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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 TO
PLAINTIFFS' STATEMENT OF FACTS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND CONTROVERTING
STATEMENT OF FACTS**

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20 Pursuant to Rule 56(e)(2), Federal Rules of Civil Procedure, and Local Rule of Civil
21 Procedure 56.1(b), defendants Joseph M. Arpaio ("Arpaio") and the Maricopa County
22 Sheriff's Office ("MCSO") hereby submit their Response to Plaintiffs' Separate Statement of
23 Fact in Support of Plaintiffs' Motion for Partial Summary Judgment (Dkt#422) as follows:
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I. DEFENDANTS’ LOCAL RULE 56.1(b)(1) RESPONSE, CONTROVERTING STATEMENT OF FACTS, AND OBJECTIONS TO PLAINTIFFS’ SEPARATE STATEMENT OF FACTS OFFERED IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT.....3

II. DEFENDANTS’ LOCAL RULE 56.1(b)(2) SEPARATE STATEMENT OF ADDITIONAL FACTS THAT EITHER ESTABLISH A GENUINE ISSUE OF MATERIAL FACT OR OTHERWISE PRECLUDE JUDGMENT IN FAVOR OF PLAINTIFFS AND THAT ARE CITED WITHIN THEIR RESPONSIVE MEMORANDUM SUBMITTED IN OPPOSITION TO PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT.....144

I. DEFENDANTS’ LOCAL RULE 56.1(b)(1) RESPONSE, CONTROVERTING STATEMENT OF FACTS, AND OBJECTIONS TO PLAINTIFFS’ SEPARATE STATEMENT OF FACTS OFFERED IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT.

<p>PLAIN TIFFS , STAT EMEN T OF FACT NO.</p>	<p>DEFENDANTS’ RESPONSE, RULE 56(c)(2) OBJECTIONS, AND CONTROVERTING STATEMENT OF FACT WHERE APPROPRIATE</p>
<p>1</p>	<p><i>Disputed.</i> Defendants object on the ground set forth below to the use of the particular exhibits identified below for purposes of summary judgment motion practice. The Court should strike the exhibits identified below.</p> <p><u>Controverting Statement:</u> This statement is misleading as stated and as used in the motion.</p> <p>Defendants do not dispute that Arpaio in the 2006-07 time period, against the backdrop of rampant illegal immigration, escalating drug and human trafficking crime, and serious public safety concerns, established an <i>additional</i> focus for the MCSO wherein it would enforce federal immigration law under the federal government’s 287(g) program (allowing local enforcement officer to enforce federal immigration law) and the power of local law enforcement agencies to enforce Arizona law related to human smuggling. <i>See</i> A.R.S. § 13-2319, (Arizona’s Human Smuggling statute). Even Plaintiffs’ police practices/racial profiling expert, Robert L. Stewart admits that: (a) crime related to <i>illegal immigration is a problem in Maricopa County</i>; and (b) that <i>human smuggling is a crime in Arizona and is a problem in Maricopa County</i>. <i>See</i> Deposition of Robert L. Stewart at p. 31, ln. 23 to p. 32, ln. 4 (for point “a”) and p. 34, lns. 12-17 (for point “b” above), attached as Exhibit 17.</p> <p>Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that the ICE-MCSO Memorandum of Agreement expressly allowed MCSO 287(g) certified deputies to enforce federal immigration law. Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 55, ln. 14 to p. 56, ln. 11; <i>see also</i> p. 52, lns. 8-25, attached as Exhibit 2. Mr. Kidd further testified that Arpaio “has the authority to enforce the state laws, and some of those [Arizona] laws do include immigration related</p>

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matters.” *Id.* at p. 56, lns. 14-19; *see also* p. 53, lns. 3-7 (emphasis added).

The testimony cited in Plaintiffs’ Statement of Fact paragraph 110 contradicts the statement in the motion it is offered to support. The Plaintiffs’ Statement of Fact at ¶ 110 demonstrates that the cited MCSO deputies understood that “one of the purposes” or one of the focuses of the MCSO saturation patrols in which they were involved was illegal immigration. In addition, Plaintiffs’ statement here directly conflicts with their own proffered statement of fact at paragraph 102 (“In this litigation, some MCSO officers have taken the position that the saturation patrols are designed to address crime generally. Officers were instructed to simply ‘enforce the law’ or ‘enforce the traffic laws.’”).

Objections: Document ORT78-80 is a *Washington Post* news article dated 05/21/06 and is inadmissible hearsay. There are no applicable exceptions, and Plaintiffs do not quote any alleged statement by any Defendant in the article that arguable may constitute an admission of a party opponent. As such, the Plaintiffs’ may not rely on this document to prove the truth of the matters set forth therein.

Document ORT84-85 is an *Arizona Republic* news article dated 03/02/07 alleged to quote Arpaio. It is inadmissible hearsay and unreliable. See F.R.E. 403. Arpaio testified that he did *not* recall making the statement referenced in the news articles and “I will say it is probably taken out of context.” (Arpaio Deposition I at p. 38, lns.5-8, attached as Hickey Dec. Ex 4). This alleged statement, therefore, lacks authenticity and foundation, and is unreliable. It cannot be used to support Plaintiffs Statement of Fact (Dkt#422) (“PSOF”) paragraph No. 1.

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Disputed.

Controverting Statement: Plaintiffs’ statement is misleading and mischaracterizes the evidence in an attempt to unfairly attribute racially discriminatory intent or motive to Arpaio for his decision to enforce laws related to illegal immigration.

The undisputed, objective, and race-neutral evidence shows that “[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 including the rest of Latin America.” See

1 Defendants' Statement of Facts (Dkt# 413-1) at Ex. 19 (Dr. Camarota
 2 Report) at pg. 14; Dkt#413-1 at Ex. 20 (Camarota deposition) at p. 122,
 3 Ins. 13-16 (foundation for his report). As stated by the Fifth Circuit in
 4 *United States v. Vandyck-Aleman*, 201 Fed. Appx. 215, 218, 2006 U.S.
 5 App. LEXIS 24245 *9 (5th Cir. 2006), *cert. denied*, 549 U.S. 1188
 6 (2007), "Although ethnicity generally may play no role in the
 7 enforcement of criminal law of this country, **enforcement of the**
 8 **immigration laws demands that the officials focus on individuals**
 9 **most likely to violate those laws. In the poultry-producing region of**
 10 **Scott County, Mississippi, as the agent testified without**
 11 **contradiction, the population of illegal aliens is predominately**
 12 **Hispanic, not (non-Hispanic) white.** Accordingly, the district court did
 13 not err by finding that the officers' decision to approach Vandyck's
 14 house and to question him when he came to the door was justified."
 15 (emphasis added).

