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

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

No. CV 07-02513-PHX-GMS

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

(Oral Argument Requested)

20 Defendants Joseph M. Arpaio ("Arpaio) and the Maricopa County Sheriff's Office  
21 ("the MCSO") submit this Response in opposition to Plaintiffs' Motion for Partial Summary  
22 Judgment (Dkt#421). Plaintiffs have presented no direct evidence and insufficient  
23 circumstantial evidence on which to base a finding, as a matter of law, that Defendants'  
24 employ a policy, pattern, or practice that has a racially discriminatory effect on Plaintiffs and  
25 was based on racially discriminatory intent or motive as to Plaintiffs. Plaintiffs, therefore,  
26 are not entitled to judgment in their favor, and the Court should deny their Motion and grant  
27 the Defendants' pending Motion for Summary Judgment.

28 This Response is supported by the following Memorandum of Points and Authorities,

1 the Defendants' Rule 56(e)(2), F.R.C.P., and Rule 56.1(b). L.R.C.P., Response to Plaintiffs'  
2 Statement of Facts and Controverting Statements of Facts concurrently filed this date,  
3 Defendants' pending Summary Judgment Motion (Dkt#413) and supporting Statement of  
4 Facts (Dkt#413-1), Defendants' Supplemental Statement of Facts re: Testimony of ICE  
5 Witnesses in Support of their Summary Judgment Motion (Dkt# 449), the Court's entire file  
6 in this matter, and any oral argument the Court may wish to hear.

## 7 MEMORANDUM OF POINTS AND AUTHORITIES

### 8 I. INTRODUCTION

9 Plaintiffs move for summary judgment on one of their three liability claims. That  
10 liability claim is their Fourteenth Amendment claim that each of the named Plaintiffs during  
11 the operation of a vehicle on a roadway in Maricopa County was stopped, detained,  
12 questioned, and/or searched by MCSO deputies allegedly in violation of their Fourteenth  
13 Amendment right to equal protection under the law. *See* Defendants' Local Rule 56.1(b)(2)  
14 Separate Statement of Additional Facts ("SSOF") beginning at p. 144, ¶ 1. The Plaintiffs,  
15 however, give little attention -- indeed, almost none at all -- to whether *they* were stopped in  
16 their vehicles because of their race or ethnicity, or whether race-neutral probable cause or  
17 reasonable suspicion justified the traffic stop. The Plaintiffs further fail to address the  
18 complete absence of any evidence that *they* interacted with specific MCSO deputies who had  
19 racially discriminatory intent or motive in regards to the Plaintiffs concerning their  
20 respective traffic stops or that the challenged MCSO policy, pattern, or practice was a cause  
21 of any allegedly improper action by any of those deputies concerning Plaintiffs or their  
22 respective traffic stops.

23 The Plaintiffs' avoidance of these issues, however, is not surprising. There is no  
24 evidence, let alone undisputed evidence, that would allow summary judgment in Plaintiffs'  
25 favor or even supporting the named Plaintiffs' claim that they were stopped for any reasons  
26 other than race-neutral probable cause or reasonable suspicion. There is also no evidence  
27 that any MCSO deputy that interacted with the Plaintiffs had racially discriminatory intent or  
28 motive or acted pursuant to an MCSO policy, pattern, or practice that had racially  
discriminatory intent or motive.

1 Given the complete dearth of evidence supporting their Fourteenth Amendment  
2 claims, the Plaintiffs choose instead to focus on the amorphous macro level to try to create  
3 the illusion of a racially prejudiced law enforcement agency motivated to conduct saturation  
4 patrols, and traffic stops during those patrols, because of racially discriminatory intent,  
5 motive, or animus against Latinos.<sup>1</sup> In support of their policy, pattern, or practice claim, the  
6 Plaintiffs argue that the undisputed evidence establishes that: (a) Arpaio is racially  
7 prejudiced against Latinos (Motion at p. 17, n. 2) and his racial prejudice against Latinos has  
8 “infected the MCSO’s immigration enforcement operations at all levels” (*Id.* at p. 1, lns. 19-  
9 20); (b) Arpaio’s “inflammatory public statements” (*Id.* at p. 2, ln. 5) “foster the unlawful use  
10 of race in the MCSO’s immigration policies, especially during saturation patrols” (*Id.* at p. 2,  
11 lns. 21-22); (c) Arpaio receives letters from private citizens which sometimes contain  
12 racially offensive or insensitive comments about Latinos or Mexican nationals, and that  
13 Arpaio somehow agrees with, approves of, or adopts those writers’ racial comments as his  
14 own by simply sending “thank-you” notes to the authors or by forwarding the letters to an  
15 MCSO chief for evaluation and/or independent investigation (*Id.* at pgs. 15-24); (d) Arpaio  
16 allegedly has initiated specific saturation patrols in response to specific “racially charged  
17 citizen complaints” (*Id.* at p. 1, lns. 22-24); and (e) the MCSO’s “saturation patrols are  
18 unlawfully motivated by racial considerations and, both by design and practice, target  
19 Hispanics in the hopes of finding illegal immigrants, resulting in the systematic  
20 discrimination against Hispanics and those who appear Hispanic.” (*Id.* at p. 3, 10-14).

21 All of Plaintiffs’ arguments are factually and legally wrong. While the Plaintiffs  
22 argue that they do not object to the enforcement of the immigration laws, just the manner in  
23 which the MCSO is enforcing those laws, the facts show that the Plaintiffs are improperly  
24 conflating the MCSO’s lawful and proper enforcement of the law, including those laws  
25 related to illegal immigration, with the unlawful and illegal targeting of Latinos based on  
26 their race or ethnicity.

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27  
28 <sup>1</sup> For brevity, when Defendants refer in this Response to the terms “racial” or “racially” they also mean to include  
“ethnicity” or the consideration of a persons’ ethnicity.

1 **II. THE LEGAL STANDARD FOR PROVING EQUAL PROTECTION**  
2 **VIOLATIONS UNDER THE FOURTEENTH AMENDMENT.**

3 Plaintiffs “assert that [Defendants] have applied facially neutral policies and traffic  
4 laws in an intentionally discriminatory manner against Hispanics.” (Motion at p. 13, lns. 12-  
5 14). To support this claim under the Fourteenth Amendment, the Plaintiffs must prove that  
6 the Defendants’ challenged law enforcement policy, pattern, or practice “had a  
7 discriminatory effect” and “that it was motivated by a discriminatory purpose.” *Wayte v.*  
8 *United States*, 470 U.S. 598, 608 (1985); *see also Pers. Adm’r of Mass. v. Feeney*, 442 U.S.  
9 256, 272-74 (1979); *Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264-66;  
10 *Washington v. Davis*, 426 U.S. 229, 239-42 (1976); *Navarro v. Block*, 72 F.3d 712, 716 (9th  
11 Cir. 1995).

12 “[A] violation of ... the Equal Protection Clause requires a showing of **intentional**  
13 discrimination.” *Alexander v Sandoval*, 523 U.S. 275, 280 (2001) (emphasis added). Thus,  
14 “in the absence of proof of discriminatory animus,” a plaintiff cannot be awarded declaratory  
15 or injunctive relief. *Gebray v. Portland Int’l Airport*, 2001 U.S. Dist LEXIS 22747 at \*11  
16 (D. Ore. 2001); *see Meyers v. San Juan Sch. Dist.*, 905 F. Supp. 1544, 1573 (D. Utah 1995).  
17 Plaintiffs, therefore, must prove that the “decision makers in [their] case acted with  
18 discriminatory purpose.” *McClesky v. Kemp*, 481 U.S. 279, 292 (1987). “Discriminatory  
19 purpose... implies more than ... intent as awareness of consequences. It implies that the  
20 decision maker... selected or reaffirmed a particular course of action at least in part because  
21 of... its adverse effects upon an identifiable group.” *Id.* at 298 (quoting *Pers. Adm’r of*  
22 *Mass. v. Feeney*, 442 U.S. at 279). A plaintiff “must produce evidence sufficient to permit a  
23 reasonable trier of fact to find by a preponderance of the evidence that [the] decision... was  
24 racially motivated.” *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 754 (9th  
25 Cir. 2001); *see also Bingham v. City of Manhattan Beach*, 341 F.3d 939, 948-49 (9th Cir.  
26 2003) (same); *FDIC v. Henderson*, 940 F.2d 465, 473 (9th Cir. 1991) (same).

27 As shown below, Plaintiffs’ have failed to prove that Defendants’ challenged law  
28 enforcement policy, pattern, or practice “had a discriminatory effect” and “that it was  
motivated by a discriminatory purpose.” *Waytes*, 470 U.S. at 608. They are not entitled to

1 summary judgment.

2 **III. THERE IS NO EVIDENCE OF A FOURTEENTH AMENDMENT**  
 3 **VIOLATION AS TO THE NAMED PLAINTIFFS AND, THEREFORE,**  
 4 **PLAINTIFFS' POLICY, PATTERN, OR PRACTICE CLAIM FAILS AS A**  
 5 **MATTER OF LAW.**

6 As mentioned above, the Plaintiffs attempt to gloss over the fatal fact that *they* were  
 7 not stopped in their vehicles because of their race or ethnicity. Plaintiffs similarly present no  
 8 evidence that *they* interacted with specific MCSO deputies who had racially discriminatory  
 9 intent or motive in regards to the Plaintiffs and the three traffic stops. Plaintiffs' omission  
 10 requires denial of their Motion.

11 There is no Fourteenth Amendment violation under a policy, pattern, or practice claim  
 12 that seeks equitable relief unless such policy, pattern, or practice, resulted in a constitutional  
 13 injury to the *named* Plaintiffs. *Lewis v. Casey*, 518 U.S. 343, 357 (1996); *Missouri v.*  
 14 *Jenkins*, 515 U.S. 70, 88-89 (1995). The Supreme Court's decisions in *Lewis* and *Jenkins*  
 15 make clear that, in an action seeking injunctive relief, the only constitutional violations (i.e.,  
 16 injuries) that are relevant are those suffered by the *named* plaintiffs – that is, those are the  
 17 only “inadequacies which the suit empower[s] the court to remedy” and are the only injuries  
 18 “relevant to the question of whether the *named* plaintiffs are entitled to the injunctive relief  
 19 they seek.” *Lewis*, 518 U.S. at 357 (emphasis added). Plaintiffs have provided no evidence  
 20 of a constitution injury to *themselves*. Accordingly, their Motion fails as a matter of law.

