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8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

10 Manuel de Jesus Ortega Melendres,
11 et al.,

11 Plaintiffs,

12 vs.

13 Joseph M. Arpaio, et al.,

14 Defendants.

No. CV 07-2513-PHX-GMS

**PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

ORAL ARGUMENT REQUESTED

The Honorable Judge G. Murray Snow

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TABLE OF CONTENTS

1

2 **I. INTRODUCTION 1**

3 **II. FACTUAL BACKGROUND 3**

4 **A. Sheriff Arpaio Announces “Crackdown” on Illegal Immigration and**

5 **Begins Saturation Patrols in Effort to Get “Illegals” 3**

6 **B. Sheriff Arpaio and MCSO Officers Endorse and Encourage Racial**

7 **Profiling in Connection with Immigration Enforcement 6**

8 **C. The MCSO’s Immigration Enforcement Activities Have Led to**

9 **Discriminatory Treatment of Hispanics in Maricopa County 8**

10 **D. Hispanics are Stopped at Significantly Higher Rates During Saturation**

11 **Patrols 10**

12 **III. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF ON THEIR**

13 **CLAIM THAT DEFENDANTS’ POLICIES AND PRACTICES VIOLATE THE**

14 **FOURTEENTH AMENDMENT’S EQUAL PROTECTION CLAUSE..... 12**

15 **A. Legal Standards 12**

16 *1. Summary Judgment 12*

17 *2. Equal Protection Violations Under the Fourteenth Amendment 13*

18 **B. The Undisputed Record Shows Sheriff Arpaio and the MCSO Acted**

19 **with Discriminatory Intent 14**

20 *1. Sheriff Arpaio’s Statements Incorporate and Endorse Explicit Calls for*

21 *Targeting Hispanics in Immigration Enforcement..... 15*

22 *2. MCSO Saturation Patrols and Other Immigration Enforcement*

23 *Operations Are Responsive To Race-Based Requests for Action..... 20*

24 *3. The Practices Adopted by MCSO on Saturation Patrols Encouraged*

25 *Racial Profiling 24*

26 *4. MCSO’s Failure to Adequately Train and Oversee its Officers*

27 *Demonstrates its Acceptance of Racial Profiling..... 28*

28 **C. Statistical Evidence and the Stops of Putative Class Members**

Demonstrate that MCSO’s Operations Disparately Impact Hispanics 31

IV. CONCLUSION..... 34

1 Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs Manuel de Jesus
2 Ortega Melendres, Jessica Quitugua Rodriguez, David Rodriguez, Velia Meraz, Manuel
3 Nieto, Jr. and Somos America/ We Are America (hereinafter “Plaintiffs”), on behalf of
4 themselves and a putative class of similarly situated persons,¹ respectfully request
5 summary judgment on the issue of liability for violations of the Fourteenth Amendment
6 to the United States Constitution. (See First Claim for Relief: Equal Protection, First
7 Amended Complaint at 25-26, Dkt. No. 26.)

8 I. INTRODUCTION

9 Under the guise of illegal immigration enforcement, Defendants Sheriff Joseph
10 M. Arpaio and the Maricopa County Sheriff’s Office (the “MCSO”) have instituted a
11 policy, pattern and practice of targeting Hispanic² drivers and passengers in Maricopa
12 County during traffic stops. In particular, Sheriff Arpaio and the MCSO have relied on
13 race and ethnicity in the decision to conduct saturation patrols or so-called “crime
14 suppression operations,” and in the implementation of those patrols. As a result,
15 Hispanic drivers and passengers in Maricopa County are singled out for investigation for
16 potential immigration violations, and are disproportionately subjected to stops,
17 detentions, questioning, searches, and other forms of law enforcement action. Such
18 selective enforcement is unconstitutional.

19 The undisputed evidence shows that considerations of race and ethnicity have
20 infected the MCSO’s immigration enforcement operations at all levels, from the policy
21 decisions to “go after illegals, not the crime first” and to use saturation patrols as a
22 primary tactic in the MCSO’s “crackdown,” to the planning of saturation patrols by
23 MCSO leadership based on racially charged citizen complaints, down to the systemic
24 pattern of discriminatory traffic stops by MCSO deputies. In the face this pattern,

25
26 ¹ Plaintiffs concurrently bring (1) a renewed motion for class certification, based
27 on the pattern and practice of racially discriminatory traffic stops shown herein, and (2) a
28 motion for issue sanctions based on Defendants’ prior willful destruction of relevant
emails and stat sheets.

² Plaintiffs intend the terms “Hispanic” and “Latino” to be synonymous.

1 Sheriff Arpaio and MCSO supervisors have refused to adopt routine law enforcement
2 measures to protect against racial profiling. Indeed, Sheriff Arpaio and MCSO
3 supervisors have instead taken steps that actually *impede* the detection of discriminatory
4 conduct.

5 Sheriff Arpaio's inflammatory public statements—in speeches, interviews and
6 his own book—equate undocumented immigrants with Mexicans and Hispanics, and
7 disparage these groups. Sheriff Arpaio's statements are simply false as an assertion
8 about the Hispanic population in Maricopa County, the large majority of whom are
9 actually U.S. citizens or legal residents; they also encourage and condone racial
10 profiling. By his own admission, Sheriff Arpaio has also endorsed and distributed for
11 use by his subordinates in the MCSO explicit calls for racial profiling sent to him by
12 members of the public, asking him to take action against dark-skinned Hispanics and
13 people speaking Spanish. In just one example out of many, Arpaio received a letter
14 asking him to do a "round-up" at 29th Street and Greenway in Phoenix and stating "If
15 you have dark skin, then you have dark skin. Unfortunately, that is the look of the
16 Mexican illegals who are here illegally." Rather than correct the sender or ignore the
17 request to focus on dark-skinned people, Sheriff Arpaio, believing that the letter was
18 relevant "intelligence," passed it on to Chief Brian Sands with a note instructing Sands,
19 "Have someone handle this." Sheriff Arpaio's racially explicit statements and
20 instructions supporting race-based policing, coupled with the absence of adequate
21 training and supervision within the MCSO, foster the unlawful use of race in the
22 MCSO's immigration enforcement policies, especially during saturation patrols aimed at
23 apprehending undocumented immigrants.

24 As a result, Plaintiffs, putative class members, and members of Plaintiff Somos
25 America have been stopped and detained on the basis of their perceived ethnicity. All of
26 the named Plaintiffs are United States citizens or lawfully present in this country. The
27 discrimination that they have suffered is typical. Indeed, the data that is available shows
28 that Hispanics are stopped at significantly higher rates by MCSO during saturation

1 patrol operations than at other times, that officers involved in saturation patrols stop
2 Hispanics at significantly greater rates than those who are not so involved, and that, on
3 average, stops of Hispanics lasted significantly longer than stops of non-Hispanics.
4 Defendants' own statistical expert does not contradict these findings. This undisputed
5 evidence of the MCSO's racially discriminatory intent, including undisputed evidence
6 of the disparate impact of the MCSO's policies and practices, warrants summary
7 judgment in favor of Plaintiffs on their equal protection claim.

8 Plaintiffs do not object to the enforcement of the immigration laws. However,
9 the Constitution requires that such enforcement be free from racial and ethnic
10 discrimination. MCSO's saturation patrols are unlawfully motivated by racial
11 considerations and, both by design and in practice, target Hispanics in the hopes of
12 finding illegal immigrants, resulting in systematic discrimination against Hispanics and
13 those who appear Hispanic. MCSO's actions thus violate our nation's fundamental
14 principle of equal treatment under laws, regardless of race.

15 **II. FACTUAL BACKGROUND**

16 As recounted in greater detail in the separate Statement of Facts in support of this
17 motion ("SOF"), filed herewith pursuant to Local Rule 56.1, the undisputed facts
18 demonstrate that MCSO has relied intentionally and unlawfully on race and/or ethnicity
19 as a factor in saturation patrols and other immigration enforcement activities, with
20 resulting disparate effects on Hispanics.

21 **A. Sheriff Arpaio Announces "Crackdown" on Illegal Immigration and** 22 **Begins Saturation Patrols in Effort to Get "Illegals"**

23 Starting in 2006, Sheriff Arpaio announced a new focus for his over 3,000-person
24 agency: to find and lock up "illegals." SOF 1. When he made this policy decision,
25 Sheriff Arpaio made clear that he equated "illegals" with Hispanics generally and
26 persons from Mexico in particular. He has stated, for example, that "the only sanctuary
27 for illegal immigrants is in Mexico." SOF 2. In a magazine interview, Sheriff Arpaio
28

1 stated that he “rarely run[s] across people other than Hispanics crossing the border
2 illegally.” SOF 12. Speaking at a press conference, addressing allegations that his
3 agency was targeting Hispanics, he added, “I have to tell you something Where do
4 you think 99 percent of the people come from?” SOF 14.

5 According to Sheriff Arpaio’s public statements, these Mexican and Hispanic
6 immigrants were taking over the southwestern United States in “epidemic” proportions,
7 bringing with them cultural disruption and disease. SOF 18-20. In his 2008 book, *Joe’s*
8 *Law: America’s Toughest Sheriff Takes on Illegal Immigration, Drugs and Everything*
9 *Else That Threatens America*, Sheriff Arpaio writes that Mexicans and Hispanics are
10 different from any other immigrant group known in American history because they
11 maintain “language[,] customs [and] beliefs” separate from the “mainstream.” SOF 16.
12 Sheriff Arpaio posits that Hispanics are trying to “reconquer” American soil through
13 their migration to the United States; he distinguishes them from his own parents, who
14 immigrated from Italy, writing, “My parents did not regard any inch of American soil as
15 somehow belonging to Italy, so their arrival here never constituted a ‘reconquest.’”
16 SOF 16. Sheriff Arpaio’s book describes what he does as a law enforcement official,
17 and he admits that there is no firm line between his business as Sheriff and what he says
18 in his book, which he actively promotes. SOF 17. Sheriff Arpaio has also stated that
19 illegal immigration from Mexico is impacting “our” culture due to Mexicans’ perceived
20 “failure to assimilate,” SOF 18, and has described immigrants coming over the Mexican
21 border as “dirty” and bringing disease into the United States. SOF 19-20.

