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

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

No. CV 07-02513-PHX-GMS

**DEFENDANTS' STATEMENT OF
FACTS IN SUPPORT OF THEIR
MOTION FOR SUMMARY
JUDGMENT**

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21 Pursuant to Rule 56(b), Federal Rules of Civil Procedure, Defendants Joseph M.
22 Arpaio and the Maricopa County Sheriff's Office submit the following Statement of Facts in
23 Support of their Motion for Summary Judgment:

24 1. Plaintiffs have sued Sheriff Joseph M. Arpaio ("Arpaio") and the Maricopa
25 County Sheriff' Office ("MCSO") for their alleged violations of the Plaintiffs' rights under
26 the Fourth and Fourteenth Amendments to the United States Constitution, alleged violations
27 of the Plaintiffs' right under the Arizona Constitution's Article II, Section 8, which prohibits
28 unreasonable searches and seizures, and alleged violations of Plaintiffs' right to be free of

1 racial discrimination pursuant to Title VI of the Civil Rights Act of 1964 which prohibits
2 racial discriminatory practices by local governmental entities. *See* Dkt.#26 (containing
3 Plaintiffs’ First Amended Complaint dated September 5, 2008).

4 2. Each of the individual Plaintiffs (Manuel de Jesus Ortega Melendres, Jessica
5 Quitugua Rodriguez, David Rodriguez, Velia Meraz, and Manual Nieto, Jr.) has been, during
6 motor vehicle traffic stops on public roadways, stopped, detained, questioned, and/or
7 searched by MCSO officers, allegedly in violation of their constitutional and statutory rights.
8 *See* Dkt.#26 (containing Plaintiffs’ First Amended Complaint dated September 5, 2008).

9 3. The Plaintiffs’ First Amended Complaint asserts that each of the individual
10 Plaintiffs were stopped, detained, questioned, and/or searched by MCSO officers allegedly
11 pursuant to an officially-sanctioned policy, pattern, and practice of racially profiling,
12 targeting, or otherwise discriminating against Latinos during motor vehicle traffic stops.
13 *See* Dkt.#26 at p. 3, lns. 15-25, ¶ 3; p. 3, ln. 26 to p. 4, ln. 1, ¶ 4 (alleging that “Plaintiffs
14 bring this action as representative of a class of Latino persons who as a result of racial
15 profiling, have been or will be stopped, detained, interrogated, or searched by Arpaio and his
16 agents *in moving or parked vehicles in Maricopa County.*”) (emphasis added).

17 4. Plaintiffs allege in their First Amended Complaint that the Defendants’
18 purported policy, practice, pattern, and practice is manifested not only on an “day-to-day”
19 basis during routine traffic stops conducted by MCSO deputies, but also during traffic stops
20 made during “crime suppression sweeps” or law enforcement saturation patrols. *See* Dkt.#26
21 at p. 3, p. 3, lns. 15-25, ¶ 3.

22 5. The gravamen of Plaintiffs’ lawsuit is the charge that MCSO deputies are
23 racially profiling Latinos to make “pretextual and unfounded [traffic] stops,” and following
24 those stops, engaged in “racially motivated questioning, searches and other treatment, and
25 often baseless arrests.” *See* Dkt.#26 at p. 3, p. 3, lns. 15-25, ¶ 3. The Plaintiffs, therefore,
26 seek declaratory and injunctive relief against the Defendants. *See* Dkt.#26 at pgs 29-30, ¶¶
27 A-F.

28 6. Plaintiff Manuel de Jesus Ortega Melendres is a resident of the Republic of
Mexico. *See* Deposition of Plaintiff Manuel Melendres at p. 7, lns. 7-15, attached as

1 Exhibit 1.

2 7. Mr. Melendres legally entered the United States and visited Maricopa County
3 as a tourist between September 6, 2007 and September 26, 2007. *See* Deposition of Plaintiff
4 Manuel Melendres at p. 11, lns. 6-18, attached as Exhibit 1.

5 8. Under federal law, during Mr. Melendres' visit to Maricopa County he was
6 required to keep with him (i.e., on his person) his B-1/B-2 tourist visa and an I-94 Form (that
7 allowed him to travel more than 25 miles north of the border with Mexico). *See* Deposition
8 of MCSO Deputy Carlos Rangel at p. 119, ln. 19 to p. 120, ln. 1, attached as Exhibit 2.

9 9. If a visiting foreign national, such as Mr. Melendres, does not have his tourist
10 visa or I-94 Form on his person, that person is legally "out of status" and a local law
11 enforcement officer certified under the federal government's 287(g) program may lawfully
12 detain such a person to determine his status and/or in order to deliver him to federal
13 immigration authorities for a determination of his lawful presence in the United States (i.e.,
14 the United States Immigration and Customs Enforcement, or "ICE"). *See* Deposition of
15 MCSO Deputy Carlos Rangel at p. 119, ln. 19 to p. 120, ln. 1, attached as Exhibit 2 ("Q: If I
16 come to you and tell you I have an I-94 but I don't have it on me, am I in status? A. You're
17 out of status.") (Q. And why am I out of status? A. Because you need to carry the B-1/B-2
18 and the I-94 together."); *see also* p. 120, lns. 6-9, attached as Exhibit 2 ("Q. Does the fact
19 that Mr. Melendres did not have his I-94 form on his person at the time you spoke with him
20 allow you under 287(g) to take him into detention? A. Yes."); *see also* Filed Under Seal
21 *Defendants' Supplemental Statement of Facts Re: Testimony of ICE Witnesses in Support of
22 Their Motion for Summary Judgment* at ¶ 26.

22 10. A person visiting the United States with the type of visa issued to Mr.
23 Melendres, is not lawfully permitted to work for compensation or otherwise have
24 employment. *See* Deposition of MCSO Deputy Carlos Rangel at p. 119, lns. 16-18, attached
25 as Exhibit 2 ("Q. Are you permitted on a B-1/B-2 Visa, based on your ICE training, to work
26 for compensation? A. No."); *see also* Filed Under Seal *Defendants' Supplemental
27 Statement of Facts Re: Testimony of ICE Witnesses in Support of Their Motion for Summary
28 Judgment* at ¶ 26.

1 11. If a foreign national visiting the United States on a tourist visa admits to a
2 287(g) certified law enforcement officer that he/she is working while as a tourist, that foreign
3 national is “out of status” and may be detained for delivery to ICE. *See* Deposition of
4 MCSO Deputy Carlos Rangel at p. 119, lns. 2-18, attached as Exhibit 2; *see also* Filed Under
5 Seal Defendants’ Supplemental Statement of Facts Re: Testimony of ICE Witnesses in
6 Support of Their Motion for Summary Judgment at ¶ 26.

7 12. On September 26, 2007, the MCSO’s Human Smuggling Unit (“HSU”) was in
8 Cave Creek, Arizona investigating a particular church in response to citizen complaints
9 about the church serving as a possible “drop house” for human smuggling, and because “day
10 laborers” near the church were stepping out into the traffic on Cave Creek Road near the
11 church and causing traffic problems. *See* Deposition of MCSO Deputy Carlos Rangel at p.
12 27, ln. 9 to p. 28, ln. 12, attached as Exhibit 2 (*see also* p.28, lns. 3-6) (“Q. Was there some
13 sort of particular investigation that was going on there? A. I believe we were there because
14 of complaints from citizens of a possible drop house in the area. Q. So was the Human
15 Smuggling Unit on patrol in connection with investigating a possible drop house? A. Yes.”);
16 *see also* Deposition of MCSO Deputy Manuel Madrid dated 10/27/09 at p.47, ln. 19 to p. 48,
17 ln. 14, attached as Exhibit 3 (“Q. And do you recall what you were doing in Cave Creek that
18 day? A. We were doing a suppression patrol. Q. And what was the purpose of the
19 suppression patrol? A. We were there based on complaints from citizens to city hall that
20 they had several individuals up there stepping out in traffic, creating traffic hazards, stopping
21 vehicles on roadways. We were up there in response to that.”); *see also* Deposition of
22 MCSO Deputy Louis DiPietro at p. 111, lns. 13-16 and p. 113, lns. 12-16, attached as
23 Exhibit 4 (“Q. And based on your conversations with other officers, you knew that other
24 officers of the MCSO were monitoring activity at or near a church suspected of being a drop
25 house for human smuggling? * * * A. Yes, Yes.”); *see also* Deposition of MCSO Deputy
26 Louis DiPietro at p. 46, ln. 21 to p. 47, ln. 9, attached as Exhibit 4 (“Q. What were you
27 doing in Cave Creek that morning? A. I was assisting other deputies that were watching, I
28 believe it was -- they were watching, I believe it was a church parking lot that had day
laborers working from it or being picked up by people. Q. Were you assisting them as a K-9

1 officer or as, more as a patrol officer? A. More of a patrol because I had a marked vehicle.

2 Q. And do you know why they were watching this church? A. I believe they had
3 information that they were, there were illegal aliens being, on the property, and that they
4 were using that property as a point where they could be picked up as day laborers.”). As such
5 the HSU was conducting surveillance on the church and its property and conducted a narrow
6 traffic patrol that related exclusively to stopping for probable cause only those vehicles that
7 were observed to have picked up people congregating at the church property and that had left
8 the property. *Id.*

9 13. On September 26, 2007, Mr. Melendres testified that he wanted to go to some
10 location in Scottsdale to take photographs and that he needed a ride to that location, and a
11 friend named Jorge Morales from Mexico offered to arrange to have an unknown person in a
12 white colored pickup truck give him the ride. *See* Deposition of Plaintiff Manuel Melendres
13 at p. 14, ln. 17 to p. 17, ln. 6, attached as Exhibit 1.

14 14. Mr. Melendres sat in the right front seat of the truck, the unknown Caucasian
15 drove the truck, and Mr. Morales and another unknown person sat in the second row in the
16 extended cab pick-up truck and they ended up driving on Cave Creek Road. *See* Deposition
17 of Plaintiff Manuel Melendres at p. 17, lns. 16-22, attached as Exhibit 1.

18 15. Mr. Melendres and three other men were picked up at the church by the
19 unknown driver of the white colored pickup truck, and the church was under HSU
20 surveillance. *See* Deposition of MCSO Deputy Louis DiPietro at p. 48, lns. 2-20, attached as
21 Exhibit 4 (“Q. Was there some sort of plan that you were briefed on as to how to participate
22 in this operation? A. There was going to be two marked units, two K-9 units; one east and
23 one west of the location. And -- I don't remember who all was involved with Sergeant
24 Madrid, who was all under him, but I know Sergeant Madrid was there. *And they had*
25 *somebody that had eyes on or some type of surveillance and would call out if they had a*
26 *vehicle that picked up, you know, a group of suspected illegals and drove off the property.*
27 *Kind of gave a description of the vehicle. And we were advised prior to going out that if you*
28 *can find PC, stop it; if not, let it go. Q. And "if you can find PC," what did you understand*
that to mean? A. Probable cause. Q. Probable cause to make a traffic stop of that vehicle?