16 Arpaio's professional experience in his law enforcement career as
 17 Sheriff is that most of the illegal immigrants he has observed in
 18 Maricopa County are originally from Mexico, or Central or South
 19 America. *See* Deposition of Joseph Arpaio dated 11/16/10 at p. 81, Ins.
 20 6-18, attached as Exhibit 15 ("In Arizona, because of the proximity to
 21 the border, I believe it's a fact that many people arrested here, in the
 22 state of Arizona, border area, may come from Latin America or
 23 Mexico."); Deposition of Joseph Arpaio dated 12/16/09 at p. 9, Ins. 17-
 24 23; p. 219, Ins. 1-12, attached as Exhibit 16.

25 Other MCSO personnel that have learned from their law enforcement
 26 experience in Maricopa County that most illegal immigrants in Maricopa
 27 County are from Mexico, or Central or South America. *See* Deposition
 28 of Louis DiPietro dated 10/21/09 at p. 51, Ins. 2-4, attached as Exhibit
 13; Deposition of Carlos Rangel dated 10/20/09 at p. 93, ln. 24 to p. 94,
 ln. 1, attached as Exhibit 11; Deposition of Manual Madrid dated
 10/27/09 at p. 189, Ins. 18-21, attached as Exhibit 10; Deposition of
 Brett Palmer dated 10/23/09 at p. 30, Ins. 2-16, attached as Exhibit 9;
 and Deposition of Brian Sands dated 12/14/09 at p. 94, Ins. 3-6, attached
 as Exhibit 14.

There are a number of ICE-approved articulable "indicators" that a local
 law enforcement officer that is 287(g) certified is trained by ICE to look
 for in determining whether a person may be in the United States
 unlawfully. One of the ICE approved indicators is **that person's race**
or ethnicity, including Mexican ancestry. *See* Deposition of Brett
 Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7, attached as Exhibit 9.
ICE approves of the use of race as one indicator among several in
the exercise of 287(g) authority in the determination of whether

1 someone may be in the United States unlawfully. See Deposition of
 2 ICE former Special Agent in Charge, Phoenix, Mr. Alonzo Pena, at p.
 3 54, Ins. 16-22, attached as Exhibit 1 (“[Race] could be used, but, again, it
 4 couldn’t—it is not to be used solely. It is never to be used just as a—as
 5 an individual factor.”); see also Deposition of Brett Palmer dated
 6 10/23/09 at p. 25, Ins. 9-18 attached as Exhibit 9 (“That is part of the
 7 287(g) training that is part of our SOP, yes.”); Exhibit 9 at p. 151, Ins. 4-
 8 9 (“MCSO 287(g) officers can consider race as one relevant factor with
 9 others to have reasonable suspicion that human smuggling may be
 10 occurring.”).

11 Although ICE approves of the use of race as one indicator, among
 12 several other indicators, as a basis to form reasonable suspicion of
 13 unlawful status, **the MCSO does not use race as an indicator or factor**
 14 **to make vehicle stops under Arizona law.** See Deposition of Brett
 15 Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7; p. 145, Ins. 12-25; p.
 16 150, ln. 25 to p. 151, ln. 3, attached as Exhibit 9.

17 While Plaintiffs’ statement sets forth facts that are largely undisputed as
 18 to Arpaio’s quotes from his own MCSO News Release, and in equating
 19 illegal aliens/immigrants discovered in Maricopa County as coming
 20 predominantly from the Republic of Mexico given that Arizona is a
 21 border state with that nation, this paragraph does not support the
 22 statement set forth in the Motion. Plaintiffs Motion (at p.3, Ins. 24-26)
 23 which is supposedly supported by PSOF No. 2 makes a statement that is
 24 different from the facts that are set forth in PSOF No. 2. The Motion
 25 states: “When he [Arpaio] made this policy decision, Sheriff Arpaio
 26 made clear that he equated ‘illegals’ with Hispanics generally and
 27 persons from Mexico in particular.” (Motion at p.3, Ins. 24-26). Neither
 28 PSOF No. 2 nor the evidence listed therein supports the Plaintiffs’
 statement in their Motion that Arpaio equated illegal immigrants with
 “Hispanics generally.” Arpaio was referring specifically to illegal
 immigrants from Mexico.

Document ORT104 is an MCSO News Release. It states nothing that
 would allow a reasonably objective person that was not advocating for a
 particular outcome to conclude that Arpaio equated “illegals with
 Hispanics generally”. To the contrary, the News Release states that the
 MCSO responded to Queen Creek citizen complaints regarding day
 laborers *harassing school children* at a bus stop and that the MCSO
 investigated the complaint and eventually arrested 16 illegal aliens under
 the federal immigration law.

