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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Manuel de Jesus Ortega Melendres, et al.,
14 **Plaintiffs,**
15 vs.
16 Joseph M. Arpaio, et al.
17 **Defendants.**

No. CV 07-02513-PHX-GMS

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

(Oral Argument Requested)

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19
20 Pursuant to Rule 56(b), Federal Rules of Civil Procedure, Defendants Joseph M.
21 Arpaio ("Arpaio") and the Maricopa County Sheriff's Office ("MCSO") respectfully move
22 the Court for its Order granting summary judgment in their favor and against Plaintiffs'
23 claims. Arpaio and the MCSO move for summary judgment because:

- 24 1. Plaintiffs lack standing to obtain their requested equitable remedies because the
25 undisputed and well developed evidentiary record shows that Plaintiffs have not, and cannot,
26 demonstrate a real and immediate threat of future injury despite being exposed since 2007 to
27 the Defendants' allegedly racially discriminatory policy, custom, or practice;
28 2. Plaintiff's Fourth Amendment claim (Second Claim for Relief) and Plaintiffs'

1 claim under Article II, Section 8 of the Arizona Constitution (Third Claim for Relief) fail as
 2 a matter of law because the undisputed facts establish that each of the Plaintiffs' traffic stops
 3 made by MCSO deputies was preceded by, and based on, probable cause or reasonable
 4 suspicion that they, or the driver of the vehicle in which he/she was a passenger, had violated
 5 Arizona law; and

6 3. Plaintiffs' Fourteenth Amendment claim (First Claim for Relief) and Title VI
 7 of the Civil Rights Act of 1964 claim (Fourth Claim for Relief) fail as a matter of law
 8 because the evidentiary record demonstrates that there are no genuine issues of material fact
 9 as to whether Plaintiffs were subjected to intentional discrimination – that is whether any
 10 MCSO deputy that had stopped, questioned, detained, or interacted with the Plaintiffs in any
 11 manner acted with racially discriminatory intent or motive, or that any alleged policy,
 12 custom, or practice of the Defendants had a discriminatory intent or motive.

13 This Motion is supported by the following Memorandum of Points and Authorities,
 14 the concurrently filed supporting Statement of Facts and accompanying exhibits, the
 15 concurrently filed (under seal) supporting Supplemental Statement of Facts Re: Testimony of
 16 ICE Witnesses and accompanying exhibits, the Court's entire file in this matter, and any oral
 17 argument the Court may wish to hear.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

18 Plaintiffs have sued Arpaio and the MCSO for alleged violations of the Plaintiffs'
 19 rights under the Fourth and Fourteenth Amendments to the United States Constitution,
 20 alleged violations of the Plaintiffs' rights under Arizona Constitution Article II, Section 8,
 21 and alleged violations of Plaintiffs' right to be free of racial discrimination pursuant to Title
 22 VI of the Civil Rights Act of 1964. *See* Defendants' Statement of Facts ("SOF") at ¶ 1.
 23 More specifically, each of the individual Plaintiffs allege that during the operation of a motor
 24 vehicle on a public roadway in Maricopa County they have been stopped, detained,
 25 questioned, and/or searched by MCSO deputies allegedly in violation of their constitutional
 26 and statutory rights. *Id.* at ¶ 2.

27 The Plaintiffs' First Amended Complaint asserts that the individual Plaintiffs were
 28

1 stopped, detained, questioned, and/or searched by MCSO officers allegedly pursuant to an
2 officially-sanctioned MCSO policy, pattern, and practice of racially profiling, targeting, or
3 otherwise discriminating against Latinos during motor vehicle traffic stops. *Id.* at ¶ 3.
4 Plaintiffs further allege that Defendants' purported policy, practice, pattern, and practice is
5 manifested not only on a "day-to-day" basis during routine traffic stops conducted by MCSO
6 deputies, but also during traffic stops made during "crime suppression sweeps" or law
7 enforcement saturation patrols or crime suppression operations. *Id.* at ¶ 4.

8 The gravamen of Plaintiffs' lawsuit is the charge that MCSO deputies are racially
9 profiling Latinos by making "pre-textual and unfounded [traffic] stops," and following those
10 stops, then engage in "racially motivated questioning, searches and other treatment, and
11 often [make] baseless arrests." *Id.* at ¶ 5. The Plaintiffs, therefore, seek declaratory and
12 injunctive relief against the Defendants. *Id.*

13 After extensive written and deposition discovery conducted since the lawsuit's initial
14 filing on December 12, 2007, the evidentiary record now amply demonstrates that the
15 Plaintiffs' charges are factually unsupported and legally deficient as set forth below.

16 **II. BACKGROUND FACTS**

17 To assist the Court in better understanding the factual predicate for this Motion, it is
18 essential to set forth the factual background about each of the Plaintiffs' respective traffic
19 stops, questioning, and/or detention.

20 **A. The Traffic Stop Involving Mr. Melendres.**

21 **1. Mr. Melendres Visits the United States.**

22 The first named individual plaintiff is Manuel de Jesus Ortega Melendres. Mr.
23 Melendres is a citizen of the Republic of Mexico. *Id.* at ¶ 6. He legally entered the United
24 States and visited Maricopa County as a tourist for the time period between September 6,
25 2007 and September 27, 2007. *Id.* at ¶ 7. Pursuant to federal law, during Mr. Melendres'
26 visit to Maricopa County he was required to keep with him at all times his B-1/B-2 tourist
27 visa and an I-94 Form (that allowed him to travel more than 25 miles north of the U.S.
28 border with Mexico). *Id.* at ¶ 8. If a visiting foreign national, such as Mr. Melendres, does
not keep his tourist visa and/or I-94 Form with him (i.e., on his person), that person is legally

1 “out-of-status” and a local law enforcement officer certified under the federal government’s
2 287(g) program may lawfully question and detain such a person without a warrant in order to
3 determine his entry status, and/or in order to deliver him to the United States Immigration
4 and Customs Enforcement (“ICE”) for its determination of the person’s lawful presence in
5 the United States.¹ *Id.* at ¶ 9. In addition, a person visiting the United States with a tourist
6 visa is not lawfully permitted to work for compensation or otherwise have employment. *Id.*
7 at ¶ 10. If a foreign national visiting the United States on a tourist visa tells an ICE agent or
8 a 287(g) certified law enforcement officer that he/she is working while visiting as a tourist,
9 that foreign national is considered “out of status” and may be detained without warrant and
10 transported to ICE. *Id.* at ¶ 11.

11 **2. The MCSO Operation on September 26, 2007**

12 On September 26, 2007, the MCSO Human Smuggling Unit (“HSU”) was in Cave
13 Creek, Arizona investigating a particular church building/parking lot in response to citizen
14 complaints that the church or its grounds may be serving as a possible “drop house” for
15 human smuggling and because “day laborers” congregating or loitering near the church were
16 stepping into the traffic lanes of Cave Creek Road and causing traffic problems. *Id.* at ¶ 12.
17 As such, the HSU conducted surveillance on the church and its property, and conducted a
18 narrow traffic patrol that related exclusively to stopping for probable cause following traffic
19 violations only those vehicles that were observed to have picked up people congregating at
20 the church property and that had left the property. *Id.*

21 On that same date, Mr. Melendres testified that he wanted to travel to an unknown
22 location in Scottsdale to take photographs, that he needed a ride there, and that a friend
23 named “Jorge Morales” from Mexico offered to arrange to have an unknown person in a
24 white colored pickup truck give him the ride. *Id.* at ¶ 13. Mr. Melendres sat in the right
25 front seat of the white colored truck, an unknown Caucasian person drove the truck, and Mr.

26 ¹ Local law enforcement personnel that are trained and certified pursuant to ICE’s 287(g) program are expressly
27 authorized to investigate and enforce federal immigration law. More specifically, the MCSO personnel certified with
28 287(g) authority by the federal government under the February 2007 ICE-MCSO Memorandum of Agreement are
expressly allowed to stop and interrogate any person “believed” by a MCSO 287(g) certified officer to be an alien as to
his/her right to be or remain in the United States. *See* 8 U.S.C. § 1357; 8 C.F.R. § 287.5, *et seq.* They are also permitted
to make warrantless arrests. *Id.*

1 Morales and another unknown person sat in the second row in the extended cab pick-up
2 truck and drove on Cave Creek Road. *Id.* at ¶ 14. *Mr. Melendres and the other persons*
3 *were picked up by the driver of the white colored truck at the church that was under HSU*
4 *surveillance. Id.* at ¶ 15.

5 **3. The Actual Traffic Stop of the Melendres Truck.**

6 When a HSU surveillance unit observed the white truck stop at the church and pick up
7 Mr. Melendres and three other men it radioed MCSO Deputy Louis DiPietro in his patrol car
8 and assigned him to follow the truck (in which Mr. Melendres was a passenger) and to look
9 for probable cause to make a traffic stop of the truck. *Id.* at ¶ 16. Deputy DiPietro followed
10 the truck and observed no equipment violations on the truck and, therefore, “paced” the truck
11 for roughly 1.5 miles and determined it was speeding (34 mph in a 25 mph zone) and that he
12 had probable cause to lawfully stop the truck for a violation of the traffic code. *Id.* at ¶ 17;
13 *see also Muehler v. Mena*, 544 U.S. 93, 101 (2005) (A traffic violation provides probable
14 cause to stop the vehicle and to reasonably detain a driver and other occupants of the
15 vehicle); *Whren v. United States*, 517 U.S. 806, 810 (1996) (same, regardless of the
16 subjective intentions or motivations of the stopping officer in making the traffic stop);
17 *Delaware v. Prouse*, 440 U.S. 648, 653 (1979) (a traffic violation results in probable cause to
18 stop the vehicle). Once the truck was stopped, Deputy DiPietro contacted the truck’s driver,
19 and based on information provided by the driver, formed reasonable suspicion that the
20 truck’s occupants may have been in the country unlawfully. SOF at ¶ 18. Deputy DiPietro,
21 therefore, called on his radio for a 287(g) MCSO deputy to assist at the stop to investigate
22 the truck’s occupants. *Id.* at ¶ 19.