1 A. Correct.”); *see also* p. 49, ln. 4 to p. 50, ln. 5 attached as Exhibit 4 (“Q. If you were able
2 to develop probable cause to stop the vehicle, were you then advised to investigate whether
3 there were illegal aliens in the vehicle? A. I don't remember being briefed on that. *Once the*
4 *vehicle was stopped, I asked the driver, you know, for his driver's license, registration and*
5 *insurance. And I asked: Who are these guys, who's in our vehicle? And he said he had*
6 *picked them up. And he was a construction worker of some sort and -- or appeared to be.*
7 *And I called for the, Sergeant Madrid, and they came and took over there. Q. Why did you*
8 *call Sergeant Madrid? A. The driver told me that he had picked them up to work. And I had*
9 *reasonable suspicion from that that they were day laborers and here illegally. Q. Did you*
10 *have any reason to believe that they were committing any sort of state crime? Violating any*
11 *state criminal law? A. Well, I'm not sure what the employer sanction laws and when they*
12 *came into effect or not. But I had reason to believe that they were here illegally.*
13 *Q. And so it was based on your belief that they were here illegally that you called Sergeant*
14 *Madrid? A. Yes.”) (emphasis added); see also p. 51, ln. 24 to p. 52, ln. 3, attached as Exhibit*
15 *4 (“Q. And so is it your understanding that that surveillance vehicle observed this particular*
16 *truck pick up persons from the parking lot and start driving away from the church? A. Yes.”)*
(emphasis added).

17 16. MCSO Deputy Louis DiPietro was assigned by an HSU surveillance member
18 to follow the truck in which Mr. Melendres was a passenger and to look for probable cause
19 to conduct a traffic stop of the truck. *See* Deposition of MCSO Deputy Louis DiPietro at p.
20 52, ln. 4 to p. 54, ln. 10, attached as Exhibit 4.

21 17. Deputy DiPietro paced the truck for 1.5 miles and determined it was speeding
22 and that he had probable cause to make a traffic stop of the truck. *See* Deposition of MCSO
23 Deputy Louis DiPietro at p. 53, lns. 9-18 (miles paced); p. 52, ln. 4 to p. 54, ln. 10 (probable
24 cause), attached as Exhibit 4; *see also* p. 115, lns. 2-17 (“Q. Your testimony earlier in this
25 deposition was that you estimated that perhaps you had traveled one and a half miles or so
26 from the point you first began looking for probable cause on the truck to the point you
27 actually made the decision that you had probable cause? A. Yes. Q. Okay. You
28 determined that this driver, based on your pacing technique, had exceeded the posted speed

1 limit? A. Yes. Q. You told the plaintiffs' lawyer earlier that the posted speed limit was 25
2 miles per hour? A. Yes. Q. That based on your pacing technique, you determined the driver
3 was going 34 miles per hour? A. Yes.”).

4 18. Deputy DiPietro interacted with the truck’s driver, and based on information
5 provided by the driver and other indications, formed reasonable suspicion that the truck’s
6 occupants may have been in the country unlawfully. *See* Deposition of MCSO Deputy Louis
7 DiPietro p. 49, ln. 4 to p. 50, ln. 5; p. 54, ln. 19 to p. 55, ln. 11; attached as Exhibit 4; *see*
8 *also* Deposition of MCSO Deputy Carlos Rangel at p. 32, lns. 5-10, attached as Exhibit 2
9 (another indication to Deputy DiPietro was the observation that the truck’s passengers were
10 unable to speak the English language).

11 19. Deputy DiPietro called on his radio for a 287(g) MCSO deputy to assist at the
12 stop to investigate the occupants in the white truck. *See* Deposition of MCSO Deputy Carlos
13 Rangel at p. 28, lns. 13-24, attached as Exhibit 2.

14 20. MCSO Deputy Carlos Rangel arrived at the traffic stop involving Mr.
15 Melendres within a minute of receiving the call for a 287(g) deputy. *See* Deposition of
16 MCSO Deputy Carlos Rangel at p. 29, lns. 2-6, attached as Exhibit 2. Deputy Rangel was
17 287(g) certified at the time. *Id.* at p. 14, ln. 15 to p. 15, ln. 8, attached as Exhibit 2.

18 21. Deputy DiPietro told Deputy Rangel that the passengers in the truck did not
19 speak English and asked him if he would talk to the passengers. *See* Deposition of MCSO
20 Deputy Carlos Rangel at p. 32, lns. 5-10, attached as Exhibit 2.

21 22. Deputy Rangel, a Latino himself, and fluent Spanish speaking deputy, asked
22 the passengers for identification. *See* Deposition of MCSO Deputy Carlos Rangel at p. 34,
23 lns. 1-13; p. 113, ln. 3 to p. 114, ln. 7, attached as Exhibit 2.

24 23. Deputy Rangel conducted his questioning of the truck’s passengers while
25 Deputy DiPietro was simultaneously questioning the driver of the truck. *See* Deposition of
26 MCSO Deputy Carlos Rangel at p. 33, lns. 20-25, attached as Exhibit 2 (“Q: I take it that
27 Deputy DiPietro dealt with the driver and you were speaking with the passengers? A. Yes.
28 Q. When you were speaking with the passengers, was he [Deputy DiPietro] at the same
time talking to the driver? A. Yes.”).

1 24. The February 2007 Memorandum of Agreement between the MCSO and ICE,
2 a 287(g) deputy states:

3 The power and authority to interrogate any alien or person believed to be an alien as
4 to his right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. §
5 287.5(a)(1))... [and] [t]he power to arrest without warrant any alien entering or
6 attempting to unlawfully enter the United States, or any alien in the United States, if
7 the officer has reason to believe the alien to be arrested is in the United States in
8 violation of law and is likely to escape before a warrant can be obtained. INA §
9 287(a)(2) and 8 C.F.R. § 287.5(c)(1).

10 *See* Memorandum of Agreement at p. 3, bullet point one and two, attached as Exhibit 5.

11 25. Deputy Rangel, as a 287(g) certified officer, looks for indicators of unlawful
12 presence in the United States such as the person providing him with a foreign identification
13 card, not having any identification from anywhere in the United States, and the inability to
14 speak the English language. *See* Deposition of MCSO Deputy Carlos Rangel at p. 21, ln. 3
15 to p. 22, ln 3, attached as Exhibit 2. Based on those indicators, Deputy Rangel is permitted
16 to question persons about their origin and whether they are lawfully present in the United
17 States. *Id* at p. 21, ln. 13 to p. 22, ln. 3 (“Q. What sort of questions did you believe that you
18 were able to ask to determine a person's origin? A. Where were you born? Where are your
19 parents from? And how did you enter the United States? Q. And how would you -- how
20 would you decide whom to ask these questions of? A. There are a number of indicators that
21 would lead me to believe a person is in the United States illegally. Based on those
22 indicators, I would proceed on enforcing the immigration law. Q. And what were the
23 indicators that you would consider? A. They would -- the subject would provide a foreign
24 identification card. Subject doesn't speak English. And subject not producing a United
25 States' identification.”)

26 26. Mr. Melendres provided Deputy Rangel with his tourist visa but did not
27 provide an I-94 form. *See* Deposition of MCSO Deputy Carlos Rangel at p. 34, ln 20 to p.
28 35, ln. 10 attached as Exhibit 2.

 27. Deputy Rangel asked the passengers in the truck whether they were going to
work, and two of them responded “yes, with one of the responders being Mr. Melendres. *See*
Deposition of MCSO Deputy Carlos Rangel at p. 34, lns. 14-16, attached as Exhibit 2.

1 28. Deputy Rangel instructed those persons/passengers in the truck that said they
2 were going to work to exit or get out of the truck. *See* Deposition of MCSO Deputy Carlos
3 Rangel at p. 34, Ins. 14-16; *see also* p. 35, Ins.11-13, attached as Exhibit 2.

4 29. Based on the identification provided by Mr. Melendres and the others,
5 Deputy Rangel began to try to determine whether these persons/passengers were in the
6 United States illegally. *See* Deposition of MCSO Deputy Carlos Rangel at p. 35, Ins. 14-23,
7 attached as Exhibit 2.

8 30. Mr. Melendres told Deputy Rangel that he had legally entered the United
9 States through a port of entry, had an I-94 form, but did not have the I-94 form with him at
10 the moment. *See* Deposition of MCSO Deputy Carlos Rangel at p. 35, ln. 6 to p. 36, ln. 20,
11 attached as Exhibit 2.

12 31. Mr. Melendres testified that he gave his I-94 Form to the deputy (i.e., Deputy
13 Rangel) that questioned him at the time of the stop. *See* Deposition of Plaintiff Manuel
14 Melendres at p. 9, ln. 23 to p. 10, ln. 5; *see also* p. 22, ln. 6-13, attached as Exhibit 1. Mr.
15 Melendres, however, has never produced in this litigation a copy of the I-94 Form that he
16 supposedly had on his person on September 27, 2007, and the one I-94 Form that he did
17 produce during this litigation does not cover the date of his September 26, 2007 stop and
18 detention. Exhibit 1 at p. 10, ln. 8 to p. 11, ln.5.

19 32. Based on Mr. Melendres not having his I-94 Form on him at the time of the
20 traffic stop, and that he stated that he was working while on his visa, Deputy Rangel detained
21 Mr. Melendres with handcuffs and intended to have him delivered to ICE for verification of
22 status. *See* Deposition of MCSO Deputy Carlos Rangel at p. 36, ln. 10 to p. 37, ln. 2,
23 attached as Exhibit 2; *see also* p. 47, Ins. 5-13, attached as Exhibit 2 (“Q. Do you have any
24 reason to believe that ICE's conclusion that there was no reason to detain him was mistaken?
25 A. Yes. Q. And what are those -- what -- please explain. A. During the traffic stop when I
26 made contact, Mr. Melendres did not have his I-94 in his possession. Therefore, he was out
27 of status. That's the reason why he was detained and transported to DRO.”); *see also* Exhibit
28 2 at p. 119, ln. 2 to p. 120, ln. 9 (explaining out-of-status character of a person on a B-1/B-2
visa and working for compensation and such information serving as grounds for detention).

1 33. Deputy Rangel told Mr. Melendres that he was being detained because he did
2 not have his I-94 Form with him. *See* Deposition of MCSO Deputy Carlos Rangel at p. 38,
3 Ins. 19-25, attached as Exhibit 2. (“Q. Do you remember anything that was said to Mr.
4 Ortega during the time when he was handcuffed and searched? A. That he needed his I-94
5 with his B-1/B-2 Visa and that's why he was being detained. Q. Is that what you said to
6 him? A. Yes, I did.”). Mr. Melendres described Deputy Rangel as acting politely to him at
7 all times. *See* Deposition of Plaintiff Manuel Melendres at p. 27, In. 25 to p. 28, In.2,
8 attached as Exhibit 1 (“Q. Did the Spanish -- were you treated rudely by the Spanish-
9 speaking officer who asked you for documentation? A. No.”).

10 34. The total length of time of Deputy Rangel’s questioning of the truck’s
11 passengers was fifteen (15) minutes. *See* Deposition of MCSO Deputy Carlos Rangel at p.
12 40, Ins. 10-13; p 40, In. 24 to p. 41, In. 4, attached as Exhibit 2.

13 35. All the passengers from the truck were detained. *See* Deposition of MCSO
14 Deputy Carlos Rangel at p. 42, Ins. 7-23, attached as Exhibit 2.

15 36. The passengers/detainees were taken to an MCSO substation and then
16 delivered to ICE’s Detention and Removal Office near Central Avenue and McDowell Road.
17 *See* Deposition of MCSO Deputy Carlos Rangel at p. 44, In. 22 to p. 45, In. 7, attached as
18 Exhibit 2. Mr. Melendres was in an MCSO holding cell before removal to ICE for “probably
19 about two hours.” *See* Deposition of Plaintiff Manuel Melendres at p. 25, Ins. 10-15,
20 attached as Exhibit 1. Mr. Melendres was held another six to seven hours at ICE. *See*
21 Deposition of Plaintiff Manuel Melendres at p. 25, In. 16 to p. 26, In. 4, attached as
22 Exhibit 1.