Defendants do not dispute the quotes attributed to Arpaio in Document

1 2 3 4 5 6	<p>ORT104; however, they dispute the characterization, implied meaning, and interpretation Plaintiffs ascribe to the quotes.</p> <p>Objections: Document ORT78-80 is a <i>Washington Post</i> news article dated 05/21/06 and is hearsay and inadmissible. There are no exceptions and Plaintiffs do not quote any alleged Arpaio statement in the article. As such, the Plaintiffs’ may not rely on this document to support this statement of fact.</p>
7	3 <i>Admit</i>
8	4 <i>Admit</i>
9	5 <i>Admit</i>
10	6 <i>Admit</i>
11 12 13 14 15 16 17 18 19 20 21 22	<p>7 <i>Disputed</i></p> <p>Controverting Statement: Plaintiffs’ Motion (p. 5, ln. 7) states that Arpaio began to “hunt for illegal immigrants” and relies on this statement as support for the remainder of Plaintiffs’ argument therein. The evidence cited by Plaintiffs in support of PSOF No. 7 does not support the argumentative conclusion that illegal aliens were “hunted” or the subject of a hunt.</p> <p>The cited evidence shows that the MCSO “has been at the forefront of the fight against illegal immigration” and that its personnel will be, through saturation patrols, on “roadways and highways commonly used as transportation corridors for human trafficking” targeting “vehicles commonly used to move human cargo to destination inside and outside the county [i.e., so-called load vehicles]. If a vehicle is stopped for cause, anyone inside who is determined to be an illegal alien by the Sheriff’s immigration [i.e., 287(g) certified deputies] will be arrested and jailed.” ORT42-22, Hickey Dec. Ex. 9.</p> <p>Defendants do not dispute the other quotations set forth in PSOF No. 7.</p>
23 24 25 26 27 28	<p>8 <i>Admit with clarification.</i></p> <p>There is nothing unique or extraordinary about addressing the presence of illegal immigrants even if they are not involved in crime. It is a policy decision by the specific law enforcement agency on when and to what extent they take action to address illegal immigrants discovered in their jurisdiction. For example, when the MCSO entered into its agreement with ICE in 2007, the George W. Bush Administration gave wide discretion to ICE and local law enforcement agencies operating under the 287(g) program as to the arresting of illegal immigrants</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16</p>	<p><i>regardless</i> of whether they were suspected of engaging in serious crime. After the election of President Barrack Obama, however, the federal government changed its policy priorities and desired ICE and local 287(g) agencies to arrest only illegal aliens suspected of serious crime. <i>See</i> Deposition Alonzo Pena at p. 150, ln. 21 to p. 155, ln. 4 (in particular p. 153, lns. 154, ln. 24); <i>see also</i> p. 274, ln. 11 to p. 275, ln 17, attached as Ex. 1; <i>see also</i> Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 233, lns. 7-13 (ICE policy priorities changed after January 2009), attached as Exhibit 2.</p> <p>In addition, Mr. Alonzo Pena, the Special Agent in Charge for ICE Phoenix testified that it was completely proper for MCSO deputies to make traffic stops of motorists under Arizona law and call for a 287(g) certified deputy if the deputy that made the traffic stop had reasonable suspicion that someone in the stopped vehicle might be unlawfully present in the country. <i>See</i> Deposition Alonzo Pena at p. 167, ln. 1 to p. 168, ln. 22, attached as Ex. 1.</p> <p>Finally, Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that Arpaio had the authority under the ICE-MCO Memorandum of Agreement to do pure immigration enforcement. Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 159, lns. 13-20 (the MOA “does not limit the type of enforcement”), attached as Exhibit 2.</p>
<p>17</p>	<p>9 <i>Admit.</i></p>
<p>18 19 20 21 22 23 24 25 26 27 28</p>	<p>10 <i>Partial Admit and Partial Dispute.</i></p> <p><u>Controverting Statement:</u> Defendants do not dispute that effective October 16, 2009, the ICE-MCSO Memorandum of Agreement was modified to terminate the MCSO’s 287(g) authority in the field. Plaintiffs, however, suggest that ICE terminated the agreement because it determined that MCSO had violated the agreement or otherwise acted unlawfully and that somehow the MCSO saturation patrols should stop. (Motion at p. 5, fn. 3). That suggestion is not correct.</p> <p>The termination decision was the result of a change in policy priorities of the new administration of President Barrack Obama. After the 2008 general election, the federal government <i>changed its policy priorities</i> and desired ICE and local 287(g) agencies to arrest only illegal immigrants suspected of serious crime. <i>See</i> Deposition Alonzo Pena at p. 150, ln. 21 to p. 155, ln. 4 (in particular p. 153, lns. 154, ln. 24); <i>see also</i> p. 274, ln. 11 to p. 275, ln 17, attached as Ex. 1; <i>see also</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click</p>

1 dated January 21, 2011, at p. 49, attached thereto as Exhibit 16; *see also*
2 March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24
3 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click
4 testified to the foundation for his opinions and that his opinions in the
5 report were the same he would provide at trial to a reasonable degree of
6 probability in his field of expertise) wherein Mr. Click testified:

7 “*The 287(g) agreement with the MCSO was not renewed in October,*
8 *2009 for field operations because of a change in focus and priorities by*
9 *the new federal administration. See ICE managers’ Mr. Pendergraph’s,*
10 *Mr. Pena’s and Mr. Kidd’s statements. The 287(g) agreement was*
11 *continued for detention operations.”*

12 *Id.*

13 The MCSO maintains authority to enforce immigration related laws.
14 Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that
15 Arpaio “has the authority to enforce the state laws, **and some of those**
16 **[Arizona] laws do include immigration related matters.”** Deposition
17 of Jason Kidd (ICE Assistant SAC Phoenix) at p. 56, lns. 14-19; *see also*
18 p. 53, lns. 3-7, attached as Exhibit 2 (emphasis added).

19 The ICE agents with knowledge of MCSO saturation patrols did not
20 have concerns or complaints about the effectiveness or lawfulness of the
21 patrols. *See* Defendants’ Supplemental Statement of Facts re Testimony
22 of ICE Witnesses in Support of their Motion for Summary Judgment
23 dated April 29, 2011 (Dkt# 414 and 415) (motion to file same under) at
24 ¶¶ 5-10, 12-13, and 19-25. According to ICE Assistant Special Agent in
25 Charge Jason Kidd, he was knowledgeable or aware of the fact that the
26 MCSO saturation patrols were using violations of the Arizona motor
27 vehicle equipment and moving codes to make traffic stops of persons.
28 *Id.* at ¶ 21. Mr. Kidd was further knowledgeable or aware of the fact
that during MCSO conducted traffic stops MCSO deputies were
encountering people in the United States unlawfully. *Id.* Mr. Kidd never
expressed in writing, or verbally, to the MCSO any concerns about the
MCSO using traffic stops and during those stops identifying people in
the country unlawfully. *Id.*