21 **A. Stop One - Melendres and Deputy DiPietro.**

22 MCSO Deputy Louis DiPietro stopped the truck in which Plaintiff Melendres was a  
 23 passenger. SSOF at ¶ 2. There is no evidence that Deputy DiPietro had a racially  
 24 discriminatory intent or motive in deciding to stop, or in actually stopping, the Melendres  
 25 vehicle. Before Deputy DiPietro found probable cause to stop the truck in which Mr.  
 26 Melendres was a passenger, **he did not know or see** the race of the truck's driver or the race  
 27 of the passengers in the truck. *Id.* at ¶ 3; *see United States v. Montero-Camargo*, 208 F.3d  
 28 1122, 1139-40 (9th Cir. 2000) (no constitutional violation occurs when officer did not know  
 the race of the driver or vehicle occupants before actually stopping the vehicle.). Neither  
 race nor ethnicity was a factor in Deputy DiPietro's finding that he had probable cause to

1 stop the truck. *Id.* at ¶ 4. Even Mr. Melendres does not have an opinion on whether he was  
2 racially profiled:

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

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

7 *Id.* at ¶ 5 (emphasis added).

8 Defendants' police practices expert, Bennie Click, testified that "[t]here is no  
9 evidence that Deputy DiPietro knew the race or ethnicity of the vehicle's occupants prior to  
10 the truck stopping or that race or ethnicity played any role in Deputy DiPietro's actions." *Id.*  
11 at ¶ 6. Plaintiffs' own police practices-racial profiling expert, Robert Stewart, testified that  
12 he lacks any factual basis to support a conclusion that Deputy DiPietro acted with racially  
13 discriminatory intent or motive in stopping the Melendres truck. *Id.* at ¶ 7.

14 In addition, the evidence demonstrates that Deputy DiPietro made the traffic stop  
15 involving Mr. Melendres based on race-neutral probable cause. *Id.* at ¶ 8; *see also Longmire*  
16 *v. Starr*, 2005 U.S. Dist. LEXIS 18388 \*7 (N.D. Tex. 2005) (in light of the facts showing the  
17 traffic stop of the plaintiff was based on race-neutral probable cause, "Plaintiff cannot  
18 establish that the allegedly discriminatory purpose was a motivating factor in the officer's  
19 decision to stop his vehicle.").

20 Based on the record before the Court, therefore, Plaintiffs have failed to prove that  
21 Deputy DiPietro was motivated by racially discriminatory intent in making the traffic stop of  
22 the Melendres vehicle or that he was acting pursuant to any MCSO policy, pattern, or  
23 practice promoting or fostering the targeting of Latinos. Instead, Deputy DiPietro stopped  
24 Mr. Melendres, whose race and ethnicity were unknown to him at the time, for a violation of  
25 a state traffic law. Because Mr. Melendres' Fourteenth Amendment claim fails, Plaintiffs'  
26 policy, pattern, or practice claim based upon his stop also must fail. *Lewis*, 518 U.S. at 357;  
*Jenkins*, 515 U.S. at 88-89.

27 **B. Stop Two - Mr. and Mrs. Rodriguez and Deputy Ratcliffe.**

28 MCSO Deputy Matthew Ratcliffe made the traffic stop of the Rodriguez Plaintiffs.

1 SSOF at ¶ 9. Before making the decision to conduct the traffic stop of the Rodriguez' truck  
2 and to issue a citation to the truck's driver (Mr. Rodriguez), Deputy Ratcliffe **did not see the**  
3 **race or ethnicity** of the truck's driver or its occupants. *Id.* at ¶ 10; *see Montero-Camargo*,  
4 208 F.3d at 1139-40 (no constitutional violation when officers did not know the race of the  
5 driver or vehicle occupants before actually stopping the vehicle.); *see also United States v.*  
6 *Hernandez-Bustos*, 2005 U.S. LEXIS 16311, \*4 ¶ 3 (D. Kan. 2005) (no racial profiling when  
7 the officer made the traffic stop without knowing or seeing the driver's race or ethnicity).  
8 Mrs. Rodriguez even candidly admitted that Deputy Ratcliffe was not acting with racially  
9 discriminatory intent or motive:

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

12 A. **No.**

13 *Id.* at ¶ 11 (emphasis added).

14 Defense expert Mr. Click testified that there is no evidence that Deputy Ratcliffe used  
15 race in any manner in regards to the traffic stop or citation issuance or otherwise acted with  
16 racially discriminatory intent or motive toward Mr. and Mrs. Rodriguez. *Id.* at ¶ 12. It is,  
17 therefore, not surprising that Plaintiffs' own expert, Mr. Stewart, has no opinion as to  
18 whether Deputy Ratcliffe had racially discriminatory intent or motive in stopping the  
19 Rodriguez vehicle. *Id.* at ¶ 13

20 The evidence, therefore, demonstrates that Deputy Ratcliffe made the traffic stop  
21 involving the Rodriguez Plaintiffs, whose race and ethnicity were unknown to him at the  
22 time, for a violation of a race-neutral state traffic law. *Id.* at ¶ 14; *see also Longmire*, 2005  
23 U.S. Dist. LEXIS 18388 \*7. Based on the foregoing, Plaintiffs have failed to prove that  
24 Deputy Ratcliffe acted with racially discriminatory intent or motive toward Mr. and Mrs.  
25 Rodriguez, or acted pursuant to any MCSO policy, pattern, or practice promoting or  
26 fostering the targeting of Latinos. Because the Rodriguez Plaintiffs' Fourteenth Amendment  
27 claim fails, Plaintiffs' policy, pattern, or practice claim based on their stop also must fail.  
28 *Lewis*, 518 U.S. at 357; *Jenkins*, 515 U.S. at 88-89.

1           **C.     Stop Three - Meraz and Nieto and Deputies Armendariz, Kikes, and**  
2           **Beeks.**

3           MCSO Deputy Michael Kikes made the traffic stop of siblings Mr. Nieto and Ms.  
4 Meraz. SSOF at ¶ 15. Due to the Meraz-Nieto vehicle's window tinting, Deputy Kikes  
5 **could not see the race, ethnicity**, or other characteristics of the vehicle's occupants. *Id.* at ¶  
6 16; *see also Montero-Camargo*, 208 F.3d at 1139-40 (no constitutional violation when  
7 officers did not know the race of the driver or vehicle occupants before actually stopping the  
8 vehicle.); *United States v. Eliseo-Gonzalez*, 2009 U.S. LEXIS 91831 \*4 (M.D. Fla. 2009)  
9 (“[N]o racial profiling took place in this case. The officer testified that he could not see  
10 inside the vehicle when it passed his position and could not observe race or gender because  
11 of the dark tint.”).

12           Plaintiffs' expert, Mr. Stewart, testified that he has no evidence of racially  
13 discriminatory intent or motive by Deputy Kikes in making the traffic stop of the Meraz-  
14 Nieto vehicle. *Id.* at ¶ 17. There is no evidence that MCSO Deputy Ramon Armendariz,  
15 who had the initial interaction with the Plaintiffs and called for back-up that led to the traffic  
16 stop of Meraz and Nieto made by Deputy Kikes, had any racially discriminatory intent or  
17 motive in regards to Meraz and Nieto. *Id.* at ¶ 18. There is no evidence of racially  
18 discriminatory intent or motive by Deputy Douglas Beeks in drawing his weapon to his side  
19 (without pointing it) when he joined Deputy Kikes after the traffic stop of Meraz and Nieto.  
20 *Id.* at ¶ 19. Even expert Mr. Stewart admitted that there is no evidence that Plaintiffs Meraz  
21 and Nieto were racially profiled in either the traffic stop or during their subsequent treatment  
22 by the MCSO deputies. *Id.* at ¶ 20. In fact, Mr. Stewart also testified that Deputy Kikes  
23 acted “reasonably” in his post-stop conduct and treatment of Mr. Nieto. *Id.* at ¶ 111.

24           Finally, the evidence demonstrates that Deputy Kikes made the traffic stop involving  
25 Plaintiffs Meraz and Nieto either on race-neutral probable cause or race-neutral reasonable  
26 suspicion. *Id.* at ¶ 21; *see also Longmire*, 2005 U.S. Dist. LEXIS 18388 \*7. Based on the  
27 foregoing, therefore, Plaintiffs have failed to prove that any deputy that interacted with the  
28 Plaintiffs Meraz and Nieto acted with racially discriminatory intent or motive, or acted  
pursuant to any MCSO policy, pattern, or practice promoting or fostering the targeting of

1 Latinos. Because the Plaintiffs Meraz and Nieto’s Fourteenth Amendment claims fail,  
 2 Plaintiffs’ policy, pattern, or practice claim based upon this stop also must fail. *Lewis*, 518  
 3 U.S. at 357; *Jenkins*, 515 U.S. at 88-89. Moreover, because there is no evidence that **any** of  
 4 the named Plaintiffs’ constitutional rights were violated during any of the three stops at  
 5 issue, Plaintiffs’ entire Fourteenth Amendment claim including their policy, pattern, or  
 6 practice claim fails as a matter of law.

7 **IV. THE EVIDENCE CONCLUSIVELY ESTABLISHES THAT DEFENDANTS**  
 8 **DID NOT ACT WITH RACIALLY DISCRIMINATORY INTENT AGAINST**  
 9 **LATINOS, AND THAT NO POLICY, PATTERN, OR PRACTICE OF THE**  
 10 **DEFENDANTS VIOLATED THE PLAINTIFFS’ FOURTEENTH**  
 11 **AMENDMENT RIGHTS.**

12 Plaintiffs argue that Defendants “instituted a pattern or practice of selecting locations  
 13 for saturation patrols based, in part, upon racially-charged citizen complaints and in an effort  
 14 to target individuals of Mexican and Hispanic ethnicity, who Arpaio publicly and explicitly  
 15 equates to ‘illegal.’” (Motion at p. 14, ln. 22 to p., 15, ln. 3). Not only is this argument  
 16 irrelevant given the absence of any constitutional violation concerning the three traffic stops  
 17 involving the named Plaintiffs, but it is also factually and legally unsupportable.