23 **4. The Role of Deputy Rangel.**

24 MCSO Deputy Carlos Rangel arrived at the traffic stop within *one minute* of
25 receiving the call for a 287(g) deputy. *Id.* at ¶ 20. Deputy Rangel was then a 287(g)
26 certified officer. *Id.* Deputy DiPietro told Deputy Rangel that the passengers in the truck did
27 not speak English and asked if he would talk to the passengers. *Id.* at ¶ 21. Deputy Rangel,
28 a Latino himself and a fluent Spanish speaker, asked the passengers for identification. *Id.* at
¶ 22. Deputy Rangel questioned the truck’s passengers *while* Deputy DiPietro was

1 *simultaneously questioning* the driver of the truck. *Id.* at ¶ 23; *see also Muehler*, 544 U.S. at
2 101 (“mere police questioning [regarding identification] does not constitute a seizure unless it
3 prolongs the detention of the individual, and, thus, no reasonable suspicion is required to
4 justify questioning that does not prolong the stop.”); *Florida v. Bostick*, 501 U.S. 429, 434-
5 35 (1991) (holding that officers did not need reasonable suspicion to ask questions of an
6 individual or to ask to examine the individual’s identification); *United States v. Turvin*, 517
7 F.3d 1097, 1100-1104 (9th Cir. 2008) (reasonable suspicion is not required to ask questions
8 unrelated to purpose of an initially lawful stop); *United States v. Mendez*, 476 F.3d 1077,
9 1080 (9th Cir. 2007) (*Muehler* applies equally to traffic stops); *United States v. Soriano-*
10 *Jarquín*, 492 F.3d 495, 500-501 (4th Cir. 2007) (“request for identification from passengers
11 falls within purview of a lawful traffic stop and does not constitute a separate Fourth
12 Amendment event.”).

13 As a 287(g) certified officer, Deputy Rangel had broad authority to question the
14 truck’s occupants to determine whether they were lawfully present in the United States. *See*
15 8 U.S.C. § 1357; 8 C.F.R. § 287.5, *et seq.* As set forth in the 2007 Memorandum of
16 Agreement between the MCSO and ICE, a 287(g) deputy has:

17 the power and authority to interrogate any alien or person believed to be an alien as to
18 his right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. §
19 287.5(a)(1))... [and] [t]he power to arrest without warrant any alien entering or
20 attempting to unlawfully enter the United States, or any alien in the United States, if
21 the officer has **reason to believe** the alien to be arrested is in the United States in
22 violation of law and is **likely to escape before a warrant can be obtained**. INA §
23 287(a)(4) and 8 C.F.R. § 287(c)(2).

24 SOF at ¶ 24 (emphasis added).

25 Deputy Rangel, as a 287(g) officer, looked for ICE approved indicators of unlawful
26 presence in the United States such as the questioned person providing him with a foreign
27 identification card, not having any identification documents issued from anywhere in the
28 United States, and the inability to speak the English language. *Id.* at ¶ 25. Based on those
indicators, a 287(g) officer is permitted to question persons about their country of origin and
whether they are lawfully present in the United States. *Id.*

Deputy Rangel questioned Mr. Melendres. According to Deputy Rangel, Mr.

1 Melendres provided him with a tourist visa but did **not** provide an I-94 Form. *Id.* at ¶ 26.
2 Mr. Melendres, therefore, was “out-of-status.” Deputy Rangel then asked the passengers
3 whether they were going to work, and two of the passengers responded “yes,” with one of
4 the responders being Mr. Melendres. *Id.* at ¶ 27. Mr. Melendres, therefore, also was “out-
5 of-status” based on his statement about working on his tourist visa. Deputy Rangel then
6 instructed the truck’s passengers, including Mr. Melendres, to exit the truck. *Id.* at ¶ 28.

7 **5. Deputy Rangel used his 287(g) Authority to Detain Melendres.**

8 Based on the identification information and statements provided by Mr. Melendres
9 and the other passengers, Deputy Rangel began to try to determine whether the passengers
10 were in the United States legally. *Id.* at ¶ 29. Mr. Melendres told Deputy Rangel that Mr.
11 Melendres had lawfully entered the United States through a legitimate port of entry, had
12 obtained an I-94 Form, **but did not have the I-94 Form with him at the moment.** *Id.* at ¶
13 30.² Based on Mr. Melendres not having his I-94 Form on him at the time and his statement
14 that he was working, Deputy Rangel detained Mr. Melendres with handcuffs and directed
15 that he be delivered to ICE for handling and/or verification of status. *Id.* at ¶ 32.

16 Deputy Rangel advised Mr. Melendres that he was being detained because he did not
17 have his I-94 Form with him. *Id.* at ¶ 33. Deputy Rangel was polite to Mr. Melendres at all
18 times. *Id.* The total amount of time Deputy Rangel spent questioning the truck’s passengers
19 was *fifteen (15) minutes.* *Id.* at ¶ 34. All of the truck’s passengers were detained. *Id.* at ¶ 35.
20 The passengers/detainees were taken to an MCSO substation and held for roughly two hours,
21 and then the MCSO transported them to ICE’s Detention and Removal Office near Central
22 Avenue and McDowell Road where Mr. Melendres waited in federal detention for six to
23 seven hours for federal officials. *Id.* at ¶ 36.

24 ICE eventually released Mr. Melendres from detention. The ICE agent that
25 determined Mr. Melendres’ status told Deputy Rangel that ICE released Mr. Melendres
26 because it concluded that there was insufficient evidence that Mr. Melendres was actually

26 ² Mr. Melendres testified that he gave his I-94 Form to the deputy that questioned him at the time of the stop. SOF at ¶
27 31. Mr. Melendres, however, has never produced a copy of the I-94 Form that he supposedly had on September 26, 2007
28 and the one copy of an I-94 Form produced in the litigation does not include or cover the date of his September 26, 2007
stop and detention. *Id.* Regardless, this factual dispute is *immaterial* to the resolution of this Motion as Deputy Rangel
had other grounds to detain Mr. Melendres under the 287(g) authority.

1 working during his visit to the United States, and that he had an I-94 Form issued to him
2 despite him being “out-of-status” at the time of the traffic stop (i.e., not having the I-94 Form
3 on him when questioned by Deputy Rangel). *Id.* at ¶ 37.³

4 **B. The Traffic Stop Involving Mr. and Mrs. Rodriguez.**

5 The next set of individual plaintiffs is the married couple of David Rodriguez and
6 Jessika Rodriguez.

7 Deputy Matthew Ratcliffe is an eight-year veteran of the MCSO. In 2007 he worked
8 in the MCSO Lake Patrol Division. The Lake Patrol Division is responsible for policing the
9 recreational areas within Maricopa County and the Tonto National Forest. SOF at ¶ 39.
10 Lake Patrol deputies conduct traffic-related patrol duties near the recreational areas, perform
11 searches and rescues and dive missions in the lakes and rivers, and conduct ATV patrols. *Id.*

12 On Sunday, December 2, 2007, the Maricopa County Department of Transportation
13 (“MCDOT”), in order to protect the public’s safety, closed the Bartlett Dam Road, the road
14 to Bartlett Lake, because storm damage had caused heavy flooding on it, washed away parts
15 of the road, and left debris on the road. *Id.* at ¶ 40. There was a “*Road Closed*” sign posted
16 by the MCDOT across Bartlett Dam Road indicating to approaching drivers that the road
17 was closed. *Id.* at ¶ 41.

18 Deputy Ratcliffe was on regular patrol that day in a marked MCSO SUV. *Id.* at ¶ 42.
19 Neither Deputy Ratcliffe nor anyone from the MCSO conducted a saturation patrol on that
20 date. *Id.* at ¶ 43. In the early afternoon, Deputy Ratcliffe observed a dark colored truck
21 driving toward his parked position on the closed Bartlett Dam Road and then observed that it
22 suddenly made a “u-turn” as it approached him and another MCSO officer. *Id.* at ¶ 44.
23 Deputy Ratcliffe determined that the truck had committed a traffic violation by driving on
24 the closed road, and decided to stop the truck and issue a citation to its driver. *Id.* at ¶ 45.
25 Before deciding to conduct the traffic stop and issue a citation, Deputy Ratcliffe did *not* see

26 ³ Plaintiffs’ Complaint asserts that an MCSO deputy made allegedly crude and derogatory remarks to Mr. Melendres about lotion
27 found in his pocket. SOF at ¶ 38. Mr. Melendres, however, does not speak or understand English well and did not personally hear
28 such alleged comments. *Id.* The alleged remarks were reported to Mr. Melendres by his friend Jorge Morales while they were in
custody. *Id.* Deputies DiPietro, Rangel, and Madrid deny making or hearing such comments. *Id.* Regardless, to the extent any
factual dispute on this issue exists from the hearsay statement, it is neither material nor germane to the resolution of this Motion for
Summary Judgment.

1 the race of the truck's driver or of any of the truck's occupants. *Id.* at ¶ 46.

2 Mr. David Rodriguez was driving the truck, his wife, Jessika, was sitting in the front
3 right passenger seat, and the Rodriguez' children were seated in the truck's back row.
4 Deputy Ratcliffe stopped the truck and asked Mr. Rodriguez for his driver's license, vehicle
5 registration, and proof of insurance documents. *Id.* at ¶ 47. He also asked Mr. Rodriguez for
6 his Social Security *number* so he could complete the MCSO citation form which includes a
7 space for recording such information. *Id.* at ¶ 48. Deputy Ratcliffe denies asking Mr.
8 Rodriguez for his Social Security card. *Id.* at ¶ 49.⁴ Indeed, Deputy Ratcliffe never asks any
9 driver for his Social Security card. *Id.*

10 After obtaining Mr. Rodriguez' identification, Deputy Ratcliffe asked him why he
11 was driving his truck on the closed Bartlett Dam Road. *Id.* at ¶ 50. **Mr. Rodriguez stated**
12 **that "he had driven around the [road closed] sign and was taking the kids down to the**
13 **lake."** *Id.*⁵ Mr. and Mrs. Rodriguez asked Deputy Ratcliffe why he asked for David's Social
14 Security number. *Id.* at ¶ 52. Deputy Ratcliffe explained that it was for identification
15 purposes only and to fill in the blanks on the MCSO citation form. *Id.* Deputy Ratcliffe
16 performed via radio a records check on the Rodriguez' truck and then issued a citation to Mr.
17 Rodriguez for failure to obey a traffic control device (i.e., the "Road Closed" sign). *Id.* at ¶
18 53. He determined that a citation was appropriate in his discretion because of the safety risk
19 inherent in driving on the closed road. *Id.*

20 Upon receipt of the citation, Mr. Rodriguez asked Deputy Ratcliffe what possible
21 affect such a citation would have on his commercial driver's license, and either Mr. or Mrs.
22 Rodriguez then told Deputy Ratcliff that he/she did not see any other drivers on the closed
23 road receiving citations. *Id.* at ¶ 54. Deputy Ratcliffe responded by telling Mr. and Mrs.
24 Rodriguez that he was only dealing with them and not dealing with other drivers at that time.
25 *Id.* It was at this time that Mrs. Rodriguez accused Deputy Ratcliffe of "selective

26 ⁴ Mr. Rodriguez testified that Deputy Ratcliffe asked for his Social Security card. This conflict in testimony is
27 immaterial to the resolution of this Motion for the same reasons set forth below in footnote 5.

