselves. Tr. 1226:5-11.

14 As held by this Court, “[i]n considering the totality of the circumstances, . . . ‘an
 15 officer cannot rely solely on generalizations that, if accepted, would cast suspicion on
 16 large segments of the law abiding population.’” *Ortega-Melendres*, 836 F. Supp. 2d at
 17 972 (internal citation omitted). Instead, the Fourth Amendment demands “particularized
 18 suspicion of the person to be stopped.” *Manzo-Jurado*, 457 F.3d at 939. This is just as
 19 true in the immigration context as elsewhere. *Id.* An officer therefore cannot detain
 20 people merely based on factors, such as appearance as a Hispanic day laborer, that do
 21 not “distinguish[] any group member from an ordinary, lawful immigrant.” *Id.* at 940.

22 **C. The MCSO Routinely Detains Passengers To Verify Their Identity**
 23 **Without Reasonable Suspicion, and Arrests Passengers for Failure To**
 24 **Produce Identification Though There Is No Such Crime.**

25 The MCSO also has a practice of detaining passengers during traffic stops for the

26 ²⁶ When questioned by the Court as to the basis for his belief that being a day laborer
 27 gave rise to reasonable suspicion of unlawful status, Deputy DiPietro acknowledged that
 28 he had no prior experience with day laborers upon which to form such a belief. Tr.
 300:3-301:3.

1 ostensible purpose of “identifying” them. This policy and practice independently violates
2 the Fourth Amendment because it constitutes an unreasonable seizure without any
3 reasonable suspicion of criminal activity.

4 HSU deputies testified that they have a policy and practice of asking passengers
5 for identification during traffic stops. Tr. 944:9-11 (Rangel) (stating that he always asks
6 “everybody in the vehicle for identification.”); Tr. 1520:4-14 (Armendariz) (calling this
7 practice “typical”). Other MCSO deputies engage in this practice as well. Tr. 306:8-
8 307:23, 322:10-16 (DiPietro) (stating that he would ask passengers for identification
9 “[g]enerally, if – if they weren’t wearing a seat belt or something” and agreeing with the
10 statement that “[t]he purpose of saturation patrols is to make contacts with [persons] . . .
11 [a]nd that includes passengers”); Tr. 620:13-19 (Kikes) (discussing an instance during
12 saturation patrol in which he arrested a passenger for failure to provide identification).

13 If a passenger does not have identification, deputies ask them for their name and
14 date of birth. Tr. 944:17-18 (Rangel); Tr. 1520:25-1521:1 (Armendariz). The deputy
15 then runs that information through a database or databases. Tr. 944:22-24 (Rangel) (“I
16 run their name through our computer database”); Tr. 1521:1-3 (Armendariz) (listing four
17 databases), 1509:20-25 (Armendariz) (defining acronyms for the database). If the
18 database search turns up no record, Deputy Rangel asks the passenger why he or she
19 does not have any identification, Tr. 944:25-945:9, and asks for other forms of
20 identification. Tr. 946:5-8. Deputy Armendariz takes a more extreme approach: if he
21 finds no record of the name and date of birth given in response to his demand, he detains
22 the passenger until he can determine his or her identity. Tr. 1522:24-1523:3. Deputy
23 Armendariz believes that if a passenger does not show up in the databases, there is
24 reasonable suspicion that he or she has given false identification. Tr. 1524:21-1525:1.

25 This practice of asking passengers for identification springs out of the MCSO’s
26 focus on immigration enforcement. Deputy Rangel admitted that during crime
27 suppression patrols he would invoke his 287(g) authority to arrest passengers who failed
28 to provide identification based on suspicion of unlawful status. Tr. 946:21-948:6. In fact,

1 the MCSO frequently investigates and arrests passengers for immigration violations.²⁷

2 MCSO's practice of asking passengers for identification, detaining them pending
3 multiple database searches, and then further detaining them for interrogation if they do
4 not appear in the databases, violates the Fourth Amendment proscription on unlawful
5 seizures. Extending a stop requires reasonable suspicion of further criminal activity.
6 *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). A deputy does not have reasonable
7 suspicion that a passenger has provided false identification merely because she does not
8 show up in a database containing Arizona motor vehicle and criminal records. The
9 passenger might, for example, simply have no Arizona identification document. Holding
10 passengers for an admittedly prolonged period of up to thirty minutes, Tr. 1525:21-2,
11 1590:5-12, violates the Fourth Amendment. *Cf. United States v. Motley*, 344 F. App'x
12 445, 446 (9th Cir. 2009) (holding that in absence of reasonable suspicion of drug
13 activity, holding individual for additional 30 minutes after conclusion of original
14 investigation while awaiting arrival of narcotics dog violated Fourth Amendment).