18 Plaintiffs’ argument, indeed their entire Motion, is based upon their conflating the  
 19 MCSO’s lawful and race-neutral enforcement of laws relating to illegal immigration with the  
 20 MCSO supposedly unlawfully targeting Latinos. In other words, because the MCSO seeks  
 21 to enforce laws related to illegal immigration, Plaintiffs argue that the MCSO targets Latinos  
 22 in general in order to identify and arrest illegal immigrants. This argument is factually  
 23 unsupported and legally wrong as shown below.

24 **A. The MCSO Policy of Enforcing Laws Relating to Illegal Immigration is**  
 25 **Race-Neutral, the Use of Saturation Patrols is a Reasonable and Common**  
 26 **Law Enforcement Technique, and the Discovery of Illegal Immigrants**  
 27 **During Such Patrols is Not Evidence of Defendants’ Alleged Racial**  
 28 **Prejudice or Animus against Latinos.**

Against “the backdrop of rampant illegal immigration, escalating drug and human  
 trafficking crime, and serious public safety concerns,” in 2006-07 Arpaio established an  
*additional* law enforcement focus for the MCSO. *See United States v. Brewer*, 703

1 F.Supp.2d 980, 985 (D. Ariz. 2010) (the “SB1070” case wherein the court discussed the  
2 “backdrop” of illegal immigration related problems facing Arizona that the Legislature tried  
3 to remedy). Arpaio determined that public safety in Maricopa County would be promoted by  
4 the MCSO’s enforcement of federal immigration laws under the federal government’s 287(g)  
5 program (which allows specially trained and certified local enforcement officers to enforce  
6 federal immigration law) while concurrently enforcing Arizona laws related to human  
7 smuggling. *See, e.g.*, A.R.S. § 13-2319 (Arizona’s human smuggling statute); *see also* SSOF  
8 at ¶ 22. This is a reasonable race-neutral policy decision for Arpaio to make.

9 Defense expert Mr. Click testified:

10 **Arizona’s proximity to the Mexican border results in enforcement issues not**  
11 **faced by non-border states.** Major smuggling corridors have been identified that  
12 lead from the Mexico border to Maricopa County and beyond. This can result in  
13 different and reasonable law enforcement policies in Maricopa County than in other  
14 parts of the country. Arizona has specific immigration-related statutes that many  
15 other states do not have. **These statutes make certain immigration related**  
16 **activities a crime and therefore can impact agency policies.**

17 *Id.* at ¶ 27 (emphasis added). Even Plaintiffs’ own expert, Mr. Stewart, acknowledged that  
18 crime related to illegal immigration is a problem in Maricopa County, and that human  
19 smuggling is a significant problem in Maricopa County. *Id.* at ¶ 23. A local law  
20 enforcement agency, such as the MCSO, has broad discretion in setting its enforcement  
21 policies. *Id.* at ¶ 24. Mr. Stewart testified that a local law enforcement agency has broad  
22 discretion in determining what problems, concerns, or crimes it should prioritize for  
23 enforcement. *Id.* at ¶ 25. Arpaio, therefore, properly designated illegal immigration as an  
24 additional law enforcement focus for the MCSO. *Id.* at ¶ 26.

25 Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that the MCSO had  
26 the authority under the February 2007 ICE-MCO Memorandum of Agreement (“MOA”) to  
27 perform pure immigration enforcement, that is to enforce the immigration law regardless of  
28 whether a specific illegal immigrant was suspected of engaging in so-called serious crime.  
*Id.* at ¶ 31. The MOA expressly allowed MCSO 287(g) certified deputies to enforce federal  
immigration law. *Id.* at ¶ 32. More specifically, the MCSO personnel certified with 287(g)  
authority by ICE are expressly allowed to stop and interrogate any person “*believed*” to be an

1 alien as to his/her right to be or remain in the United States. *See* 8 U.S.C. § 1357; 8 C.F.R. §  
2 287.5, *et seq.* Also, 287(g) certified deputies are permitted to make warrantless arrests. *Id.*

3 Mr. Kidd further testified that the MCSO “has the authority to enforce the state laws,  
4 and some of those [Arizona] laws do include immigration related matters.” *Id.* at ¶ 33. In  
5 addition, Mr. Alonzo Pena, the Special Agent in Charge for ICE Phoenix during the MOA,  
6 testified that it was completely proper for MCSO deputies to make traffic stops of motorists  
7 under Arizona law and then call for a 287(g) certified deputy to determine if someone in the  
8 stopped vehicle might be unlawfully present in the country. *Id.* at ¶ 34.

9 While the MCSO saturation patrols were designed to generally address crime in a  
10 given geographic area, another focus of the patrols was the enforcement of the laws related  
11 to illegal immigration. *Id.* at ¶ 109. “[T]he Supreme Court stated that ‘entering or remaining  
12 unlawfully in this country is itself a **crime.**’” *Medina v. Holder*, \_\_\_ F.3d \_\_\_, 2011 U.S.  
13 LEXIS 5341 (9th Cir. 2011) (emphasis added) *quoting from INS v. Lopez-Mendoza*, 468  
14 U.S. 1032, 1038 (1984); *but see Gonzales v. City of Peoria*, 722 F.2d 468, 476 (9th Cir.  
15 1983) (illegal entry in the United States is a crime but an alien’s mere unlawful presence in  
16 the United States is only a civil violation), *overruled on other grounds by Hodgers-Durgin v.*  
17 *de la Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc); *see also United States v. Santana-*  
18 *Garcia*, 264 F.3d 1188, 1193 (10th Cir. 2001) (Utah state trooper had probable cause to  
19 arrest an alien without a warrant after the alien told the trooper that he was illegally present  
20 in the United States). Regardless of whether an illegal immigrant’s unlawful presence in  
21 Maricopa County is a civil or criminal violation of the law, the fact remains that MCSO  
22 deputies that were 287(g) certified during the time pertinent to this lawsuit were authorized  
23 to enforce federal immigration law, whether criminal or civil. *See* 8 U.S.C. § 1357; 8 C.F.R.  
24 § 287.5, *et seq.*; *see also* SSOF at ¶ 110.<sup>2</sup>

25 There is nothing about the use of a saturation patrol that is, in itself, indicative of  
26 racially discriminatory intent or motive by Defendants. Police practices expert Mr. Click

26 <sup>2</sup> The United States Supreme Court has held that local law enforcement has the inherent authority to enforce the *civil*  
27 provisions of the federal immigration law. *Muehler v. Mena*, 544 U.S. 93, 101 (2005); *see also United States v. Brewer*,  
28 \_\_\_ F.3d \_\_\_, 2011 U.S. LEXIS 7413 (9th Ci. 2011), No. 10-16645 D.C. No. 2:10-cv-01413 SRB OPINION at pgs.  
4882-87 (partial dissent by Judge Bea) (9th Cir. April 11, 2011). The Ninth Circuit, however, has recently held to the  
contrary as to *civil* violations but without limiting the inherent authority to enforce the criminal provisions of federal

1 testified that a saturation patrol is a long-standing, common, and reasonable tool of law  
 2 enforcement, and that it is an agency policy decision *as to what particular problems* are to be  
 3 addressed by or with a saturation patrol. *Id.* at ¶ 27. Mr. Click testified:

4 Saturation patrol operations have long been an accepted strategy used by law  
 5 enforcement agencies to address specific crime problems in a particular location... **It**  
 6 **is an agency policy decision to use saturation patrols to address a particular**  
 7 **problem.**

8 Saturation patrols/crime suppression/task force operations usually involve officers  
 9 making increased number of lawful traffic stops and street contacts. **The goal of**  
 10 **these lawful stops and contacts is [to] discover other crime.** This can also have a  
 11 deterrent effect. Lawful stops and contacts are also used to gather intelligence about  
 12 criminal activity.

13 The specific criminal activity that is identified as the focus of a saturation patrol  
 14 operations is any **agency policy decision. This is a common law enforcement**  
 15 **practice. The Sheriff has the authority to designate illegal immigration an**  
 16 **enforcement priority.**

17 *Id.* (emphasis added).

18 Because of Maricopa County's proximity to the Mexican border, one of the facts  
 19 faced by the MCSO necessarily is the relative commonality of the racial or ethnic  
 20 composition of the illegal immigrants that are encountered in the county. The illegal  
 21 immigrants indentified in the county are generally not from China, the Caribbean, North  
 22 Africa, Eastern Europe, or the Indian subcontinent. They are predominately from Mexico  
 23 and other countries south of the Arizona border. Several MCSO deputies testified that, in  
 24 their professional experience, most illegal immigrants they have discovered in Maricopa  
 25 County are from Mexico, or Central or South American. *Id.* at ¶ 28. Arpaio's experience is  
 26 the same. *Id.* at ¶ 29. The fact that most illegal immigrants discovered in Maricopa County  
 27 are from Mexico, and thus Latino by definition, is neither shocking nor indicative of racial  
 28 animus against Latinos by the Defendants. According to the objective and race-neutral  
 evidence, "[i]t is well established that illegal immigrants in Arizona and in the United  
 States as a whole are overwhelmingly Hispanic. The Pew Hispanic Center has  
 estimated that 94 percent of illegal immigrants in Arizona are from Mexico alone, not

immigration law. *Brewer*, at p. 4848.

1 **including the rest of Latin America.”** *Id.* at ¶ 30. It is not surprising, therefore, that when  
 2 the MCSO conducts saturation patrols it will encounter Latinos that are Mexican nationals or  
 3 from Central or South America that are unlawfully in the United States. *See United States v.*  
 4 *Vandyck-Aleman*, 201 Fed. Appx. 215, 218, 2006 U.S. App. LEXIS 24245 \*9 (5th Cir.  
 5 2006), *cert. denied*, 549 U.S. 1188 (2007) (“In the poultry-producing region of Scott County,  
 6 Mississippi, as the [ICE] agent testified without contradiction, the population of illegal aliens  
 7 is predominately Hispanic, not (non-Hispanic) white. Accordingly, the district court did not  
 8 err by finding that the officers’ decision to approach Vandyck’s house and to question him  
 9 when he came to the door was justified.”).