28 ⁵ Mr. Rodriguez admits that he saw a "Road Damaged" sign but drove past it. SOF at ¶ 51. He denied ever seeing a
"Road Closed" sign. *Id.* This conflict in testimony is *immaterial* to the resolution of this Motion because it is
undisputed that Mr. Rodriguez was actually driving on a closed road, and as will be shown below, it is undisputed that
Deputy Ratcliffe had probable cause to stop the truck driven by Mr. Rodriguez.

1 enforcement” in issuing the traffic citation to her husband. *Id.* at ¶ 55. Mrs. Rodriguez
 2 became “argumentative” with Deputy Ratcliffe. *Id.* According to Deputy Ratcliffe, neither
 3 Mr. nor Mrs. Rodriguez ever told him that they had not seen the “*Road Closed*” sign, or that
 4 they were off-road driving and must have missed seeing the sign. *Id.* at ¶ 56.⁶ The total time
 5 for the Rodriguez traffic stop was approximately ten (10) minutes. *Id.* at ¶ 58.

6 After completing the traffic stop, Deputy Ratcliffe drove behind the Rodriguez’ truck
 7 as it left the area. He was behind the Rodriguez truck for roughly two miles, not to escort
 8 them out, or to harass or intimidate them, but in order for Deputy Ratcliffe to reach the
 9 location where he could take a picture of the “*Road Closed*” sign. *Id.* at ¶ 59. “Due to the
 10 argumentative nature of the passenger in the vehicle [Mrs. Rodriguez], [Deputy Ratcliffe]
 11 wanted to take photographs of the ‘*Road Closed*’ sign and the ‘*Road Closed Ahead*’ signs for
 12 later defense in court.” *Id.* Mr. Rodriguez later pled responsible to the citation. *Id.*

12 C. The Traffic Stop of Ms. Meraz and Mr. Nieto.

13 The last set of individual Plaintiffs are siblings, Mr. Manuel Nieto, Jr. and Ms. Velia
 14 Meraz.

15 1. The Role of Deputy Armendariz.

16 Deputy Ramon Armendariz is a member of the MCSO HSU and is 287(g) certified.
 17 SOF at ¶ 61. Deputy Armendariz’ first language is Spanish and he is fluent in speaking that
 18 language. *Id.* at ¶ 62. On March 28, 2008, the MCSO was conducting a saturation patrol in
 19 north Phoenix. Deputy Armendariz worked the saturation patrol in the capacity of a patrol
 20 officer and his role was to conduct traffic stops and write citations. *Id.* at ¶ 63. Around 2:00
 21 p.m., Deputy Armendariz made a traffic stop of a car on North Cave Creek Road and that car
 22 pulled into a convenience mart/gas station located at the southwest corner of North Cave
 23 Creek Road and East Nesbit Road. *Id.* at ¶ 64. Deputy Armendariz parked his patrol car
 24 behind the stopped car. *Id.* at ¶ 65. The stopped car contained two men, and Deputy
 25 Armendariz conducted a radio check on them. *Id.*

26 _____
 27 ⁶ The Rodriguez’ claim they were off-road driving and must have missed the *Closed Road* sign. SOF at ¶ 57. As in
 28 footnotes 4-5, this factual dispute also is immaterial to the resolution of this Motion as Mr. Rodriguez was stopped and
 cited for committing a traffic violation for driving on a closed road, and to which Mr. Rodriguez later pled responsible.
 SOF at ¶ 60.

1 Following his radio check, Deputy Armendariz took both men into custody. *Id.* at ¶
2 66. He arrested the car's driver for driving with a suspended license, placed him in
3 handcuffs, and sat him inside his MCSO patrol car. *Id.* For security reasons because he was
4 the only officer at the scene, Deputy Armendariz placed handcuffs on the car's passenger,
5 and had the passenger sit down on the front bumper of the MCSO patrol car. *Id.* at ¶ 67. At
6 that moment a dark colored vehicle pulled into the convenience mart/gas station and parked
7 **directly** behind Deputy Armendariz' patrol car. *Id.* at ¶ 68. Deputy Armendariz was
8 standing in front of his patrol car handling the detained passenger of the car he stopped. *Id.*

9 The dark colored vehicle was playing loud music, the passenger side windows were
10 down, and Deputy Armendariz could see a female passenger (later known to be Ms. Meraz)
11 and a male driver (later known to be Mr. Nieto). *Id.* at ¶ 69. The female passenger started
12 **yelling repeatedly** in Spanish out her window at Deputy Armendariz' detainee sitting on the
13 bumper of the patrol car, "no diga nada," "no diga nada," ... which means don't – 'don't say
14 anything,' 'don't say anything'; 'pida un abogado,' 'pida un abogado,' which means 'ask
15 for a lawyer,' 'ask for a lawyer.'" *Id.* at ¶ 70.

16 At first, Deputy Armendariz tried to ignore the yelling, but the female passenger in
17 the dark colored vehicle kept yelling and he began to fear for his safety. *Id.* at ¶ 71. Deputy
18 Armendariz, therefore, ordered the driver of the vehicle to leave his vicinity and to stay out
19 of the way. *Id.* In response to Deputy Armendariz' command, the female passenger **yelled**
20 several times that "we're not going anywhere!" *Id.* at ¶ 72. Deputy Armendariz again
21 ordered that they leave. *Id.* at ¶ 73. The dark vehicle, however, would not leave. Then the
22 female passenger started **yelling** at Deputy Armendariz "fucking Sheriff Joe, fucking Nazi,"
23 and "you guys don't have a right to do this." *Id.* at ¶ 74.

24 Deputy Armendariz was worried about his safety and the safety of the two men he
25 had in custody. *Id.* at ¶ 75. Because the vehicle with the yelling passenger would not leave,
26 Deputy Armendariz called on his radio for back-up. *Id.* at ¶ 76.⁷

27 ⁷ MCSO Deputy Douglas Beeks heard Deputy Armendariz' radio call for back-up and described Deputy Armendariz'
28 voice as sounding "excited" and "agitated". *Id.* at ¶ 77. Deputy Beeks also recalls hearing words used by Deputy
Armendariz that led Deputy Beeks to believe in good faith that "a vehicle had tried to run over or hit Deputy Armendariz
as it left the area" and that a crime may have been committed. *Id.* Accordingly, Deputy Beeks was concerned for the
safety of Deputy Armendariz. *Id.* MCSO Deputy Michael Kikes also heard Deputy Armendariz' radio call for

1 Despite Deputy Armendariz’ repeated commands for them to leave, the male in the
2 dark colored vehicle then opened his door and started to get out. *Id.* at ¶ 78. Deputy
3 Armendariz believed that the male was going to get out of the car to “try to kick my ass.” *Id.*
4 The vehicle occupants appeared very “angry” and were acting “very threatening.” *Id.* at 79.
5 “[T]heir actions towards [Deputy Armendariz] were as if it was personal towards [him].” *Id.*
6 Deputy Armendariz testified as to his state of mind when he saw the male in the vehicle open
7 his door and start to get out:

8 I had other responsibilities that I was taking care of. I had two people that I was in --
9 that I had in custody that I was responsible for. I didn’t know if he [Mr. Nieto] was
10 going to come out with a gun. I didn’t know if he was going to come out with a knife.
11 Am I going to have to -- am I going to have to defend myself while protecting my
12 suspect that I have in custody? You know, is this going to turn into -- is he going to
13 get out with a knife? Am I going to have to shoot him? Is he going to come out with
14 a gun? Am I going to have to spray -- you know, pepper spray to get him away from
15 me? I mean, just the array of, you know, “what-ifs.” That situation could have gone
16 bad, really bad, really quick.

17 *Id.* at 80.⁸

18 Seeing this, Deputy Armendariz grew more worried, in fact he was afraid, and
19 ordered the man to stay in his car or he would be arrested for disorderly conduct. *Id.* at ¶ 82.
20 In short, the occupants of the vehicle (Ms. Meraz and Mr. Nieto) made “a big scene” at the
21 convenience mart/gas station. *Id.* at ¶ 83.

22 Finally, the vehicle’s occupants complied with Deputy Armendariz’ command and
23 left the scene while yelling profanities at him. After the vehicle was out of Deputy
24 Armendariz’ sight, other MCSO deputies arrived on scene in response to his radio call for
25 assistance. Deputy Armendariz identified the vehicle to MCSO motorcycle Deputy Michael
26 Kikes and then pointed Deputy Kikes in the general direction of the departed vehicle.
27 Deputy Beeks, in a patrol car, followed Deputy Kikes. Deputy Armendariz returned to the
28 work of safely handling his arrestees.

29 assistance and believed, based on the pitch of Deputy Armendariz’ voice, that something was wrong at the time of
30 Deputy Armendariz’ call. *Id.*

31 ⁸ Deputy Armendariz’ caution about Mr. Nieto’s anger and behavior was sound. Although unknown to Deputy
32 Armendariz at the time, Plaintiff Manuel Nieto is a three-time convicted felon who spent 3.5 years in prison for domestic

1 **2. The Role of Deputies Kikes and Beeks.**

2 Deputy Kikes quickly spotted the dark colored vehicle driving on North Cave Creek
3 Road and activated his motorcycle's lights and siren. *Id.* at ¶ 84. Deputy Kikes believed in
4 good-faith that he had probable cause to stop the dark colored vehicle because he believed
5 there was an emergency situation of some type involving Deputy Armendariz. *Id.* at ¶ 85.
6 Due to the vehicle's window tinting, Deputy Kikes could not see the race, sex, or other
7 characteristics of the vehicle's occupants. *Id.* at ¶ 86. The driver of the vehicle (i.e., Mr.
8 Nieto) would not stop in response to Deputy Kikes' signals (in itself a violation of the traffic
9 law), and he drove another 300 feet until he turned left into an auto shop instead of pulling
10 over on the right side of the public roadway as required by law. *Id.* at ¶ 87. Deputy Kikes
11 was concerned about the driver's behavior, where he parked, and what that behavior meant.
Id. at ¶ 88.