23 37. ICE released Mr. Melendres from detention because ICE concluded that there
24 was insufficient evidence that Mr. Melendres was working and that he did have an I-94 Form
25 issued to him despite him being “out-of-status” (i.e., not having the form on him when
26 questioned by Deputy Rangel). *See* Deposition of MCSO Deputy Carlos Rangel at p. 45, In.
27 9 to p. 46, In. 20, attached as Exhibit 2.

28 38. Plaintiffs’ First Amended Complaint asserts that an unknown MCSO deputy
made allegedly crude and derogatory remarks to Mr. Melendres about lotion found in his

1 pocket. *See* Dkt#26 at p. 18, ¶¶ 61-62. Mr. Melendres, however, does not speak or
2 understand English well and did not personally hear such alleged comments. *See* Deposition
3 of Plaintiff Manuel Melendres at p. 6, lns. 5-11 and p. 7, lns. 2-6, attached as Exhibit 1 (not
4 understanding much English and having to be deposed through an interpreter); *see also*
5 Exhibit 1 at p. 31, ln. 1 to p. 33, ln. 1 (discussing Mr. Melendres' knowledge of the alleged
6 crude and derogatory remarks). Such report of the crude remark is hearsay and was reported
7 to him via his friend Jorge Morales. Exhibit 1 at p. 33, ln. 8-11 (“Q. You heard from George
8 that they were talking about whether your lotion was used for masturbation; is that true? A.
9 Yes, later on.”). MCSO Deputies DiPietro, Rangel, and Madrid deny making or hearing
10 such comments. *See* Deposition of MCSO Deputy Carlos Rangel at p. 120, ln. 12 to 121, ln.
11 1, attached as Exhibit 2; Deposition of MCSO Sgt. Manuel Madrid at p. 220, lns. 4-25,
12 attached as Exhibit 3; Deposition of MCSO Deputy Louis DiPietro at p. 120, ln. 23 to p. 121,
13 ln. 22, attached as Exhibit 4.

14 39. The MCSO Lake Patrol Division is responsible for policing the recreational
15 areas within Maricopa County and the Tonto National Forest. *See* Deposition of MCSO
16 Deputy Matthew Ratcliffe at p. 9, lns. 12-15, and lns. 20-22, attached as Exhibit 6. Lake
17 Patrol deputies conduct traffic related patrol duties near the recreational areas, perform
18 searches and dive missions in the lakes and rivers, and ATV patrols. *Id.*

19 40. On Sunday, December 2, 2007, the Maricopa County Department of
20 Transportation, in order to try to protect the public's safety, closed the road to Bartlett Lake,
21 Bartlett Dam Road, because of storm damage that caused heavy flooding on it and had
22 washed away parts of the road. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 91,
23 ln. 25 to p. 93, ln. 10; *see also* p. 18, lns. 19-21, p. 23, lns. 17-18; p. 92, ln. 23 to p. 93, ln. 4
24 attached as Exhibit 6 (“Q. What are, based on your experiences, the concerns or the dangers
25 of motorists driving on a damaged road? A. Well, on this particular road, anything from flash
26 flood in that area, as well as damage to their vehicle or injuries they sustain due to a crash
27 caused by the debris on the roadway.”).

28 41. There was a “*Road Closed*” sign posted by the MCDOT across Bartlett Dam
Road indicating to approaching drivers that the road was closed. *See* Deposition of MCSO

1 Deputy Matthew Ratcliffe at p. 92, Ins. 9-22, attached as Exhibit 6; *See also* Photographs of
2 Road Closed sign taken by Deputy Matthew Ratcliffe attached as Exhibit 9 (*See* Deposition
3 of MCSO Deputy Matthew Ratcliffe at p. 107, In. 8 to p. 108, In. 10, attached as Exhibit 6.
4 (“A. Due to the argumentative nature of the passenger in the vehicle [Mrs. Rodriguez],
5 [Deputy Ratcliffe] wanted to take photographs of the ‘*Road Closed*’ sign and the ‘*Road*
6 *Closed Ahead*’ signs for later defense in court.”); *See also* Deposition of MCSO Deputy
7 Matthew Ratcliffe at p. 42, Ins 1-17, attached as Exhibit 6 (laying the foundation for the
8 photographs attached as Exhibit 9 to this Statement of Facts).

9 42. Deputy Ratcliffe was on patrol on Bartlett Dam Road on December 2, 2007.
10 *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 88, In. 24 to p. 89, In. 7, attached
11 as Exhibit 6.

12 43. No saturation patrol was conducted by the MCSO on December 2, 2007 and
13 neither Deputy Ratcliffe nor anyone from the MCSO was conducting a saturation patrol on
14 that date. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 89, Ins. 12-25, attached
15 as Exhibit 6.

16 44. In the early afternoon of December 2, 2007, Deputy Ratcliffe observed a dark
17 colored truck driving toward his parked position on the closed Bartlett Dam Road and then
18 observed that it made a “u-turn” as it approached him and another officer. *See* Deposition of
19 MCSO Deputy Matthew Ratcliffe at p. 20, Ins. 14-25 (type and color of vehicle and time of
20 day); p. 22, Ins. 13-20 (discussing the truck’s u-turn as it approached the officers), attached
21 as Exhibit 6.

22 45. Deputy Ratcliffe determined that the driver was present on Bartlett Dam Road
23 unlawfully and decided to make a traffic stop of the vehicle and to issue a citation to the
24 driver. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 23, Ins. 14-18; see also p.
25 93, Ins. 16-21, attached as Exhibit 6.

26 46. Before deciding to conduct the traffic stop and to issue a citation to the truck’s
27 driver, Deputy Ratcliffe did not see the race of the truck’s driver or of any occupants of the
28 truck. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 93, In. 11 to p. 94, In. 9,
attached as Exhibit 6.

1 47. When the truck was stopped, Deputy Ratcliffe asked Mr. Rodriguez for his
2 driver's license, vehicle registration, and proof of insurance documents. *See* Deposition of
3 MCSO Deputy Matthew Ratcliffe at p. 24, ln. 25 to p. 25, ln. 2, attached as Exhibit 6.

4 48. Deputy Ratcliffe asked Mr. Rodriguez for his Social Security number. *See*
5 Deposition of MCSO Deputy Matthew Ratcliffe at p. 25, lns. 3-6, ln. 2, attached as Exhibit
6 6.

7 49. Deputy Ratcliffe did not ask for Mr. Rodriguez' Social Security card. *See*
8 Deposition of MCSO Deputy Matthew Ratcliffe at p. 24, ln. 25 to p. 25, ln. 2, attached as
9 Exhibit 6. Deputy Ratcliffe never asks any driver for his Social Security card. *Id.* at p. 25,
10 lns. 15-17.

11 50. After obtaining identification from Mr. Rodriguez, Deputy Ratcliffe asked him
12 why he was driving his truck on the closed Bartlett Dam Road. *See* Deposition of MCSO
13 Deputy Matthew Ratcliffe at p. 26, lns. 7-25, attached as Exhibit 6. Mr. Rodriguez stated to
14 Deputy Ratcliffe that "he had driven around the [road closed] sign and was taking the kids
15 down to the lake." *Id.* at p. 26, lns. 13-25 ("Q. What was that conversation? A. I asked them
16 why they were driving down the roadway. Q. And what do you recall them saying? A. Mr.
17 Rodriguez advised that he had driven around the sign and was taking the kids down to the
18 lake. Q. When you say 'the sign,' what sign are you referring to? A. The 'Road Closed'
19 sign. Q. You don't recall him saying 'Road Damaged Sign'? A. No, sir. Q. Or 'Road
20 Closed Ahead sign? A. No, sir. He stated the 'Road Closed.'"); *see also* p. 101, lns. 3 to p.
21 102, ln. 12, attached as Exhibit 6.

22 51. Mr. Rodriguez admits that he saw a "Road Damaged" sign but drove past it.
23 *See* Deposition of David Rodriguez at p. 11, lns. 2-11, attached as Exhibit 8 ("A: *And once*
24 *we were going down, I came upon -- before we hit the wash, there was a 'Road Damaged'*
25 *sign that we came across, and we just kept going. And once we hit that, maybe about a*
26 *quarter-mile to a half-mile there was a -- a turn, and then there was a long wash. And we*
27 *started, you know, going through the wash a bit, but there was, you know, some -- some*
28 *debris and stuff that -- because it had rained recently, and over the wash, and I had noticed*
that there was a sheriff Expedition and another Expedition next to it.") (emphasis added); *See*

1 also Photographs of Road Closed sign taken by Deputy Matthew Ratcliffe attached as
2 Exhibit 9 (See Deposition of MCSO Deputy Matthew Ratcliffe at p. 107, ln. 8 to p. 108, ln.
3 10, attached as Exhibit 6. (“A. “Due to the argumentative nature of the passenger in the
4 vehicle [Mrs. Rodriguez], [Deputy Ratcliffe] wanted to take photographs of the ‘Road
5 Closed’ sign and the ‘Road Closed Ahead’ signs for later defense in court.”); See also
6 Deposition of MCSO Deputy Matthew Ratcliffe at p. 42, lns 1-17, attached as Exhibit 6
7 (laying the foundation for the photographs attached as Exhibit 9 to this Statement of Facts).
8 Mr. Rodriguez denied ever seeing a “Road Closed” sign. See Deposition of David
9 Rodriguez at p. 17, lns. 10-11, attached as Exhibit 8.

10 52. Mr. and Mrs. Rodriguez asked Deputy Ratcliffe why he asked for David’s
11 Social Security number. See Deposition of MCSO Deputy Matthew Ratcliffe at p. 25, lns.
12 18-23, attached as Exhibit 6. Deputy Ratcliffe explained that it was for identification
13 purposes and to fill in the blanks on the MCSO citation form. *Id.*; see also p. 96, lns. 10-24;
14 see also the MCSO Standard Traffic Citation form, attached as Exhibit 7.

15 53. Deputy Ratcliffe performed via radio a records check on the Rodriguez’ truck
16 and then issued a citation to Mr. Rodriguez for failure to obey a traffic control device (i.e.,
17 the “road closed” sign). See Deposition of MCSO Deputy Matthew Ratcliffe at p. 27, lns. 6
18 to p. 28, ln. 8, attached as Exhibit 6. He determined that a citation was appropriate in his
19 discretion because there was a safety risk with driving on the closed road. *Id.* at p. 28, lns.
20 4-8.

21 54. Upon receipt of the citation, Mr. Rodriguez asked Deputy Ratcliffe the effect
22 such a citation would have on his commercial driver’s license, and either Mr. or Mrs.
23 Rodriguez told Deputy Ratcliffe that he/she did not see any other drivers on the closed road
24 receiving citations. See Deposition of MCSO Deputy Matthew Ratcliffe at p. 28, lns. 9-12;
25 see also p. 106, lns. 10-16, attached as Exhibit 6. Deputy Ratcliffe responded by telling Mr.
26 and Mrs. Rodriguez that he was only dealing with them and not dealing with other drivers at
27 that time. *Id.* at p. 28, lns. 13-15.

28 55. Mrs. Rodriguez accused Deputy Ratcliffe of selective enforcement in issuing
the traffic citation to her husband. See Deposition of MCSO Deputy Matthew Ratcliffe at p.