10 In summary to this point, Plaintiffs have failed to prove that Defendants’ policy of  
 11 enforcing the laws, including those related to illegal immigration, was motivated by racially  
 12 discriminatory intent or motive against Latinos. They have also failed to prove that the  
 13 Defendants’ use of saturation patrols as a law enforcement technique, a technique that has  
 14 inevitably lead to the MCSO’s discovery and arrest of illegal immigrants that are, given the  
 15 county’s proximity to the Mexican border, predominantly Latino, is an unreasonable law  
 16 enforcement technique or that it is driven by discriminatory intent to target Latinos and not  
 17 merely violators of federal or Arizona law.

18 **B. MCSO Saturation Patrols are Initiated, Planned, and Executed Based on**  
 19 **Race-Neutral Considerations.**

20 Plaintiffs have a two-pronged approach in their effort to prove that Defendants are  
 21 motivated by racial animus toward Latinos in initiating, planning, and executing saturation  
 22 patrols. First, they argue that Arpaio’s public statements show he has racial animus toward  
 23 Latinos. (Motion at p. 17, n. 9).<sup>3</sup> Second, Plaintiffs argue that Arpaio somehow adopted,  
 24 approved, and agreed with citizen letters that expressed racially offensive or insensitive  
 25 remarks about Latinos and called for the racial targeting of Latinos. Both arguments are  
 26 incorrect and wholly unsupported by the evidence.

27 <sup>3</sup> It is important to note that Plaintiffs do *not* attempt to prove that a single MCSO deputy that interacted with any of  
 28 the *named* Plaintiffs in any way had racially discriminatory intent or motive, either in making the respective traffic stop  
 or in his post-stop treatment of the named Plaintiffs, or acted pursuant to the challenged policy, pattern, or practice.  
 Moreover, in apparent recognition of the evidentiary deficiencies with their first argument, Plaintiff represent that they  
 “need not even prove that Sheriff Arpaio himself held racial animus in order to establish racially discriminatory intent if  
 he adopted his policies in response to public sentiment that he knew was racially inspired.” (Motion at p. 17, Ins. 22-24).

1                                   **1. Arpaio’s Statements Do Not Show Racial Animus.**

2           Plaintiffs attribute racial animus against Latinos to Arpaio and his policy of enforcing  
3 the laws related to illegal immigration because of certain public statements he has made  
4 during his recent career. Plaintiffs claim that Arpaio has indicated racial animus against  
5 Latinos when he: (a) publicly announced an MCSO “crackdown” on illegal immigration; (b)  
6 publicly used the terms “illegals,” “illegal aliens,” or “day laborers;” (c) publicly described  
7 the illegal immigration problem in the county as an “epidemic;” (c) warned in early 2009  
8 that illegal immigrants could transmit swine flu, and supposedly said that all Mexican  
9 nationals were “dirty;” (d) wrote in one of his books the opinion that illegal immigrants from  
10 Mexico are failing to assimilate into U.S. culture; (e) publicly stated that most illegal  
11 immigrants in the county are from Mexico and have certain “appearances;” and (f) publicly  
12 stated “where do you think 99 percent of the [illegal immigrants] come from?”

13           Plaintiffs’ argument is not persuasive. They have offered the Court no legal authority  
14 from the Ninth Circuit or elsewhere that supports their argument that any of Arpaio’s  
15 remarks (or alleged remarks), in isolation or collectively, amount to direct or circumstantial  
16 evidence of racial animus against Latinos. They offer no authority that Arpaio’s remarks  
17 constitute the sort of hidden or “camouflaged racial expression” that courts have found to be  
18 evidence of racially discriminatory intent by a public official. *Smith v. Town of Clarkton*,  
19 682 F.2d 1055, 1063-66 (4th Cir. 1982) (compare here the references to the “influx of  
20 undesirables”). To the contrary, each of Arpaio’s remarks concern illegal immigration and  
21 reflects race-neutral facts or opinion about the reality and nature of illegal immigration in  
22 Maricopa County. Moreover, there simply is no legal authority equating a public official’s  
23 (or law enforcement officer’s) publicly stated opposition to illegal immigration to animus  
24 toward the race/ethnicity of the illegal immigrants.

25           The race-neutral reality is that Arizona is a border state and that Maricopa County is a  
26 well-recognized major human smuggling corridor. SSOF at ¶ 35. Most of the illegal  
27 immigrants in the county, given the countries they are originally from, are, by definition  
28 Latinos. *Id.* at ¶¶ 28-30. Most day-laborers in this county, in the experience of many

1 MCSO deputies, are illegal immigrants. *Id.* at ¶ 36. Plaintiffs’ own racial profiling expert,  
2 Mr. Stewart, testified that crime related to illegal immigration is a problem in Maricopa  
3 County. *Id.* at ¶ 23. Defendants respectfully submit that a resident of this county can oppose  
4 “rampant” illegal immigration without having racial or ethnic animus toward the illegal  
5 immigrants themselves. *Brewer*, 703 F.Supp.2d at 985 (describing the illegal immigration  
6 situation in Arizona as “rampant”). A reasonable person could not interpret Arpaio’s public  
7 comments as anything other than an expression of his opposition to, and desire to remediate,  
8 the undisputed problem of illegal immigration. Arpaio’s comments certainly are not  
9 evidence of racial or ethnic animus toward Latinos.

10 As for Arpaio’s comment about the appearance of illegal immigrants in Maricopa  
11 County, there is nothing racially discriminatory about such a comment. This is especially  
12 true when considering the context in which Arpaio made the comment. The context shows  
13 that Arpaio was attempting to articulate the ICE-approved indicators that the **MCSO’s**  
14 **287(g) certified deputies could use to determine a suspect’s unlawful presence** in the  
15 United States. He was **not** talking about using appearance to make traffic stops. Under the  
16 ICE 287(g) program, there are a number of ICE-approved “indicators” that a local law  
17 enforcement officer who is 287(g) certified is trained by ICE to look for in determining  
18 whether a person may be in the United States unlawfully. One of the ICE-approved  
19 indicators is **that person’s race or ethnicity**, including Mexican ancestry. *Id.* at ¶ 38; *see*  
20 *also United States v. Montero-Camargo*, 208 F.3d 1122, 1134 n.21 (9th Cir. 2000) (“Nor do  
21 we preclude the use of race or ethnic appearance as one factor relevant to reasonable  
22 suspicion or probable cause....”); *United States v. Brignoni-Ponce*, 422 U.S. 873, 885-87  
23 (1975) (“the apparent Mexican ancestry of the occupants” is a relevant factor among others  
24 in an immigration investigation); *cf. United States v. Kim*, 25 F.3d 1426 (9th Cir. 1994)  
25 (holding that a consensual encounter by law enforcement may be based on a suspect’s racial  
26 appearance).

27 ICE approves of the **use of race as one indicator among several** in the exercise of  
28 287(g) authority in determining whether someone may be in the United States unlawfully.  
*Id.* at ¶ 39. Although ICE approves of the use of race as one indicator, among several other

1 indicators, as a basis to form reasonable suspicion of unlawful presence or status, **the MCSO**  
2 **does not use race as an indicator or factor to make vehicle stops under Arizona law.** *Id.*  
3 at ¶ 40.

4 Another ICE-approved indicator of unlawful presence is that the person **does not**  
5 **speak the English language.** *Id.* at ¶ 41. Additional ICE-approved indicators of unlawful  
6 presence are: (a) an overcrowded vehicle; (b) none of the occupants have luggage or only  
7 small items of property easily transported; (c) the people in the vehicle are unrelated or do  
8 not know each other; (d) whether the people in the vehicle are **dressed in a disheveled**  
9 **manner;** (e) **pungent body odor** of the people in the vehicle; and (f) the vehicle is located a  
10 known human smuggling corridor. *Id.* at ¶ 42. When Plaintiffs complain of MCSO 287(g)  
11 certified deputies focusing on a person's ability to speak only the Spanish language, or  
12 general "appearance," that complaint ignores the facts and the context of using such factors  
13 only when determining immigration status.

14 As for Arpaio's alleged comment that all Mexican nationals are "dirty," the evidence  
15 does support Plaintiffs' argument. Arpaio gave an interview with *GQ* magazine online in  
16 late 2008 or early 2009. In that story, there is a statement attributed to him or his spouse that  
17 illegal immigrants coming over the Mexican border are "dirty." That statement was likely  
18 taken out of context by the reporter. According to Arpaio,

19 It reflects my views only that those that come across the border and do not go through  
20 the proper checks, through the regular ports to come in here with no checks at all.  
21 **And there is no way to determine whether they have a disease or not. I can talk**  
22 **about swine flu, tuberculosis and I believe I was referring to those instances**  
23 **when people come across without doing the proper checks.**

24 *Id.* at ¶ 43 (emphasis added). Moreover, it is important to note that ICE-approved indicators  
25 for unlawful presence include appearance related factors such as whether, as mentioned  
26 above, the suspects are dressed in a disheveled manner and have pungent body odor. *Id.* at ¶  
27 42.

28 In conclusion, after nearly four years of litigation in this case, the Plaintiffs have come  
forward with insufficient evidence that Arpaio's remarks, or alleged remarks, would "permit  
a reasonable trier of fact to find by a preponderance of the evidence" that he held racial or

1 ethnic animus against Latinos. *Keyser*, 265 F.3d at 754. There also is insufficient evidence  
 2 that would “permit a reasonable trier of fact to find by a preponderance of the evidence” that  
 3 Defendants’ illegal immigration enforcement and saturation patrol policy “was racially  
 4 motivated.” For all the reasons set forth herein, summary judgment in Plaintiffs’ favor is  
 5 inappropriate.