12 Once the vehicle pulled into the auto repair shop, the driver (Mr. Nieto) refused to
13 exit his vehicle. *Id.* at ¶ 89. He also refused to roll down his window to speak with Deputy
14 Kikes. *Id.* at ¶ 90. At this time, two unknown men in mechanic's clothing immediately
15 came out from the auto repair shop and were "angry", "yelling" and "cursing" at Deputy
16 Kikes. *Id.* at ¶ 91. Deputy Beeks, now at the scene, saw the driver acting very "belligerent",
17 "non-compliant", and "almost hostile in nature" toward Deputy Kikes, and Deputy Beeks
18 thought that the driver might drive his vehicle forward or backward; therefore, Deputy Beeks
19 pulled his handgun to his side for safety purposes. *Id.* at ¶ 92. Finally, Deputy Kikes opened
20 the vehicle's door, grabbed the driver, and removed him from the vehicle where he then
21 handcuffed him. *Id.* at ¶ 93. Deputy Kikes moved the driver to the rear of the vehicle away
22 from the angry mechanics and obtained his driver's license information. *Id.* at ¶ 94.

23 Deputy Kikes conducted a radio check on the driver's status (Mr. Nieto's) and it came
24 back clear. *Id.* at ¶ 95. Deputy Beeks then contacted Deputy Armendariz to determine what
25 had actually occurred between him and the vehicle's occupants. *Id.* at ¶ 96. Following that
26 communication, Mr. Nieto was released without being charged with either a traffic violation
27 (i.e., failure to stop when directed) or for obstructing Deputy Armendariz. *Id.* at ¶ 97.⁹

28 violence and was released from prison only one month earlier in February 2008. SOF at ¶ 81.

⁹ Mr. Nieto and Ms. Meraz deny making many of the comments and acting with the behavior attributed to them by

1 Deputies Kikes and Beeks left the auto repair shop.

2 **III. PLAINTIFFS LACK STANDING TO OBTAIN EQUITABLE RELIEF AND**
 3 **SUMMARY JUDGMENT IS REQUIRED.**

4 To have standing to seek equitable relief, a plaintiff must satisfy the case-or-
 5 controversy requirement under Article III of the Constitution and demonstrate a real and
 6 immediate threat of future injury. *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1040-45
 7 (9th Cir. 1999). “It is the responsibility of the [plaintiff] clearly to allege facts demonstrating
 8 that he is a proper party to invoke judicial resolution of the dispute and the exercise of the
 9 court's remedial powers.” *Warth v. Seldin*, 422 U.S. 490, 518 (1975). Standing cannot be
 10 “inferred argumentatively from averments in the pleadings.” *Grace v. American Cent. Ins.*
 11 *Co.*, 109 U.S. 278, 284 (1883). **Standing “must affirmatively appear in the record.”**
 12 *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (citations omitted) (emphasis
 13 added) (overruled on other grounds in *City of Littleton v. Z. J. Gifts D-4, L.L.C.*, 541 U.S.
 14 774, 781 (2004)); *see also Althin v. W. Suburban Kidney Ctr.*, 874 F. Supp. 837(N.D. Ill.
 15 1994). “System-wide injunctive relief is not available based on alleged injuries to unnamed
 16 members of a proposed class.” *Hodges-Durgin*, 199 F.3d at 1045; *see also Lewis v. Casey*,
 17 518 U.S. 343, 357 (1996). After extensive discovery, the evidentiary record now
 18 demonstrates that Plaintiffs have failed to meet their burden of proof for establishing that
 19 they have standing to continue this lawsuit. As such, summary judgment is required.

20 **A. Plaintiffs Have Failed to Demonstrate a Real and Immediate Threat of**
 21 **Future Injury.**

22 A plaintiff seeking to invoke the jurisdiction of the federal courts must demonstrate an
 23 actual case or controversy to satisfy the jurisdictional requirement under Article III of the
 24 Constitution. *Flast v. Cohen*, 392 U.S. 83, 94-101 (1968). To satisfy the case-or-
 25 controversy requirement under the Constitution, **a plaintiff seeking equitable relief must**

26 Deputies Armendariz, Kikes, and Beeks in their depositions. These denials, however, do *not* create genuine issue of
 27 material fact on the issues pending before the Court on this Motion as shown below. Additionally, Ms. Meraz’
 28 truthfulness is at issue for several reasons, including the fact she has a prior felony conviction for fraudulent schemes and
 artifices for writing money orders to herself while she was employed at Catholic Social Services as an immigration case
 worker. SOF at ¶ 98. Because those credibility issues are not germane to the Court’s ruling on this Motion, they are not
 addressed further in this Motion.

1 demonstrate a “credible” and “genuine” threat of suffering the same harm or injury
2 again in the future. *Ellis v. Dyson*, 421 U.S. 426, 434-435 (1975); see also *O’Shea v.*
3 *Littleton*, 414 U.S. 488, 495-96 and 502 (1974) (“past exposure to illegal conduct does not in
4 itself show a present case or controversy regarding injunctive relief;” to obtain equitable
5 relief, the plaintiff must establish “the likelihood of substantial and immediate irreparable
6 injury.”); *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (in the context of a party
7 seeking injunctive relief, the plaintiff must prove that he is “likely to suffer future injury.”)

8 “A claim is not ripe for adjudication if it rests upon contingent future events that may
9 not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S.
10 296, 299 (1998) (citation and internal quotation omitted). “[F]ailure to establish a likelihood
11 of future injury similarly renders . . . [a] claim for declaratory relief unripe. Ripeness
12 doctrine protects against premature adjudication of suits in which declaratory relief is
13 sought.” *Hodgers-Durkin*, 199 F.3d at 1044 (clarifying that “[i]n suits seeking both
14 declaratory and injunctive relief against a defendant’s continuing practices, the ripeness
15 requirement serves the same function in limiting declaratory relief as the imminent-harm
16 requirement serves in limiting injunctive relief.”) (citation omitted).

17 Here, the Plaintiffs allege that since 2007 they have been subjected to the MCSO’s
18 alleged official policy, pattern, and practice of stopping, questioning, searching, and
19 sometimes arresting Latino persons without probable cause or reasonable suspicion simply
20 on the basis of their race. SOF at ¶ 99. They further alleges that the MCSO’s challenged
21 conduct occurs not only as a general practice of the MCSO when making traffic stops, but
22 also through making traffic stops during saturation patrols or so called “crime suppression
23 sweeps.” *Id.*

24 Plaintiffs have completely failed, however, to prove a credible and genuine threat of
25 the MCSO stopping, questioning, searching, detaining or otherwise harming *them again* in
26 the future. *Lyons*, 461 U.S. at 103-106 (and the cases cited therein); *Farm Labor Organizing*
27 *Committee v. Ohio State Highway Patrol*, 95 F.Supp.2d 723, 731 (N.D. Ohio 2000); see also
28 *Huss v. Spokane County*, 2007 U.S. Dist. LEXIS 27667, *4-8 (E.D.Wash. 2007) (“plaintiff
seeking to challenge an unconstitutional policy must show a genuine threat of enforcement

1 of the policy against the plaintiff”). Indeed, the **extensive evidence garnered during this**
2 **litigation amply shows that although the Plaintiffs have been long exposed to MCSO**
3 **scrutiny under its alleged “racial profiling” policy since 2007, they have nevertheless**
4 **experienced no additional traffic stop encounters with the MCSO of which they can**
5 **complain of, or at all.**

6 Mr. Melendres is a Mexican national and lives in Ciudad Obregon, Sonora, Mexico,
7 about a seven (7) hour bus trip from the border at Nogales, Mexico. SOF at ¶ 100. As a
8 citizen of Mexico, Mr. Melendres is **not** likely to again encounter the MCSO while he lives
9 in Mexico. In addition, Mr. Melendres has returned to Maricopa County “once or twice”
10 since his September 2007 traffic stop. *Id.* at ¶ 101. When he has visited Maricopa County
11 on those occasions, Mr. Melendres stays only for “some days or maybe a week.” *Id.* at ¶
12 102. During his one or two visits to Maricopa County after the 2007 traffic stop, Mr.
13 Melendres has **not** again been stopped, questioned, detained, arrested, searched, or
14 investigated by the MCSO. *Id.* Moreover, Mr. Melendres’ own statistics expert, Ralph
15 Taylor, Ph.D., has *no opinion* as to whether Mr. Melendres is likely to again face a future
16 traffic stop by the MCSO. *Id.* at ¶ 146. Mr. Melendres, therefore, cannot prove a “credible”
17 and “genuine” threat of future interaction with the MCSO, let alone likely future harm
18 caused by the MCSO. He lacks standing to seek the equitable relief set forth in the First
19 Amended Complaint.

20 As to Mr. and Mrs. Rodriguez, they each testified that since their December 2007
21 traffic stop on Bartlett Dam Road by Deputy Ratcliffe, and although they live and work in
22 Maricopa County, they each have had **no other traffic stop encounters** with the MCSO. *Id.*
23 at ¶ 103. Indeed, Mrs. Rodriguez drives 20 miles roundtrip to work every day and estimates
24 that she drives roughly 20,000 miles on her personal car every year in Maricopa County but
25 has never again been stopped by the MCSO. *Id.* at ¶ 104. Dr. Taylor also has *no opinion* as
26 to whether Mr. and Mrs. Rodriguez are likely to again face a future traffic stop by the
27 MCSO. *Id.* at ¶ 147. Mr. and Mrs. Rodriguez, therefore, cannot demonstrate a “credible”
28 and “genuine” threat of future interaction with the MCSO, or any likely future harm by the
MCSO. As such, they lack standing to seek the equitable relief set forth in the First

1 Amended Complaint.

2 Likewise, Ms. Meraz and Mr. Nieto are hard-pressed to prove that that they have a
3 “credible” and “genuine” threat of the MCSO again stopping, questioning, searching, or
4 detaining them in the future. Ms. Meraz testified that since her March 2008 traffic stop by
5 the MCSO she has had **no other personal experience** with the MCSO stopping her in any
6 vehicle at any time for any reason. *Id.* at ¶ 105. Her brother, Mr. Nieto, testified that he also
7 has had **no traffic stop encounters with the MCSO** since the March 2008 traffic stop. *Id.*
8 at ¶ 106. Once again, Dr. Taylor also has no opinion as to whether Ms. Meraz and Mr. Nieto
9 are likely to again face a future traffic stop by the MCSO. *Id.* at ¶ 148. As a consequence,
10 Ms. Meraz and Mr. Nieto cannot demonstrate a “credible” and “genuine” threat of future
11 traffic stop interaction with the MCSO, or any likely future harm by the MCSO. They also
12 lack the standing to seek equitable relief.