22 In light of the purported threat that this group of immigrants posed, Sheriff
23 Arpaio determined it was necessary to respond by launching a “crackdown” on illegal
24 immigration. SOF 3. To implement this new priority, the Sheriff made several large-
25 scale changes at great financial and manpower cost to his agency. SOF 21. First, he
26 sought and secured an agreement with U. S. Immigration and Customs Enforcement
27 (ICE) to cross-certify 160 of his officers to arrest persons based on a suspected violation
28 of the federal immigration laws, pursuant to Section 287(g) of the federal immigration

1 code. SOF 3.³ Second, Sheriff Arpaio created a specialized unit within MCSO to find
2 and arrest illegal immigrants, called the Human Smuggling Unit (“HSU”). SOF 4-5.
3 Third, he created and advertised a hotline where citizens of Maricopa County could call
4 with complaints about suspected illegal immigrants. SOF 6. And finally, as discussed
5 in more detail below, he began conducting regular large-scale saturation patrols, known
6 as “crime suppression operations,” where deputies and posse would “saturate valley
7 cities” in the hunt for illegal immigrants. SOF 7, 53.

8 While illegal immigration was not new to law enforcement in Maricopa County,
9 Sheriff Arpaio explicitly distinguished the MCSO’s immigration enforcement program
10 from those of other law enforcement officials: Rather than targeting immigrants who
11 were also criminal offenders, MCSO’s program would “go after illegals, not the crime
12 first.” SOF 8; *see also* SOF 15. Sheriff Arpaio believes that the Hispanic illegal
13 immigrants, “by and large” have “certain appearances,” including “brown . . . skin
14 color.” SOF 13. They can be spotted, according to him, based on their “speech [and]
15 what they look like.” SOF 11. In Sheriff Arpaio’s view, with his “pure program,” it
16 was possible to simply send some deputies “right down there to the main street in Mesa
17 and arrest some illegals,” SOF 9, and that is exactly what the Sheriff set out to do.

18 During the MCSO’s high-profile saturation patrols, which commenced in 2007
19 and continue to this day, the agency deploys “the full resources of the Sheriff’s Office”
20 to find and arrest significant numbers of purported illegal immigrants. SOF 7, 53.
21 Some saturation patrols have focused on “day laborer” areas, SOF 53, 112, which makes
22 perfect sense, since groups of Hispanic men waiting on the corner for day work are the
23 most visible manifestation of the growing Latino population in Maricopa County. The
24 MCSO refers to these areas as “magnets for [] illegal aliens.” SOF 53. During these

25
26 ³ In October 2009, MCSO lost this authority with respect to the enforcement of
27 federal immigration laws in the field (the authority was retained for detention officers
28 who process inmates in the jails). SOF 10. Despite the revocation of the agency’s
287(g) field authority, and despite being aware of this lawsuit, MCSO has made clear
that Sheriff Arpaio will not change any of his illegal immigration policies; indeed,
MCSO has continued to conduct large-scale saturation patrols. SOF 10; 225-26.

1 operations, MCSO officers follow vehicles that appear to have picked up day laborers,
2 develop probable cause of a traffic violation to conduct a traffic stop, and then continue
3 the investigation from there. SOF 117. MCSO officers could not know if the men being
4 picked up were illegal immigrants, or even day laborers, but believed that most day
5 laborers were Hispanic. SOF 113. Indeed, Chief Sands could not think of an instance
6 where the MCSO arrested a day laborer who was not Hispanic. SOF 89.

7 The MCSO also employs the tactic of using pretextual traffic stops for minor
8 traffic violations to screen drivers and passengers for potential violations of the
9 immigration laws in other saturation patrols. SOF 114-15. The HSU still takes a lead
10 role, preparing the operations plans and giving the briefings. SOF 58-59. Officers are
11 encouraged to stop vehicles they observe violating any traffic or motor vehicle law,
12 regardless of the seriousness or triviality of the infraction. SOF 118. MCSO officers
13 testified that they could find a violation in almost every case, even within two minutes.
14 SOF 116. Unlike on a regular patrol, where they prioritize more serious traffic
15 violations, MCSO officers are given wide latitude on saturation patrols to conduct traffic
16 stops for minor violations. SOF 118, 124. They are also encouraged to maximize
17 contacts with drivers and passengers and request identification, including from
18 passengers who have not committed any violation of the law. SOF 118, 126-28.

19 By the end of 2009, MCSO had conducted at least 13 large-scale saturation
20 patrols, as well as a number of smaller operations. SOF 60-73.

21 **B. Sheriff Arpaio and MCSO Officers Endorse and Encourage Racial** 22 **Profiling in Connection with Immigration Enforcement**

23 Sheriff Arpaio's decision to launch a crackdown on illegal immigration was
24 based on having "heard the people speak." SOF 22. Indeed, Sheriff Arpaio regularly
25 receives letters and emails advocating racial profiling as an effective tool for
26 immigration enforcement. SOF 25, 45; *see also* SOF 27-49. Much of this material is
27 crude, racially and ethnically derogatory, and contains no information about criminal
28 activity. *Id.* Despite its offensive content and irrelevance to any legitimate law

1 enforcement purpose, Sheriff Arpaio retains this material as part of his personal
2 “immigration file,” duplicates it, and circulates endorsed copies to MCSO command
3 staff. SOF 25-26, 44-46; *see also, e.g.*, SOF 26-43, 47-49.

4 The record reveals a number of instances where Sheriff Arpaio circulated within
5 MCSO materials expressing explicit anti-Hispanic or anti-Mexican sentiments. SOF 44-
6 46; *see also* 25-43, 47-49. Examples include concerns about the destruction of the
7 American way of life due to the influx of Hispanic immigrants, reference to Ninth
8 Circuit Judge Mary Murguia (who previously was the district judge assigned to this
9 case) as a “token female Hispanic judge,” and a set of fabricated immigration “statistics”
10 that present a derogatory picture of Spanish speakers and Mexicans. SOF 44, 48-49. In
11 most instances, Sheriff Arpaio wrote thank-you notes in response to these materials,
12 some of which were personalized and lengthy. SOF 26, 45, 47. Beyond these personal
13 responses, Sheriff Arpaio also endorsed the sentiments in such materials by sending
14 copies to Chief Sands and others in the MCSO’s leadership. *See, e.g.*, SOF 45-49.

15 Sheriff Arpaio also received and circulated to MCSO leadership materials
16 explicitly promoting racial profiling in immigration enforcement. SOF 26-43, 76-83,
17 85, 87, 93, 96-97, *see also* SOF 51. Many of these letters include requests for Sheriff
18 Arpaio or the MCSO to take action against individuals whom the sender apparently
19 believes are illegal immigrants based on the color of their skin, the language they speak,
20 or other characteristics associated with Hispanic ethnicity. SOF 25, 27, 29, 31, 33-34,
21 37-43, 76, 78, 80-84, 87, 90-92, 96. Most of these requests do not describe any actual
22 criminal activity or trigger any need for police action. SOF 25, 27, 29, 31-34, 37-38, 39-
23 43, 76-78, 80-84, 97-88, 91, 96-97. The record shows numerous instances in which
24 Sheriff Arpaio annotated such requests and forwarded them to other members of the
25 MCSO leadership, primarily Chief Brian Sands, who is charged with selecting sites for
26 saturation patrol operations. SOF 26, 28, 30, 32-33, 36-37, 39, 42-43, 74-75, 77, 79, 81-
27 82, 85, 90, 93, 97. In some cases, Arpaio has told his staff that the directive is “for our
28 operation,” or used similar language to indicate his intent. SOF 79, 85, 90, 93, 97. On

1 several occasions, letters espousing racial antipathy were indeed followed shortly
2 thereafter by saturation patrol operations in the areas requested. SOF 79, 86, 91, 95, 98.

3 A number of MCSO officers, including officers in the HSU, and posse members
4 also distributed inappropriate materials—emails containing offensive images targeting
5 “Mexicans” or making exaggerated claims about undocumented immigrants or
6 Mexicans—using their county email accounts. SOF 145-151. To name just two
7 examples out of many, HSU Sergeant Palmer forwarded the same “statistics” as Sheriff
8 Arpaio and also sent an email with an attachment entitled, “Indian yoga versus Mexican
9 yoga” depicting a man in a yoga pose with the subtitles “Indian Yoga” “Requires years
10 of practice to achieve,” and a man who appears to be passed out from intoxication with
11 the subtitle “Mexican Yoga” “Requires about 3-4 hours to achieve.” SOF 147-148.

12 **C. The MCSO’s Immigration Enforcement Activities Have Led to**
13 **Discriminatory Treatment of Hispanics in Maricopa County**

14 The treatment of the Plaintiffs in this case—and of other individuals in Maricopa
15 County who have suffered similar harms—provide vivid examples of the impact of the
16 MCSO’s policies on Hispanics in Maricopa County.