6 **2. Arpaio Did Not Adopt, Approve of, Agree with, or Endorse Citizen**  
 7 **Letters that Expressed Racially Offensive or Insensitive Remarks**  
 8 **about Latinos or that Asked the MCSO to Engage in the Racial**  
 9 **Targeting of Latinos.**

10 Arpaio receives numerous letters from citizens about illegal immigration. Arpaio  
 11 saves the letters he receives. As such, Plaintiffs have selected and cited to several letters that  
 12 Arpaio has received over the years from citizens that have expressed racially or ethnically  
 13 offensive or insensitive remarks about Latinos and/or called for the MCSO to target Latinos  
 14 based solely on their race or ethnicity. Plaintiffs use those letters to argue that Arpaio  
 15 “adopted the racial sentiments of his constituents” (Motion at p. 18, ln. 15) by, among other  
 16 things, writing “thank-you” notes to the letters’ authors (*Id.* at p. 17, lns. 14-16) (“By  
 17 responding to these sentiments, Sheriff Arpaio put his imprimatur on his constituents’  
 18 sentiments against Hispanics and their views that Hispanics should be targeted for law  
 19 enforcement based on their race or ethnicity.”). Plaintiffs’ argument is legally and factually  
 20 wrong.

21 First, Arpaio did **not** and does not agree with the offensive or insensitive remarks  
 22 about Latinos that were contained in the cited letters. Arpaio, for example, testified that he  
 23 did *not* agree with the comments made by one author about Ninth Circuit Court of Appeals  
 24 judge Mary Murguia, the former judge presiding over this litigation. *Id.* at ¶ 44. In fact,  
 25 Arpaio thought the author’s comments were “*rather nasty. And this is their opinion. It*  
 26 *doesn’t mean it is my opinion. I’ve been a federal official, law enforcement official, for 26*  
 27 *years. I have respect for the courts, and I don’t agree with that.*” *Id.* (emphasis added).

28 When he was asked whether he agreed with racially offensive language in another  
 citizen letter, Arpaio testified that “**I don’t agree with that.**” *Id.* at ¶ 45 (emphasis added).  
 When he was questioned about the contents of another letter from a citizen named Richard

1 H., Arpaio testified that he had “no knowledge of percentages or whatever he’s talking  
2 about. **Once again, that’s his comment, not mine.**” *Id.* at ¶ 46. Moreover, when  
3 questioned about whether he agreed with Richard H.’s racially charged statement, Arpaio  
4 responded: “Once again, that’s his statement, and **I don’t know what context he’s talking**  
5 **about**, about ducks or whatever he’s mentioning.... I can’t read his mind. **This is his**  
6 **opinion, not mine.**” *Id.* at ¶ 47 (emphasis added).

7 When a citizen named Carol B. indicated that racial profiling was, in her lay opinion,  
8 a desirable and harmless law enforcement tool because her own Italian mother experienced it  
9 many years ago, Arpaio testified that “**This is just her comments, her opinions. I have no**  
10 **comment on her comment. I wasn’t there. I wasn’t involved with her family.**” *Id.* at ¶  
11 48 (emphasis added).

12 When Arpaio was questioned about whether he agreed with the racially charged  
13 comments contained within another letter co-written by citizens Sarah M. and Erika S.,  
14 Arpaio made it abundantly clear that he did **not** adopt, agree with, or endorse their  
15 comments. *Id.* at ¶ 59. When he was asked whether he agreed with the racially charged  
16 language in another citizen’s letter, Arpaio testified that he did not even understand what the  
17 author was thinking and “**I can’t believe what he’s thinking when he wrote this.**” *Id.* at ¶  
18 60 (emphasis added).

19 As for other citizen letters containing actual, or perceived, racially charged language  
20 that the Plaintiffs cite to in their Motion (i.e., documents OSLS00004525, OSLS0005154,  
21 Melendres MCSO 76267, Melendres MCSO 71945, OSLS001235, OSLS0001057, and  
22 OSLS001058-60), Plaintiffs **did not** even question Arpaio during his deposition as to  
23 whether he agreed with those racially charged statements. However, given Arpaio’s prior  
24 testimony when he was asked whether he agreed with other citizens’ racially offensive  
25 remarks, it is reasonable to assume that Arpaio would have similarly disagreed with the  
26 offensive remarks in each of these documents as well.

27 Finally, the Plaintiffs’ argument that citizen letters asking the MCSO to act  
28 unlawfully by racially profiling Latinos triggered Defendants’ law enforcement action is not  
supported by the evidence. Arpaio testified that racial profiling is morally wrong and his

1 deputies do not engage in such conduct. *Id.* at ¶ 49. Deputy Chief Brian Sands, the MCSO  
2 person that actually makes the decisions of where, when, and how to do a saturation patrol,  
3 testified that racial profiling is morally wrong and illegal. *Id.* at ¶ 50. MCSO Lieutenant  
4 Joseph Sousa, the head of MCSO’s Human Smuggling Unit (“HSU”), and one of the top  
5 planners for executing and supervising saturation patrols, testified that racial profiling is  
6 prohibited by MCSO policy, is illegal, and HSU members do not racially profile. *Id.* at ¶ 51.

7 Sergeant Manuel Madrid, who is one of two supervising sergeants for the HSU, who  
8 works directly for Lt. Sousa, and who is a Latino himself, testified that racial profiling is  
9 illegal, the factor of a person’s race or ethnicity can never be used in making a traffic stop,  
10 and the HSU members he supervises do not racially profile. *Id.* at ¶ 52. Sergeant Brett  
11 Palmer, the remaining supervisory sergeant for HSU, testified that racial profiling is wrong  
12 and illegal, and that the HSU members he supervises do not racially profile. *Id.* at ¶ 53.

13 The testimony of the MCSO deputies who interacted with the named Plaintiffs is in  
14 accord. Louis DiPietro, the deputy that made the traffic stop on Plaintiff Melendres, knows  
15 and understands that racial profiling is illegal. *Id.* at ¶ 54. Race was not a factor in his  
16 finding of probable cause to stop the truck in which Plaintiff Melendres was a passenger. *Id.*  
17 Matthew Ratcliffe, the deputy that made the traffic stop on the Rodriguez Plaintiffs knows  
18 and understands that racial profiling is illegal and wrong. *Id.* at ¶ 55. Race was not a factor  
19 in his finding of probable cause to stop the Rodriguez Plaintiffs. *Id.* Michael Kikes, the  
20 deputy who made the traffic stop on Plaintiffs Meraz and Nieto knows and understands that  
21 racial profiling is illegal and wrong. *Id.* at ¶ 56. Race was not a factor in Deputy Kikes’  
22 finding of probable cause to stop Plaintiffs Meraz and Nieto. *Id.* In addition, after extensive  
23 review of the case file, defense expert Mr. Click opined:

24 The 3 incidents that are the basis of this suit do not support [Plaintiffs’ claim] that the  
25 deputies engaged in improper tactics such as racial profiling and improper stops to  
26 carry out their responsibilities.

27 Every MCSO deputy and supervisor deposed understood, without equivocation, that  
28 racial profiling is wrong, a serious crime and could result in the loss of their jobs.  
This understanding by all personnel is a strong motivator not to racially profile any  
person.

1 *Id.* at ¶ 61.

2 Second, Arpaio’s “thank-you” notes sent to the letters’ authors were not  
3 endorsements, approval, or adoptions of the letters’ content. The “thank-you” notes were  
4 merely a courtesy and acknowledgement by a public official that a citizen had written a letter  
5 to him. Arpaio, via his secretary, normally writes “thank-you” notes to *all people* who write  
6 to him, regardless of the content of the letters. *Id.* at ¶ 57.

7 Third, Plaintiffs offer the Court no legal authority from the Ninth Circuit or any  
8 jurisdiction standing for the proposition that a public official who receives a citizen  
9 complaint expressing or implying racial prejudice has thereby adopted, approved of, agreed  
10 with, or endorsed the contents of those letters simply because he sent a “thank-you” note to  
11 the author, and/or because he forwarded the letter to a management level person on his staff.  
12 Likewise, the Plaintiffs offer no legal authority that supports their novel argument that  
13 Arpaio, by failing to “correct the sender” (Motion at p. 2, ln.16) as to his/her opinions or  
14 racial prejudice or by failing to rebuke him/her for expressing such opinions, has thereby  
15 adopted, agreed, or approved of the citizens’ opinions or prejudice. *City of Cuyahoga Falls,*  
16 *Ohio v. Buckeye Community Hope Foundation*, 538 U.S. 188, 196 (2003) (“[O]ur well  
17 established First Amendment admonition that government may not prohibit the expression of  
18 an idea simply because society finds the idea itself offensive or disagreeable, dovetails with  
19 the notion that all citizens, regardless of the content of their ideas, have the right to petition  
20 their government.”) (citations and internal quotations omitted). Arpaio is under no  
21 obligation to “correct” or rebuke every citizen letter writer as to his/her opinions or lay-  
22 person view of the law.

23 In conclusion to this point, Plaintiffs offer no evidence that would “permit a  
24 reasonable trier of fact to find by a preponderance of the evidence” that Arpaio “adopted the  
25 racial sentiments of his constituents” or placed “his imprimatur” on those expressions and,  
26 therefore, “was racially motivated” in his law enforcement policy regarding enforcing the  
27 laws related to illegal immigration. *Keyser*, 265 F.3d at 754. Plaintiffs, therefore, are not  
28 entitled to judgment as a matter of law based upon these citizen communications.

1                   3.     **Defendants Did Not, and Do Not, Conduct Saturation Patrols Based**  
2                   **on Citizen Letters that Express Racially Offensive or Insensitive**  
3                   **Remarks about Latinos or that ask the MCSO to Engage in the**  
4                   **Targeting of Latinos.**

5                   Plaintiffs next argue that, because Arpaio sent to certain of his executive management  
6                   staff copies of citizen letters that expressed racially offensive or insensitive remarks about  
7                   Latinos and/or called for racial targeting of Latinos, Arpaio must have agreed with the  
8                   letters' content *in toto* and/or the MCSO must have used those letters to make decisions  
9                   about where and when to conduct saturation patrols. This argument is, once again, factually  
10                  unsupportable. The evidence shows that the MCSO selects sites for saturation patrols based  
11                  on race and ethnicity neutral factors.