1 28, ln. 21 to p. 29, ln. 5, attached as Exhibit 6. Mrs. Rodriguez became “argumentative”
2 with Deputy Ratcliffe. *Id.* at p. 100, lns. 1-7; *see also* Deposition of David Rodriguez at p.
3 29, lns. 13-17, attached as Exhibit 8 (“Q. When was it that she [Mrs. Rodriguez] told Officer
4 Ratcliffe that -- about selective enforcement? A. When I had asked if I can -- if I can get a
5 warning, because the other people were getting warnings too.”). Mrs. Rodriguez became
6 “argumentative” with Deputy Ratcliffe. *See* Deposition of MCSO Deputy Matthew Ratcliffe
7 at p. 119, ln. 23 to p. 120, ln. 10, attached as Exhibit 6.

8 56. Neither Mr. nor Mrs. Rodriguez ever told Deputy Ratcliffe that they had not
9 observed the “Road Closed” sign or that they were ever off-road driving and did not see the
10 sign and must have missed it. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 100,
11 lns. 8-17, attached as Exhibit 6.

12 57. The Rodriguez’ testified that they were off-road driving and must have missed
13 observing the closed road sign. *See* Deposition of David Rodriguez at p. 10, ln. 7 to p. 12,
14 ln. 4, attached as Exhibit 8.

15 58. The total time for the Rodriguez traffic stop by Deputy Ratcliffe was
16 approximately ten (10) minutes. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p.
17 33, lns. 10-12, attached as Exhibit 6.

18 59. Deputy Ratcliffe then drove behind the Rodriguez’ truck as it left the area for
19 roughly two miles, not to escort them out, or to harass or intimidate them, but in order for
20 him to take a picture of the “*Road Closed*” sign. *See* Deposition of MCSO Deputy Matthew
21 Ratcliffe at p. 107, ln. 8 to p. 108, ln. 10, attached as Exhibit 6. “Due to the argumentative
22 nature of the passenger in the vehicle [Mrs. Rodriguez], [Deputy Ratcliffe] wanted to take
23 photographs of the ‘*Road Closed*’ sign and the ‘*Road Closed Ahead*’ signs for later defense
24 in court.”) *Id.* The pictures taken by Deputy Ratcliffe are attached as Exhibit 9 to this
25 Statement of Facts.

26 60. Mr. Rodriguez pled responsible to the citation issued to him by Deputy
27 Ratcliffe. *See* Deposition of David Rodriguez at p. 34, ln. 14 to p. 35, ln. 11, attached as
28 Exhibit 8 (“Q. The citation, did you plead responsible for that citation? A. Yes. Q. So you
admitted not obeying a traffic control device? A. When I got the -- yes, I had to sign for it

1 and I had to admit to it, yes. Q. In court did you end up paying a \$120 fine? A. Yes.

2 Q. And you understood that that was admitting that you failed to obey a traffic control

3 device? A. Yes. Q. Okay. Explain for me, if you thought that this citation was wrongly

4 issued, why you did not contest it, why you did not challenge it in court? A. It was pretty

5 much going to be me against the officer, and in situations like that, it's usually the officer

6 that's going to come out on top, so that's why I just decided to get it -- to go ahead and just

7 pay it.”)

8 61. Deputy Ramon Armendariz is a member of the MCSO HSU and is 287(g)
9 certified. *See* November 24, 2009 Deposition of MCSO Deputy Ramon C. Armendariz at p.
10 16, Ins. 17-23 (discussing when he joined the MCSO Human Smuggling Unit); p. 18, In. 17
11 to p. 20, In. 2 (discussing his decision to become 287(g) certified), attached as Exhibit 10.

12 62. Deputy Armendariz' first language is Spanish and he is therefore fluent in
13 speaking that language. *See* Deposition of MCSO Deputy Ramon C. Armendariz at p. 20,
14 Ins. 20-22, attached as Exhibit 10.

15 63. Deputy Armendariz worked the saturation patrol in the capacity of a patrol
16 officer where he was to conduct traffic stops and write citations. *See* Deposition of MCSO
17 Deputy Ramon C. Armendariz at p. 100, Ins. 8-17, attached as Exhibit 10

18 64. Around 2:00 p.m., Deputy Armendariz made a traffic stop of a vehicle and the
19 vehicle pulled into a convenience mart/gas station located at the southeast corner of North
20 Cave Creek Road and East Nesbit Road. *See* Deposition of MCSO Deputy Ramon C.
21 Armendariz at p. 116, Ins. 4-10 (time of stop); p. 123, Ins. 21-23 (location of stop); p. 126,
22 In. 19 to p. 127, In. 6 (location of stop); p. 131, Ins. 5-11 (southeast corner of roads),
23 attached as Exhibit 10

24 65. Deputy Armendariz parked his vehicle behind the stopped car. *See*
25 Deposition of MCSO Deputy Ramon C. Armendariz at p. 132, Ins. 11-23, attached as
26 Exhibit 10. The vehicle stopped by Deputy Armendariz contained two men, Benjamin
27 Moreno and Jorge Ramirez, and he conducted a radio check on both of the men. *Id.* at p.
28 123, In. 24 to p. 124, In. 6; p. 126, In. 19 to p. 127, In. 6, attached as Exhibit 10.

66. Following his radio check, Deputy Armendariz took both men into custody.

1 See Deposition of MCSO Deputy Ramon C. Armendariz at p. 129, Ins. 15-19, attached as
2 Exhibit 10. Deputy Armendariz took the driver of the vehicle into custody for driving with a
3 suspended license and placed him inside his patrol car. See Deposition of MCSO Deputy
4 Ramon C. Armendariz at p. 135, Ins. 5-13, attached as Exhibit 10.

5 67. Deputy Armendariz placed handcuffs on the car's passenger and had the
6 passenger sit down on the front bumper of the MCSO patrol car. See Deposition of MCSO
7 Deputy Ramon C. Armendariz at p. 136, Ins. 12-24, attached as Exhibit 10.

8 68. At that time, a dark colored vehicle pulled into the convenience mart/gas
9 station and parked directly behind Deputy Armendariz' patrol car. See Deposition of MCSO
10 Deputy Ramon C. Armendariz at p. 136, ln. 25 to p. 137, ln. 3; p. 137, ln. 16-20, attached as
11 Exhibit 10. Deputy Armendariz was standing in front of his patrol car handling the detained
12 passenger of the car he stopped. *Id.* at p. 137, ln. 23 to p. 138, ln. 1.

13 69. The dark colored vehicle was playing loud music, the passenger side windows
14 were down, and Deputy Armendariz could see a female passenger (later known to be
15 Plaintiff Velia Meraz) and a male driver (later known to be Plaintiff Manuel Nieto). See
16 Deposition of MCSO Deputy Ramon C. Armendariz at p. 139, ln. 2 to p. 140, ln. 6, attached
17 as Exhibit 10.

18 70. The female passenger (i.e., Ms. Meraz) started yelling repeatedly in Spanish
19 out her window at Deputy Armendariz' detainee sitting on the bumper of the patrol car, "no
20 diga nada," "no diga nada," you know, which means don't – "don't say anything," "don't say
21 anything"; "pida un abogado," "pida un abogado," which means, you know, "ask for a
22 lawyer," "ask for a lawyer.'" See Deposition of MCSO Deputy Ramon C. Armendariz at p.
23 140, ln. 19 to p. 141, ln. 11, attached as Exhibit 10.

24 71. At first, Deputy Armendariz tried to ignore the yelling, but the female
25 passenger (i.e., Ms. Meraz) kept yelling and he started to fear for his safety. See Deposition
26 of MCSO Deputy Ramon C. Armendariz at p. 141, Ins. 12-17; p. 142, Ins. 5-23, attached as
27 Exhibit 10. Deputy Armendariz, therefore, ordered the driver of the vehicle to leave deputy
28 Armendariz' vicinity or the location, or at least stay out of his way. *Id.* at p. 141, Ins. 12-17.

72. In response to Deputy Armendariz, the female passenger (i.e., Ms. Meraz)

1 yelled several times that ‘we’re not going anywhere.’ *See* Deposition of MCSO Deputy
2 Ramon C. Armendariz at p. 142, Ins. 5-23, attached as Exhibit 10.

3 73. Deputy Armendariz again ordered that Meraz and Nieto leave. *See* Deposition
4 of MCSO Deputy Ramon C. Armendariz at p. 142, Ins. 5-18, attached as Exhibit 10.

5 74. The female passenger (i.e., Ms. Meraz) started yelling at Deputy Armendariz
6 “fucking Sheriff Joe, fucking Nazi,” and “you guys don't have a right to do this.” *See*
7 Deposition of MCSO Deputy Ramon C. Armendariz at p. 143, Ins. 3-8, attached as Exhibit
8 10.

9 75. Deputy Armendariz was worried about his safety and the safety of the two
10 men he had in custody. *See* Deposition of MCSO Deputy Ramon C. Armendariz at p. 143,
11 Ins. 9-17; p. 144, Ins. 12-18, attached as Exhibit 10.

12 76. Because the vehicle with the yelling passengers would not leave, Deputy
13 Armendariz called on his radio for back-up. *See* Deposition of MCSO Deputy Ramon C.
14 Armendariz at p. 144, Ins. 12-18, attached as Exhibit 10 (“but when they refused to leave,
15 that's when I called for help.”); *see also* p. 214, ln. 25 to p. 218, ln. 11 (explaining the
16 reasons he called for back-up support).

17 77. MCSO Deputy Douglas Beeks heard Deputy Armendariz’ radio call for back-
18 up and described Deputy Armendariz’ voice as sounding “excited” and “agitated”. *See*
19 October 22, 2009 Deposition of MCSO Deputy Douglas W. Beeks at p. 148, Ins. 10-15,
20 attached as Exhibit 11. Deputy Beeks also recalls hearing words used by Deputy
21 Armendariz that led Deputy Beeks to believe in good faith that “a vehicle had tried to run
22 over or hit Deputy Armendariz as it left the area” and that a crime may have been committed.
23 *Id.* at p. 148, Ins. 16-23. Accordingly, Deputy Beeks was concerned for the safety of Deputy
24 Armendariz. *Id.* at p. 148, Ins. 16-20; *see also* Deposition of MCSO Deputy Michael Kikes
25 at p. 69, ln. 17, to p. 70, ln. 9, attached as Exhibit 13 (“Q. So you were riding southbound on
26 Cave Creek Road and you were listening to radio traffic. You heard Deputy Armendariz say
27 something over the radio? A. Correct. Q. Do you recall what he said? A. Not exactly
28 what he said -- Q. Okay. A. -- but I could tell by the pitch in his voice it wasn't just a
regular call out for a license plate or something of that nature. Q. What do you mean by the

1 pitch in his voice? A. We have a tendency as deputies to be able to when we talk on the
2 radio to give a license plate or give an identification of somebody in a very monotone, very
3 easily recognizable voice that we can transmit every day. We could -- when something goes
4 awry, you could tell the excitability, you can tell a little bit about there's more than just a
5 regular traffic stop.”).

6 78. The male in the vehicle (i.e., Mr. Nieto) then opened his door and started to get
7 out. *See* Deposition of MCSO Deputy Ramon C. Armendariz at p. 145, ln. 24 to p. 146, ln.
8 21, attached as Exhibit 10. Deputy Armendariz believed that the male (i.e., Mr. Nieto) was
9 going to get out of the car to “try to kick my ass”. *Id.* at p. 216, lns. 19-24.

10 79. The vehicle occupants (i.e., Ms. Meraz and Mr. Nieto) appeared very angry
11 and were acting “very threatening.” *See* Deposition of MCSO Deputy Ramon C.
12 Armendariz at p. 218, lns. 2-11 (acting angrily); p. 215, lns. 5-9 (acting very threatening),
13 attached as Exhibit 10. “[T]heir actions towards [Deputy Armendariz] were as if it was
14 personal towards [the deputy].” *Id.* at p. 217, lns. 3-4.