17 During one of the earlier suppression patrols in September 2007, Plaintiff Manuel
18 de Jesus Ortega Mendres was stopped by the MCSO after an undercover unit
19 identified the vehicle he was riding in as having picked up several men who appeared to
20 be day laborers at a church in Cave Creek. SOF 171- 72, 174-75, 177. Prior to the
21 patrol, the MCSO had conducted an undercover investigation at the church, but
22 discovered no information pertaining to human smuggling, drop houses or even illegal
23 immigration. SOF 173. Detectives knew only that Hispanic men were using the church
24 to find day work. *Id.* Deputy Louis DiPietro, who stopped the vehicle, did not have
25 reason to believe that any of the Hispanic passengers had committed any violation of the
26 law (other than the fact that he believes most day laborers look Hispanic and are illegal
27 immigrants), but he detained the passengers so that HSU Deputy Carlos Rangel could
28 come and “check the[ir] status.” SOF 113, 176, 179, 181-82. He did not cite or further

1 detain the white driver of the vehicle, who was allowed to leave the scene. SOF 178;
2 *see also* SOF 180. Deputy Rangel's investigation resulted in Mr. Ortega Melendres
3 being erroneously detained for seven to eight hours before his eventual release by ICE.
4 SOF 183-85.

5 Plaintiffs David and Jessika Rodriguez were also treated differently based on
6 their ethnicity. As the Rodriguezes were taking their children down to Bartlett Lake in
7 December 2007, they were stopped by 287(g)-certified Deputy Matthew Ratcliffe and
8 cited for failing to heed a "Road Closed" sign. SOF 139, 186-87, 193. Deputy Ratcliffe
9 issued Mr. Rodriguez a citation even though Mr. Rodriguez informed him that they must
10 have entered the road past the point of the sign, and even though none of the other, non-
11 Hispanic motorists driving on that same stretch of road were receiving citations. SOF
12 189, 190-93; *see also* 197-98. Deputy Ratcliffe then demanded that Mr. Rodriguez
13 provide his Social Security number for the citation, even though MCSO policy does not
14 require this. SOF 188, 193-196.

15 Plaintiffs Manuel Nieto and Velia Meraz were stopped at gunpoint during one of
16 MCSO's large immigration saturation patrol operations in March 2008. SOF 200, 209.
17 After 287(g)-certified Deputy Ramon Charley Armendariz heard them advising two of
18 his detainees to "remain silent" and "ask for a lawyer" in Spanish, he sent backup
19 officers to pursue Mr. Nieto and Ms. Meraz though they had left the scene. SOF 140,
20 201-05. The backup officers had no reason to think that the pair were dangerous. SOF
21 204-06. Nevertheless, they pulled them over, drew their weapons, and forcefully
22 removed Mr. Nieto from the vehicle. SOF 207-10. Mr. Nieto and Ms. Meraz were
23 released without any citation or charge after deputies learned that they were U.S.
24 citizens. SOF 211-13.

25 In addition to the named Plaintiffs, other putative class members have been
26 subject to selective enforcement and aggressive police action based on their race or
27 ethnicity. *See, e.g.*, 215-224 (detailing additional stops). For example, Jorge Urteaga
28 was stopped during a saturation patrol in Buckeye in January 2009. SOF 215. Despite

1 having provided a valid drivers license, the officer asked him where he was from and
2 whether he could “prove” that he was a U.S. citizen. *Id.* The citation he received for an
3 alleged registration violation was later dismissed. *Id.* Jerry Cosio was also stopped and
4 arrested during a saturation patrol, in July 2009 in the Southeast Valley. SOF 219.
5 When he was waiting at a substation, he overheard the MCSO officer telling another that
6 “he doesn’t count because he’s American.” *Id.*

7 Daniel and Eva Magos were stopped in December 2009 after an officer made eye
8 contact with Mr. Magos. SOF 216. The officer had to make a sudden U-turn to pull
9 them over. *Id.* Mr. Magos and his wife were asked to provide identification, but Mr.
10 Magos was told that his registration “wasn’t important.” *Id.* He received no citation
11 and was eventually released, but not before the officer conducted a baseless pat down.
12 *Id.* When he asked the officer for his badge number, even though he could have been
13 complaining about any number of problems with the stop, the officer told him, “Don’t
14 go thinking this is racial profiling.” *Id.*

15 Lino Garcia has been stopped multiple times in or near his neighborhood of
16 Avondale. SOF 217. Each time, his girlfriend (who is also Hispanic) was also asked to
17 provide identification. *Id.* Mr. Garcia was often stopped for a minor violation such as
18 having a license plate light that was “too dark” or “too bright.” *Id.* He was not cited on
19 any occasion, but was once asked for his Social Security number. *Id.*

20 Sergio Martinez Villaman was stopped during a saturation patrol in June 2008 in
21 Mesa. SOF 218. Although he provided a valid visa and an Arizona identification card,
22 the officer still arrested him for “failure to provide ID.” *Id.* Mr. Villaman’s passenger
23 was also asked whether he had identification or spoke English. *Id.* Mr. Villaman’s case
24 was never prosecuted, but he spent almost two weeks in jail. *Id.*

25 **D. Hispanics are Stopped at Significantly Higher Rates During** 26 **Saturation Patrols**

27 At Plaintiffs’ request, Dr. Ralph B. Taylor conducted a study based on the names
28 called into MCSO’s Computer Aided Dispatch (CAD) database, which records

1 information from calls by MCSO officers to central dispatch made during MCSO traffic
2 stops, to determine the ethnic composition of individuals stopped by the MCSO. SOF
3 227-30, 233, 236. Dr. Taylor determined whether the surname was Hispanic using data
4 from the U.S. Census on the most common Hispanic surnames, which is a generally
5 accepted technique for determining Hispanic ethnicity. See SOF 234-35. Dr. Taylor
6 focused on traffic stop activity on days in which a major saturation patrol operation was
7 conducted by MCSO (“saturation patrol days”), as compared to other, non-saturation
8 patrol control days. SOF 237, 239-43. He also examined the traffic stop patterns of
9 officers who were actively working on a saturation patrol, as compared to other MCSO
10 officers. SOF 238, 244-47.

11 Dr. Taylor made three key undisputed findings: (1) MCSO officers were more
12 likely to stop Hispanics⁴ on saturation patrol days as compared to control days; (2)
13 MCSO officers assigned to saturation patrols were more likely to stop Hispanics than
14 were other MCSO officers who were not involved in saturation patrols, particularly on
15 saturation patrol days; and (3) stops involving Hispanic individuals were significantly
16 longer than stops where no Hispanic surname was called into dispatch. SOF 239-49.

17 Comparing MCSO activity on saturation patrol days to all non-saturation patrol
18 days, Dr. Taylor found that Hispanic individuals were between 26% to 29.9%⁵ more
19 likely to be stopped on saturation patrol days as compared to all other days. SOF 241.
20 Using dates one week before and one week after a saturation patrol as controls, Dr.

21 ⁴ To be more precise, because of the nature of MCSO’s Computer-Aided
22 Dispatch (CAD) data, Dr. Taylor looked at the names checked by MCSO officers during
23 traffic stops when an MCSO officer calls a name into dispatch. See SOF 235-26. For
24 simplicity, and because Defendants’ expert uses the same methods to determine the
25 ethnic composition of persons stopped by the MCSO, SOF 252, this motion will refer to
26 “Hispanic persons stopped” as opposed to “Hispanic names checked” when
27 summarizing Dr. Taylor’s results. Similarly, although it is possible that an individual
28 with a “Hispanic” name might not be Hispanic, and vice versa, these effects roughly
cancel each other out to produce an accurate estimate in the aggregate, SOF 234; indeed,
Defendants’ own statistical expert relies on the same widely-used surname-based
analysis to infer the ethnicity of persons stopped and to detect patterns in those stops.
SOF 252.

⁵ The percentage ranges presented depend on the particular percentage cutoff used
to define whether a surname is Hispanic. See SOF 235.

1 Taylor found that Hispanic individuals were 28.8% to 34.8% more likely to be stopped
2 on saturation patrol days. SOF 239. When compared to control dates precisely one year
3 before the saturation patrol day, the differences were even larger: Hispanics were 36.2%
4 to 39.5% more likely to be stopped on saturation patrol days. SOF 240.

5 Further, when an analysis was limited only to the MCSO officers known to have
6 participated in saturation patrols,⁶ those actively working in a saturation patrol operation
7 were 34.1% to 40% more likely to stop Hispanic persons as compared to officers never
8 involved in saturation patrol operations. SOF 244. Looking to activity just on
9 saturation patrol days, the MCSO officers actively working a saturation patrol operation
10 were 46% to 53.7% more likely to stop Hispanic persons than the MCSO officers also
11 working on those days but not involved in the saturation patrol. SOF 245.

12 Dr. Taylor's report also reveals that stops where at least one Hispanic name was
13 checked were 21% to 25% longer than stops in which no Hispanic surname was
14 checked. SOF 248-49. This result controls for both the disposition of stop (e.g.,
15 whether it concludes in an arrest), and for the number of names checked during a stop.
16 *Id.* All the results reported above are highly statistically significantly at the $p < .001$
17 level, meaning there is a less than one in a thousand odds that they could have occurred
18 purely by chance. SOF 242-43, 246-48.

19 **III. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF ON THEIR**
20 **CLAIM THAT DEFENDANTS' POLICIES AND PRACTICES VIOLATE**
21 **THE FOURTEENTH AMENDMENT'S EQUAL PROTECTION CLAUSE**

22 **A. Legal Standards**

23 *1. Summary Judgment*

24 Summary judgment is appropriate when "there is no genuine dispute as to any
25 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
26 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). "Only disputes

27 ⁶ An MCSO officer's participation in a given saturation patrol is determined by
28 whether the officers' name appears on MCSO's "Sign-in Roster" or "Arrest List" for the
particular saturation patrol. SOF 238.