12                  Arpaio forwards letters to executive staff in his office when he believes the letters  
13                  may be of interest to them. SSOF at ¶ 62. In regards to the letters that Plaintiffs assert are  
14                  racially charged, Arpaio forwarded those letters predominately to one person, Chief Brian  
15                  Sands. Arpaio forwarded the letters to Chief Sands so he could determine whether there was  
16                  any factual information contained within the letters that was worthy of MCSO independent  
17                  investigation. *Id.* at ¶ 78. The forwarding of such letters from the top executive to a  
18                  subordinate executive is standard practice among law enforcement administration and is  
19                  precisely what defense expert Bennie Click did when he received such letters as Chief of  
20                  Police of the Dallas, Texas police department. *Id.* at ¶ 71.

21                  As for Plaintiffs' reliance upon Arpaio not checking the accuracy of statistics about  
22                  illegal immigration in a particular document before he forwarded it to management level  
23                  staff, Arpaio testified that he sent the document to Chiefs Sands and Freeman so *they could*  
24                  *check on it* "[b]ecause this is another piece of intelligence. It could be true, or it could not.  
25                  That's why I sent it to them." *Id.* at ¶ 78. The document is "[j]ust another intelligence-type  
26                  report, **whether it's true or not, I think that they [Chiefs Sands and Freeman] should**  
27                  **look at it.**" *Id.*

28                  Chief Sands makes the decisions of where, when, and how to do a saturation patrol.  
*Id.* at ¶ 63. There are a multitude of different law enforcement factors that Chief Sands used  
to determine whether to conduct a saturation patrol, and where it is conducted. *Id.* The race

1 or ethnicity of people, however, plays **no role** in Chief Sands' selection of saturation patrol  
 2 locations. *Id.* at ¶ 64. The ethnic constituency in a neighborhood plays **no role** in selecting  
 3 locations for saturation patrols. *Id.* at ¶ 65. Even with an additional MCSO emphasis on  
 4 enforcing laws related to illegal immigration, **the MCSO still does not focus or target**  
 5 **areas believed to contain a high percentage of illegal immigrants.** *Id.* at ¶ 66. Chief  
 6 Sands testified:

7 **[T]he [illegal] immigration problems that we have are so widespread throughout**  
 8 **Maricopa County there [are] very few places you can go [on a saturation patrol]**  
 9 **where you are not going to encounter an illegal alien.** Whether to focus on a group  
 10 of people standing on a corner because they look a certain way is not good practice  
 11 and would certainly be easier to just go up and start grabbing people off the street  
 12 corner because they are day-laborers, **but it is not a practice or anything that we**  
 13 **condone in the sheriff's office.**

14 *Id.* (emphasis added). Similarly, HSU Lt. Sousa testified that the areas for saturation patrols  
 15 are *not* selected because they may have a high concentration of suspected illegal aliens. *Id.*  
 16 at ¶ 67.

17 The sites for saturation patrols are determined by Chief Sands based on a *combination*  
 18 of the following types of factors:

- 19 • The area's crime history and statistics. *Id.* at ¶ 68(A).
- 20 • Intelligence and data regarding possible criminal activity at the possible site. *Id.* at ¶  
 21 68(B).
- 22 • Requests for assistance in a particular area from Arizona Legislators and information  
 23 offered in the request. *Id.* at ¶ 68(C).
- 24 • Requests for assistance from city officials for a particular area. *Id.* at ¶ 68(D).
- 25 • Information provided by local police officers from other law enforcement agencies.  
 26 *Id.* at ¶ 68(E).
- 27 • Requests for assistance from private citizens in the community providing information  
 28 about possible criminal activity; but such information provided by private citizens is  
 independently evaluated and confirmed by the MCSO. *Id.* at ¶ 67(8).

When evaluating private citizen complaints, including the letters that Plaintiffs  
 complain about in their Motion, the MCSO conducts an independent investigation of the

1 complaint to determine its legitimacy and whether there is any basis to do anything. *Id.* at ¶  
2 69. “Generally speaking, [Chief Sands] likes to know what is going on in the community as  
3 a whole relative to crime before we do a saturation patrol.” *Id.* More specifically as to how  
4 the MCSO handles citizen complaints that may be made by persons who express racial  
5 prejudice, Chief Sands testified:

6 Q. How do you satisfy yourself that a complaint that you are about to act on was  
7 not motivated by race or ethnicity?

8 A. **I ignore it, unless there is some type of crime relative to it that would still**  
9 **lead to the discovery of that crime**, not excluding the person or the information  
10 source’s information for giving us that information. **To ignore all information**  
11 **would be contrary to good law enforcement.**

12 Q. So even if you have reason to believe that a complaint may be motivated by  
13 racism, you would not discount the complaint solely on that basis?

14 A. **If the complaint is racial only in itself, there is no follow-up done on it.**  
15 There is no need to follow up on a complaint about someone that is Irish or  
16 Jewish or ethnically Mexican that lives in a house with a whole group of other  
17 people. I mean, there is no need to follow up. That would be – there is no crime  
18 involved.

19 Q. If you believe a crime may be involved, you might pursue that tip even though  
20 you have reason to believe that the tip was also made on some improper  
21 consideration of race or ethnicity?

22 A. Keep in mind **I am not supporting racial or prejudicial attitudes in the**  
23 **community at all** when I say this, but sometimes the information sources that  
24 we end up using in law enforcement are people that are involved in – in  
25 criminal elements in their community or neighborhood they live in and  
26 **oftentimes these people give us information. It can be corroborated** to solve  
27 a murder or human smuggling case, that person may be, in fact, motivated by  
28 ulterior motives of his own, and **I am just being honest with you in saying that**  
**he may be racially prejudiced at the same time and its- it would be hard to**  
**disqualify that information and say that the information source doesn’t like**  
**certain groups of people so we are not going to- we are not going to**  
**investigate the crime that he might very well be a witness to.**

26 *Id.* at ¶ 70 (emphasis added).

27 As for Plaintiffs’ argument that Chief Sands blindly initiated saturation patrols when  
28

1 Arpaio forwarded him letters containing racially charged language, that argument is  
 2 nonsense. For example, when Chief Sands was asked whether he agreed with a particular  
 3 citizen author's statement in a letter he received from Arpaio that stated that "we have too  
 4 many dysfunctional Hispanics already here," Chief Sands **expressly rejected the author's**  
 5 **statement.** *Id.* at ¶ 77. Chief Sands never drew the conclusion that, because Arpaio merely  
 6 forwarded him a citizen' letter, he was to initiate a saturation patrol on that basis. *Id.* Expert  
 7 Mr. Click succinctly summarized the evidence about Chief Sands' handling of racially  
 8 charged letters that Arpaio had forwarded to him:

9 I don't think that—certainly Chief Sands is by just the nature of his position has been  
 10 around a long time, and I don't think he's going to be influenced by an email like this.  
 11 It would be just more informative or more just educational as to what a citizen is  
 12 saying out there.

12 *Id.* at ¶ 79.

13 The MCSO also, in fact, rejected race and ethnicity-based information that it received  
 14 from its illegal immigration "hot-line" or telephone tip-line. Chief Sands testified:

15 Q. Are you aware of your office having received tips relating to illegal  
 16 immigration that have come from persons or members of groups that have  
 17 expressed hatred for illegal immigrants?

18 A. I don't typically receive all these tips or the communication so it is hard for me  
 19 to analyze what motivates people that are giving us information. **I will say,**  
 20 **though, that I have sat in on meetings over tips that have come in and**  
 21 **when there is no need to follow up on something based on the caller's**  
 22 **information and it only attributed—the information is only attributed to**  
 23 **somebody's ethnicity or appearance, we don't follow up on it.** Whether  
 24 those are racially motivated complaints, I wouldn't know. **But when the**  
 25 **information is only such directed towards a group of people or a business**  
 26 **or—and just solely on their race or ethnicity, we don't follow-up on it.**

27 *Id.* at ¶ 72 (emphasis added).

28 Plaintiffs' charge that the MCSO conducted saturation patrols solely because a  
 location was frequented by day-laborers is not true. When the MCSO received citizen  
 complaints about day-laborers, the MCSO independently investigated the complaints and  
only took official action when it determined that criminal activity existed. *Id.* at ¶ 107.

1 Chief Sands does **not** select locations for saturation patrols because of the sole factor that  
2 there are day-laborers at a particular location. *Id.* While some saturation patrols involved  
3 sites where day-laborers were located, every saturation patrol in an area with day-laborers  
4 was conducted because there **were race and ethnicity-neutral factors related to criminal**  
5 **activity occurring at the site** that controlled Chief Sands' decision to conduct a particular  
6 saturation patrol at a particular location. *Id.* at ¶ 108; *compare Doe v. Vill. of Mamaroneck*,  
7 462 F.Supp.2d 520, 531 ¶ 89 (S.D.N.Y. 2006) ("To the extent Village officials did receive  
8 complaints from residents concerning the behavior of the day laborers, *the Village took no*  
9 *step to investigate and determine whether those complaints were genuine* and/or whether  
10 they were motivated consciously or unconsciously, by racial animus towards the day  
11 laborers.") (emphasis added).

12 The MCSO, therefore, consistently rejected racially or ethnically charged citizen  
13 complaints when there was no mention of any facts indicating criminal activity. *Id.* at ¶ 73.  
14 When there was criminal activity identified in the citizen complaint, the MCSO  
15 independently evaluated the same. *Id.* In addition, Mr. Click, the defense expert, testified  
16 that "[t]he method by which the MCSO chooses target areas for saturation patrols is  
17 **reasonable and consistent with standard law enforcement practices.**" *Id.* at ¶ 74  
18 (emphasis added). As for citizen complaints that contained actual or perceived racially  
19 prejudiced comments, Mr. Click concluded that the "MCSO took steps not to respond to  
20 requests to that [which] would have amounted to racial profiling." *Id.* at ¶ 75. Finally,  
21 Plaintiffs' own expert, Mr. Stewart, testified that each of the MCSO saturation patrols was  
22 justified under law enforcement standards:

23 Q. Have you formed the opinion that any particular MCSO saturation patrol was  
24 unjustified or unwarranted?

25 A. Based on crime data?

26 Q. For any reason.

27 A. **I did not draw that conclusion.**"

28 *Id.* at ¶ 76 (emphasis added).