15 80. Deputy Armendariz testified as to his state of mind when he observed the male
16 in the vehicle (i.e., Mr. Nieto) open his door and start to get out: “I had other responsibilities
17 that I was taking care of. I had two people that I was in -- that I had in custody that I was
18 responsible for. I didn't know if he was going to come out with a gun. I didn't know if he
19 was going to come out with a knife. Am I going to have to -- am I going to have to defend
20 myself while protecting my suspect that I have in custody? You know, is this going to turn
21 into -- is he going to get out with a knife? Am I going to have to shoot him? Is he going to
22 come out with a gun? Am I going to have to spray -- you know, pepper spray to get him
23 away from me? I mean, just the array of, you know, what-ifs. That situation could have gone
24 bad, really bad, really quick.” *See* Deposition of MCSO Deputy Ramon C. Armendariz at p.
25 217, ln. 12 to p. 218, ln. 1, attached as Exhibit 10.

26 81. Plaintiff Manuel Nieto, Jr. is a three-time convicted felon who spent 3.5 years
27 in prison for domestic violence. *See* October 8, 2009 Deposition of Manuel Nieto, Jr., at p.
28 7, ln. 22 to p. 8, ln. 21 (fact of three felony convictions for domestic abuse); *see also* p. 10,
ln. 25 to p. 11, ln. 1 (length of time in prison), attached as Exhibit 12. Mr. Nieto was only

1 released from his most recent prison time one month before the confrontation with Deputy
2 Armendariz. *Id.*

3 82. Seeing the male in the vehicle (i.e., Mr. Nieto) open his door and start to get
4 out, Deputy Armendariz grew more worried, in fact he was afraid, and ordered the man to
5 stay in his car or he would be arrested for disorderly conduct. *See* Deposition of MCSO
6 Deputy Ramon C. Armendariz at p. 145, ln. 24 to p. 146, ln. 21, p. 149, lns. 4-14 (“As I was
7 -- as I was getting more worried that they were actually going to get out of their car and
8 actually come towards my -- my direction, I moved the passenger, which is who I was
9 talking to on the front bumper. I walked around the other side of my patrol car and I put
10 him and secured him in the back. And at that point, as I secured him -- as I was securing him
11 in the back and I kept yelling at these people, "You need to leave. You need to get out of
12 here now," that's when they decided on leaving. And I put him in the back, they took off,
13 still cussing at me, you know.”); *see also* p. 214, ln. 25 to p. 215, ln. 4 (“Q. What was the
14 reason you called for backup? A. Not to put it in a bad way, but I was -- I was afraid. I was
15 afraid. I was afraid that the situation would have escalated further and my safety would have
16 been in jeopardy.”), attached as Exhibit 10.

17 83. The occupants of the vehicle (Meraz and Nieto) made “a big scene” at the
18 convenience mart/gas station. *See* Deposition of MCSO Deputy Ramon C. Armendariz at p.
19 148, ln. 25, attached as Exhibit 10.

20 84. MCSO Deputy Michael Kikes spotted the dark colored vehicle driving on
21 North Cave Creek Road and activated his motorcycle’s lights and siren. *See* Deposition of
22 MCSO Deputy Michael Kikes at p. 129, lns. 19-22 (discussion in context of already having
23 his lights and sire on), attached as Exhibit 13.

24 85. Deputy Kikes testified that he believed that he had probable cause to stop the
25 dark colored vehicle because he believed there was an emergency situation of some type
26 involving Deputy Armendariz and the occupants of the vehicle Deputy Kikes was stopping.
27 *See* Deposition of MCSO Deputy Michael Kikes at p. 129, lns. 4-18, attached as Exhibit 13.

28 86. Due to the vehicle’s window tinting, Deputy Kikes could not see the race, sex,
or other characteristics of the vehicle’s occupants. *See* Deposition of MCSO Deputy

1 Michael Kikes at p. 129, ln. 23 to p. 130, ln. 18, attached as Exhibit 13.

2 87. The driver of the vehicle (i.e., Mr. Nieto) would not stop and drove another
3 300 feet until it turned into an auto shop instead of pulling over on the right side of the public
4 roadway as required by law. *See* Deposition of MCSO Deputy Michael Kikes at p. 130, ln.
5 19 to p. 132, ln. 2; *see also* p. 131, lns. 10-13 (“A. Well, first of all, the driver didn't
6 acknowledge that I was there and that he didn't use a turn signal *and he didn't pull to the*
7 *right as what law states you need to pull to the right for an emergency vehicle.*”), attached as
8 Exhibit 13.

9 88. Deputy Kikes was concerned about the driver's (i.e., Mr. Nieto) behavior and
10 where he parked, and what that parking location meant. *See* Deposition of MCSO Deputy
11 Michael Kikes at p. 131, ln. 3 to p. 132, ln. 4, attached as Exhibit 13 (“Q. Was there
12 anything about that distance of 300 feet from the point you activated your lights and siren
13 until the point it -- the dark vehicle stopped that caused you any concern? A. Yes. Q. And
14 would you explain for me, what was that concern? A. Well, first of all, the driver didn't
15 acknowledge that I was there and that he didn't use a turn signal and he didn't pull to the right
16 as what law states you need to pull to the right for an emergency vehicle. He kept driving
17 and he kept going and then he finally pulled into a private -- somewhat private driveway.
18 Obviously, it's not a private driveway. It's a commercial driveway, but instead he remained
19 in the vehicle which, to us, is a very safety-oriented issue alarming to an officer. Q. Explain
20 for us of those who do not have law enforcement training, why is pulling into even a
21 commercial property of concern for officer safety? A. The surroundings, the nature of
22 where he pulled, how he pulled in, the direction of where he was facing, heading. He could
23 have drove backwards, hit us, anything. There is an escape route to the right. I look for
24 escape routes. I look for a place where somebody can flee from the vehicle, get lost in a
25 commercial area, get lost in the buildings and things like that.”).

26 89. Once the vehicle pulled into the auto repair shop, the driver (Mr. Nieto)
27 refused to exit his vehicle. *See* Deposition of MCSO Deputy Michael Kikes at p. 131, lns
28 17-19, attached as Exhibit 13 (“instead he [Mr. Nieto] remained in the vehicle which, to us,
is a very safety-oriented issue alarming to an officer.”)

1 90. Manuel Nieto refused to roll down his window to speak with MCSO Deputy
2 Michael Kikes. *See* Deposition of MCSO Deputy Michael Kikes at p. 78, Ins. 8-25, attached
3 as Exhibit 13.

4 91. Two unknown men in mechanic's clothing immediately came out from the
5 auto repair shop and were "angry", "yelling" and "cursing" at MCSO Deputy Michael Kikes.
6 *See* Deposition of MCSO Deputy Michael Kikes at p. 132, Ins. 5-23, attached as Exhibit 13.

7 92. Deputy Beeks, now at the scene, saw the driver (Mr. Nieto) acting very
8 "belligerent", "non-compliant", and "almost hostile in nature" with and toward Deputy
9 Kikes, and he thought that the driver (Mr. Nieto) might drive his vehicle forward or
10 backward and, therefore, Deputy Beeks pulled his handgun for safety purposes. *See* October
11 22, 2009 Deposition of MCSO Deputy Douglas W. Beeks at p. 150, Ins. 3-23; see also p.
12 151, Ins. 12-18, attached as Exhibit 11.

13 93. Deputy Kikes opened the vehicle's door, grabbed the driver (Mr. Nieto), and
14 removed Mr. Nieto from the vehicle where he then handcuffed Mr. Nieto. *See* Deposition
15 of MCSO Deputy Michael Kikes at p. 80, Ins. 2-10; p. 80, ln. 23 to p. 82, ln. 2; *see also* p.
16 133, ln. 19 to p. 134, ln. 1 ("Q. Eventually I understand your testimony is that you ended up
17 taking the driver from the vehicle to the back of his SUV? A. Correct. Q. And the reason
18 for that was to create some distance or separation from the two men that were yelling curses
19 at you? A. Correct."), attached as Exhibit 13.

20 94. Deputy Kikes was able to move the driver (Mr. Nieto) to rear of the vehicle
21 away from the angry mechanics and obtain the driver's license. *See* Deposition of MCSO
22 Deputy Michael Kikes at p. 80, Ins. 2-10, attached as Exhibit 13.

23 95. Deputy Kikes conducted a radio check on the driver's status (Mr. Nieto's) and
24 it came back clear. *See* Deposition of MCSO Deputy Michael Kikes at p. 85, ln. 23 to p. 86,
25 ln. 24, attached as Exhibit 13.

26 96. Deputy Beeks then contacted Deputy Armendariz to determine what had
27 occurred between Deputy Armendariz and Ms. Meraz and Mr. Nieto. *See* Deposition of
28 MCSO Deputy Michael Kikes at p. 85, ln. 23 to p. 86, ln. 24; *see also* p. 134, ln. 3 to p. 135,
ln. 15 ("Q. You testified that eventually Deputy Beeks made some sort of contact with

1 Deputy Armendariz? A. Correct, by telephone, cell phone, he called back. Q. And your
2 understanding is that cleared up any confusion of exactly what had occurred with this dark
3 SUV and its occupants? A. Right. Q. There was a question as to why there was no citation
4 issued. That was because there was no moving violation? A. No crime had been
5 committed. Q. Okay. And that was confirmed after the stop had been made and
6 communication with Mr. -- Deputy Armendariz had been made? A. Right. After Deputy
7 Beeks advised me that nothing had taken place, that was just a gentleman of interest from the
8 traffic stop earlier, that nothing had been violated, that we could go ahead and let him go. Q.
9 Why in law enforcement -- strike that. Was there a concern that had you stopped to speak
10 with Armendariz first about what had occurred that the black SUV may not be able to be
11 found? A. Correct. Q. And I guess that is my next question is, before making that traffic
12 stop on the black SUV, why -- why couldn't you or another officer determine precisely why
13 you folks were not going to be following the black SUV and making the traffic stop? A.
14 Well, that all goes into exigent circumstances. We need to find out and stop right at that
15 point. We need to make a stop of that vehicle to not let it further -- either get away, either
16 hide whatever weapons may be -- or drugs or whatever the case may be inside that vehicle.
17 So we need to pursue that vehicle, have a stop and then go ahead and do our detective work
18 and find out exactly investigative of what is actually with that vehicle and why it needs to be
19 stopped.”), attached as Exhibit 13.

19 97. Following the communication between Deputies Beeks and Armendariz, Mr.
20 Nieto was released without being charged with either a traffic violation (i.e., a failure to
21 stop when directed) or for obstructing Deputy Armendariz. *See* Deposition of MCSO
22 Deputy Michael Kikes at p. 85, ln. 23 to p. 86, ln. 24, attached as Exhibit 13.

23 98. Plaintiff Velia Meraz' truthfulness is at issue for several reasons, including the
24 fact she has a prior felony conviction for fraudulent schemes and artifices for writing money
25 orders to herself while she was employed at Catholic Social Services as an immigration case
26 worker. *See* Deposition of Plaintiff Velia Meraz at p. 7, ln. 22 to p. 9, ln. 19, attached as
27 Exhibit 14.

28 99. Plaintiffs allege in the First Amended Complaint that since year 2007 they

1 have been subjected to the MCSO's alleged official policy, pattern, and practice of stopping,
2 questioning, searching, and sometime arresting Latino persons without probable cause or
3 reasonable suspicion simply on the basis of their race. *See* Dkt.#26 at p. 3, lns. 15-25, ¶ 3; p.
4 3, ln. 26 to p. 4, ln. 1, ¶ 4. Plaintiffs further allege in their First Amended Complaint that the
5 MCSO's challenged conduct occurs not only as a general practice of making traffic stops,
6 but also through making traffic stops during saturation patrols or so call "crime suppression
7 sweeps." *See* Dkt.#26 at p. 3, p. 3, lns. 15-25, ¶ 3.