1 over facts that might affect the outcome of the suit under the governing law will
2 properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*,
3 477 U.S. 242, 248 (1986).

4 The movant bears the initial responsibility of presenting the basis for its motion
5 and identifying those portions of the record that it believes demonstrate the absence of a
6 genuine issue of material fact. *Celotex*, 477 U.S. at 323; *Devereaux v. Abbey*, 263 F.3d
7 1070, 1076 (9th Cir.2001) (en banc). If the movant meets its burden with a properly
8 supported motion, the burden then shifts to the non-movant to present specific facts that
9 show there is a genuine issue for trial. *Auvil v. CBS “60 Minutes”*, 67 F.3d 816, 819-20
10 (9th Cir.1995). The non-movant may not rest on mere allegations and denials, but must
11 present evidence of specific, disputed facts. *See Anderson*, 477 U.S. at 248.

12 2. *Equal Protection Violations Under the Fourteenth Amendment*

13 Plaintiffs assert that Sheriff Arpaio and the MCSO have applied facially neutral
14 policies and traffic laws in an intentionally discriminatory manner against Hispanics.
15 To succeed on a claim of selective enforcement in violation of the Equal Protection
16 Clause, Plaintiffs must prove that the Defendants’ actions “had a discriminatory effect
17 and [were] motivated by a discriminatory purpose.” *Farm Labor Org. Comm. v. Ohio*
18 *State Highway Patrol*, 308 F.3d 523, 533- 34 (6th Cir. 2002) (citing *Wayte v. United*
19 *States*, 470 U.S. 598, 608 (1985)); *see also Whren v. United States*, 517 U.S. 806, 813
20 (1996) (“[T]he Constitution prohibits selective enforcement of the law based on
21 considerations such as race.”). “In addition to the showing of discriminatory purpose
22 and effect, plaintiffs seeking to enjoin alleged selective enforcement must demonstrate
23 the police misconduct is part of a policy, plan, or a pervasive pattern.” *Rosenbaum v.*
24 *City and County of San Francisco*, 484 F.3d 1142, 1153 (9th Cir. 2007) (internal
25 quotation marks and citation omitted).

26 To show discriminatory purpose, Plaintiff need only demonstrate that
27 impermissible considerations, such as race or ethnicity, were one “motivating factor” in
28

1 the enforcement decisions of Sheriff Arpaio and the MCSO. *See Vill. of Arlington on*
2 *Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265-66 (1977). It is not required
3 that Plaintiffs show that the challenged action rested *solely*, or even primarily, on
4 racially discriminatory purposes. *See id.* at 265. “Determining whether invidious
5 discriminatory purpose was a motivating factor demands a sensitive inquiry into such
6 circumstantial and direct evidence of intent as may be available.” *Arlington Heights*,
7 429 U.S. at 266; *accord Washington v. Davis*, 426 U.S. 229, 242 (1976) (finding that
8 discriminatory purpose “may often be inferred from the totality of relevant facts”). In
9 *Arlington Heights*, the Supreme Court identified the following non-exhaustive list of
10 areas of inquiry where the Court may find evidence of discriminatory intent: (1)
11 discriminatory impact; (2) the historical context; (3) the sequence of events leading to
12 challenged conduct; (4) substantive and procedural departures from norms; and (5) the
13 contemporary statements of decisionmakers. 429 U.S. at 266-68; *see also Doe v. Vill. of*
14 *Mamaroneck*, 462 F. Supp. 2d 520, 547-48 (S.D. N.Y. 2006) (applying *Arlington*
15 *Heights* factors to Village’s campaign against day laborers).

16 **B. The Undisputed Record Shows Sheriff Arpaio and the MCSO Acted**
17 **with Discriminatory Intent**

18 The undisputed facts in this case, as established through documentary evidence,
19 deposition testimony, expert opinions, and any adverse inferences entered by the Court,⁷
20 demonstrate that the actions of Sheriff Arpaio and the MCSO are motivated by a
21 discriminatory purpose and have a discriminatory effect on Hispanic motorists and
22 passengers in Maricopa County. Sheriff Arpaio and the MCSO instituted a pattern or

23 _____
24 ⁷ While the undisputed evidence presented herein shows discriminatory intent
25 alone, Plaintiffs are also entitled to rely on any adverse inferences entered by the Court
26 against the Defendants for their willful spoliation of evidence, as additional evidence
27 further supporting that conclusion. Those inferences include, but are not limited to, the
28 fact that: (1) that MCSO has followed a pattern of conducting saturation patrols based on
citizen complaints that describe no criminal activity and express ethnic animus; (2)
MCSO’s decision to “crack down” on illegal immigration is motivated by citizen
communications that describe no criminal activity and express ethnic animus; and (3)
MCSO’s saturation patrol policies were motivated by anti-Hispanic sentiments and
negative stereotypes of persons of Mexican descent.

1 practice of selecting locations for saturation patrols based, in part, upon racially-charged
2 citizen complaints and in an effort to target individuals of Mexican and Hispanic
3 ethnicity, whom Arpaio publicly and explicitly equates to “illegals”. The record
4 contains both direct and circumstantial evidence of discriminatory intent, including
5 strong statistical evidence of discriminatory effect.

6 The undisputed record shows that the MCSO, led by Sheriff Arpaio: (1) launched
7 and publicized a “crackdown” on illegal immigration in which Hispanic or Mexican
8 individuals were targeted; (2) distributed, endorsed and acted upon materials advocating
9 racial profiling, requesting police action based on nothing more than Hispanic
10 appearance, and containing inaccurate and derogatory characterizations of Hispanics; (3)
11 selected locations for saturation patrols in reliance upon such materials, specifically
12 intending to go after Hispanics; and yet, despite these actions, (4) has done little to
13 nothing to prevent or detect unlawful racial profiling, thereby departing from normal
14 practices in law enforcement agencies. Based on the undisputed evidence, the MCSO
15 has, and continues to, act with discriminatory intent, resulting in discrimination against
16 the named Plaintiffs and the class they represent.

17 *1. Sheriff Arpaio’s Statements Incorporate and Endorse Explicit Calls*
18 *for Targeting Hispanics in Immigration Enforcement*

19 As detailed above, Sheriff Arpaio’s public statements and other evidence
20 demonstrate that his immigration “crackdown” is focused on a single ethnic group—
21 Hispanics. *See supra* Section II.A. Sheriff Arpaio has repeatedly equated illegal
22 immigration with having Mexican ancestry, speaking Spanish, or being Hispanic, SOF
23 2, 11-14, failing to acknowledge the fact that a majority of Hispanics in Maricopa
24 County are, indeed, not illegal immigrants. According to him, a focus on Hispanics is
25 justified, because “Where do you think 99 percent of the people come from?” SOF 14.

26 The record demonstrates that Sheriff Arpaio’s decision to fundamentally shift his
27 agency’s priorities in the direction of immigration enforcement was made “because of”
28 its adverse effects on Hispanics, not “in spite of” them. *McKlesky v. Kemp*, 481 U.S.

1 279, 298 (1987) (internal quotation and citation omitted). The historical backdrop of his
2 decision, the growing resentment of Hispanics among Sheriff Arpaio’s constituency, and
3 Arpaio’s contemporaneous statements provide ample insight into his discriminatory
4 purpose. *See Arlington Heights*, 429 U.S. at 266-68.

5 When Sheriff Arpaio announced his unprecedented “crackdown,” he stated that
6 he was responding to the people’s “frustration” and that he had “heard the people
7 speak.” SOF 22. Indeed, Sheriff Arpaio maintains a file of newspaper clippings, letters,
8 and emails from constituents about illegal immigration. SOF 23. Sheriff Arpaio
9 chooses what goes into this file himself, and often passes materials contained therein to
10 others within the MCSO. SOF 24, 26, 45-49; *see also* SOF 27-43, 51, 76-83, 85, 87, 93,
11 96-97. The contents of the file include a large collection of letters expressing anti-
12 Hispanic sentiments, SOF 25-49, and reveal that the “frustrations” and sentiments of the
13 people the Sheriff was responding to when he initiated the saturation patrols were
14 directed towards Mexican and Hispanic individuals in particular, as opposed to illegal
15 immigration in general.

16 For example, one letter complains about “Mexicans...on the corner...peddling
17 their old corn, peanuts, etc,” and expressed frustration “at how the police officers ignore
18 these Mexicans when they are speeding right by them.” SOF 31. Though there was no
19 information about the peddlers’ immigration status, Sheriff Arpaio responded with a
20 note stating that he would “give the info to *my illegal immigration OFFICERS* to look
21 into.” SOF 32 (emphasis added). Prior to the implementation of the MCSO’s
22 “crackdown” on illegal immigration, Arpaio forwarded to Chief Hendershott a 2005
23 letter from the Minutemen Project asking him to “investigate and deport illegal
24 immigrants when they are spotted in our cities,” and asking why it was that “day
25 laborers stand on our cities street corners every day of the year without fear of being
26 questioned?” SOF 39. Sheriff Arpaio’s directive to Chief Hendershott was that they
27 “should have a meeting (internally) and decide how to respond.” *Id.*

28

1 Additional materials in Sheriff Arpaio's file include crude comparisons between
2 Hispanics and "wild feral animals," predictions that "AZ would now also be facing a
3 70% population of Hispanics and Spanish language domination," and claims that
4 Hispanic immigrants "would destroy our historical 'American way of life'" and fail to
5 practice "American values." SOF 44, 47. Sheriff Arpaio also endorsed and circulated
6 to Chief Sands a set of false "statistics" that Sheriff Arpaio felt were relevant to Sands'
7 enforcement activities, SOF 49, despite having reason to doubt their veracity. Under
8 "illegal alien contributions," these "statistics" listed the number of Spanish language
9 radio stations in Phoenix and the number of Spanish speakers in Los Angeles County,
10 along with a claim that 83% of warrants for murder in Phoenix are for illegal aliens—a
11 number that even Sheriff Arpaio later said "does not sound right." *Id.*⁸ Sergeant Brett
12 Palmer, an HSU supervisor, also circulated the same set of fabricated "statistics" to his
13 officers without bothering to verify their validity. *Id.*; see also SOF 147.