1 In conclusion, Plaintiffs' argument that the MCSO conducted saturation patrols based  
2 on the offensive comments of citizens is unsupported by the evidence and is, quite simply,  
3 wrong. Their own police practices racial profiling expert agrees that each saturation patrol  
4 was justified on race-neutral grounds. Accordingly, Plaintiffs offer no evidence that would  
5 "permit a reasonable trier of fact to find by a preponderance of the evidence that [Arpaio]"  
6 "adopted the racial sentiments of his constituents" or placed "his imprimatur" on those  
7 expressions by forwarding some of these letters to Chief Sands, or that Chief Sands ordered a  
8 saturation patrol in a given area based upon citizens' racial prejudice. *Keyser*, 265 F.3d at  
9 754. Summary judgment in Plaintiffs' favor is inappropriate.

10 **4. The MCSO's Saturation Patrol Policies and Practices Were**  
11 **Reasonable, Appropriate, and Industry Standard and Did Not**  
12 **Encourage Racial Profiling of Latinos.**

13 Plaintiffs argue that Defendants' "practices on saturation patrols constitute a stark  
14 departure from both MCSO's past practice and the typical practice of American law  
15 enforcement agencies with respect to saturation patrols" and, therefore, "afford evidence that  
16 improper purposes are playing a role." (Motion at p. 24, Ins. 21-24). This argument is  
17 mistaken.

18 First, Plaintiffs are critical of Arpaio's decision to use saturation patrols as a tool to  
19 identify and deter crime, which inevitably in Maricopa County will also lead to the discovery  
20 of persons who are violation of the United States immigration laws. The evidence, however,  
21 shows that there is nothing particularly unique about the MCSO saturation patrols.  
22 "Saturation patrol operations have long been an accepted strategy used by law enforcement  
23 agencies to address specific crime problems in a particular location.... **It is an agency policy**  
24 **decision to use saturation patrols to address a particular problem.**" SSOF at ¶ 27. "The  
25 Sheriff has the authority to designate illegal immigration an enforcement priority." *Id.* On  
26 the other hand, what is unique to MCSO saturation patrols is the inevitable identification and  
27 arresting of illegal immigrants. But that uniqueness is not the result of racial or ethnic  
28 animus, but instead of the race-neutral realities of Maricopa County's geography relative to  
Mexico and the nature of illegal immigration in this county, state, and nation at present. As

1 set forth above already, Mr. Click testified:

2 Arizona's proximity to the Mexican border results in enforcement issues not faced by  
3 non-border states. Major smuggling corridors have been identified that lead from the  
4 Mexico border to Maricopa County and beyond. This can result in different and  
5 reasonable law enforcement policies in Maricopa County than in other parts of the  
6 country. Arizona has specific immigration-related statutes that many other states do  
7 not have. These statutes make certain immigration related activities a crime and  
8 therefore can impact agency policies.

9 *Id.* at ¶ 27. Finally, Mr. Click testified that the MCSO saturation patrols were reasonably  
10 and appropriately planned, executed, supervised and de-briefed. *Id.* at ¶ 80. There is "no  
11 stark departure" from reasonable, standard law enforcement practice.

12 Second, Plaintiffs are critical of the MCSO's use of so-called pre-textual traffic stops  
13 because those stops can be used "as a launching point for investigations into immigration  
14 status." That criticism is misplaced. The MCSO makes only lawful traffic stops based on  
15 probable cause or reasonable suspicion that a violation of the traffic code or vehicle code  
16 exists. *Id.* at ¶ 8. The MCSO **does not use race or ethnicity** as an indicator or factor to  
17 make vehicle stops. *Id.* at ¶ 82.

18 Plaintiffs' use of the term "pre-textual traffic stops" also has a negative implication  
19 that is not consistent with the law permitting, under *Fourth Amendment* analysis, the police  
20 to make lawful traffic stops even if the subjective intent of the stopping officer is to discover  
21 another crime. *Whren v. United States*, 517 U.S. 806, 810 (1996); *United States v. Robinson*,  
22 414 U.S. 218, 221 n.1 (1973); *United States v. Ramirez*, 473 F.3d 1026, 1030-31 (9th Cir.  
23 2007); *United States v. Willis*, 431 F.3d 709, 715 (9th Cir. 2005); *Rodriquez v. California  
24 Highway Patrol*, 89 F.Supp.2d 1131, 1139 (N.D. Cal. 2000). Even Plaintiffs' expert, Mr.  
25 Stewart, admits that a traffic stop can be made for probable cause even if the stopping police  
26 officer has some other race-neutral motivation to stop the motorist. SSOF at ¶ 83.

27 Defendants' expert, Mr. Click, testified about the traffic stop component of saturation  
28 patrols:

Saturation patrols/crime suppression/task force operations usually involve officers  
making increased number of lawful traffic stops and street contacts. The goal of these  
lawful stops and contacts is [to] discover other crime. This can also have a deterrent  
effect. Lawful stops and contacts is also used to gather intelligence about criminal

1 activity.

2 *Id.* at ¶ 84. Accordingly, there is “no stark departure” from reasonable, standard law  
3 enforcement practice.

4 Third, Plaintiffs are critical of the MCSO’s saturation patrol practice of asking **all**  
5 **passengers** in stopped vehicles, regardless of race or ethnicity, for identification. There is  
6 nothing unusual or unconstitutional about such a technique. The MCSO acted reasonably  
7 when it instituted a policy of asking **all passengers** in a vehicle stopped during a saturation  
8 patrol for their identification. *Id.* at ¶ 85. This policy was created in an effort to reduce the  
9 potential for racial profiling by deputies during saturation patrols. *Id.* Mr. Click testified:

10 Sergeant [Manuel] Madrid reasonably instituted a policy in the HSU [Human  
11 Smuggling Unit] that all passengers in vehicles that had been stopped would be  
12 contacted. He stated that this was done to avoid the appearance that deputies could  
13 pick and chose whom they contacted.

14 *Id.*; see also *INS v. Delgado*, 466 U.S. 210, 212 (1984) (immigration officers could question  
15 an individual although they lacked reasonable suspicion that the individual was an illegal  
16 alien); *Mena*, 544 U.S. at 101 (local law enforcement officers could ask passengers about  
17 their immigration status: “mere police questioning does not constitute a seizure.... Hence,  
18 the officers did not need reasonable suspicion to ask Mena for her name, date and place of  
19 birth, or *immigration status.*”) (emphasis added). There is “no stark departure” from  
20 reasonable, standard law enforcement practice.

21 Fourth, Plaintiffs criticize the MCSO’s use of a “zero-tolerance” policy requiring  
22 deputies to stop **all vehicles** they observed that had either a moving or equipment violation.  
23 This policy was “a reasonable practice... that removed the deputies’ discretion to pick and  
24 chose who they stopped” and was intended to reduce the potential of racial profiling during  
25 saturation patrols. SSOF at ¶ 86. Plaintiffs’ argument that it is unclear whether the MCSO  
26 actually implemented the zero-tolerance policy during large scale saturation patrols is not  
27 supported by the facts. **There was a zero tolerance policy for traffic stops during all**  
28 **large scale saturation patrols.** *Id.* at ¶ 87. Accordingly, Plaintiffs’ reliance on the  
testimony of Chief Sands, Lt. Sousa, and Deputy Armendariz to support Plaintiffs’ argument  
that deputies still had broad discretion when deciding which vehicles to stop during a large

1 scale saturation patrol is mistaken. *Id.* at ¶ 88. There is “no stark departure” from  
2 reasonable, standard law enforcement practice.

3 Fifth, Plaintiffs criticize the MCSO for supposedly not having a policy prohibiting  
4 racial profiling. The evidence, however, shows that the MCSO has a policy prohibiting  
5 racial profiling. *Id.* at ¶ 89. In addition, defendants’ expert Mr. Click testified:

6 The MCSO maintains comprehensive and detailed policies and procedures that all  
7 personnel are required to have a working knowledge of. **A number of MCSO  
8 policies prohibit racial profiling. The MCSO policies are reasonable and  
conform to nationally recognized standards.**

9 *Id.* at ¶ 90 (emphasis added). The MCSO, via Lt. Sousa and Sgts. Madrid and Palmer, also  
10 instructed the deputies who were to participate in a saturation patrol during the pre-patrol  
11 briefing for **each** patrol that they were **not** to racially or ethnically profile any person during  
12 the saturation patrol. *Id.* at ¶ 91. Accordingly, there is “no stark departure” from reasonable,  
13 standard law enforcement practice.

14 Sixth, Plaintiffs criticize the MCSO for supposedly not training deputies about racial  
15 profiling, or for failing to properly supervise deputies during saturation patrols. The MCSO  
16 deputies, however, were appropriately trained about racial profiling. They were trained  
17 about racial profiling, first at the police academy, and again when they actually started their  
18 work at the MCSO, and, if the deputy underwent 287(g) certification with ICE, again at the  
19 five-week long ICE training academy. *Id.* at ¶ 92. Finally, as to whether the MCSO  
20 provided appropriate supervision during its saturation patrols, expert Mr. Click testified that  
21 the “Operations Plans were reasonable and met the standard of care. There is no evidence  
22 that there was confusion over the objective of the operations, personnel assignments or the  
23 specific duties to be performed.” *Id.* at ¶ 93. He further testified that the “level of  
24 supervision required generally depends on a deputies’ training, experience and past  
25 performance. **There is no evidence that any deputy lacked supervision.**” *Id.* There is “no  
stark departure” from reasonable, standard law enforcement practice.

26 Finally, Plaintiffs criticize the MCSO for not documenting the race or ethnicity of  
27 individuals stopped or contacted by deputies during all traffic stops. Expert Mr. Click,  
28 however, testified that the MCSO acted reasonably and appropriately in not collecting data

1 about the race/ethnicity of persons stopped or contacted by the MCSO and provided detailed  
 2 explanation for the reasons why such data collection is **not** standard in law enforcement. *Id.*  
 3 at ¶ 94.<sup>4</sup> There is “no stark departure.”