8 100. Mr. Melendres is a Mexican national and lives in Ciudad Obregon, Sonora,
9 Mexico, about a seven (7) hour bus trip from the border at Nogales, Mexico. *See* Deposition
10 of Plaintiff Manuel Melendres at p. 7, lns. 7-15, attached as Exhibit 1.

11 101. Mr. Melendres has returned to Maricopa County "once or twice" since his
12 September 2007 traffic stop. *See* Deposition of Plaintiff Manuel Melendres at p. 33, lns. 20-
13 23, attached as Exhibit 1.

14 102. When Mr. Melendres has visited Maricopa County on those occasions, Mr.
15 Melendres stays only for "some days or maybe a week." *See* Deposition of Plaintiff Manuel
16 Madrid at p. 37, lns. 3-8, attached as Exhibit 1. During his one or two visits to Maricopa
17 County after the 2007 traffic stop, Mr. Melendres has not again been stopped, questioned,
18 detained, arrested, searched, or investigated by the MCSO since the traffic stop in September
19 2007. *Id.* at p. 34, ln. 8 to p. 35, ln. 5.

20 103. As to Mr. and Mrs. Rodriguez, they each testified that since their December
21 2007 traffic stop on Bartlett Dam Road by Deputy DiPietro, and although they live and work
22 in Maricopa County, they each have had no other traffic stop encounters with the MCSO.
23 *See* Deposition of Jessika Rodriguez at p. 58, ln. 16 to p. 59, ln. 6, attached as Exhibit 15;
24 Deposition of David Rodriguez at p. 37, lns. 17-22, attached as Exhibit 8.

25 104. Indeed, Mrs. Rodriguez drives 20 miles roundtrip to work every day and
26 estimates that she put roughly 20,000 miles on her personal car every year in Maricopa
27 County but has never again been stopped by the MCSO. *See* Deposition of Jessika
28 Rodriguez at p. 60, lns. 14-20; p. 61, lns. 11-21, attached as Exhibit 15.

105. Ms. Meraz testified that since her March 2008 traffic stop by the MCSO she

1 has had no other personal experience with the MCSO stopping her in any vehicle at any time
2 for any reason. *See* Deposition of Velia Meraz at p. 32, Ins. 15-20, attached as Exhibit 14.

3 106. Mr. Nieto testified that he also has had no traffic stop encounters with the
4 MCSO since the March 2008 traffic stop. *See* Deposition of Manuel Nieto, Jr., at p. 36, Ins.
5 14-16, attached as Exhibit 12.

6 107. Although Mr. Melendres speculates that the truck was not speeding, he has no
7 facts that would allow him to dispute the probable cause determination of Deputy DiPietro.
8 *See* Deposition of Plaintiff Manuel Melendres at p. 18, Ins. 1-5, (speculative conclusion that
9 the truck was not speeding); at p. 18, ln. 9 to p.19, ln. 17 (Q. But do you know what the
10 speed was of the truck shortly before it was stopped? A. No. Q. Do you know whether the
11 driver of the vehicle was driving at a speed in excess of the posted speed limit? A. No. Q. If
12 it's the sheriff's deputy's position that the driver was going too fast, do you have any facts to
13 dispute that position? A. Could you repeat the question? Q. Sure. My clients say they
14 stopped the vehicle because it was speeding. Do you have any facts that would allow you to
15 dispute that? A. No. *** Q. Do you contend, sir, that the stop was improper or illegal in
16 anyway? A. Well, if I showed him my documents -- well, I don't know the rules here. So
17 actually, I don't know if they have the right to stop the driver. I can't say, because it's not my
18 -- within my knowledge to say. Q. It is not within your knowledge to say whether the stop
19 was proper or not proper; true? A. Well, no, because the officers who pulled the car over,
20 they are the ones who know about that. I cannot say anything about that.”), attached as
21 Exhibit 1.

22 108. Defendants' law enforcement practices expert, Bennie R. Click, opines that
23 that “Deputy DiPietro had probable cause to stop the vehicle in which Mr. Melendres was a
24 passenger. Deputy DiPietro’s actions in stopping the vehicle conformed with standard police
25 training and law enforcement practice, met the requirements set for in [A.R.S. section] 13-
26 3883 and were reasonable.” *See* Report of Ben Click dated January 21, 2011, at p. 13,
27 attached as Exhibit 16; *see also* March 18, 2011 Deposition of Defense Expert Ben Click at
28 p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 (wherein he testified to the foundation
for his opinions and that his opinions in the report were the same he would provide at trial to

1 a reasonable degree of probability in his field of expertise).

2 109. Plaintiffs' law enforcement practices/racial profiling expert witness, Robert L.
3 Stewart, has no factual basis to disagree with Deputy DiPietro's probable cause
4 determination:

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

8 A. According to him.

9 Q. Is that a yes or a no?

10 A. His record reflects that he did.

11 Q. Do you have any direct evidence rebutting Deputy DiPietro's testimony that he
12 had probable cause to stop the truck?

13 A. No, sir.

14 Q. Do you have any circumstantial evidence rebutting Deputy DiPietro's
15 testimony that he had probable cause to stop the truck?

16 A. No, sir.

17 *See* February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 60, ln. 12 to p.
18 61, ln. 2, attached as Exhibit 18.

19 110. Mr. Melendres was in an MCSO holding cell before removal to ICE for
20 "probably about two hours." *See* Deposition of Plaintiff Manuel Melendres at p. 25, lns. 10-
21 15, attached as Exhibit 1. Mr. Melendres was held another six to seven hours by ICE at the
22 ICR DRO facility. *Id.* at p. 25, ln. 23 to p. 26, ln. 4.

23 111. Mr. Melendres was properly detained pursuant to Deputy Rangel's 287(g)
24 authority. *See* Report of Ben Click dated January 21, 2011, at p. 14-15; *see also* March 18,
25 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as
26 Exhibit 17 (wherein he testified to the foundation for his opinions and that his opinions in the
27 report were the same he would provide at trial to a reasonable degree of probability in his
28 field of expertise); *cf.* Filed Under Seal *Defendants' Supplemental Statement of Facts Re:*

1 *Testimony of ICE Witnesses in Support of Their Motion for Summary Judgment* at ¶ 26.

2 112. Mrs. Rodriguez admits there was probable cause to stop her vehicle. *See*
3 *Deposition of Jessica Rodriguez* at p. 30, lns. 7-21 (“Q. Do you believe now, in hindsight,
4 that [Deputy Ratcliffe] did have a good reason to pull you over? A. Yes. Q. And what is
5 that based on? A. On the citation issued to us, which was failure to obey a traffic device.
6 Q. All right. And so in hindsight, even though you weren't aware of it at the time of the
7 stop, you did realize that there was a "Road Closed" sign, right? A. Yes. Q. And that it
8 was illegal to travel on that road, wasn't it? A. Yes.”), attached as Exhibit 15.

9 113. Mrs. Rodriguez is not even critical of the traffic stop made by MCSO Deputy
10 Matthew Ratcliffe. *See Deposition of Jessica Rodriguez* at p. 31, 9-20) (“Q. All right. So
11 you're not critical of the initial stop, are you? A. No. Q. Okay. He was -- the initial stop,
12 the officer, you understand, was legally -- in your mind's eye, what he did was proper, wasn't
13 it? A. Yes.”), attached as Exhibit 15.

14 114. Defense expert Mr. Click testified that Deputy Ratcliffe had PC to stop the
15 Rodriguez truck. *See Report of Ben Click* dated January 21, 2011, at p. 23, attached as
16 Exhibit 16; *see also* March 18, 2011 *Deposition of Defense Expert Ben Click* at p. 341, ln.
17 24 to p. 342, ln. 14, attached as Exhibit 17 (wherein he testified to the foundation for his
18 opinions and that his opinions in the report were the same he would provide at trial to a
19 reasonable degree of probability in his field of expertise).

20 115. Plaintiffs' liability expert Mr. Stewart testified:

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

23 A. Yes.

24 *See* February 28, 2011 *Deposition of Plaintiffs' Expert Robert L. Stewart* at p. 79, lns. 14-17,
25 attached as Exhibit 18; *see also* p. 77, ln. 18 to p. 78, ln. 2.

26 116. Plaintiffs' liability expert Mr. Stewart opined that Deputy Ratcliffe had
27 probable cause to stop the Rodriguez truck even if Mr. Rodriguez did not see the “*Road*
28 *Closed*” sign. *See* February 28, 2011 *Deposition of Plaintiffs' Expert Robert L. Stewart* at p.
77, ln. 18 to p. 78, ln. 2, attached as Exhibit 18.

1 117. MCSO Deputy Michael Kikes testified that he had probable cause to stop the
2 vehicle driven by Mr. Nieto and occupied by Ms. Meraz. *See* Deposition of MCSO Deputy
3 Michael Kikes at p. 129, Ins. 4-18, attached as Exhibit 13 (“Q. Now, let's turn to the incident
4 that the plaintiffs' lawyer asked you questions about, the one involving Ms. Meraz and Mr.
5 Nieto. Tell us what was, in your judgment, the probable cause that allowed you to activate
6 your lights and siren to pull over what you described as the black SUV? A. I believed that
7 some emergency and some situation had taken part with Ramon Armendariz, Deputy
8 Armendariz. There was an emergency and that is why I pulled them over because -- not
9 knowing exactly what had happened, but there was some sort of emergency that took place at
10 that moment. Q. Did you believe that that emergency situation existed in what you believed
11 to be your good faith? A. Absolutely.”).

12 118. Defense expert Mr. Click opines that Ms. Meraz and Mr. Nieto obstructed
13 Deputy Armendariz in his investigation and arrest of the two stopped men and that they
14 could have been arrested by law enforcement for such obstructions. *See* Report of Ben Click
15 dated January 21, 2011, at p. 37, attached as Exhibit 16; *see also* March 18, 2011 Deposition
16 of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17
17 (wherein he testified to the foundation for his opinions and that his opinions in the report
18 were the same he would provide at trial to a reasonable degree of probability in his field of
19 expertise). Defense expert Bennie R. Click, therefore, testified that Deputy Kikes had
20 reasonable suspicion to stop the Nieto-Meraz vehicle. *See* Report of Ben Click dated
21 January 21, 2011, at p. 35, attached as Exhibit 16; *see also* March 18, 2011 Deposition of
22 Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 (wherein
23 he testified to the foundation for his opinions and that his opinions in the report were the
24 same he would provide at trial to a reasonable degree of probability in his field of expertise).

25 119. Plaintiffs' liability expert Stewart agrees with Defense expert Click that MCSO
26 Deputy Michael Kikes had reasonable suspicion that allowed him to properly stop the
27 Meraz-Nieto vehicle. *See* February 28, 2011 Deposition of Plaintiffs' Expert Robert L.
28 Stewart at p. 103, Ins. 4-17, attached as Exhibit 18.

120. To the extent the Plaintiffs claim that Deputy Kikes' treatment of Mr. Nieto

1 during the traffic stop violated his rights, such claim lacks merit. Even Plaintiffs' liability
2 expert Mr. Stewart opines that Deputy Kikes acted reasonably in his post-stop conduct and
3 treatment of Mr. Nieto. *See* February 28, 2011 Deposition of Plaintiffs' Expert Robert L.
4 Stewart at p. 105, Ins. 3-6, attached as Exhibit 18 ("Q. Do you have any opinion whether
5 Deputy Kikes acted reasonable or unreasonable? A. I think for the circumstances that he
6 had, he acted reasonable.").