15 The MCSO also routinely arrests passengers for failure to produce identification,
16 even though a passenger who fails to produce an identification document is not guilty of
17 any crime absent reasonable suspicion that he has committed some violation of the
18 traffic code. Tr. 1075:6-12 (Sousa). Nonetheless, the record demonstrates that passengers
19 have been arrested during HSU saturation patrols without any other state charge. *See*,
20 *e.g.*, Ex. 82 at 8-9 (two passengers arrested for failure to provide identification and
21 287(g); also discussed at Tr. 1074:15-1075:12 (Sousa)); Ex. 112 at 4 (one such
22 passenger); Ex. 111 at 45-46 (one such passenger). The MCSO's detention of
23 passengers for purposes of "identifying" them is unreasonable and violates the Fourth
24

25 ²⁷ *See, e.g.*, Ex. 79 at 3-4 (arrest list showing six passengers; also discussed at Tr.
26 1179:18-1181:21 (Madrid)); Ex. 82 at 4-5 (eight such passengers; also discussed at
27 1074:15-1075:12 (Sousa)); Ex. 87 at 20-11 (four such passengers); Ex. 90 at 27-28, 34-
28 35 (seven such passengers); Ex. 97 at 19-21 (13 such passengers); Ex. 111 at 45-46 (five
such passengers); Ex. 112 at 4 (seven passengers); Ex. 174 at 10-12, 18-19 (between 12
and 24 such passengers turned over to LEAR).

1 Amendment.

2 **D. The MCSO Stops Latinos Without Reasonable Suspicion or Probable**
 3 **Cause To Believe any State Law Violation Has Been Committed.**

4 Finally, in its zeal to find and investigate potential violations of the immigration
 5 laws, MCSO deputies have regularly stopped Plaintiff class members without any
 6 reasonable suspicion or probable cause of a violation of state traffic or criminal law. Dr.
 7 Taylor’s statistical findings suggest that numerous Latino motorists have been stopped
 8 and have not received a citation on saturation patrols. *See supra* Section II(B.)(4.)(a.).

9 Plaintiffs Nieto and Meraz were stopped at gunpoint even though MCSO
 10 witnesses acknowledged that Mr. Nieto and Ms. Meraz had committed “no crime” and
 11 that if there had been any probable cause to arrest them for any crime, they would have
 12 been arrested under the zero tolerance policy. Tr. 584:5-15, 601:20-603:1 (Kikes).
 13 Deputy Kikes agreed he had no information that Plaintiffs had violated the traffic law or
 14 committed a crime before he pulled them over. Tr. 587:23-588:11 (Kikes). And Deputy
 15 Armendariz had no reasonable suspicion or probable cause to justify his sending backup
 16 units to stop Plaintiffs’ vehicle. Plaintiffs had complied with his order to leave the gas
 17 station by that point. Tr. 1537:17-21 (Armendariz), Tr. 586:17-20 (Kikes). Based on the
 18 record, there was no probable cause for a charge of disorderly conduct.²⁸

19 Class members Vasquez, Magos, and Escamilla were also stopped even though
 20 MCSO deputies could not possibly have observed the traffic violations that were
 21 asserted as the justification for their stops until after the stops were made. Tr. 202:12-17
 22 (Vasquez), 563:8-13 (Magos), 967:7-13, 968:24-969:4 (Escamilla). Before making a
 23 traffic stop, the officer must have a reasonable suspicion or probable cause of a violation

24 ²⁸ Disorderly conduct generally requires someone *other than the police officer’s* peace to
 25 be disturbed. *See City of Houston v. Hill*, 482 U.S. 451, 462 (1987) (“a properly trained
 26 officer may reasonably be expected to ‘exercise a higher degree of restraint’ than the
 27 average citizen”) (internal quotation omitted). Thus, even if Deputy Armendariz’s
 28 claims about what Plaintiffs yelled at him were true, that would not amount to a crime.
Duran v. City of Douglas, 904 F.2d 1372, 1377-78 & n.4 (9th Cir. 1990) (invalidating
 subsequent traffic stop of individual for disorderly conduct under Arizona law who was
 “making obscene gestures toward [officer] and yelling profanities”).

1 of the law. *Delaware v. Prouse*, 440 U.S. 648, 661 (1979). The MCSO’s practice of
 2 stopping motorists without such justification violates the Fourth Amendment.