According to ICE Assistant Special Agent in Charge Jason Kidd, under
the 287(g) program, the MCSO had the highest rate of encountering and
removing persons that were in the United States unlawfully of any local
law enforcement agencies in a 287(g) program in the country. *Id.* at ¶
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11	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While the Defendants do not dispute that Arpaio made the cited statement, the statement is misleading as used in the motion. Plaintiffs unfairly attempt to cast upon Arpaio some type of racially discriminatory intent or motive toward Latinos in general because of a statement based on his law enforcement experience and, in proper context, a statement that merely restates some of the ICE-approved indicators of unlawful presence in the United States.</p> <p>There are a number of ICE-approved articulable “indicators” that a local law enforcement officer that is 287(g) certified is trained by ICE to look for in determining whether a person may be in the United States unlawfully. <i>Cf. INS v. Delgado</i>, 466 U.S. 210, 212 (1984) (immigration officers could question an individual although they lacked reasonable suspicion that the individual was an illegal alien); <i>Muehler v. Mena</i>, 544 U.S. 93, 101 (2005) (“[M]ere police questioning does not constitute a seizure.... Hence, the officers did not need reasonable suspicion to ask Mena for her name, date and place of birth, or immigration status.”). One such ICE approved indicator is that the person does not speak the English language. <i>See</i> Deposition of Manuel Madrid dated 10/27/09 at p. 31, Ins. 10-18, attached as Exhibit 10; <i>see</i> Deposition of Ramon Armendariz at p. 44, Ins. 1-4, attached as Exhibit 8; <i>see</i> Deposition of Carlos Rangel dated 10/20/09 at p.21, ln. 3 to p. 22, ln. 5, attached as Exhibit 11.</p> <p>Another number of ICE additional approved indicators are: (a) an overcrowded vehicle; (b) none of the occupants have luggage or only small items of property easily transported; (c) the people in the vehicle are unrelated or do not know each other; (d) whether the people in the vehicle are dressed in a disheveled manner; (e) pungent body odor of the people in the vehicle; (f) the vehicle is located in a known human smuggling corridor. <i>See</i> Deposition of Carlos Rangel dated 10/20/09 at p. 95, ln. 12 to p. 96, ln. 12 attached as Exhibit 11; <i>see</i> Deposition of Manuel Madrid dated 10/27/09 at p. 38, ln. 9 to p. 39, ln. 4, attached as Exhibit 10; <i>see</i> Deposition of Brett Palmer dated 11/09/10 at p. 38, ln. 21 to p. 39, ln. 14, attached as Exhibit 12.</p> <p>Another of the ICE approved indicators is that of a person’s race or ethnicity, including Mexican ancestry. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7, attached as Exhibit 9. ICE approves of the use of race as one indicator among several in the</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	<p>exercise of 287(g) authority in the determination of whether someone may be in the United States unlawfully. <i>See</i> Deposition of ICE former Special Agent in Charge, Phoenix, Mr. Alonzo Pena, at p. 54, Ins. 16-22, attached as Exhibit 1 (“[Race] could be used, but, again, it couldn’t—it is not to be used solely. It is never to be used just as a—as an individual factor.”); <i>see also</i> Deposition of Brett Palmer dated 10/23/09 at p. 25, Ins. 9-18 attached as Exhibit 9 (“That is part of the 287(g) training that is part of our SOP, yes.”); Exhibit 9 at p. 151, Ins. 4-9 (“MCSO 287(g) officers can consider race as one relevant factor with others to have reasonable suspicion that human smuggling may be occurring.”).</p> <p>The Fifth Circuit’s decision in <i>United States v. Vandyck-Aleman</i>, 201 Fed. Appx. 215, 218, 2006 U.S. App. LEXIS 24245 *9 (5th Cir. 2006), <i>cert. denied</i>, 549 U.S. 1188 (2007) is instructive. There, the Court held that “[a]lthough ethnicity generally may play no role in the enforcement of criminal law of this country, enforcement of the immigration laws demands that the officials focus on individuals most likely to violate those laws. In the poultry-producing region of Scott County, Mississippi, as the agent testified without contradiction, the population of illegal aliens is predominately Hispanic, not (non-Hispanic) white. According, the district court did not err by finding that the officers’ decision to approach Vandyck’s house and to question him when he came to the door was justified.” (emphasis added).</p> <p>Although ICE approves of the use of race as <u>one</u> indicator, among several other indicators, as a basis to form reasonable suspicion of unlawful status, the MCSO does <u>not</u> use race as an indicator or factor to make vehicle stops under Arizona law. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7; p. 145, Ins. 12-25; p. 150, ln. 25 to p. 151, ln. 3, attached as Exhibit 9.</p>
<p>22 23 24 25 26 27 28</p>	<p>Disputed.</p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio made the cited statement, the statement is misleading as used in the motion in that it unfairly attempts to cast upon Arpaio some type of racially discriminatory intent or motive toward Latinos in general because he has set as a law enforcement priority for his office the enforcement of law related to illegal immigration. In other words, Plaintiffs conflate the MCSO’s targeting of crimes regarding human smuggling or illegal immigration with the targeting of Latinos because of their race.</p>

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2 Arpaio's professional experience in his law enforcement career as
3 Sheriff is that most of the illegal immigrants he has observed in
4 Maricopa County are originally from Mexico, or Central or South
5 America. *See* Deposition of Joseph Arpaio dated 11/16/10 at p. 81, Ins.
6 6-18, attached as Exhibit 15 ("In Arizona, because of the proximity to
7 the border, I believe it's a fact that many people arrested here, in the
8 state of Arizona, border area, may come from Latin America or
9 Mexico."); Deposition of Joseph Arpaio dated 12/16/09 at p. 9, Ins. 17-
10 23; p. 219, Ins. 1-12, attached as Exhibit 16. This is neither shocking nor
11 indicative of racial animus against Latinos. According to the objective
12 and race-neutral evidence, "[i]t is well established that illegal immigrants
13 in Arizona and in the United States as a whole are overwhelmingly
14 Hispanic. The Pew Hispanic Center has estimated that **94 percent of
15 illegal immigrants in Arizona are from Mexico alone**, not including
16 the rest of Latin America." Defendants' Statement of Facts (Dkt#413-1)
17 at Ex. 19 (Dr. Camarota Report) at pg. 14; DSOE (Dkt#413-1) at Ex. 20
18 (Camarota deposition) at p. 122, Ins. 13-16 (foundation for his report).
19 Arpaio's professional experience is no more derived from personal racial
20 animus toward Latinos than is the conclusion reached by the Pew
21 Hispanic Center.

22 Arpaio's professional experience is no more derived from personal racial
23 animus toward Latinos than are the objective experiences of other
24 MCSO personnel that have learned that most illegal immigrants in
25 Maricopa County are from Mexico, or Central or South America. *See*
26 Deposition of Louis DiPietro dated 10/21/09 at p. 51, Ins. 2-4, attached
27 as Exhibit 13; Deposition of Carlos Rangel dated 10/20/09 at p. 93, In.
28 24 to p. 94, In. 1, attached as Exhibit 11; Deposition of Manual Madrid
dated 10/27/09 at p. 189, Ins. 18-21, attached as Exhibit 10; Deposition
of Brett Palmer dated 10/23/09 at p. 30, Ins. 2-16, attached as Exhibit 9;
and Deposition of Brian Sands dated 12/14/09 at p. 94, Ins. 3-6, attached
as Exhibit 14; *see also United States v. Vandyck-Aleman*, 201 Fed.
Appx. 215, 218, 2006 U.S. App. LEXIS 24245 *9 (5th Cir. 2006), *cert.*
denied, 549 U.S. 1188 (2007) ("Although ethnicity generally may play
no role in the enforcement of criminal law of this country, **enforcement
of the immigration laws demands that the officials focus on
individuals most likely to violate those laws. In the poultry-
producing region of Scott County, Mississippi, as the agent testified
without contradiction, the population of illegal aliens is
predominately Hispanic, not (non-Hispanic) white.**").

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28*Disputed.*

Controverting Statement: While the Defendants do not dispute that Arpaio made the cited statement, the statement is misleading as used in the motion. Plaintiffs unfairly attempt to cast upon Arpaio some type of racially discriminatory intent or motive toward Latinos in general because of a statement based on his law enforcement experience and, in proper context, a statement that merely restates, perhaps in-artfully, one of the ICE-approved indicators of unlawful presence in the United States.