7 121. The essence of Plaintiffs' Fourteenth Amendment and Title VI racial
8 discrimination claims is summarized in their First Amended Complaint:

9 Caucasian drivers and passengers involved in the same or similar acts or alleged
10 violations are treated differently and their vehicles stopped at much lower rates than
11 similarly situated Latino drivers and passengers pursuant to MCSO policy and
12 practice. Further Caucasian drivers and passengers are treated differently and less
13 intrusively and detained for shorter periods of time after their vehicles are stopped by
14 MCSO personnel than Latino drivers and passengers after being stopped. Latino
15 occupants are also treated differently and more intrusively by MCSO than Caucasian
16 occupants of the same vehicle

17 *See* Dkt.#26 at p. 11, Ins. 3-10, ¶ 32 (containing Plaintiffs' First Amended Complaint dated
18 September 5, 2008).

19 122. Plaintiffs' own statistical expert, Ralph Taylor, Ph.D., conducted a statistical
20 analysis of all the MCSO traffic stops conducted from January 1, 2007 to October 31, 2009
21 and concluded that Latinos in Maricopa County are stopped by MCSO personnel in roughly
22 the same proportion to their share of Maricopa County's population. *See* March 21, 2010
23 Deposition of Ralph Taylor, Ph.D. at 129, ln. 19 to p. 130, ln. 14, attached as Exhibit 21 ("Q.
24 What about for non-saturation patrol days? Would it be fair to categorize the percentage of
25 traffic stops as what you would expect given the population of Hispanics in Maricopa
26 County? A. I am looking at names checked, not traffic stops per se. And I—and you've
27 asked ---there's something incomplete in your question. Q. [Question re-read to the
28 witness].... A. Oh. *If you're asking does the percentage of—for names checked on non-*
saturation patrol days, does the percentage of names checked Hispanic appear to align with
generally the Hispanic proportion of Maricopa County, my answer to that would be
generally yes, but that is non-informative.") (emphasis added); see also February 28, 2011

1 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 154, Ins. 20-24, attached as Exhibit
2 18 ("Q. Did Mr. Taylor's overall traffic stop analysis show that Hispanics in Maricopa
3 County are stopped in rough proportion to their share of Maricopa County's population? A.
4 Yes, sir.").

5 123. Defense expert statistician Steve Camarota, Ph.D, wrote a written report
6 containing his opinions and the "Summary of Findings" in his report provided the following:

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

16 *See* January 20, 2011 Report of Steven Camarota, Ph.D., entitled "*Report 1 Hispanic*
17 *Surname Analysis of Maricopa County Sheriff's Office Patrol Activity 2005 to 2009*" at p. 1,
18 attached as Exhibit 19 (underlining added for key sections of the report for the convenience
19 of the Court); *see also* March 22, 2011 Deposition of Defense Expert Steve Camarota, Ph.D.
20 at p. 122, Ins. 13-16, attached as Exhibit 20 (foundation for his report). Dr. Camarota would
21 expect that *if* Latinos were being racially profiled by MCSO personnel during traffic stops
22 then the traffic stops of Latinos would be in a much greater percentages than their percentage
23 of the general population. *See* March 22, 2011 Deposition of Defense Expert Steve
24 Camarota, Ph.D. at p. 106, Ins. 3-13, attached as Exhibit 20 (Q. You don't come to a
25 conclusion affirmatively that the MCSO does not discriminate against Hispanics, correct? A.
26 My conclusion is that Hispanics are not stopped at rates higher than their overall population
27 share, and that if they were being targeted for enforcement, we would expect that they would
28 be stopped at rates higher than their population shares. That's my conclusion."); *See also*
January 20, 2011 Report of Steven Camarota, Ph.D., entitled "*Report 1 Hispanic Surname*
Analysis of Maricopa County Sheriff's Office Patrol Activity 2005 to 2009" at p. 1, attached
as Exhibit 19.

124. Dr. Taylor's saturation patrol opinions are based on a study that he

1 characterized as “quasi-experimental” in nature. *See* March 21, 2010 Deposition of Ralph
2 Taylor, Ph.D. at 46, Ins. 6-10 (“Because that was not required by the quasi experimental
3 design used in my analysis.”); p. 46, Ins. 11-18 (“The quasi- experimental design that I used
4 had tow types, of, if you will, non-treatment days.”); p. 48, ln. 12-17 (discussion of what is a
5 quasi-experimental study), attached as Exhibit 21. Dr. Taylor’s “quasi-experimental” study
6 does not result in definitive findings or conclusion, only “inferences.” *See* March 21, 2010
7 Deposition of Ralph Taylor, Ph.D. at 47, ln. 13 to p. 48, ln. 11, attached as Exhibit 21. Dr.
8 Taylor’s alternative opinions that there are disproportionate percentages of Latino’s stopped
9 during MCSO saturation patrols and that their traffic stop detentions are supposedly longer
10 than non-Latinos is factually suspect. Dr. Taylor’s saturation patrol analysis mistaken fails:
11 (1) to exclude those patrols that included a human smuggling interdiction component or
12 exclude load vehicles found with illegal immigrant; (2) to exclude duplicate records in the
13 Computer Aided Dispatch (“CAD”) database; (3) improperly excluded thousands of other
14 cases that should have been included in the analysis; and (4) failed to account for any socio-
15 economic variables in his statistical model. *See* January 20, 2011 Report of Steven
16 Camarota, Ph.D., entitled “*Report 1 Hispanic Surname Analysis of Maricopa County*
17 *Sheriff’s Office Patrol Activity 2005 to 2009*” at p. 1, 3-4. 20-33, attached as Exhibit 19
18 (underlining added for key sections of the report for the convenience of the Court); *see also*
19 March 22, 2011 Deposition of Defense Expert Steve Camarota, Ph.D. at p. 122, Ins. 13-16_,
20 attached as Exhibit 20 (foundation for his report; *See* March 21, 2010 Deposition of Ralph
21 Taylor, Ph.D. at 47, ln. 13 to p. 48, ln. 11, attached as Exhibit 21 (wherein Dr. Taylor
22 testified that his study leads only to “inferences” that might be drawn from the data); p. 56,
23 Ins. 5-7 (wherein Dr. Taylor testified that he excluded 18% of all MCSO traffic stops); p.
24 52, Ins. 8-19 (wherein Dr. Taylor testified that he excluded 18% of all MCSO traffic stops
25 because they did not “align” well with the Plaintiffs’ case theory or the Plaintiffs’ “concerns”
26 about MCSO operations).

27 125. Before MCSO Deputy Louis DiPietro had ever found probable cause to stop
28 the truck in which Mr. Melendres was a passenger, Deputy DiPietro did not know or see the
race of the truck’s driver or the passengers in the truck. *See* Deposition of MCSO Deputy

1 Louis DiPietro at p. 115, ln. 18 to p. 116, ln. 5, attached as Exhibit 4.

2 126. Race was not a factor in Deputy Louis DiPietro's finding that he had probable
3 cause to stop the truck:

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

6 A. No.

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

8 A. No, I don't.

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

10 A. No.

11 *See* Deposition of MCSO Deputy Louis DiPietro at p. 116, lns. 7-16, attached as Exhibit 4.

12 127. Deputy Carlos Rangel does not racially profile because it is morally wrong
13 and illegal. *See* Deposition of MCSO Deputy Carlos Rangel at p. 128, lns. 11-18, attached
14 as Exhibit 2.

15 128. Plaintiff Manuel Melendres does not have an opinion or position on whether he
16 was racially profiled by any MCSO deputy:

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

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

21 *See* Deposition of Plaintiff Manuel Melendres at p. 38, lns. 18-25, attached as Exhibit 1.

22 129. Defense expert Bennie R. Click testified that '[t]here is no evidence that
23 Deputy [DiPietro] knew the race or ethnicity of the vehicle's occupants prior to the truck
24 stopping or that race or ethnicity played any role in Deputy [DiPietro's] actions. *See* Report
25 of Ben Click dated January 21, 2011, at p. 14, attached as Exhibit 16; *see also* March 18,
26 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as
27 Exhibit 17 (wherein he testified to the foundation for his opinions and that his opinions in the
28 report were the same he would provide at trial to a reasonable degree of probability in his
field of expertise).

1 130. Plaintiffs' liability expert Robert L. Stewart testified that he believes Deputy
2 DiPietro must have had discriminatory intent or motive in stopping the truck in which Mr.
3 Melendres was a passenger. Mr. Stewart reaches this conclusion based on his "reasoning"
4 that: (a) Deputy DiPietro testified that, in his law enforcement experience in Maricopa
5 County, most day laborers were illegal aliens from Mexico; (b) the MCSO operation that
6 date was targeting a church suspected of being a drop house for smuggled illegal aliens and a
7 location for such persons to be picked-up for day laborer jobs; and (c) Deputy DiPietro was
8 instructed to find probable cause for vehicles that picked-up passengers at the church and
9 before finding such probable cause he already drawn the conclusion that anyone picked up at
10 the church would be an illegal alien; and (d) because people from Mexico are Latinos by
11 definition, Deputy DiPietro must have been intending to discriminate against Latinos. *See*
12 February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 61, ln. 10 to p. 65,
ln. 1, attached as Exhibit 18.

13 131. Plaintiffs' liability expert Robert L. Stewart testified at deposition to the
14 following:

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

17 A. I don't know.

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

20 A. I don't know.

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

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

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

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

27 Q. Is there any evidence that Deputy DiPietro used race as a factor in any form to
28

1 decide to stop the truck?

2 A. No, sir.

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

5 A. Not that I know of.

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

8 A. We don't know.

9
10 *See* February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 66, ln. 1 to p.
11 67, ln. 6, attached as Exhibit 18; *see also* Filed Under Seal *Defendants' Supplemental*
12 *Statement of Facts Re: Testimony of ICE Witnesses in Support of Their Motion for Summary*
13 *Judgment* at ¶¶ 6-13, 20-21, and 23-24.

14 132. Before deciding to conduct the traffic stop of the Rodriguez truck, and to issue
15 a citation to the truck's driver, Deputy Ratcliffe did not see the race of the truck's driver or
16 of any occupants of the truck. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 93,
17 ln. 11 to p. 94, ln. 9, attached as Exhibit 6.

18 133. Mrs. Rodriguez testified that Deputy Ratcliffe was not acting with racially
19 discriminatory intent or motive.

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

22 A. No.

23 *See* Deposition of Jessika Rodriguez at p. 55, ln. 25 to p. 56, ln. 4, attached as Exhibit 15.

24 134. Defense expert Mr. Bennie R. Click opines that there is no direct or
25 circumstantial evidence that Deputy Ratcliffe racially profiled or otherwise acted toward Mr.
26 and Mrs. Rodriguez with racially discriminatory intent or motive. *See* Report of Ben Click
27 dated January 21, 2011, at pgs. 23-24, attached as Exhibit 16; *see also* March 18, 2011
28 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit
17 (wherein he testified to the foundation for his opinions and that his opinions in the report

1 were the same he would provide at trial to a reasonable degree of probability in his field of
2 expertise).

3 135. Plaintiffs' liability expert Mr. Robert L. Stewart testified:

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

6 A. Don't know.

7 *See* February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 84, lns. 16-19,
8 attached as Exhibit 18; *see also* Filed Under Seal *Defendants' Supplemental Statement of*
9 *Facts Re: Testimony of ICE Witnesses in Support of Their Motion for Summary Judgment* at
10 ¶¶ 6-13, 20-21, and 23-24.