14 By responding to these sentiments, Sheriff Arpaio put his imprimatur on his
15 constituents' sentiments against Hispanics and their views that Hispanics should be
16 targeted for law enforcement based upon their race or ethnicity. This conduct violates
17 the Equal Protection Clause, which flatly prohibits government officials from
18 responding to popular racial prejudice" by "effectuating the desires of private citizens"
19 where officials are "aware of the [racial] motivations of the private citizens." *United*
20 *States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1224-25 (2d Cir. 1987) (quoting *United*
21 *States v. City of Birmingham, Mich.*, 538 F. Supp. 819, 828 (E.D. Mich. 1982). Indeed,
22 Plaintiffs need not even prove that Sheriff Arpaio himself held racial animus in order to
23 establish racially discriminatory intent if he adopted his policies in response to public
24 sentiment that he knew was racially inspired. *Id.*⁹ While "[p]rivate biases may be

25
26 ⁸ Sheriff Arpaio admits that he never checked the validity of the numbers before
27 circulating them. SOF 49. An article in the Los Angeles Times debunked the fake
statistics before Arpaio forwarded them to MCSO personnel. *Id.*

28 ⁹ Plaintiffs, of course, also offer proof that Sheriff Arpaio's actions were
motivated by his own racial prejudice.

1 outside the reach of the law,” a govern mental body may not sidestep the Equal
2 Protection Clause by “bowing to the hypothetical effects of private prejudice that they
3 assume to be both widely and deeply held.” *Palmore v. Sidoti*, 466 U.S. 429, 433
4 (1984) (citing *Palmer v. Thompson*, 403 U.S. 217, 260-261 (1971)).

5 The rhetoric employed by the authors and endorsed by Sheriff Arpaio is precisely
6 the type of “‘camouflaged’ racial expressions” that courts have found to prove
7 discriminatory intent. *Smith v. Town of Clarkton*, 682 F.2d 1055, 1063-66 (4th Cir.
8 1982) (discussing references, for example, to the “influx of ‘undesirables’”); *Greater*
9 *New Orleans Fair Housing Action Center v. St. Bernard Parish*, 648 F. Supp. 2d 805,
10 810-12 (E.D. La. 2009) (finding discriminatory intent based on statements from
11 residents that proposed housing development tenants would not share the same “values”
12 and would threaten the community’s “way of life” and admission by planning
13 commission chair that he was voting in consideration of the “health and welfare”
14 concerns raised by the public).

15 Sheriff Arpaio has not only adopted the racial sentiments of his constituents, he
16 has expressed them as his own in public statements gratuitously stigmatizing
17 undocumented immigrants from Mexico. Sheriff Arpaio went out of his way to
18 emphasize that the illegal immigration issue had become an “epidemic,” and that
19 immigration from Mexico is impacting our culture due to a failure to “assimilate” into
20 “mainstream” America. SOF 16, 18-20. He pointed out to the media that immigrants
21 from Mexico were “all dirty” and brought disease. SOF 19-20. This serves as
22 additional evidence that his policy decisions are motivated by such attitudes. *Village of*
23 *Mamaroneck*, 462 F. Supp. 2d at 549 (stigmatizing statements by public officials about
24 day laborers constituted “some evidence of racism”). Similarly, the circulation of
25 similar materials by others within the MCSO, and in particular HSU, demonstrate that
26 their individual actions are also motivated by such attitudes. SOF 145-151.

27 In addition to circulating racially derogatory materials through the MCSO,
28 Sheriff Arpaio forwarded to his staff materials from constituents explicitly advocating

1 racial profiling in immigration enforcement. SOF 26-43, 76-83, 85, 87, 93, 96-97, *see*
2 *also* SOF 51. By doing so, Sheriff Arpaio was communicating both his agreement with
3 these messages and his intent to see them realized in MCSO's anti-illegal immigration
4 enforcement activities. For example, in response to a letter from one constituent opining
5 that Arpaio has the "right" to "investigate people based on the color of their skin,"
6 relaying that her Italian mother had been profiled during World War II, and explaining
7 that she felt racial profiling was "the right thing to do," Sheriff Arpaio wrote a personal
8 thank-you letter, stating "I especially enjoyed reading the story of your Italian
9 grandmother and her experiences after coming into the country *legally*." SOF 40
10 (emphasis in original). In response to another letter co-authored by two of Sheriff
11 Arpaio's constituents explaining that "[s]topping Mexicans to be sure they are legal is
12 not racist...our state is a border state to Mexico, so of course, there will be more
13 Mexican illegals here than any other ethnic group!" Sheriff Arpaio sent a thank-you
14 letter to the authors, sent a copy to Chief Sands, and requested three copies for himself.
15 SOF 43. Sheriff Arpaio also forwarded Chief Sands a letter stating that "[t]heir claim
16 about your profiling in doing your job is ridiculous. Where else would you look for
17 illegal aliens except in neighborhoods where they reside?" SOF 27-28. And when a
18 constituent suggested that Muslim terrorists may be hiding amongst dark skinned
19 Hispanic immigrants, Sheriff Arpaio again sent a thank-you letter and forwarded a copy
20 to Chief Sands SOF 33.

21 Sheriff Arpaio also maintained in his file, and circulated to others, a number of
22 emails from an individual who writes actively on illegal immigration issues and whom
23 Sheriff Arpaio has met personally. SOF 34-38. In one such email, this individual
24 writes, regarding Hispanics, that "What our open border crowd calls racial profiling is
25 what I call reasonable suspicion and probable cause, both of which are legal grounds for
26 further reaction If it walks like a duck and quacks like a duck" SOF 34.
27 Sheriff Arpaio retained two copies of the email for himself and forwarded a copy to
28 Chief Sands. SOF 36.

1 The sheer number of times Sheriff Arpaio did this demonstrates that his
2 circulation of the materials was no accident. *See Keyes v. Sch. Dist.*, 413 U.S. 189, 207
3 (1973) (“The prior doing of other similar acts, whether clearly a part of a scheme or not,
4 is useful as reducing the possibility that the act in question was done with innocent
5 intent.” (internal quotation omitted)). Furthermore, the sentiments expressed in these
6 letters were also reflected in Sheriff Arpaio’s own statements. By definition, it is
7 impossible to tell a person’s immigration status, which is a complex issue of federal
8 administrative law depending on multiple factual circumstances, based on observable
9 behaviors (absent seeing the person cross the border or finding the person hiding in a
10 smuggling load). But Sheriff Arpaio had a solution to this problem: His deputies could
11 “take care of the situation” by selecting who to target for investigation based on their
12 “speech, what they look like, if they look like they came from another country.” SOF
13 10-11. This type of message from the head of an agency inevitably influenced
14 operations in the field. *See Mamaroneck*, 462 F.Supp.2d at 543 (“[T]he law recognizes
15 that a government that sets out to discriminate intentionally in its enforcement of some
16 neutral law . . . will rarely if ever fail to achieve its purpose.”). Sheriff Arpaio believes
17 that illegal immigrants from Mexico “by and large” have “certain appearances,”
18 including “brown...skin color.” SOF 13; *see also* SOF 14. MCSO therefore cast a
19 broad net in its quest to apprehend more undocumented immigrants, capturing many
20 Hispanic individuals legally residing in Arizona—including citizens—who shared these
21 same characteristics.

22 2. *MCSO Saturation Patrols and Other Immigration Enforcement*
23 *Operations Are Responsive To Race-Based Requests for Action*

24 Apart from the decisions to use saturation patrols as a way to investigate
25 Hispanics for potential immigration law violations, Sheriff Arpaio’s files reveal that he
26 passed on numerous directives to others within the MCSO leadership to respond to
27 citizen requests for police action against Hispanics at particular locations, a practice that
28 is undisputedly contrary to generally accepted law enforcement practice. SOF 25- 43,

1 50, 52, 76-97, 101. In particular, many messages are sent to Chief Sands, who is in
2 charge of planning saturation patrols, and who understands that he is to do
3 “whatever[he] can” about these citizen complaints. SOF 26, 28, 30, 32-33, 36-37,
4 39, 42-43, 74-75, 77, 79, 81-82, 85, 90, 93, 97. For example, one letter stated that “dark
5 skin” is “the look of the Mexican illegals who are here illegally,” urged Sheriff Arpaio
6 to “come over to 29th Street/Greenway Parkway area and round them all up”—
7 suggesting pointedly that immigration enforcement should target dark skinned people.
8 SOF 78. Sheriff Arpaio forwarded this letter onto Chief Sands with a note that said,
9 “Have someone handle this,” because, according to him, he was “building up
10 intelligence on crime areas in the city.” SOF 79. MCSO conducted several saturation
11 patrols in the area near 29th Street and Greenway. *Id.*

12 Sheriff Arpaio also received a complaint from a constituent about “a large
13 amount of these Mexicans” in a parking lot who “swarmed around my car, and I was so
14 scared and alarmed, and the only alternative I had was to manually direct them away
15 from my car.” SOF 80. Sheriff Arpaio forwarded the letter on to Chief Deputy Trombi
16 with a note for him to keep a file on these complaints, and also to have someone contact
17 the author. SOF 81. Arpaio admits that the letter refers to no crime, SOF 87, thus it
18 appears his instruction was based on the constituent having been scared of “these
19 Mexicans.” Sheriff Arpaio received and passed along numerous additional requests for
20 saturation patrols from citizens who complained about day laborers “attempting to flag
21 down” prospective employers, or Mexicans “hanging out . . . on the corner,” by letter
22 and phone. SOF 76-77, 82.