13 The sole organizational Plaintiff, Somos America, also can show no credible or
14 genuine threat of future injury. Somos America’s Rule 30(b)(6) representative, Ms. Lydia
15 Guzman, has never experienced a traffic stop by the MCSO. *Id.* at ¶ 150. Somos America is
16 a non-profit advocacy organization, with no paid staff, no membership dues, and any person
17 or entity that attends its monthly meetings may consider itself a member of Somos
18 American. *Id.* at ¶ 151. It has only 35 members such as *Latino American Citizens, No More*
19 *Deaths, MECHHA*, and various labor unions, and there is no admissible evidence that any
20 Somos America member -- or employee of a member organization -- has been subject to an
21 MCSO traffic stop. *Id.* at ¶ 152.

22 In summary, the evidentiary record shows that “it is not sufficiently likely that [the
23 Plaintiffs] will again stopped by the” MCSO. *Hodgers-Durgin*, 199 F.3d at 1044. In other
24 words, Plaintiffs are not sufficiently “likely to suffer future injury” because of the MCSO’s
25 alleged racial profiling policy. *Lyons*, 461 U.S. at 105. The Plaintiffs lack standing to
26 request or receive the injunctive relief they seek against the Defendants. The Court,
27 therefore, should dismiss their claims.¹⁰

28

¹⁰ There is another reason the Plaintiffs lack standing. Plaintiffs can avoid future traffic stop encounters with the MCSO by avoiding future unlawful conduct, such as violating the Arizona motor vehicle code or, as in the case of Ms. Meraz and Mr. Nieto, complying with the lawful instructions of a peace officer. “[S]tanding is inappropriate where the future injury could be inflicted only in the event

1 **IV. PLAINTIFFS' FOURTH AMENDMENT AND ARIZONA**
 2 **CONSTITUTIONAL CLAIMS FAIL BECAUSE EACH OF THEIR TRAFFIC**
 3 **STOPS WITH THE MCSO WERE PRECEDED BY, AND BASED ON,**
 4 **PROBABLE CAUSE OR REASONABLE SUSPICION THAT THEY, OR THE**
 5 **VEHICLES IN WHICH THEY WERE PASSENGERS, HAD VIOLATED**
 6 **ARIZONA LAW.**

7 The existence of probable cause or reasonable suspicion supporting the traffic stops of
 8 each of the Plaintiffs defeats their Fourth Amendment and Arizona Constitution Article II, §
 9 8 claims. *Virginia v. Moore*, 553 U.S. 164, 171 (2008) (a seizure based on probable cause
 10 does not violate the Fourth Amendment); *Atwater v. City of Lago Vista*, 532 U.S. 318, 354
 11 (2001) (no Fourth Amendment violation arises out of seizure for minor traffic infraction
 12 where police officer has probable cause to believe seized person violated law); *Edgerly v.*
 13 *City and County of San Francisco*, 599 F.3d 946, 959 (9th Cir. 2010) (the existence of
 14 probable cause renders a seizure reasonable under the Fourth Amendment); *Cabrera v.*
 15 *Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998) (probable cause defeats a § 1983 claim
 16 for false arrest); *United States v. Choudhry*, 461 F.2d 1097, 1101 (9th Cir. 2006) (no Fourth
 17 Amendment violation for traffic stop based on reasonable suspicion); *cf. Malmin v. State*,
 18 246 P. 548, 548-49 (Ariz. 1926) (Article II, § 8 of Arizona Constitution “although different
 19 in its language, is of the same general effect and purpose as the Fourth Amendment, and, for
 20 that reason, decisions on the right of search under the latter are well on point.”); *see also*
State v. Reyna, 71 P.3d 366, 369-70 & n.5 (Ariz. App. 2003); *State v. Teagle*, 170 P.3d 266,
 21 271 n.3 (Ariz. App. 2007).

22 Law enforcement officers may stop a moving vehicle if they have probable cause or
 23 reasonable suspicion that a moving violation has occurred. *Whren*, 517 U.S. at 810.
 24 Probable cause determinations present mixed question of law and fact in which the legal
 25 issues predominate. *Orenelas v. United States*, 517 U.S. 690, 697-98 (1996). In determining

26 of future illegal conduct by the plaintiff.” *Armstrong v. Davis*, 275 F.3d 849, 865 (9th Cir. 2001). “Where a party can prevent all risk
 27 of constitutional injury by controlling his conduct (without sacrificing any of his rights, privileges, or immunities), his claim of
 28 standing, which is predicated on a future unlawful act on his own part, is of dubious legitimacy.” *Farm Labor*, 95 F.Supp.2d at 731, n.
 6 (citing *O’Shea*, 414 U.S. at 497). “It is to be assumed that (plaintiffs) will conduct their activities within the law and so avoid . . .
 exposure to the challenged course of conduct said to be followed by [police officials].” *Lyons*, 461 U.S. at 103. Even Plaintiffs’
 expert Dr. Taylor admits that future behavior by Plaintiffs is a variable that will determine whether it is likely that Plaintiffs will ever
 again be stopped by the MCSO. SOF at ¶¶ 146 and 149.

1 whether there is probable cause to defeat a Fourth Amendment claim, courts do **not** consider
2 a stopping officer's actual motivation for effectuating the traffic stop. *Whren*, 517 U.S. at
3 812-13; *see also United States v. Robinson*, 414 U.S. 218, 221 n.1 (1973) ("a traffic violation
4 arrest would not be rendered invalid under the Fourth Amendment by the fact that it was a
5 mere pretext for a narcotics search."); *United States v. Ramirez*, 473 F.3d 1026, 1030-31 (9th
6 Cir. 2007) (pre-textual traffic stops based on probable cause that are also motivated by some
7 other reason do not violate Fourth Amendment); *United States v. Willis*, 431 F.3d 709, 715
8 (9th Cir. 2005) (same); *Rodriquez v. California Highway Patrol*, 89 F.Supp.2d 1131, 1139
9 (N.D. Cal. 2000) (same). Instead, "[p]robable cause exists when the facts and circumstances
10 within the officer's knowledge are sufficient to cause a reasonably prudent person to believe
11 that a crime [or traffic offense] has been committed." *Lassiter v. City of Bremerton*, 556
12 F.3d 1049, 1053 (9th Cir. 2009).

13 Reasonable suspicion is a less exacting standard than probable cause. *United States v.*
14 *Skolow*, 490 U.S. 1, 7 (1989). When deciding whether a traffic stop was supported by
15 reasonable suspicion, courts must consider whether "in light of the totality of the
16 circumstances, the officer had a particularized and objective basis for suspecting the
17 particular person stopped of criminal activity." *United States v. Berber-Tinoco*, 510 F.3d
18 1083, 1087 (9th Cir. 2007) (internal quotation marks and citation omitted).

19 The undisputed evidence in this case demonstrates that *each* of the Plaintiffs'
20 respective traffic stops was made on either probable cause or reasonable suspicion as
21 required. Plaintiffs' Fourth Amendment and Arizona Constitution Article II, § 8 claims,
22 therefore, fail as a matter of law.

23 **A. The Melendres Vehicle was Stopped for Probable Cause.**

24 Deputy DiPietro paced the truck, in which Mr. Melendres was a passenger, for 1.5
25 miles and determined it was speeding (i.e., going 34 mph in a zone marked for 25 mph) and
26 that he had probable cause to lawfully stop the truck. SOF at ¶ 17. Speeding is a violation
27 of Arizona law. A.R.S. § 28-701; *see also* A.R.S. § 13-3883(B) ("A peace officer may stop
28 and detain a person as is reasonably necessary to investigate an actual or suspected violation
of any traffic law committed in the officer's presence...."). Even though Deputy DiPietro

1 wanted to stop the truck because he believed it may have passengers in the country
2 unlawfully, that subjective intent is irrelevant to the Fourth Amendment analysis. *Whren*,
3 517 U.S. at 811 (rejecting “the principle that ulterior motives can invalidate police conduct
4 that is justifiable on the basis of probable cause.”).

5 Although Mr. Melendres speculates that the truck in which he was a passenger was
6 not speeding, he has presented no admissible facts to dispute the probable cause
7 determination of Deputy DiPietro. SOF at ¶¶ 107. Defendants’ law enforcement practices
8 expert witness, Bennie R. Click, opines that “Deputy DiPietro had probable cause to stop the
9 vehicle in which Mr. Melendres was a passenger. Deputy DiPietro’s actions in stopping the
10 vehicle conformed with standard police training and law enforcement practice, met the
11 requirements set for in [A.R.S. section] 13-3883 and were reasonable.” *Id.* at ¶¶ 108. Even
12 Plaintiffs’ law enforcement practices/racial profiling expert witness, Robert L. Stewart, has
13 no factual basis to disagree with Deputy DiPietro’s probable cause determination:

14 Q. Based on all the evidence that you have reviewed, did Deputy Louis DiPietro
15 have probable cause to stop the truck in which Mr. Melendres was a
16 passenger?

17 A. According to him.

18 Q. Is that a yes or a no?

19 A. **His record reflects that he did.**

20 Q. Do you have any *direct* evidence rebutting Deputy DiPietro’s testimony that he
21 had probable cause to stop the truck?

22 A. **No, sir.**

23 Q. Do you have any *circumstantial* evidence rebutting Deputy DiPietro’s
24 testimony that he had probable cause to stop the truck?