11 136. Plaintiffs' liability expert Mr. Robert L. Stewart testified that that MCSO
12 Deputy Matthew Ratcliffe "maybe" had racially discriminatory intent or motive in issuing a
13 citation to Mr. Rodriguez. *See* February 28, 2011 Deposition of Plaintiffs' Expert Robert L.
14 Stewart at p. 84, lns. 20-23, attached as Exhibit 18. Mr. Stewart, however, testified that he
15 had no direct or circumstantial evidence that Deputy Ratcliffe used race as a factor in any
16 form to decide to give a citation to Mr. Rodriguez. *See* February 28, 2011 Deposition of
17 Plaintiffs' Expert Robert L. Stewart at p. 87, lns. 19-22, attached as Exhibit 18; *see also*
18 Filed Under Seal *Defendants' Supplemental Statement of Facts Re: Testimony of ICE*
19 *Witnesses in Support of Their Motion for Summary Judgment* at ¶¶ 6-13, 20-21, and 23-24.

20 137. Mr. Stewart basis his "maybe" opinion on the reasoning that Deputy Ratcliffe
21 stopped several non-Latino motorists on Bartlett Dam Road the same day he stopped Mr. and
22 Mrs. Rodriguez, did not give them citations, referred the non-Latino drivers to the Tonto
23 National Forest Ranger (who issued citations to the non-Latino drivers), and the only citation
24 Deputy Ratcliffe actually issued was to Mr. Rodriguez, who is Latino. *See* February 28,
25 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 85, ln. 4 to p. 87, ln. 18,
26 attached as Exhibit 18. As such, Mr. Stewart concludes that Deputy Ratcliffe intentionally
27 treated the Rodriguez differently than the non-Latinos drivers he pulled over by issuing a
28 citation to the Rodriguez but referring the non-Latinos to the Tonto National Forest Ranger.
Id.

1 138. Deputy Ratcliffe did not recall the race of the other drivers he referred to the
2 Tonto National Forest Ranger, and he observed the ranger issue citations to those other
3 drivers. *See* Deposition of MCSO Deputy Matthew Ratcliffe at p. 39, ln. 4 to p. 40, ln. 11,
4 attached as Exhibit 6.

5 139. Another MCSO officer working Lake Patrol with Deputy Ratcliffe, Deputy
6 Maltz, had on the same day allowed other motorists (of unknown races) to drive on the
7 closed Bartlett Dam Road in order to go to the lake to repair either their recreational vehicles
8 or boats that had been damaged in the storm. *See* Deposition of MCSO Deputy Matthew
9 Ratcliffe at p. 28, ln. 21 to p. 31, ln. 4 (p. 31, lns. 1-4; Deputy Maltz has stopped all the other
10 vehicles); *see also* p. 32, ln. 22 to p. 33, ln. 9 (“Q. What else did you say to the Rodriguez’
11 at that time? A. As far as what, sir? Q. As far as the discussion that you were having with
12 them about selective enforcement. A. Just advising them that basically some people were
13 allowed to try to make repairs to their boats or RVs at that time. Q. Do you recall the race
14 or ethnicity of those other people? A. No, sir. Q. Were any of them Hispanic? A. I don't
15 recall, sir.”); *see also* p. 113, ln 9 to p. 114, ln. 13, attached as Exhibit 6 (other drivers
16 allowed to use road to repair property at the lake).

17 140. Deputy Ratcliffe has known Deputy Maltz for 2.5 years and does not believe
18 that Deputy Maltz’ decision to allow other people to use Bartlett Dam Road to repair their
19 property was based in any way on racial considerations. *See* Deposition of MCSO Deputy
20 Matthew Ratcliffe at p. 114, lns. 17-24, attached as Exhibit 6.

21 141. Plaintiffs’ liability expert, Mr. Robert L. Stewart, has no evidence of racially
22 discriminatory intent or motive by Deputy Armendariz. *See* February 28, 2011 Deposition
23 of Plaintiffs’ Expert Robert L. Stewart at p. 99, ln. 3-6; *see also* p. 97, ln. 18 to p. 98, ln. 5,
24 attached as Exhibit 18; *see also* Filed Under Seal *Defendants’ Supplemental Statement of*
25 *Facts Re: Testimony of ICE Witnesses in Support of Their Motion for Summary Judgment at*
26 ¶¶ 6-13, 20-21, and 23-24.

27 142. Plaintiffs’ liability expert, Mr. Robert L. Stewart, testified that there is no
28 evidence of racially discriminatory intent or motive by MCSO Deputy Douglas Beeks in
withdrawing his weapon. *See* February 28, 2011 Deposition of Plaintiffs’ Expert Robert L.

1 Stewart at p. 101, Ins. 5-6, Ins. 17-19, attached as Exhibit 18; *see also* Filed Under Seal
2 *Defendants' Supplemental Statement of Facts Re: Testimony of ICE Witnesses in Support of*
3 *Their Motion for Summary Judgment* at ¶¶ 6-13, 20-21, and 23-24.

4 143. Plaintiffs' liability expert, Mr. Robert L. Stewart, testified that there is no
5 evidence that MCSO Deputy Michael Kikes had racially discriminatory intent or motive in
6 making the traffic stop of the Meraz-Nieto vehicle. *See* February 28, 2011 Deposition of
7 Plaintiffs' Expert Robert L. Stewart at p. 103, ln. 18 to p. 104, ln. 1; p. 104, Ins. 12-4; Ins.
8 19-21, attached as Exhibit 18; *see also* Filed Under Seal *Defendants' Supplemental*
9 *Statement of Facts Re: Testimony of ICE Witnesses in Support of Their Motion for Summary*
10 *Judgment* at ¶¶ 6-13, 20-21, and 23-24.

11 144. Plaintiffs' liability expert, Mr. Robert L. Stewart, testified that there is no
12 evidence that Ms. Meraz and Mr. Nieto were racially profiled in either the traffic stop or
13 during their treatment by the MCSO deputies. *See* February 28, 2011 Deposition of
14 Plaintiffs' Expert Robert L. Stewart at p. 108, Ins. 10-13, attached as Exhibit 18; *see also*
15 Filed Under Seal *Defendants' Supplemental Statement of Facts Re: Testimony of ICE*
16 *Witnesses in Support of Their Motion for Summary Judgment* at ¶¶ 6-13, 20-21, and 23-24.

17 145. Plaintiffs' liability expert, Mr. Robert L. Stewart, testified that he only has his
18 "suspicions" that MCSO Deputy Michael Kikes may have been racially motivated to stop
19 Meraz and Nieto. *See* February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart
20 at p. 107, ln. 25 to p. 108, ln. 2, attached as Exhibit 18 (Q. What evidence do you have that
21 anyone was racially motivated to stop these people [Meraz and Nieto]? A. *Only my*
22 *suspicions.*") (emphasis added); *see also* p. 106, Ins. 8-11 (Q: My question to you is, is it
23 Robert Stewart's opinion that Meraz and Nieto were racially profiled during the traffic stop?
24 A. There is a *strong hint* that they *may* have been.") (emphasis added).

25 146. The Plaintiffs' own statistics expert, Ralph Taylor, Ph.D., has no opinion as to
26 whether Plaintiff Mr. Melendres is likely to again face a future traffic stop by the MCSO.
27 *See* March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 163, ln. 20 to p. 164, ln. 13 (As
28 to Mr. Melendres, Dr. Taylor opines that he estimates that Mr. Melendres would have "a
higher chances of being stopped all else equal compared to that other hypothetical non-

1 Hispanic driver”): p. 164, Ins. 14-20 (As to the probability that Mr. Melendres will be
2 stopped in a future saturation patrol, “I am not sure, because I – I don’t know his driving
3 patterns or what the future pattern of saturation patrol activities will be; its frequency, its
4 location and how that would link to where and how he drives.”); p. 165, Ins. 1 to p. 166, ln.
5 24 (Dr. Taylor cannot opine on the probability that Mr. Melendres will be pulled over
6 because his data deals with a group and not individuals.), attached as Exhibit 21.

7 147. The Plaintiffs’ own statistics expert, Ralph Taylor, Ph.D., has no opinion as to
8 whether Plaintiffs Mr. and Mrs. Rodriguez are likely to again face a future traffic stop by the
9 MCSO. *See* March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 166, ln. 25 to p. 167,
10 ln. 7, attached as Exhibit 21 (“Q. Do you know the probability of Rodriguez getting pulled
11 over again by Maricopa County sheriff’s deputies in a saturation patrol? A. No, I don’t.
12 But what I do estimate, and it’s my opinion, that his chances of being stopped during a major
13 saturation patrol are higher than would be the chances of a person driving with a non-
14 Hispanic name driving in exactly the same way, exactly the same type of vehicle.”); *see also*
15 p. 170, Ins. 11-19 (discussing chances of the Rodriguez having an MCSO conducted traffic
16 during a non-saturation patrol: “no, I cannot give you those specific probabilities.”).

17 148. The Plaintiffs’ own statistics expert, Ralph Taylor, Ph.D., has no opinion as to
18 whether Plaintiffs Velia Meraz and Manuel Nieto, Jr., are likely to again face a future traffic
19 stop by the MCSO. *See* March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 170, ln. 22
20 to p. 171, ln. 5, attached as Exhibit 21.

21 149. The Plaintiffs’ own statistics expert, Ralph Taylor, Ph.D., testified that if the
22 Plaintiffs in this case have not again been subject to MCSO initiated traffic stops during
23 “major saturation patrols” over a time span over several years – which are the undisputed
24 facts -- he would want to learn more information about the Plaintiffs’ driving, if the Plaintiffs
25 were exposed to law enforcement, where the Plaintiffs were driving on those saturation
26 patrol days, and where the Plaintiffs were not driving on those saturation patrol days. *See*
27 March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 172, ln. 23 to p. 173, ln. 16,
28 attached as Exhibit 21.

150. Somos America’s representative, Ms. Lydia Guzman, has never experienced a

1 traffic stop by the MCSO. See Deposition of Lydia Guzman, at p. 29, Ins. 19-21; p. 93, Ins.
2 1-9, attached as Exhibit 22.

3 151. Somos America is a non-profit advocacy organization, with no paid staff, no
4 membership dues, and any person or entity that attends its monthly meetings may consider
5 itself a member of Somos American. See Deposition of Lydia Guzman, at p. 8, Ins. 11-25
6 (Somos is a 501(c)(3) non profit organization); p. 11, ln. 16 to p. 12, ln. 4 (no paid
7 employees, only volunteers); p. 9, Ins. 23-25 (anybody that attends a Somos meeting may
8 consider itself a member), attached as Exhibit 22.

9 152. Somos America has only 35 members such as *Latino American Citizens, No*
10 *More Deaths, MECHHA*, and various labor unions, and there is no admissible evidence that
11 any Somos America member -- or employee of a member organization -- has been subject to
12 an MCSO traffic stop. See Deposition of Lydia Guzman, at p. 22, Ins. 22-25 (35 members);
13 p. 24-26 (listing of member organizations or entities); p. 29, Ins. 19-21 and p. 93, Ins. 1-9 (no
14 traffic stops personally witnessed by Lydia Guzman) attached as Exhibit 22.

15 DATED this 29th day of April, 2011.

16 SCHMITT, SCHNECK, SMYTH & HERROD,
17 P.C.

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26 **CERTIFICATE OF SERVICE**

27 I hereby certify that on April 29, 2011, I electronically transmitted the attached
28 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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