4 In conclusion to these points, Plaintiffs offer insufficient evidence that would “permit  
 5 a reasonable trier of fact to find by a preponderance of the evidence that” the MCSO’s  
 6 policies or practices were so outside the law enforcement mainstream “that improper  
 7 purposes are playing a role” in such patrols. *Keyser*, 265 F.3d at 754. Plaintiffs are not  
 8 entitled to summary judgment.

9 **V. PLAINTIFFS’ SATURATION PATROL STATISTICS DO NOT ESTABLISH**  
 10 **THAT THE NAMED PLAINTIFFS’ FOURTEENTH AMENDMENT RIGHTS**  
 11 **WERE VIOLATED.**

12 Plaintiffs argue that Dr. Ralph Taylor’s statistical evidence about saturation patrols  
 13 “proves discriminatory effect and also provides additional evidence of discriminatory  
 14 intent.” (Motion at p, 31, Ins. 20-21). This argument is not persuasive.

15 First, the saturation patrol statistical evidence is irrelevant to whether the Defendants’  
 16 policy, pattern, or practice had a discriminatory effect on the *named* Plaintiffs, or whether  
 17 their Fourteenth Amendment rights were violated. It is undisputable that the traffic stop of  
 18 Mr. and Mrs. Rodriguez was *unrelated* to a saturation patrol. SSOF at ¶ 96. It is  
 19 undisputable that the traffic stop of Ms. Meraz and Mr. Nieto, while occurring when a  
 20 saturation patrol was simultaneously on-going in the area, was *unrelated* to that saturation  
 21 patrol. *Id.* at ¶ 97. While Mr. Melendres’ traffic stop technically could be considered as part  
 22 of a small MCSO saturation patrol, and was considered as such by Deputy DiPietro, the  
 23 operation was actually a small HSU detail targeting only specific vehicles that had picked up  
 24 persons from a suspected human smuggling drop house/day laborer location and did not  
 involve the MCSO making general traffic stops of any vehicles other than those that had

25 <sup>4</sup> Plaintiffs point to isolated incidents of individuals within the MCSO who violated policy and circulated emails that  
 26 were racially/ethnically offensive and/or inappropriate. They use these incidents in an effort to prove that Arpaio and the  
 27 HSU detectives had racially discriminatory intent or motive against Latinos. Plaintiffs, however, offer no evidence that  
 28 these emails resulted in any MCSO deputy or employee having racially discriminatory intent or motive against the  
 named Plaintiffs specifically, or Latinos in general. Indeed, there is no evidence that would support such a causal  
 connection. Additionally, as soon as the person with day-to-day responsibilities for the HSU, Lt. Sousa, learned of the  
 same he became “livid” and immediately stopped all such emails. SSOF at ¶ 95.

1 visited the church property and picked-up passengers and where probable cause or  
2 reasonable suspicion was found sufficient to stop those particular vehicles. *Id.* at ¶ 98.  
3 Accordingly, at least **four of the five named Plaintiffs, and perhaps even all five of the**  
4 **named Plaintiffs, were *not* stopped as part of an MCSO saturation patrol.** Saturation  
5 patrol statistics showing disparities among race for traffic stops made as part of a saturation  
6 patrol are irrelevant to Plaintiffs' Fourteenth Amendment claim. *See* Rule 401 and 402, Fed.  
7 R. Evid.

8 Second, the only type of statistical evidence that possibly might even be arguably  
9 relevant to the claims of the *named* Plaintiffs is the evidence about traffic stop disparities on  
10 *non-saturation* patrol days. Plaintiffs' statistical expert, Dr. Taylor, conducted a statistical  
11 analysis of all MCSO traffic stops conducted from January 1, 2007 to October 31, 2009 and  
12 concluded that Latinos in Maricopa County are stopped by MCSO personnel in roughly the  
13 same proportion to their share of Maricopa County's population. SSOF at ¶ 99. Defense  
14 expert statistician Steve Camarota, Ph.D., holds the same opinion:

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

23 *Id.* at ¶ 100 (emphasis added). These statistics show that no MCSO policy, pattern, or  
24 practice had a disproportionate effect on the *named* Plaintiffs given that they were not  
25 stopped as part of saturation patrol.

26 Third, assuming, *arguendo*, that Plaintiffs' saturation patrol statistics are somehow  
27 relevant to the *named* Plaintiffs' claims, the statistics, at best, show only that Defendants'  
28 policy, pattern, or practice had a disproportionate *impact* on Latinos in general during  
saturation patrols, not the *disparate treatment* of Latinos during saturation patrols. An

1 official policy, pattern, or practice is **not** unconstitutional solely because it has a racially  
 2 disproportionate impact. *Castaneda v. Partida*, 430 U.S. 482, 493 (1971); *see also Vill. Of*  
 3 *Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264-65 (1977) (“**[O]fficial**  
 4 **action will not be held unconstitutional solely because it results in a racially**  
 5 **disproportionate impact.**”) (emphasis added). Dr. Taylor’s saturation patrol opinions, and  
 6 the inferences that can be reasonably drawn from those opinions, do not prove disparate  
 7 treatment of Latinos. An equal protection cause of action can only be based upon disparate  
 8 treatment. *Washington v. Davis*, 426 U.S. 229, 242 (1976) (“Disproportionate impact is not  
 9 irrelevant, but it is not the sole touchstone of invidious racial discrimination....”). Moreover,  
 10 only in “rare cases [has] a statistical pattern of discriminatory impact demonstrated a  
 11 constitutional violation.” *McClesky v. Kemp*, 481 U.S. 279, 293 n.12 (1987).<sup>5</sup>

12 Fourth, Dr. Taylor’s saturation patrol opinions are unreliable. *Hernandez-Bustos*,  
 13 2005 U.S. LEXIS 16311, \*4 ¶ 19 (“The court is convinced that the [statistical evidence]  
 14 offered by the defendant has so many problems that it cannot be relied upon to establish  
 15 discriminatory effect.”). Dr. Taylor’s study is admittedly “quasi-experimental” in nature.  
 16 SSOFF at ¶ 101. His “quasi-experimental” study does not result in definitive findings or  
 17 conclusions, merely “inferences.” *Id.* at ¶ 102.

18 Dr. Taylor’s saturation patrol analysis: (1) fails to exclude those patrols that included  
 19 a human smuggling interdiction component, or otherwise exclude human smuggling load  
 20 vehicles found containing multiple illegal immigrants as occupants, which skews his  
 21 saturation patrol results; (2) fails to exclude duplicate records in the MCSO Computer Aided  
 22 Dispatch database, which skews his saturation patrol results; (3) excludes thousands of other  
 23 cases that should have been included in the analysis, which artificially inflates his saturation  
 24 patrol results (he admits that he excluded 18% of all MCSO traffic stops per year because  
 25 they did not “align” with Plaintiffs’ case theory or Plaintiffs’ “concerns”); and (4) fails to  
 26 account for any socio-economic variables that affected his saturation patrol model. *Id.* at ¶  
 103; *contrast Lacy v. Villeneuve*, 2005 U.S. Dist. LEXIS 31639 \* 14 (W.D. Wash. 2005)

27 <sup>5</sup> “Even when statistical evidence of disparate impact is offered, its role is limited to creation of a rebuttable *prima facie*  
 28 case that race is a motivating factor in the challenged action.” *United States v. Avery*, 137 F.3d 343, 356 (6th Cir. 1997).  
 As shown throughout this Response, and in Defendants’ pending Motion for Summary Judgment, Defendants’ alleged

1 (there, plaintiff’s expert “examined comprehensive data of all [Washington State Patrol]  
 2 arrests” and concluded “that the data ‘strongly support’ the conclusion that Trooper  
 3 Villeneuve **intentionally targets** individuals for traffic stops **based on race.**”) (emphasis  
 4 added); *Giron v. City of Alexandria, Ark.*, 693 F.Supp.2d 904, 938-39 (E.D. Ark. 2010)  
 5 (detailed numerical and statistical evidence demonstrated that Officer Leah **intentionally**  
 6 **targeted** Latinos for traffic stops and citations **because of their race or nationality**).

7 Finally, saturation patrols are infrequent events and do not occur on a daily, weekly,  
 8 or even monthly basis. *Id.* at ¶ 104. Saturation patrols are, by their very nature, special  
 9 operations intended to address concerns about criminal activity or possible problems in the  
 10 community. *Id.* at ¶ 105. For the 34-month time period covered by Plaintiffs’ Motion  
 11 addressing January 1, 2007 to October 31, 2009, there were only thirteen (13) large scale  
 12 saturation patrols conducted by the MCSO. *Id.* at ¶ 106. The argument that such patrols  
 13 have a discriminatory effect on the named Plaintiffs, therefore, is not persuasive. *Id.* Indeed,  
 14 none of the named Plaintiffs have reported being stopped by the MCSO since their traffic  
 15 stops that form the basis of this suit. For the reasons discussed in Defendants’ Motion for  
 16 Summary Judgment, this fact prevents Plaintiffs from establishing their entitlement to the  
 17 broad injunctive relief they request.

18 The Plaintiffs’ saturation patrol statistics are not “sufficient to permit a reasonable  
 19 trier of fact to find by a preponderance of the evidence that [the Defendants’ policy, pattern,  
 20 or practice]... was racially motivated” or had a discriminatory effect as to the named  
 21 Plaintiffs. *Keyser.*, 265 F.3d at 754. As a consequence, Plaintiffs are not entitled to  
 22 summary judgment in their favor.

## 22 **VI. CONCLUSION**

23 Based on the foregoing, Plaintiffs are not entitled to judgment as a matter of law, and  
 24 genuine issue of material fact also preclude summary judgment in favor of Plaintiffs. The  
 25 Court, therefore, should deny their Motion and grant the Defendants’ Motion for Summary  
 26 Judgment pending before the Court.

27 DATED this 3<sup>rd</sup> day of June, 2011.

28 \_\_\_\_\_  
 policy, pattern, and practice regarding saturation patrols in planned, initiated, and executed on race-neutral factors.

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11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on June 3, 2011, I electronically transmitted the attached  
13 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
14 Notice of Electronic Filing to the following CM/ECF registrants:

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