There are a number of ICE-approved articulable “indicators” that a local law enforcement officer who is 287(g) certified is trained by ICE to look for when determining whether a person may be in the United States unlawfully. One of the ICE-approved indicators is **that person’s race or ethnicity**, including Mexican ancestry. *See* Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7, attached as Exhibit 9. **ICE approves of the use of race as one indicator among several in the exercise of 287(g) authority in the determination of whether someone may be in the United States unlawfully.** *See* Deposition of ICE former Special Agent in Charge, Phoenix, Mr. Alonzo Pena, at p. 54, lns. 16-22, attached as Exhibit 1 (“[Race] could be used, but, again, it couldn’t—it is not to be used solely. It is never to be used just as a—as an individual factor.”); *see also* Deposition of Brett Palmer dated 10/23/09 at p. 25, lns. 9-18 attached as Exhibit 9 (“That is part of the 287(g) training that is part of our SOP, yes.”); Exhibit 9 at p. 151, lns. 4-9 (“MCSO 287(g) officers can consider race as one relevant factor with others to have reasonable suspicion that human smuggling may be occurring.”); *see also United States v. Vandyck-Aleman*, 201 Fed. Appx. 215, 218, 2006 U.S. App. LEXIS 24245 *9 (5th Cir. 2006), *cert. denied*, 549 U.S. 1188 (2007) (“Although ethnicity generally may play no role in the enforcement of criminal law of this country, **enforcement of the immigration laws demands that the officials focus on individuals most likely to violate those laws. In the poultry-producing region of Scott County, Mississippi, as the agent testified without contradiction, the population of illegal aliens is predominately Hispanic, not (non-Hispanic) white.**”).

Although ICE approves of the use of race as one indicator, among several other indicators, as a basis to form reasonable suspicion of unlawful status, **the MCSO does not use race as an indicator or factor to make vehicle stops under Arizona law.** *See* Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7; p. 145, lns. 12-25; p. 150, ln. 25 to p. 151, ln. 3, attached as Exhibit 9.

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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<p>14</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While the Defendants do not dispute that Arpaio made the cited statement, the statement is misleading as used in the motion. Plaintiffs unfairly attempt to cast upon Arpaio some type of racially discriminatory intent or motive toward Latinos in general because of a statement based on his law enforcement experience and the undisputed facts that most illegal immigrants are from Mexico. The evidence shows that “[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 <i>94 percent</i> of illegal immigrants in Arizona <i>are from Mexico alone</i>, not including the rest of Latin America.”</p> <p>DSOF (Dkt# 413-1) at Ex. 19 (Dr. Camarota Report) at pg. 14; DSOF (Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, Ins. 13-16 (foundation for his report).</p> <p>The Fifth Circuit’s decision in <i>United States v. Vandyck-Aleman</i>, 201 Fed. Appx. 215, 218, 2006 U.S. App. LEXIS 24245 *9 (5th Cir. 2006), <i>cert. denied</i>, 549 U.S. 1188 (2007) is instructive. There, the Court held that “[a]lthough ethnicity generally may play no role in the enforcement of criminal law of this country, enforcement of the immigration laws demands that the officials focus on individuals most likely to violate those laws. In the poultry-producing region of Scott County, Mississippi, as the agent testified without contradiction, the population of illegal aliens is predominately Hispanic, not (non-Hispanic) white. According, the district court did not err by finding that the officers’ decision to approach Vandyck’s house and to question him when he came to the door was justified.” (emphasis added).</p>
20 21 22 23 24 25 26 27 28	<p>15</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> There is nothing unusual about law enforcement discovering, and seeking to discover, illegal immigrants regardless of whether the particular illegal immigrant committed a state crime.</p> <p>Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that Arpaio had the authority under the ICE-MCO Memorandum of Agreement to do pure immigration enforcement. <i>See</i> Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 159, Ins. 13-20 (the MOA “does not limit the type of enforcement”), attached as Exhibit 2.</p> <p>Mr. Kidd further testified 287(g) authority could be used during or</p>

1 following a lawful traffic stop because “[w]hat mattered was that there
2 was a legitimate law enforcement encounter. So it could be anything
3 from a traffic violation to a criminal violation that they were able to
4 encounter those people that was a legitimate law enforcement
5 encounter.” Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at
6 p. 171, ln. 18 to p. 172, ln. 5), attached as Exhibit 2.

7 According to Jason Kidd, he was knowledgeable or aware of the fact that
8 the MCSO saturation patrols were using violations of the Arizona motor
9 vehicle equipment and moving codes to make traffic stops of persons.
10 See Defendants’ Supplemental Statement of Facts re Testimony of ICE
11 Witnesses in Support of their Motion for Summary Judgment dated
12 April 29, 2011 (Dkt# 414 and 415) (motion to file same under) at ¶ 21.
13 Mr. Kidd was further knowledgeable or aware of the fact that during
14 MCSO conducted traffic stops MCSO deputies were encountering
15 people in the United States unlawfully. *Id.* Mr. Kidd never expressed in
16 writing, or verbally, to the MCSO any concerns about the MCSO using
17 traffic stops and during those stops identifying people in the country
18 unlawfully. *Id.*

19 Mr. Alonzo Pena, the Special Agent in Charge for ICE Phoenix testified
20 that it was completely proper for MCSO deputies to make traffic stops of
21 motorists under Arizona law and call for a 287(g) certified deputy if the
22 deputy that made the traffic stop had reasonable suspicion that someone
23 in the stopped vehicle might be unlawfully present in the country. See
24 Deposition Alonzo Pena at p. 167, ln. 1 to p. 168, ln. 22, attached as Ex.
25 1. Whether the immigration suspect was involved in a crime or not is
26 immaterial. *Id.*

27 The MCSO’s police practices expert, Mr. Bennie Click, testified to a
28 reasonably degree of probability in his field of expertise that that
MCSO’s use of saturation patrols is a long-standing, common, and
reasonable tool of law enforcement, and that is an agency policy decision
as to what particular problem to address with a saturation patrol. More
specifically, Mr. Click testified:

***“Saturation patrol operations have long been an accepted strategy used by law enforcement agencies to address specific crime problems in a particular location. They generally are of short duration, nor more than several days, because the additional personnel needed for the operation are taken from other assignments. Historically, saturation patrols have targeted gangs, drugs, alcohol, DUI, and curfew violations.*”**

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*They are also used to address traffic issues such as high collision locations. The saturation patrols not only address crime problems, but also reassure the residents and businesses that their crime concerns are being addressed. A strong law enforcement presence also deters crime in the area. Saturation patrols play an important role in the practice of community policing. **It is an agency policy decision to use saturation patrols to address a particular problem.***

*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 activity.***

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

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

See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 46 and 48-49, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).