23 MCSO witnesses candidly admit that the agency often relies on citizen
24 complaints in planning immigration enforcement. Both Chief Sands and Lieutenant
25 Sousa of the HSU testified that saturation patrols are regularly initiated based on citizen
26 complaints. SOF 75. Sheriff Arpaio testified that he sends requests to Chief Sands
27 because they “may assist him in the future on any operation he has.” SOF 99. Chief
28

1 Sands confirmed, “We respond to citizen’s complaints on a lot of things. Sometimes we
2 have crime suppressions, sometimes they’re handled in a different way.” SOF 100.

3 The record contains several instances where enforcement operations directly
4 followed racially charged requests for sweeps in the same area. Here, saturation patrols
5 followed closely in time after Arpaio received racially motivated citizen complaints and
6 forwarded them to Sands and other subordinate officials. In addition, Sheriff Arpaio
7 issued contemporaneous statements that the patrols were initiated in response to
8 complaints from the public. This constitutes highly compelling proof that the saturation
9 patrols were motivated by discriminatory intent. *Arlington Heights*, 429 U.S. at 266-68;
10 *see also Yonkers Bd. of Educ.*, 837 F.2d at 1224-25; *Greater New Orleans Fair Housing*
11 *Action Center*, 648 F. Supp. 2d at 810-12.

12 For example, in August of 2008 Sheriff Arpaio received a letter complaining
13 about people speaking Spanish at a McDonald’s and suggesting to Sheriff Arpaio that he
14 should “check out Sun City.” SOF 83. The letter clearly equates speaking Spanish with
15 illegal alien status. SOF 83-84. At least one circuit court has cautioned that placing any
16 criminal significance on the fact that a person speaks Spanish can be a pretext for
17 discrimination due to the “close connection between the Spanish language and a specific
18 ethnic community.” *Farm Labor Organizing Comm.* 308 F.3d 523 at 539-40. However,
19 rather than informing the author that speaking Spanish is not illegal, or ignoring the
20 request, Sheriff Arpaio wrote a note on the letter stating that he would “look into it” and
21 passed the letter on to Chief Sands with a handwritten notation, “for our operation.”
22 SOF 84-85. Two weeks later, on August 13-14, 2008, the MCSO conducted a saturation
23 patrol in Sun City. SOF 86.

24 Sheriff Arpaio received a letter dated May 8, 2008, from a constituent in Mesa
25 stating that he “ha[s] yet to see the police stop in order to determine whether these day
26 laborers are here under legitimate circumstances,” and “believe[d]” that they were in the
27 country illegally.” SOF 87. Sheriff Arpaio sent the letter to Sands and marked it to
28 draw Sands’ attention to the portion quoted above as “intelligence,” even though, as he

1 admits, the letter does not describe any violation of the law. SOF 88-90. On May 24,
2 2008, Sheriff Arpaio received another letter urging that Mesa “needs” a “sweep,” noting
3 that the head of Mesa’s police union is Hispanic, and commenting “[t]his is what you
4 get from Mesa.” SOF 91. Sheriff Arpaio wrote, “I will be going in to Mesa” and sent a
5 copy to Chief Sands. SOF 93. Chief Sands testified that he assumes that the author
6 believed that the individuals were undocumented immigrants because they were “dark-
7 complected people.” SOF 92. Soon thereafter, the MCSO conducted two saturation
8 patrol operations in the Mesa area. SOF 95. In an MCSO news release announcing the
9 first operation, Arpaio stated that he was sending his officers in “[i]n keeping with his
10 promise to the public.” *Id.*

11 In another example, MCSO officials received an October 2, 2007 email that had
12 been forwarded to them by John Kross, the Town Manager of Queen Creek. SOF 96.
13 The author complained of Hispanic men loitering on the corner “being silly,” “jeering”
14 at her and making people in the town feel “uncomfortable.” *Id.* Sheriff Arpaio testified
15 that he could not tell if a crime had been committed based on the email, but nevertheless
16 he passed it on to his people “to look into” because the MCSO “would be remiss in our
17 duties not to respond.” SOF 97. The MCSO did a sweep in Queen Creek on October 4,
18 2007. SOF 98. In the Operations Plan for the sweep, MCSO described the operation as
19 having been based on “emails from the town council in reference to the day laborers in
20 the city.” SOF 98.

21 Sheriff Arpaio and other MCSO commanders repeatedly acknowledged that these
22 constituent letters did not describe any criminal activity and that any supposed “crimes”
23 were never investigated. SOF 81, 84, 88, 97. It follows, then, that when the MCSO
24 says it initiated saturation patrols based on citizen complaints, they were relying on
25 these and other similar complaints that contained only racial stereotyping and no
26 information about specific criminal activity. *See Keyes*, 413 U.S. at 207-08 (“[A]
27 finding of illicit intent as to a meaningful portion of the item under consideration has
28 substantial probative value on the question of illicit intent as to the remainder.”). The

1 failure to subject the complaints to any real scrutiny serves as additional evidence of
2 improper purpose. *See, e.g., Mamaroneck*, 462 F. Supp. 2d at 531, 554 (“To the extent
3 Village officials did receive complaints from residents concerning the behavior of the
4 day laborers, the Village took no steps to investigate and determine whether those
5 complaints were genuine . . .”).

6 Further, the selection of neighborhoods in Maricopa County where Hispanic day
7 laborers were known to gather further evidences a discriminatory intent. SOF 53 (citing
8 to MCSO news releases about the sites of saturation patrols), SO F 112, 117. The
9 description of those areas as hot spots for crime, “unless properly limited and factually
10 based, can easily serve as a proxy for race or ethnicity.” *United States v. Montero-*
11 *Camargo*, 208 F.3d 1122, 1138 (9th Cir. 2000) (“We must be particularly careful to
12 ensure that a ‘high crime’ area factor is not used with respect to entire neighborhoods or
13 communities in which members of minority groups go about their daily business, but is
14 limited to . . . locations where particular crimes occur with unusual regularity.”).

15 These instances show a pattern of Sheriff Arpaio receiving racially charged
16 requests for action and MCSO acting on them. It is clear, then, that the MCSO’s
17 saturation patrols were initiated to target a particular protected group, Hispanics, and not
18 to target any actual criminal activity.

19 3. *The Practices Adopted by MCSO on Saturation Patrols*
20 *Encouraged Racial Profiling*

21 MCSO’s practices on saturation patrols constitute a stark departure from both the
22 MCSO’s past practice and the typical practice of American law enforcement agencies
23 with respect to saturation patrol operations. Such departures from the norm can “afford
24 evidence that improper purposes are playing a role.” *Arlington Heights*, 429 U.S. at
25 267. Substantive departures from norms are particularly probative of discriminatory
26 intent when the “factors usually considered important to the decisionmaker” favor the
27 opposite decision than the one actually taken. *Id.*

28

1 Saturation patrols are a tactic historically used by law enforcement agencies to
2 combat a spike in a particular type of crime or to address a sudden concern about violent
3 crime in a limited geographical area, such as that which would arise from a gang turf
4 war. SOF 104-05. During such operations, officers are provided with information about
5 a particular criminal activity or a pattern of criminal activity, and directed to go out and
6 target individuals who officers have reason to believe are involved in that activity. SOF
7 105. Prior to Sheriff Arpaio's institution of the recent spate of saturation patrols, MCSO
8 acted in accord with this generally accepted practice, focusing such patrols on known
9 problems with DUI or some other specific criminal activity. SOF 103. Conducting
10 saturation patrols without such a focus would be counterproductive, as they require
11 agencies to devote a significant amount of resources to a particular area for a particular
12 period of time. *See* SOF 21, 104-105.

13 In contrast, however, the MCSO saturation patrols that are at issue in this case
14 were not spurred by any identified need for such a substantial use of agency resources,
15 such as comparative crime analysis or a analysis of traffic hazards. SOF 107. HSU
16 Lieutenant Sousa confirmed that the saturation patrols were not prompted by any spike
17 in traffic problems. SOF 109. Even Defendants' police practices expert, Mr. Bennie
18 Click, testified that he did not see any indication that the patrols were concerned with
19 DUI or traffic problems. SOF 108. Contrary to the normal practice for such operations,
20 MCSO officers also do not appear to have been briefed on any specific criminal targets
21 for the operations, or provided with any intelligence on specific crimes. SOF 105-06.
22 Officers were simply instructed to go out and "enforce the laws." SOF 102.

23 The MCSO has thus apparently taken the position that the saturation patrols were
24 focused on crime generally. *Id.* This claim is contrary to the logic of saturation patrols
25 and serves as an indication that "improper purposes are playing a role." *Arlington*
26 *Heights*, 429 U.S. at 267. MCSO's protestation shows that Defendants are self-
27 conscious about the inherent problems associated with operations that simply attempt to
28 "round up" or "sweep [up]" illegal immigrants. *See* SOF 56-57. Based on the

1 undisputed evidence, however, there is no doubt that saturation patrols were focused on
2 illegal immigration. That was their genesis, and the sentiment was regularly reinforced
3 by Sheriff Arpaio's own statements. SOF 53-55. Though supervisors might not have
4 discussed the purpose of the saturation patrols explicitly in briefings, officers understood
5 by the time they got in to the field who they were supposed to look for. SOF 110.
6 Indeed, Defendants' expert agreed that the purpose of the operations was to impact
7 illegal immigration. SOF 111 (statement by Mr. Click that "[T]he general information
8 to officers . . . was that this is a—an illegal immigration enforcement effort."); *see also*
9 SOF 125 (agreement by Plaintiffs' expert, Mr. Robert Stewart).