25 A. **No, sir.**

26 *Id.* at ¶¶ 109 (emphasis added). The undisputed evidence, therefore, shows that the traffic
27 stop involving Mr. Melendres was based on probable cause and his Fourth Amendment and
28 Arizona Constitution Article II, § 8 claims fail as a matter of law.

1 There is also no unreasonable seizure under the Fourth Amendment or Arizona
2 Constitution Article II, § 8 for Deputy Rangel's detention of Mr. Melendres. According to
3 Deputy Rangel, the questioning of the truck's passengers, including Mr. Melendres, lasted
4 only fifteen minutes while Deputy DiPietro was concurrently questioning the driver. SOF at
5 ¶ 34. The reasonableness of a detention is evaluated "from the perspective of a reasonable
6 officer on the scene." *Graham v. Connor*, 490 U.S. 386, 387 (1989). In addition, Mr.
7 Melendres was out-of-status (in not having his I-94 Form on him at the time of the stop) and
8 stated that he was working while on his tourist visa and such information allowed a 287(g)
9 certified officer to detain Mr. Melendres. *See* 8 U.S.C. § 1357; 8 C.F.R. § 287.5, *et seq.*; *see*
10 *also* SOF at ¶¶ 24-30, 32-33. Mr. Melendres was in a MCSO holding cell before removal to
11 ICE for "probably about two hours." SOF at ¶ 110. He was held by ICE -- not the MCSO --
12 for another six to seven hours at an ICE facility. *Id.* As such, Mr. Melendres was properly
13 detained pursuant to Deputy Rangel's 287(g) authority. *See* 8 U.S.C. § 1357; 8 C.F.R. §
14 287.5, *et seq.*; *see also* SOF at ¶¶ 24 and 111.

14 **B. The Rodriguez Vehicle was Stopped for Probable Cause.**

15 Deputy Ratcliffe had probable cause to stop the Rodriguez truck because it was
16 driving on a closed road. SOF at ¶¶ 44-45, and 51-52. Knowingly or unknowingly
17 disobeying a traffic control sign is a violation of Arizona law. A.R.S. § 28-644. Mrs.
18 Rodriguez *admits* there was probable cause to stop her vehicle. *Id.* at ¶ 112. Mrs. Rodriguez
19 is not even critical of the actual traffic stop. *Id.* at ¶ 113. Defense expert Mr. Click testified
20 that Deputy Ratcliffe had probable cause to stop the Rodriguez truck. *Id.* at ¶ 114. The
21 opinion of Plaintiffs' own expert, Mr. Stewart, is in accord:

22 Q. Based on all the evidence you've reviewed, did Deputy Ratcliffe have probable
23 cause to stop the Rodriguez vehicle on the road?

24 A. Yes.

25 *Id.* at ¶ 115 (emphasis added). Moreover, the factual testimony from Mr. and Mrs.
26 Rodriguez as to whether they ever saw the "Road Closed" sign is immaterial. Their own
27 liability expert, Mr. Stewart, testified that Deputy Ratcliffe had probable cause to stop the
28 Rodriguez truck even if Mr. Rodriguez did not see the "Road Closed" sign. *Id.* at ¶ 116.

1 The undisputed evidence, therefore, shows that the traffic stop involving Mr. and Mrs.
2 Rodriguez was based on probable cause and their Fourth Amendment and Arizona
3 Constitution Article II, § 8 claims fail as a matter of law.

4 **C. The Meraz-Nieto Vehicle was Stopped for Reasonable Suspicion and**
5 **Probable Cause.**

6 Neither Deputy Armendariz nor Deputy Beeks stopped the Meraz-Nieto vehicle.
7 They, therefore, could not have violated Ms. Meraz and Mr. Nieto's rights under the Fourth
8 Amendment or Article II, § 8. Deputy Kikes, however, stopped the Meraz-Nieto vehicle.
9 SOF at ¶¶ 84-85.

10 Deputy Kikes testified that he had probable cause to stop the Meraz-Nieto vehicle. *Id.*
11 at ¶ 117. He made the stop because he believed in good faith that the occupants of the
12 vehicle were involved in some type of crime involving Deputy Armendariz. *Id.* Defense
13 expert Mr. Click opines that Ms. Meraz and Mr. Nieto obstructed Deputy Armendariz in his
14 investigation and arrest of the two stopped men, and that the MCSO could have arrested Ms.
15 Meraz and Mr. Nieto for such obstruction. *Id.* at ¶ 118.

16 Mr. Click further testified that Deputy Kikes had reasonable suspicion to stop the
17 Meraz-Nieto vehicle. *Id.* Plaintiffs' expert Mr. Stewart *agrees* that Deputy Kikes had
18 reasonable suspicion under the circumstances that allowed him to properly stop the Meraz-
19 Nieto vehicle. *Id.* at ¶ 119. It is, therefore, undisputed, that Deputy Kikes had reasonable
20 suspicion, if not probable cause, to stop the Meraz-Nieto vehicle. Ms. Meraz and Mr.
21 Nieto's Fourth Amendment and Arizona Constitution Article II, § 8 claims fail as a matter of
22 law.

23 Finally, to the extent the Plaintiffs claim that Deputy Kikes' post-traffic stop
24 treatment of Mr. Nieto (i.e., removing him from the vehicle and handcuffing him) violated
25 Mr. Nieto's Fourth Amendment rights, such a claim lacks merit. Plaintiffs' expert Mr.
26 Stewart testified that Deputy Kikes acted "reasonably" in his post-stop conduct and treatment
27 of Mr. Nieto. *Id.* at ¶ 120; *see also Graham*, 490 U.S. at 387 (the reasonableness of a
28 detention is evaluated "from the perspective of a reasonable officer on the scene.");
Michigan v. Summers, 452 U.S. 692, 703, fn. 14 (1981) ("[T]he reasonableness of a

1 detention may be determined in part by whether the police are diligently pursuing a means of
 2 investigation which is likely to resolve the matter one way or another very soon....”)
 3 (internal citation and quotations omitted).

4 Based on the foregoing undisputed facts, the Court must dismiss the Plaintiffs’ Fourth
 5 Amendment and Arizona Constitution Article II, § 8 claims.

6 **V. THE EVIDENTIARY RECORD DEMONSTRATES THAT THE PLAINTIFFS**
 7 **HAVE FAILED TO PROVE THEY SUFFERED INTENTIONAL**
 8 **DISCRIMINATION AND THEREFORE THEIR EQUAL PROTECTION AND**
 9 **TITLE VI DISCRIMINATION CLAIMS FAIL AS A MATTER OF LAW.**

10 A plaintiff asserting a Fourteenth Amendment equal protection claim or a Title VI
 11 racial discrimination claim must demonstrate not only that the challenged law enforcement
 12 policy, pattern, or practice “had a discriminatory effect” but also “that it was *motivated* by a
 13 discriminatory purpose.” *Wayte v. United States*, 470 U.S. 598, 608 (1985) (emphasis
 14 added); *see also Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 272-74 (1979); *Arlington*
 15 *Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264-66; *Washington v. Davis*, 426 U.S.
 16 229, 239-42 (1976); *Navarro v. Block*, 72 F.3d 712, 716 (9th Cir. 1995) (stating that “a long
 17 line of Supreme Court cases make clear that **the Equal Protection Clause requires proof of**
 18 **discriminatory intent or motive.**”) (emphasis added); *Wilkins v. City of Tempe*, 2010 U.S.
 19 District LEXIS 843 (D. Ariz. Jan. 5, 2010).

20 “[A] violation of Title VI, like a violation of the Equal Protection Clause, requires a
 21 showing of **intentional** discrimination.” *Alexander v Sandoval*, 523 U.S. 275, 280 (2001)
 22 (emphasis added). “It is beyond dispute... that [Title VI] prohibits only intentional
 23 discrimination... [and] proscribes those racial classifications that would violate the Equal
 24 Protection Clause or the Fifth Amendment.” *Id.*; *see also Benally v. Kaye*, 2005 U.S. Dist.
 25 LEXIS 39751 at *19-20 (D. Ariz. 2005). Thus, “in the absence of proof of discriminatory
 26 animus,” a Title VI plaintiff cannot be awarded declaratory or injunctive relief. *Gebray v.*
 27 *Portland Int’l Airport*, 2001 U.S. Dist LEXIS 22747 at *11 (D. Oreg. 2001); *see Meyers v.*
 28 *San Juan Sch. Dist*, 905 F. Supp. 1544, 1573 (D. Utah 1995). Plaintiffs, therefore, must
 prove that the “decision makers in [their] case acted with discriminatory purpose.”
McClesky v. Kemp, 481 U.S. 279, 292 (1987). “Discriminatory purpose... implies more

1 than ... intent as awareness of consequences. It implies that the decision maker... selected
2 or reaffirmed a particular course of action at least in part because of... its adverse effects
3 upon an identifiable group.” *Id.* at 298 (quoting *Pers. Adm’r of Mass. v. Feeney*, 442 U.S.
4 at 279).

5 To avoid summary judgment, a plaintiff “must produce evidence sufficient to permit
6 a reasonable trier of fact to find by a preponderance of the evidence that [the] decision... was
7 racially motivated.” *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 754 (9th
8 Cir. 2001); *see also Bingham v. City of Manhattan Beach*, 341 F.3d 939, 948-49 (9th Cir.
9 2003) (same); *FDIC v. Henderson*, 940 F.2d 465, 473 (9th Cir. 1991) (same); *Cornwell v.*
10 *Electra Cen. Credit Union*, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006) (explaining that a
11 plaintiff may not defeat a defendant’s motion for summary judgment “by relying solely on
12 the plaintiff’s subjective belief that the challenged action was [wrong].”). As demonstrated
13 below, the Plaintiffs have failed to produce “evidence sufficient to permit a reasonable trier
14 of fact to find by a preponderance of the evidence that [the MCSO’s conduct toward them]
was racially motivated.” *Keyser*, 265 F.3d at 754.