16 Admit in part and disputed in part.

Controverting Statement: Defendants do not dispute the following: (a) that in 2008 Arpaio published a book with co-author Len Sherman titled: *Joe’s Law: America’s Toughest Sheriff Takes on Illegal Immigration, Drugs, and Everything Else that Threatens America;*” (b) the book

1		discusses illegal immigration at length; (c) the book suggests that
2		immigrants from Mexico have displayed a difference in assimilating into
3		American society as compared to historical experiences with other
4		immigrant groups; and (d) the book addresses Arpaio's immigrant
5		parents from Italy.
6		As for the book's discussion on the concept of Mexican "reconquista" or
7		reconquest of certain land in the southwestern United States, Arpaio
8		testified that he was not familiar with that concept and attributed
9		statements about "reconquista" in the book to those of his co-author, Len
10		Sherman. <i>See</i> deposition of Joseph Arpaio dated 12/16/09 at p. 13, ln.
11		14 to p. 17, ln. 3, attached as Exhibit 16. More specifically, Arpaio
12		testified that he did not agree with the statements about reconquest (<i>Id.</i> at
13		p. 16, lns. 6-8) or that immigrants from Mexico had hopes different from
14		his Italian parents (<i>Id.</i> at p. 16, lns. 20-23).
15	17	<i>Admit.</i>
16	18	<i>Admit.</i>
17	19	<i>Admit in part and disputed in part.</i>
18		<u>Controverting Statement:</u> Defendants admit that Arpaio has described
19		<i>illegal</i> immigration as an "epidemic". There is no evidence cited by
20		Plaintiffs wherein Arpaio has described <i>legal</i> immigration as an
21		"epidemic."
22		While Defendants admit that Arpaio gave an interview with GQ
23		magazine online in late 2008 or early 2009, the statement attributed to
24		him that illegal immigrants coming over the Mexican border as being
25		"dirty" was likely taken out of context by the reporter. According to
26		Arpaio,
27		"It reflects my views that only those that come across the border and do
28		not go through the proper checks, through the regular ports to come in
		her with no checks at all. And there is no way to determine whether
		they have a disease or not. I can talk about swine flu, tuberculosis
		and I believe I was referring to those instances when people come
		across without doing the proper checks."
		Deposition of Joseph Arpaio dated 12/16/09 at p. 19, ln. 17 to p. 20, ln.
		12, attached as Exhibit 16 (emphasis added).
		<u>Objections:</u> The document ORT528-535 is inadmissible hearsay in that
		it is a web online story containing opinions and argument of its author,
		and the Plaintiffs have not demonstrated the foundation for the

1 2 3 4 5	<p>authenticity or reliability of any statement therein that is attributed to Arpaio. As such, the supposed Arpaio statements lack authenticity and foundation to serve as admissions by a party opponent. <i>Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005); <i>Cornwell v. Electra Cen. Credit Union</i>, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006); <i>August v. Office Unlimited, Inc.</i>, 981 F.2d 576, 580 (1st Cir. 1992); <i>Moore Drug Co. v. Shaneman</i>, 461 P.2d 95, 98 (Ariz. App. 1969).</p>
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>20 <i>Admitted in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> While Defendants admit the contents of the MCSO New Release at document ORT000637-39, the contents of the news release, as used by Plaintiffs in their motion is misleading, not given in context, and ignores the environment in which the statement was made.</p> <p>Pursuant to Rule 201, Federal Rules of Evidence, the Court may take judicial notice that in the winter and spring of 2009, there was an influenza problem in the United States associated with the “swine flu.” See Center for Disease Control and Prevention (“CDC”) documents at http://www.cdc.gov/h1n1flu/ga.htm (entitled “2009 H1N1 Flu (“Swine Flu”) and You”); http://www.cdc.gov/h1n1flu/cdccresponse.htm (entitled “The 2009 H1N1 Pandemic Summary and Highlights April 2009 to April 2010”). The CDC considered the swine flu a pandemic. <i>Id.</i></p> <p>The Court may also take judicial notice that people in Mexico were affected severely with the global swine flu and that over 150 people were reported to have died from the form of influenza. See www.cbsnews.com/stories/2009/04/28/health/main4973082.shtml?tag=contentMain:contentBody (entitled “CDC Warns Swine Flu Death Likely in US. More than 60 Cases Confirmed: Obama asks for \$1.5 billion to fight Fast Spreading Disease.”) (confirming reported deaths of 159 persons in Mexico from swine flu).</p> <p>In addition, for completeness purposes pursuant to Rule 106, Federal Rules of Evidence, the following other sections of the news release ought in fairness to be considered contemporaneously with the isolated section used by the Plaintiffs:</p> <p>“No one has talked about the people who are coming into the United States <i>illegally</i> as being a potential source of the spread of swine flu,’ Sheriff Arpaio said today. <u>Unlike those who legally enter this country, and thus can be easily checked for disease</u>, the very nature of <u>illegal immigration</u> –evading authorities, and <u>unchecked</u> and</p>

<p>1 2 3 4 5 6 7 8 9 10 11</p>	<p>untraceable contact with different people – actively promotes the spread of a communicable disease. If this health crisis doesn’t serve as a wake-up call to politicians who advocate open borders and who fight this illegal immigration issue at every turn, then our nation could find itself in serious trouble on a number of levels.’”</p> <p>***</p> <p>“It takes an average of seven (7) days for illegal immigrants from the southern Mexican states to be smuggled into Maricopa County,’ Arpaio says. ‘If illegal aliens are exposed to swine flu in Mexico, by the time they arrive in the U.S, the disease is fully infectious. Deputies are exposed to illegal aliens on average about 10 to 12 hours while are arrests are in process.’”</p> <p>See ORT000638, attached to Plaintiffs’ Statement of Facts as Exhibit 208 (emphasis added).</p>
<p>12</p>	<p>21 <i>Admit.</i></p>
<p>13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>22 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> This statement states the evidence out of context and is misleading as used in the Plaintiffs’ Motion (at p.16, Ins. 5-8) because it is intended to draw a causal link between selected constituent correspondence received by Arpaio and the Defendants’ decisions to conduct certain saturation patrols or their decision to enforce laws related to illegal immigration.</p> <p>For completeness purposes pursuant to Rule 106, Federal Rules of Evidence, the following other sections of the news release (ORT421-22) ought in fairness to be considered contemporaneously with the isolated section used by the Plaintiffs so the cited terms are in context:</p> <p>“<i>Date: July 20, 2007</i></p> <p>***</p> <p><i>Maricopa County Sheriff Joe Arpaio, who has been at the forefront of the fight against illegal immigration during the past two years [i.e., since 2005] with a workforce of 4,000 employees, announced an expanded and concentrated crackdown on the [illegal immigration] problem on Friday, July 20, 2007 at his Tent City Jail.</i></p> <p><i>Arpaio said that more than 200 armed Sheriff’s deputies...will saturate valley cities as well as roadways and highways commonly used as</i></p>