10 Other departures from the norm serve as additional evidence of improper
11 purposes. *Arlington Heights*, 429 U.S. at 267. In the field, during the saturation patrols,
12 officers conduct pretextual traffic stops for minor violations as a launching point for
13 investigations into citizenship and immigration status. Such low-level traffic stops are
14 contrary to MCSO's written guidelines on traffic enforcement and officers' approach on
15 regular patrol. SOF 118, 124. Further, the practice during saturation patrols of
16 contacting passengers and asking them for identification is unusual. SOF 126-28.
17 Given that the lack of identification is considered by the MCSO to be grounds for
18 initiating questioning about citizenship and immigration status, SOF 182, both of these
19 practices appear to have been adopted in order to maximize opportunities for
20 immigration screenings. Mr. Ortega Mendres, for example, was detained and
21 questioned about his documents for no reason other than the fact that he was riding as a
22 Hispanic passenger in a vehicle that had been pulled over by MCSO. SOF 179, 181.
23 Several Hispanic individuals who provided declarations, including those stopped on
24 saturation patrols, also reported that their passengers were asked to produce
25 identification even though there was no reason to think they had violated the law. SOF
26 216-18, 222 (describing the experience of Diona Solis, whose son and three other young
27 boys aged 9 to 13 were asked for identification returning from a Boy Scout camping
28

1 trip). In addition, Mr. Rodriguez and Mr. Garcia were asked for their Social Security
2 numbers, another potential indicator of immigration status. SOF 188, 217.

3 The experiences of named Plaintiffs and putative class members who—after
4 being stopped—were never issued citations or whose alleged infractions were never
5 pursued provide further evidence that the stops were pretextual. See SOF 206 (Mr.
6 Nieto and Ms. Meraz were released after Deputy Armendariz told officers that there was
7 no reason to hold them), SOF 216-17, 221 (describing the experience of Garrett Smith,
8 whose Hispanic family was stopped when he allegedly exceeded the speed limit by 5
9 mph during a saturation patrol, but whom the deputy declined to cite after he satisfied
10 himself that Mr. Smith’s 14-year old son was not being smuggled), SOF 223 (describing
11 the experience of Julio Mora, who was stopped with his father for no reason); see also
12 SOF 215 (Mr. Urteaga’s citation dismissed), 218 (Mr. Villaman’s citation never filed),
13 220 (describing the experience of Lorena Escamilla, who was pushed against her car
14 “belly first” while she was five months pregnant and whose charges were “crossed out”
15 by the deputy by the time she got to court). Such conduct has been found to be
16 probative evidence of racial profiling. *Farm Labor Organizing Comm.*, 308 F.3d at
17 535-36 (officer questioned driver and two passengers about their immigration status
18 after deciding not to issue a speeding citation).

19 The MCSO’s assertion that it instituted a “zero tolerance” policy that eliminated
20 discretion on certain operations does not stand up to scrutiny. While some MCSO
21 witnesses testified that there was a zero tolerance policy that required officers to stop
22 any vehicle they observed violating the traffic code, SOF 118, other witnesses stated this
23 was not in fact possible and backed away from this position. SOF 120 (citing to
24 testimony of Lieutenant Sousa and Chief Sands that zero tolerance policy did not extend
25 to the initial decision to stop a vehicle and testimony of Deputies Armendariz and Kikes
26 that there is no way to avoid using discretion); see also SOF 121. Further, the MCSO
27 does not do any monitoring or follow up to make sure that its officers are applying the
28 zero tolerance policy equally, or at all. SOF 123. It appears that the policy was merely

1 adopted in name, as a defensive measure to deflect allegations of racial profiling. SOF
2 119. In fact, in the opinion of Mr. Stewart, a zero tolerance policy under these
3 circumstances would actually allow officers to make *more* traffic stops of Hispanics for
4 minor traffic violations without fear of reprimand. SOF 122.

5 4. *MCSO's Failure to Adequately Train and Oversee its Officers*
6 *Demonstrates its Acceptance of Racial Profiling*

7 The MCSO has failed to institute basic law enforcement safeguards to prevent
8 racial profiling, and has even taken steps to hinder its own ability to detect and address
9 racial profiling. The MCSO's refusal to take these standard measures is yet another
10 departure from law enforcement norms and evidence of discriminatory intent. *Arlington*
11 *Heights*, 429 U.S. at 267. The failure to adopt generally accepted measures to detect
12 racial profiling in particular suggests an effort on the MCSO's part to conceal unlawful
13 practices and implicitly allow them to continue. *See Chavez v. United States*, No. 01-
14 000245, 2010 WL 3810629, at *4 (D. Ariz. June 21, 2010) (denying motion to dismiss
15 plaintiffs' allegations of racial profiling).

16 Contrary to generally accepted practice, the MCSO does not have any agency-
17 wide written policy concerning racial profiling. SOF 129-30, 143. To the extent that
18 some of the MCSO's informational bulletins or unit-wide policies include a prohibition
19 on racial profiling, they do not provide officers with any definition of racial profiling.
20 SOF 131. Such a definition would be crucial. SOF 143. The Arizona Peace Officer
21 Standards and Training Board (AZ POST) materials, which the MCSO produced as
22 evidence that MCSO officers receive training on racial profiling, prohibits only profiling
23 based *solely* on race. SOF 133. Saturation patrol operation plans that mention racial
24 profiling also only prohibit profiling based *solely* on race in the decision about whether
25 or not to call a 287(g) officer to investigate an individual's immigration status. SOF
26 132. MCSO officers admittedly use race as a factor in determining whether individuals
27 are illegally in the United States. SOF 135 -136 (officers rely on "apparent Mexican
28 ancestry" as a factor in immigration investigations); *see also* SOF 137 (citing to

1 testimony of Sergeant Palmer that “speak[ing] only Spanish” and presence in an “illegal
2 alien locale” are additional bases for investigation). A proper written definition of racial
3 profiling would have made clear to MCSO officers that *any* reliance on race or ethnicity
4 is inappropriate, even in immigration investigations, unless it pertained to a specific
5 suspect description.¹⁰ *See Chavez v. Ill. State Police*, 251 F.3d 612, 647 (7th Cir. 2001)
6 (existence of a policy prohibiting racial profiling not sufficient if message is “not always
7 clear . . . What really matters, ultimately, is how official policies are interpreted and
8 translated into actual practice[]”) (quoting *State v. Ballard*, 752 A.2d 735, 744 (N.J.
9 Super. Ct. App. Div. 2000)).

10 In addition, based on the testimony of MCSO officers, it appears that MCSO has
11 not attempted to provide its officers with any in-house training on racial profiling .
12 There is also no requirement that officers receive regular training on this issue. SOF
13 142. As a result, the most that officers could recall learning about profiling came from
14 their basic academy training or, for a small subset of officers, the “brief training block”
15 in ICE’s 287(g) training. SOF 134, 138-41. This level of training wholly failed to equip
16 officers for the challenges of conducting immigration enforcement in the largely-urban
17 context of Maricopa County, where many Hispanic motorists are U.S. citizens and legal
18 residents. SOF 144.

19 MCSO supervisors exhibited a cavalier attitude towards their supervisory duties.
20 The MCSO makes no effort to document the race or ethnicity of individuals stopped or
21 contacted by officers on traffic stops. SOF 155. To the extent that citizen contacts are
22 recorded by officers, those notes have been intentionally destroyed. SOF 156, 162.
23 Saturation patrol operations plans detail no specific role for supervisors, SOF 159, and
24 supervisors merely stay at the command post rather than being out on traffic stops. *See*,
25 *e.g.*, SOF 158. Yet, despite having no means of verifying whether or not officers are

26 ¹⁰ *See Montero-Camargo*, 208 F.3d at 1132 & n. 22 (“Hispanic appearance is of
27 little or no use in determining which particular individuals among the vast Hispanic
28 populace should be stopped by law enforcement officials on the lookout for illegal
aliens.”).

1 engaging in racial profiling, supervisors stated that they simply “trust” their subordinates
2 not to racially profile. SOF 157-58, 164-65; *see also* 166 (no officer ever disciplined for
3 racial profiling). Though they acknowledge that selective enforcement of the traffic
4 laws is a possibility, supervisors said that as long as there was a reason for the traffic
5 stop (i.e., a traffic violation, however minor), that “ended the inquiry” for them. SOF
6 157. This statement is particularly disturbing given the tremendous amount of latitude
7 that officers are given in conducting traffic stops on saturation patrols. SOF 168.