15 **A. There is Insufficient Evidence of MCSO’s Alleged Traffic Stop Policy or**
16 **Practice having a Discriminatory Effect on Latinos and no Material**
17 **Factual Dispute Exists.**

18 The essence of Plaintiffs’ Fourteenth Amendment and Title VI racial discrimination
19 claims is summarized in the First Amended Complaint:

20 Caucasian drivers and passengers involved in the same or similar acts or alleged
21 violations are treated differently and their vehicles stopped at much lower rates than
22 similarly situated Latino drivers and passengers pursuant to MCSO policy and
23 practice. Further Caucasian drivers and passengers are treated differently and less
24 intrusively and detained for shorter periods of time after their vehicles are stopped by
MCSO personnel than Latino drivers and passengers after being stopped. Latino
occupants are also treated differently and more intrusively by MCSO than Caucasian
occupants of the same vehicle

25
26 SOF at ¶ 121. In other words, Plaintiffs assert that the evidence will show that MCSO’s
27 challenged law enforcement practice “had a discriminatory effect” on Latinos. *Wayte*, 470
28 U.S. at 608.

1 The Plaintiffs, however, are mistaken for several reasons. First, if Latinos were being
 2 racially targeted by MCSO personnel during traffic stops, then the percentage of traffic stops
 3 of Latinos would be expected to occur at a much greater percentage than their percentage of
 4 the general population. This, however, is not happening. Plaintiffs' own statistical expert,
 5 Dr. Taylor conducted a statistical analysis of *all* the MCSO traffic stops conducted from
 6 January 1, 2007 to October 31, 2009 and **concluded that Latinos in Maricopa County are**
 7 **stopped by MCSO personnel in roughly the same proportion to their share of Maricopa**
 8 **County's population.** *Id.* at ¶ 122. Defense expert statistician Steve Camarota, Ph.D.,
 9 concurs:

10 **[My] findings show that the Hispanic share of those stopped by the MCSO**
 11 **deputies is roughly equal to their proportion of the county and the state's overall**
 12 **population.** About one-third of stops are of individuals with a Hispanic last name,
 13 which closely matches their share of the county and state populations. Analysis at the
 14 sub-county level also tends to show stops in proportion to local population shares....
 15 ***Equally important, despite a significant increase in concern over illegal***
 16 ***immigration in recent years in the county and state, there was no increase in the***
 17 ***Hispanic share of those stopped by MCSO between 2005 and 2009. Overall, the***
 18 ***surname analysis shows Hispanics are being stopped at a rate that reflects their***
 19 ***share of the population.***

20 *Id.* at ¶ 123 (emphasis added).

21 Second, Dr. Taylor's additional opinions that there are disproportionate percentages
 22 of Latino's stopped during MCSO *saturation* patrols, and that their traffic stop detentions are
 23 longer than non-Latinos, is factually suspect. His saturation patrol analysis is irrelevant to
 24 the Plaintiffs' traffic stops because it does not consider the fact, as shown above already,
 25 that: (1) the traffic stop of Mr. and Rodriguez was *unrelated* to a saturation patrol, and (2)
 26 that the traffic stop of Ms. Meraz and Mr. Nieto, while occurring when a saturation patrol
 27 was simultaneously on-going in the area, was *unrelated* to that saturation patrol. *Id.* at ¶¶ 43
 28 (as to Mr. and Mrs. Rodriguez) and 64-88 (as to Ms. Meraz and Mr. Nieto). The analysis
 also fails to take into account the fact that while Mr. Melendres' traffic stop technically could
 be considered as part of an MCSO saturation patrol, and was considered as such by Deputy
 DiPietro, the operation was actually a small HSU detail targeting only specific vehicles that
 had picked up persons from a suspected human smuggling drop house/day laborer location,

1 and did not involve the MCSO making general traffic stops of any vehicles other than those
2 that had visited the church property and picked-up passengers and where probable cause was
3 found to stop those particular vehicles. *Id.* at ¶ 12. Accordingly, **four of the five Plaintiffs**
4 **were *not* stopped as part of an MCSO saturation patrol**, and it is questionable whether
5 the final Plaintiff (Mr. Melendres) was stopped during the type of MCSO saturation patrol
6 complained of in Plaintiffs' First Amended Complaint.

7 Dr. Taylor's saturation patrol opinions are factually suspect for another reason. His
8 study is admittedly "quasi-experimental" in nature. *Id.* at ¶ 124. His "quasi-experimental"
9 study does not result in definitive findings or conclusions, only "inferences." *Id.* His
10 saturation patrol analysis also: (1) fails to exclude those patrols that included a human
11 smuggling interdiction component, or otherwise exclude human smuggling load vehicles
12 found containing multiple illegal immigrants as occupants, which skews his saturation patrol
13 results; (2) fails to exclude duplicate records in the MCSO Computer Aided Dispatch
14 database, which skews his saturation patrol results; (3) excludes thousands of other cases that
15 should have been included in the analysis, which artificially inflates his saturation patrol
16 results (he admits that he excluded 18% of all MCSO traffic stops per year because they did
17 not "align" with Plaintiffs' case theory or Plaintiffs' "concerns"); and (4) fails to account for
18 any socio-economic variables that affected his saturation patrol model. *Id.*

19 Third, Dr. Taylor's saturation patrol opinions are legally insufficient, standing alone,
20 to avoid summary judgment. Assuming, *arguendo*, that Dr. Taylor's saturation patrol
21 opinions are reliable about the impact that MCSO saturation patrols has on Latinos in
22 Maricopa County, the opinion still is immaterial to the issue of whether *these particular*
23 *Plaintiffs* were the subject of racial profiling by MCSO personnel. An official policy,
24 practice, or act is **not** unconstitutional solely because it has a racially disproportionate
25 impact. *Castaneda v. Partida*, 430 U.S. 482, 493 (1971). Dr. Taylor's saturation patrol
26 opinions, at most, might show disparate impact but not disparate treatment. An equal
27 protection cause of action can only be based upon the latter. *See Washington*, 426 U.S. at
28 242 ("Disproportionate impact... is not the sole touchstone of invidious racial
discrimination..."). Moreover, only in "rare cases [has] a statistical pattern of

1 discriminatory impact demonstrated a constitutional violation.” *McCleskey*, 481 U.S. at 293
2 n.12 (citing *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Yick Wo v. Hopkins*, 118 U.S. 356
3 (1886)).

4 Finally, and perhaps most significant, the Defendants’ analysis set forth above and
5 below regarding the factual circumstances surrounding the traffic stop of *each* Plaintiff
6 shows that there is ***no discriminatory effect on the Plaintiffs***. Each of their vehicles,
7 whether they were driving the vehicles or were mere passengers, was stopped by MCSO
8 personnel based on probable cause or reasonable suspicion, and the Plaintiffs’ race and/or
9 ethnicity had nothing to do with their traffic stops.

10 Based on the foregoing, the Plaintiffs have failed to produce “evidence sufficient to
11 permit a reasonable trier of fact to find by a preponderance of the evidence that” the
12 Plaintiffs have suffered a discriminatory effect as a result of the MCSO’s conduct. *Keyser*,
13 265 F.3d at 754. There is no material issue of disputed fact on this point, and summary
14 judgment is appropriate.

15 **B. There is No Evidence that Any MCSO Personnel had Racially**
16 **Discriminatory Intent or Motive in Stopping, Questioning, or Detaining**
17 **the Plaintiffs.**

18 There is another reason summary judgment is appropriate on Plaintiffs’ Fourteenth
19 Amendment and Title VI claims: there is no evidence that any MCSO personnel that
20 interacted with any of the individual Plaintiff had racially discriminatory intent or motive.

21 **1. Melendres and Deputy DiPietro.**

22 There is no evidence creating a genuine issue of material fact as to whether Deputy
23 DiPietro had racially discriminatory intent or motive in stopping the Melendres vehicle.
24 Before Deputy DiPietro found probable cause to stop the truck in which Mr. Melendres was
25 a passenger, he did not know or see the race of the truck’s driver or the race of the
26 passengers in the truck. SOF at ¶ 125. Race was not a factor in Deputy DiPietro’s finding
27 that he had probable cause to stop the truck:

28 Q. Did race of either the driver or the passengers of the truck play any role
in your decision to find probable cause to stop this truck?

1 A. No.

2 Q. Do you ever use race to stop vehicles?

3 A. No, I don't.

4 Q. Do you ever use race to find probable cause for traffic stops?

5 A. No.

6 *Id.* at ¶ 126.¹¹ Even Mr. Melendres does not have an opinion on whether he was racially
7 profiled:

8 Q. You also claim in your lawsuit that you have suffered unlawful discrimination.
9 Do you believe that the deputies that you encountered on September 26, 2007,
10 were intentionally trying to deprive you of your constitutional rights?

11 A. *I cannot say that. I can't be -- tell you for sure.*

12 *Id.* at ¶ 128 (emphasis added).

13 Defense expert Mr. Click opines that “[t]here is no evidence that Deputy DiPietro
14 knew the race or ethnicity of the vehicle’s occupants prior to the truck stopping or that race
15 or ethnicity played any role in Deputy DiPietro’s actions.” *Id.* at ¶ 129. On the other hand,
16 Plaintiffs’ liability expert Mr. Stewart testified at one point in his deposition to the general
17 conclusion that Deputy DiPietro must have had discriminatory intent or motive in stopping
18 the truck in which Mr. Melendres was a passenger. Mr. Stewart essentially “reasoned” that:
19 (a) Deputy DiPietro testified that, in his law enforcement experience in Maricopa County,
20 most day laborers were illegal aliens from Mexico; (b) the MCSO operation that date was
21 targeting a church suspected of being a drop-house for smuggled illegal aliens and a location
22 for such illegal aliens to be picked-up for day labor jobs; (c) Deputy DiPietro was instructed
23 to find probable cause for vehicles that picked-up passengers at the church and, before
24 finding such probable cause for the Melendres vehicle, he already had the belief that anyone
25 picked up at the church would be an illegal alien; and (d) because illegal immigrants from
26 Mexico are Latinos by definition, Deputy DiPietro must have been intending to discriminate
27 against Latinos. *Id.* at ¶ 130. In other words, *Mr. Stewart conflates the MCSO’s targeting
of crimes regarding human smuggling with the targeting of Latinos.*

28 ¹¹ Similarly, Deputy Carlos Rangel does not racial profile because it is morally wrong and illegal. *Id.* at ¶ 127.

1 A closer examination of Mr. Stewart's opinion, however, shows that he lacks factual
2 support for his general conclusion. The truth is Mr. Stewart admits that he lacks any factual
3 basis to support a conclusion that Deputy DiPietro acted with racially discriminatory intent
4 or motive in stopping the Melendres truck:

5 Q. Do you *believe* that Louis DiPietro had discriminatory intent or motivation as
6 to race in stopping the truck in which Mr. Melendres was a passenger?