1 *transportation corridors for human trafficking.*

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3 ***

4 *160 immigration trained deputies and officers... will be out en masse to*
 5 *enforce both the state and federal anti illegal immigration law which*
 6 *allow them to arrest and jail anyone stopped for cause and determined*
 7 *to be in the country unlawfully.*

8 *'We are quickly becoming a full fledged anti illegal immigration*
 9 *agency,' Arpaio says. 'In the jails and on the streets, we have our*
 10 *employees trained and anxious to make a large dent in the illegal*
 11 *immigration problem. We have heard the people speak, we understand*
 12 *their frustration and will continue to do all that we can to reduce the*
 13 *number of illegal aliens making their way into the United States and*
 14 *Maricopa County.'*

15 *See* ORT421-22 (emphasis added). It is clear, therefore, from the
 16 appropriate context of the news release, that: (a) the MCSO is targeting
 17 human smuggling load vehicles, not people based on their race or
 18 ethnicity; (b) load vehicles can be stopped only for cause; (c) the MCSO
 19 intends to enforce Arizona and federal laws related to illegal
 20 immigration; and (d) the MCSO, and Arpaio in particular, is not
 21 expanding the "crackdown" in response to the specific constituent
 22 correspondence cited by the Plaintiffs throughout their, the vast majority
 23 of which were written by third parties and sent to Arpaio after the July
 24 20, 2007 date of the news release.

25 The Plaintiffs' statement, as used by Plaintiffs in the motion, is also
 26 misleading because it suggests that there is something wrong with, or
 27 otherwise unlawful about, Arpaio's law enforcement policies or
 28 priorities or his use of the saturation patrol law enforcement technique.
 That is not the case.

Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that
**Arpaio had the authority under the ICE-MCO Memorandum of
 Agreement to do pure immigration enforcement.** *See* Deposition of
 Jason Kidd (ICE Assistant SAC Phoenix) at p. 159, Ins. 13-20 (the MOA
 "does not limit the type of enforcement"), attached as Exhibit 2.

Mr. Kidd further testified 287(g) authority could be used during or
 following a lawful traffic stop because "[w]hat mattered was that there

1 was a legitimate law enforcement encounter. So it could be anything
2 from a traffic violation to a criminal violation that they were able to
3 encounter those people that was a legitimate law enforcement
4 encounter.” Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at
p. 171, ln. 18 to p. 172, ln. 5), attached as Exhibit 2.

5 According to Jason Kidd, he was knowledgeable or aware of the fact that
6 the MCSO saturation patrols were using violations of the Arizona motor
7 vehicle equipment and moving codes to make traffic stops of persons.
8 *See* Defendants’ Supplemental Statement of Facts re Testimony of ICE
9 Witnesses in Support of their Motion for Summary Judgment dated
10 April 29, 2011 (Dkt# 414 and 415) (motion to file same under) at ¶ 21.
11 Mr. Kidd was further knowledgeable or aware of the fact that during
12 MCSO conducted traffic stops MCSO deputies were encountering
people in the United States unlawfully. *Id.* Mr. Kidd never expressed in
writing, or verbally, to the MCSO any concerns about the MCSO using
traffic stops and during those stops identifying people in the country
unlawfully. *Id.*

13 Mr. Alonzo Pena, the Special Agent in Charge for ICE Phoenix testified
14 that it was completely proper for MCSO deputies to make traffic stops of
15 motorists under Arizona law and call for a 287(g) certified deputy if the
16 deputy that made the traffic stop had reasonable suspicion that someone
17 in the stopped vehicle might be unlawfully present in the country. *See*
18 Deposition of Alonzo Pena at p. 167, ln. 1 to p. 168, ln. 22, attached as
19 Ex. 1. Whether the immigration suspect was involved in a crime or not
20 is immaterial. *Id.*

21 The MCSO’s police practices expert, Mr. Bennie Click, testified to a
22 reasonably degree of probability in his field of expertise that that
23 MCSO’s use of saturation patrols is a long-standing, common, and
24 reasonable tool of law enforcement, and that is an agency policy decision
25 as to what particular problem to address with a saturation patrol. More
26 specifically, Mr. Click testified:

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

*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*

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	<p><i>and contacts is also used to gather intelligence about criminal activity.</i></p> <p><i>The specific criminal activity that is identified as the focus of a saturation patrol operations is any agency policy decision. This is a common law enforcement practice. The Sheriff has the authority to designate illegal immigration an enforcement priority.</i></p> <p><i>Arizona’s proximity to the Mexican border results in enforcement issues not faced by non-border states. Major smuggling corridors have been identified that lead from the Mexico border to Maricopa County and beyond. This can result in different and reasonable law enforcement policies in Maricopa County than in other parts of the country. Arizona has specific immigration-related statutes that many other states do not have. These statutes make certain immigration related activities a crime and therefore can impact agency policies.”</i></p> <p>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 46 and 48-49, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p> <p>Plaintiffs’ police practices/racial profiling expert, Robert Stewart, testified that a local law enforcement agency has discretion in setting its enforcement policies. See Deposition of Robert L. Stewart at p. 26, lns. 19-23, attached as Exhibit 17. Mr. Stewart testified also that a local law enforcement agency has discretion in determining what crimes it should prioritize for enforcement. Id. at p. 26, ln. 25 to p. 27, ln. 4; see also p. 27, ln. 23 to p. 28, ln. 1.</p>
23	<i>Admit.</i>
24	<i>Admit.</i>
25	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u></p> <p><u>(A) Defendants Do Not Endorse, Adopt, or Agree with Private Citizen Communications that Call for Illegal and Immoral Conduct, including calls for the Racial Profiling of Latinos.</u></p>

1 Defendants admit that Arpaio, as an elected official, receives and saves
 2 many letters or communications from private citizens and news
 3 clippings. Defendants, however, dispute the statement, as it is used in
 4 Plaintiffs' motion, that any of the citizens' letters cited by the Plaintiffs
 5 in their Motion that actually call for racial profiling, or that are fairly
 6 perceived as calling for racial profiling, ever caused or resulted in Arpaio
 7 or the MCSO engaging in racial profiling. The evidence shows that
 8 Defendants understand and agree that racial profiling is illegal and
 9 morally wrong, and that the MCSO does not, in fact, engage in such
 10 conduct:

11 Arpaio testified that racial profiling is morally wrong. *See* Deposition of
 12 Joseph Arpaio dated 12/16/09 at p. 113, lns. 10-11; 115, lns. 2-17,
 13 attached as Exhibit 16; *see also* Arpaio Deposition dated 11/16/10 at p.
 14 77, lns. 22-23, attached as Exhibit 15. Arpaio further testified that the
 15 MCSO does not racially profile. *Id.* at p. 113, ln. 21 to p. 114, ln. 10
 16 (“Well, all I can say, we don’t do that. We don’t stop people by their
 17 appearance.”).