8 When presented with data that all but one of the motorists arrested on a saturation
9 patrol were Hispanic, HSU’s Sergeant Madrid and Lieutenant Sousa both dismissed this
10 disparity, stating, respectively, that “it means nothing” and “[i]t’s not a concern.” SOF
11 160. No meaningful after-action debriefings have been conducted with officers to
12 provide an opportunity for incidents of concern to be addressed. SOF 163. And when
13 citizens have attempted to file complaints arising from their traffic stops, they have been
14 given the run-around and have eventually gave up. SOF 214, 216, 220; *see also* SOF
15 199 (cursory investigation of Rodriguez stop). These failures in supervision do not meet
16 generally accepted practices. SOF 167-68. Even Defendants’ expert agreed that the
17 attitude expressed by Sergeant Palmer and shared by other supervisors is not “generally
18 acceptable.” SOF 169.¹¹

19 One particularly egregious example of the MCSO’s lack of oversight can be seen
20 in the regular circulation of inappropriate emails by MCSO officers using their county
21 email accounts. For example, one officer circulated a photo of a mock driver’s license
22 for a state called “Mexifornia,” which included a photograph depicting stereotypical
23 Mexican facial features and attire. SOF 145. Sheriff Arpaio acknowledged that this
24 email could be offensive, *id.*, but could not say whether its circulation violated a
25 department policy. SOF 152. Multiple officers distributed “Mexican Word of the Day”

26
27 ¹¹ The fact that ICE was occasionally on scene and made aware of the saturation
28 patrols provides no comfort that racial profiling was not occurring. ICE officials have
made it clear that they had no basis to evaluate whether MCSO was engaged in racial
profiling or not. SOF 170.

1 emails making fun of Mexican accents. SOF 146. Still others circulated fake statistics
2 or jokes about Mexicans or Mexican culture. SOF 147-48. Posse members also sent
3 emails dehumanizing immigrants, including one email praising an anti-immigration
4 program from the 1950s known as “Operation Wetback.” SOF 151.

5 Many of these emails were circulated or forwarded by officers and even
6 supervisors that were centrally involved in the saturation patrols or stops of named
7 plaintiffs. SOF 148-50. For example, Sergeant Palmer sent the email about “Mexican
8 Yoga.” SOF 148. Such emails are direct evidence of the officers’ racial bias. In
9 addition, the fact that these emails were allowed to circulate over a sustained period of
10 time demonstrates MCSO’s tolerance for such attitudes within its agency. SOF 154.
11 The examples of such inappropriate material that was circulated are too numerous for
12 Plaintiffs to fully catalogue here. But it is undisputed that such materials have no place
13 in a professional police organization. Even Defendants’ expert agreed that such emails
14 are racially derogatory and should “absolutely” be dealt with by a law enforcement
15 agency “as soon as it surface[s].” SOF 153.

16 **C. Statistical Evidence and the Stops of Putative Class Members**
17 **Demonstrate that MCSO’s Operations Disparately Impact Hispanics**

18 There is little doubt that the MCSO’s immigration enforcement operations— and
19 saturation patrols in particular—have had a marked effect on Hispanic drivers and
20 passengers in Maricopa County. Such evidence proves discriminatory effect and also
21 provides additional evidence of discriminatory intent. *Arlington Heights*, 429 U.S. at
22 266; *Bradley v. United States*, 299 F.3d 197, 206 & n.11 (3d Cir. 2002); *Chavez*, 251
23 F.3d at 637-45; *State v. Soto*, 734 A.2d 350, 360- 61 (N.J. Super. Ct. 1996) (finding
24 un rebutted statistical evidence of racial profiling established discriminatory purpose).
25 Courts have permitted statistical evidence to prove discriminatory effect to address “the
26 crucial question of whether one class is being treated differently from another class that
27 is otherwise similarly situated.” *Chavez*, 251 F.3d at 638.

28

1 As detailed in Section II.D above, Dr. Taylor's analysis of MCSO's CAD
2 database revealed three principal findings about the effect of saturation patrols on the
3 stopping of Hispanics: (1) MCSO officers are more likely to stop Hispanics on
4 saturation patrol days as compared to other days; (2) MCSO officers actively working
5 on a saturation patrol are much more likely to stop Hispanics than other MCSO officers;
6 and (3) stops involving a Hispanic individual were significantly longer than other stops.
7 SOF 239-49.

8 MCSO officers actively working on a saturation patrol were approximately 50%
9 more likely to stop Hispanics than other officers working that very same day. SOF 245.
10 These results are highly statistically significant and were found across a number of
11 different models. SOF 242-43, 246-47. In all cases, stops of Hispanics were shown to
12 be more likely to be stopped on saturation patrol days and by officers working a
13 saturation patrol as compared to MCSO activity on other days. SOF 239-41, 244-45.
14 This pattern is consistent with the other evidence that Hispanics are targeted on
15 saturation patrol days. Moreover, stops involving Hispanics were about 25% longer on
16 average than other stops, SOF 248, which suggests that MCSO officers investigate
17 Hispanic individuals more closely in an effort to find undocumented immigrants.

18 Dr. Taylor's analysis draws strength from the use of internal benchmarking. *See*
19 *Chavez*, 251 F.3d 644-45 (discussing importance of accurate benchmarking); *Anderson*
20 *v. Cornejo*, 355 F.3d 1021, 1024 (7th Cir. 2004) (same). That is, instead of comparing
21 MCSO traffic stops patterns to some external measure—such as the overall percentage
22 of Hispanics in Maricopa County—Dr. Taylor's models compare (1) MCSO stop
23 activity on saturation patrol days to MCSO stop activity on other days, and (2) MCSO
24 stop activity by saturation patrol involved officers to stop activity by other MCSO
25 officers. SOF 250. In this way, Taylor's methodology controls for various factors, such
26 as socioeconomic variables or differential rates of offending or exposure to law
27 enforcement officials by Hispanic individuals—because such factors are likely to remain
28 constant as between saturation patrol days and non-saturation patrol days.

1 Dr. Taylor's basic conclusions are undisputed. Defendants' statistical expert, Dr.
2 Steven Camarota, a researcher for the Center for Immigration Studies, a think tank that
3 advocates for greater restrictions on immigration, SOF 251, does not directly refute Dr.
4 Taylor's findings; indeed, he did not try to replicate Dr. Taylor's analysis of the effect of
5 saturation patrols on Hispanic stop rates. SOF 256. Rather, he tries to point out
6 deficiencies in the data and in the way Dr. Taylor handled it. But Dr. Camarota
7 acknowledges that meaningful conclusions about MCSO's activity can be found by
8 examining the CAD database. SOF 252. In fact, Dr. Camarota *admits* that the disparity
9 in the stop rate of Hispanics on saturation patrol days exists, and that Hispanics are in
10 fact more likely to be stopped on saturation patrol days. SOF 253. Dr. Camarota also
11 acknowledges that higher stop rates for Hispanics can indicate that Hispanics are being
12 targeted. SOF 254. Dr. Camarota also does not deny that MCSO stops involving
13 Hispanic persons lasted longer than stops involving non-Hispanics. SOF 255.

14 Other statistical evidence corroborates the disparate impact demonstrated in Dr.
15 Taylor's analysis of the MCSO stop data. HSU Sergeant Madrid acknowledges that all
16 but one of the persons arrested in a March 2008 saturation patrol operation in North
17 Phoenix appeared to have Hispanic surnames. SOF 160. Even assuming that MCSO
18 was intent on seeking out undocumented immigrants, and that all of the undocumented
19 immigrants had Hispanic surnames, this only accounts for a portion of the arrestees with
20 Hispanic surnames. Only about two-thirds of the arrestees were suspected of being
21 undocumented immigrants—the rest were for other crimes, such as DUI. SOF 62.
22 Unless Hispanic individuals commit such crimes at significantly greater frequency than
23 other groups, this disparity suggests that Hispanics are being stopped and investigated in
24 greater frequency. Similarly, Chief Sands acknowledged that 90 percent of arrests made
25 during smaller saturation patrols in Fountain Hills were Hispanic, even though that area
26 is predominantly "non-Hispanic." SOF 161.

27 In sum, the traffic stop patterns in the MCSO's CAD database reveal that
28 Hispanics are stopped at significantly greater rates during saturation patrols than would

1 be expected in the absence of racial targeting. It is difficult to imagine more direct
2 evidence of discriminatory impact that the extensive statistical analyses conducted by
3 Dr. Taylor, and Defendants' put forward no evidence, beyond speculation, that directly
4 refutes these results.

5 As discussed, MCSO's practices have also exacted a human cost in the form of
6 the discriminatory impact on the named Plaintiffs and other putative class members.
7 Some of the Plaintiffs and class members were clearly treated differently than non-
8 Hispanics. Mr. Ortega Melendres, for example, was detained for further investigation
9 into his immigration status while the Caucasian driver was released without a citation.
10 SOF 178-79, 181; *see also* 180. The Rodriguezes were cited while the other drivers on
11 the same stretch of road were not. SOF 192, 197-98. The Smith family was singled out
12 from others on the road disobeying the speed limit. SOF 221. Yet despite this pattern,
13 individuals like Mr. Magos are told by officers, "[D]on't go thinking this is racial
14 profiling." SOF 216. Plaintiffs and class members have expressed decreased trust in
15 law enforcement as a result, which is why racial profiling is anathema to our criminal
16 justice system:

17 For many law-abiding citizens their only contact with the criminal justice
18 system is via interaction with the police, predominantly during traffic stops.
19 Any hint of racism in policing erodes the public support so necessary to law
20 enforcement efforts. The reality is that very few innocent victims of racial
21 profiling ever come forward with complaints. Instead, these victims simply
22 retain vivid memories of their police encounter for future reference.

23 *Martinez v. Vill. of Mount Prospect*, 92 F. Supp. 2d 780, 782 (N.D.Ill. 2000). These
24 actions are unlawful, and should not be allowed to continue.

25 **IV. CONCLUSION**

26 For all the reasons stated herein, Plaintiffs respectfully request that the court grant
27 summary judgment in their favor on the claim that Sheriff Arpaio and MCSO are
28 violating the Fourteenth Amendment to the United States Constitution.

RESPECTFULLY SUBMITTED this 29th day of April, 2011.

By /s/ Stanley Young

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2011 I caused the attached document to be electronically transmitted 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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