3 **IV. THE EVIDENCE AT TRIAL ALSO DEMONSTRATES THAT THE**
 4 **MCSO IS VIOLATING TITLE VI.**

5 Defendants have stipulated that the financial requirements of the Title VI cause of
 6 action are met. Tr. 824:7-13.²⁹ The evidence above with respect to Plaintiffs’ Fourteenth
 7 Amendment claim is also applicable to Title VI and thus, along with the stipulation,
 8 establishes a violation of Title VI. Further, evidence was also presented at trial
 9 establishing that the MCSO discriminates on the basis of national origin as well as race.
 10 For example, Deputy Ratcliffe testified that in order to determine someone’s nationality,
 11 he would ask questions about where their parents were born and questions to determine
 12 their heritage, Tr. 1374:20-1375:5, even though heritage is not an indicator of nationality
 13 or citizenship and is not relevant to immigration investigations. Deputy Ratcliffe’s
 14 statement demonstrates the MCSO discriminates on the basis of national origin.

15 **V. CONCLUSION**

16 “The history of the United States is in part made of the stories, talents, and lasting
 17 contributions of those who crossed oceans and deserts to come here.” *Arizona*, 132 S.Ct.
 18 at 2510. The MCSO’s policy and practice betray this Nation’s proud heritage. The Court
 19 should find that Defendants are violating the Fourteenth Amendment, the Fourth
 20 Amendment, Article II, Section 8 of the Arizona Constitution, and Title VI of the Civil
 21 Rights Act of 1964.

22 RESPECTFULLY SUBMITTED this 9th day of August, 2012.

23 By /s/Stanley Young
 24 Stanley Young (*Pro Hac Vice*)
 25 Andrew C. Byrnes (*Pro Hac Vice*)
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26 ²⁹ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides: “No person in
 27 the United States shall, on the ground of race, color, or national origin, be excluded from
 28 participation in, be denied the benefits of, or be subjected to discrimination under any
 program or activity receiving Federal financial assistance.”

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2012 I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing and caused the attached document to be e-mailed to:

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APPENDIX A

Pursuant to the request of the Honorable Judge Snow at the close of trial in the above captioned matter, Plaintiffs Manuel de Jesus Ortega Melendres, Jessica Quitugua Rodriguez, David Rodriguez, Velia Meraz, Manuel Nieto, Jr. and Somos America/We Are America (“Plaintiffs”) include herein the following table which includes a list of documents that were admitted into evidence at trial that contain arrest information associated with particular MCSO operations, as well the operation date and operation location with which the arrest information is associated. As noted in the table, some documents contain information regarding more than one operation.¹

<u>Operation Date</u>	<u>Operation Location</u>	<u>Exhibit Number</u>
February 29, 2007	District 2/Avondale	119
October 15, 2007	36th St. and Thomas	114
October 30, 2007	30th-44th St. and Thomas	114
November 7, 2007	40th St. and Thomas	114
November 21, 2007	36th St. and Thomas	114
November 29, 2007	Broadway and Stapley, Mesa	80
December 1, 2007	36th St. and Thomas	114
December 5, 2007	Broadway and Stapley, Mesa	81
December 8, 2007	36th St. and Thomas	114
December 10, 2007	36th St. and Thomas	114
December 14, 2007	Aguila	76
January 4-5, 2008	24th St. & Bell Road	114
January 18-19, 2008	16th St. to 40th St./Indian School to McDowell Rd.	77
February 4, 2008	32nd St. and Thomas, 36th St. and Thomas	114
March 21-22, 2008	16th St. to 40th St./Indian School to McDowell Rd.	79

¹ Plaintiffs have provided a proposed stipulation containing this table to Defendants. While Plaintiffs believe it is likely that the parties will be able to submit such a stipulation to the Court, an agreement had not been reached as of the time of filing of this brief. As such, Plaintiffs attach this Appendix for the Court’s reference.

January 31, 2008	32nd St. and Thomas	114
March 27-28, 2008	Cave Creek and Bell Road	82, 83
April 3-4, 2008	Guadalupe	87
May 6-7, 2008	Fountain Hills	108
June 26-27, 2008 (*document is mis- dated)	Mesa	90, 93
July 8, 2008	Cave Creek	117
July 14, 2008	Mesa	97
August 19, 2008	Cave Creek & Bell Roads	109
August 13-14, 2008	Sun City and Sun City West	102, 103
September 4, 2008	Cave Creek	112
January 9-10, 2009	Southwest Valley	110, 111, 148
January 23, 2009	7th and Thunderbird	286
April 23-24, 2009	West Valley - Buckeye, Avondale, Goodyear, Tolleson, Gila Bend, Tonopah	165, 166, 1185
May 29, 2009	District II	175
July 23-24, 2009	Chandler, Southeast Valley	128, 168
September 5-6, 2009	35th Ave. and Lower Buckeye Road	169, 170
October 10, 2008	7th St and Thunderbird	125
October 16-17, 2009	Surprise, Northwest Valley	174
November 16, 2009	county-wide	178, 181, 182
November 17, 2009	county-wide	179, 180, 181