7 A. **I don't know.**

8 Q. Is it your *opinion* that Deputy DiPietro had a racially discriminatory intent or
9 motivation in stopping the truck in which Mr. Melendres was a passenger?

10 A. **I don't know.**

11 Q. Is there any evidence that Deputy DiPietro knew the race of the driver of the
12 truck before stopping it?

13 A. **I don't know** whether that information was given to him by the observer.

14 Q. Is there any evidence that Deputy DiPietro knew the race of any occupants in
15 the truck before stopping it?

16 A. **I don't recall** whether that information was given by the observer either.

17 Q. **Is there any evidence that Deputy DiPietro used race as a factor in any**
18 **form to decide to stop the truck?**

19 A. **No, sir.**

20 Q. Is there any evidence that Deputy DiPietro knowingly harbored explicit bias
21 towards specific groups of people?

22 A. **Not that I know of.**

23 Q. Is there any evidence that Deputy DiPietro had unconscious bias toward certain
24 group of people?

25 A. **We don't know.**

26
27 *Id.* at ¶ 131 (emphasis added). Based on the undisputed record before the Court, therefore,
28 Plaintiffs have failed to prove with sufficient evidence that Deputy DiPietro was motivated

1 by racially discriminatory intent in making the traffic stop of the Melendres vehicle. Mr.
2 Melendres' Fourteenth Amendment and Title VI claims fail as a matter of law and the Court
3 must dismiss those claims.

4 **2. Mr. and Mrs. Rodriguez and Deputy Ratcliffe.**

5 Before making the decision to conduct the traffic stop of the Rodriguez' truck, and to
6 issue a citation to the truck's driver, Deputy Ratcliffe did not see the race of the truck's
7 driver or of any occupants of the truck. *Id.* at ¶ 132. Mrs. Rodriguez actually admits that
8 Deputy Ratcliffe was not acting with racially discriminatory intent or motive:

9 Q. Do you believe that Deputy Ratcliffe was intentionally trying to deprive you of
10 your constitutional rights?

11 A. **No.**

12 *Id.* at ¶ 133 (emphasis added).

13 Defense expert Mr. Click testified that there is no direct or circumstantial evidence that
14 Deputy Ratcliffe racially profiled or otherwise acted with racially discriminatory intent or
15 motive toward Mr. and Mrs. Rodriguez. *Id.* at ¶ 134. It is, therefore, not surprising that
16 Plaintiffs' own expert, Mr. Stewart, has no opinion as to whether Deputy Ratcliffe had
17 racially discriminatory intent or motive in stopping the Rodriguez vehicle:

18 Q. Is it your opinion that Deputy Ratcliffe had discriminatory intent or motive in
19 stopping the Rodriguez vehicle?

20 A. **Don't know.**

21 *Id.* at ¶ 135 (emphasis added).

22 At the most, Mr. Stewart offers a speculative opinion that Deputy Ratcliffe "**maybe**"
23 had racially discriminatory intent or motive *in issuing a traffic citation* to Mr. Rodriguez. *Id.*
24 at ¶ 136. However, there are a number of problems with Mr. Stewart's "maybe" opinion.
25 First, the "maybe" opinion lacks the required degree of probability to make it reliable and
26 therefore admissible. *California ex rel. Brown v. Safeway, Inc.*, 615 F.3d 1171, 1181 n.4
27 (9th Cir. 2010) ("An expert's opinions that are without factual basis and are based on
28 speculation or conjecture are inadmissible at trial and are inappropriate material for

1 consideration on a motion for summary judgment.”) (citation omitted). Second, even
2 assuming the Fourteenth Amendment issue in this case is broadly construed to include
3 whether Deputy Ratcliffe’s issuance of a traffic citation to Mr. Rodriguez for an admitted
4 traffic violation rises to the level of a constitutional violation, Mr. Stewart’s foundation for
5 his “maybe” opinion is built on unstable ground. Mr. Stewart has no direct or circumstantial
6 evidence showing that Deputy Ratcliffe used race as a factor in any form to decide to give a
7 citation to Mr. Rodriguez. *Id.* at ¶ 136.

8 Third, the sole basis for Mr. Stewart’s “maybe” opinion is speculative and relies on an
9 untenable interpretation of the evidence. Mr. Stewart bases his “maybe” opinion on the
10 reasoning that Deputy Ratcliffe stopped several non-Latino motorists on Bartlett Dam Road
11 the same day he stopped Mr. and Mrs. Rodriguez, did not give the non-Latino drivers
12 citations, referred the non-Latino drivers to a Tonto National Forest Ranger (who issued
13 citations to the non-Latino drivers), and the only citation Deputy Ratcliffe actually issued
14 was to Mr. Rodriguez, a Latino. *Id.* at ¶ 137. As such, Mr. Stewart concludes that Deputy
15 Ratcliffe intentionally treated Mr. Rodriguez differently than the non-Latinos drivers he
16 pulled over by issuing a citation to Mr. Rodriguez but referring the non-Latinos to the Tonto
17 National Forest Ranger for a determination on whether to issue a citation. *Id.* However,
18 Deputy Ratcliffe did *not* recall the race of the other drivers he referred to the Tonto National
19 Forest Ranger, and he actually observed the Forest Ranger give citations to those other
20 drivers regardless of their race. *Id.* at ¶ 138.

21 Fourth, another MCSO officer working Lake Patrol with Deputy Ratcliffe, Deputy
22 Maltz, had on the same day allowed other motorists (of unknown races) to drive on the
23 closed Bartlett Dam Road in order to go to the lake to repair either their recreational vehicles
24 or boats that had been damaged in the storm. *Id.* at ¶ 139. Deputy Maltz was responsible for
25 deciding whether to cite or warn those drivers, not Deputy Ratcliffe. *Id.* Deputy Ratcliffe
26 has known Deputy Maltz for 2.5 years and does not believe that Deputy Maltz’ decision to
27 allow other people to use Bartlett Dam Road to repair their property without the issuance of a
28 traffic citation was based in any way on racial considerations. *Id.* at ¶ 140. Again, however,
that was a decision of Deputy Maltz, not Deputy Ratcliffe and cannot, therefore, serve as a

1 basis for Mr. Stewart's opinion as to Deputy Ratcliffe's possible racially discriminatory
2 motive.

3 Based on the foregoing, Plaintiffs have failed to provide sufficient evidence that
4 Deputy Ratcliffe acted with racially discriminatory intent or motive toward Mr. and Mrs.
5 Rodriguez. Their Fourteenth Amendment and Title VI claims fail as a matter of law.

6 **3. Meraz and Nieto and Deputies Armendariz, Kikes, and Beeks.**

7 Deputy Kikes had probable cause to stop the vehicle driven by Mr. Nieto and
8 occupied by Ms. Meraz because he believed there was an emergency situation of some type
9 involving Deputy Armendariz. *Id.* at ¶ 85. Due to the vehicle's window tinting, Deputy
10 Kikes could not see the race, sex, or other characteristics of the vehicle's occupants. *Id.* at ¶
11 86. While Mr. Nieto and Ms. Meraz are adamant that they were racially profiled, this
12 speculative testimony is insufficient to avoid summary judgment. *Cornwell*, 439 F.3d at
13 1028-29 n.6 (a plaintiff may not defeat a defendant's summary judgment motion "by relying
14 solely on the plaintiff's subjective belief that the challenged action was [wrong].")

15 In stark contrast to the speculative testimony of Mr. Nieto and Ms. Meraz, their own
16 liability expert's opinions justify summary judgment in favor of the Defendants on these
17 Plaintiffs' racial discrimination claims. Plaintiffs' expert, Mr. Stewart, admittedly has no
18 evidence of racially discriminatory intent or motive by Deputy Armendariz. *Id.* at ¶ 141.
19 There is no evidence of racially discriminatory intent or motive by Deputy Beeks in drawing
20 his weapon. *Id.* at ¶ 142. There is no evidence that Deputy Kikes had racially
21 discriminatory intent or motive in making the traffic stop of the Meraz-Nieto vehicle. *Id.* at
22 ¶ 143. Finally, Mr. Stewart testified that there is no evidence that Ms. Meraz and Mr. Nieto
23 were racially profiled in either the traffic stop or during their subsequent treatment by the
24 MCSO deputies. *Id.* at ¶ 144. All Mr. Stewart has is his unsupported "*suspicions*" and "*a
25 strong hint that*" Deputy Kikes "*may have been*" racially motivated to make the traffic stop
26 of Ms. Meraz and Mr. Nieto. *Id.* at ¶ 145. Such speculative testimony does not create a
27 triable issue. *Safeway, Inc.*, 615 F.3d at 1181 n.4 (speculative opinions "are inappropriate
28 material for consideration on a motion for summary judgment.")

Based on the foregoing, Plaintiffs have failed to provide sufficient evidence that

1 Deputies Armendariz, Kikes, or Beeks acted with racially discriminatory intent or motivation
2 toward Ms. Meraz and Mr. Nieto. Their racial profiling claim is subject to summary
3 dismissal.

4 **VI. CONCLUSION**

5 Although Plaintiffs have been subjected to the Defendants' allegedly wrongful policy,
6 pattern, and practice of targeting Latinos for years since the filing of this action, the
7 evidentiary record establishes that Plaintiffs do not have a credible and genuine threat of
8 future injury. As a consequence, the Plaintiffs lack standing to seek the equitable remedies
9 pled in the First Amended Complaint.

10 The undisputed evidentiary record in this case further demonstrates that each of the
11 Plaintiffs' traffic stops were properly predicated upon probable cause or reasonable suspicion
12 that Arizona law had been violated by the driver of each vehicle. As such, the Court must
13 dismiss the Plaintiffs' Fourth Amendment claim and the Arizona Constitution Article II, § 8
14 claim as a matter of law.

15 Finally, the evidentiary record demonstrates that Plaintiffs have failed to come
16 forward with sufficient evidence that would allow a reasonable trier of fact to find by a
17 preponderance of the evidence that the Defendants' conduct toward Plaintiffs had a racially
18 discriminatory effect or that Defendants' conduct resulted from a racially discriminatory
19 intent. Accordingly, summary judgment is appropriate as to Plaintiffs' Fourteenth
20 Amendment and Title VI claims.

21 DATED this 29th day of April, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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