18 MCSO Deputy Chief Brian Sands makes the decision of where, when,
 19 and how to do a saturation patrol. *See* Deposition of Brian Sands dated
 20 12/14/09 at p. 71, lns. 19-21; p. 79, lns. 23-25, attached as Exhibit 14.
 21 Chief Sands testified that racial profiling is morally wrong. *Id.* at p. 147,
 22 ln. 20 to p. 148, ln. 5, attached as Exhibit 14. Chief Sands further
 23 understands that racial profiling is illegal. *See* Deposition of Brian
 24 Sands dated 11/15/10 at p. 92, ln. 24 to p. 93, ln. 1, attached as Exhibit
 25 14.

26 MCSO Lieutenant Joseph Sousa, the head of MCSO’s Human
 27 Smuggling Unit (“HSU”), and one of the top planners for executing and
 28 supervising saturation patrols, testified that racial profiling is prohibited
 by MCSO policy, is illegal, and HSU members do not racially profile.
See Deposition of Joseph Sousa dated 12/10/09 at p.135, ln. 24 to p. 136,
 ln. 17, attached as Exhibit 5; *see also* Sousa Deposition dated 10/22/10
 at p. 30, lns. 14-17, attached as Exhibit 19.

HSU Sergeant Manuel Madrid, one of two supervising sergeants for the
 unit, and a Latino himself, testified that racial profiling is illegal, that
 race or ethnicity can never be used in making a traffic stop, and that the
 HSU members he supervises do not racially profile. *See* Deposition of
 Manuel Madrid dated 10/27/09 at p. 20, lns. 14-23; p. 195, lns. 15-171,
 and p. 202, 18-22, attached as Exhibit 10.

HSU Sergeant Brett Palmer, the remaining supervisory sergeant for the

1 unit, testified that racial profiling is wrong and illegal, and that the HSU
2 members he supervises do not racially profile. *See* Deposition of Brett
3 Palmer dated 10/23/09 at p. 36, lns 10-25; p. 135, lns. 5-25; p. 139, ln.
4 21 to p. 140, ln 18; p. 145, lns. 12-25; and p. 153, lns. 13-15, attached as
5 Exhibit 9.

6 Louis DiPietro, the deputy that made the traffic stop on Plaintiff
7 Melendres, knows and understands that racial profiling is illegal. *See*
8 Deposition of Louis DiPietro dated 10/21/09 at p. 87, lns. 17-19,
9 attached as Exhibit 13.

10 Race was not a factor in Deputy DiPietro's finding that he had probable
11 cause to stop the truck in which Plaintiff Melendres was a passenger.
12 *See* Defendants Statement of Facts (Dkt# 413-1) at ¶¶ 125-126

13 Matthew Ratcliffe, the deputy that made the traffic stop on the
14 Rodriguez Plaintiffs knows and understands that racial profiling is illegal
15 and wrong. *See* Deposition of Matthew Ratcliffe dated 10/15/09 at p.
16 115, lns.18-25, attached as Exhibit 6. Race was not a factor in Deputy
17 Ratcliffe's finding that he had probable cause to stop the truck in which
18 the Rodriguez Plaintiffs were driving or occupying. *See* Defendants
19 Statement of Facts (Dkt# 413-1) at ¶¶ 132-135.

20 Michael Kikes, the deputy that made the traffic stop on the Plaintiffs
21 Meraz and Nieto knows and understands that racial profiling is illegal
22 and wrong. *See* Deposition of Michael Kikes dated 02/15/10 at p. 46,
23 lns. 14-17, p. 108, lns. 9-15, attached as Exhibit 7. Race was not a factor
24 in Deputy Kikes's finding that he had probable cause to stop the truck in
25 which Plaintiffs Meraz and Nieto were driving or occupying. *See*
26 Defendants Statement of Facts (Dkt# 413-1) at ¶¶ 85-86.

27 Defendants further refer the Court to the contraverting statement set
28 forth below in section (B) regarding the MCSO's receipt and evaluation
of private citizen complaints, the MCSO's handling of the same when
they appear racially charged, and the MCSO's independent investigation
of the complaint made to determine its legitimacy and whether there is
any basis for law enforcement action. *See* Deposition of Joseph Sousa
dated 12/10/09 at p. 86, ln. 3 to p. 88, ln. 11, attached as Exhibit 5
(discussing the investigation of citizen complaints; that if the citizen is
racially profiling and not describing any criminal activity, the complaint
is rejected; the efforts MCSO takes to independently evaluate whether
criminal activity is taking place); Deposition of Brian Sands dated
12/14/09 at p. 81, ln. 3 to p. 85, ln. 6, attached as Exhibit 14 (providing a
detailed discussion of the MCSO rejecting racially motivated tips by
citizens that provide no evidence of criminal activity).

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4 **(B) Defendants Do Not Take Official Action, or Plan or Conduct**
5 **Saturation Patrols, Based on Private Citizen Communications that**
6 **Express solely Racial Prejudice or that Call for Illegal and Immoral**
7 **Conduct, including calls for the Racial Profiling of Latinos.**

8 Defendants dispute the statement, as it is used in Plaintiffs' motion, that
9 any of the citizens' letters or tips cited by the Plaintiffs in their Motion
10 that actually call for racial profiling, or that are fairly perceived as
11 calling for racial profiling or motivated by racial prejudice, ever caused
12 or resulted in Arpaio or the MCSO taking official action such as
13 conducting a saturation patrol. *The evidence shows that Defendants*
14 *determine where to conduct a saturation patrol on race-neutral factors:*

15 MCSO Deputy Chief Brian Sands makes the decision of where, when,
16 and how to do a saturation patrol. *See* Deposition of Brian Sands dated
17 12/14/09 at p. 71, Ins. 19-21; p. 79, Ins. 23-25, attached as Exhibit 14.
18 There are a multitude of different law enforcement reasons a saturation
19 patrol is conducted, and conducted in a particular area. *Id.* at p. 71, Ins.
20 9-16. The race or ethnicity of people, however, play **no role** in Chief
21 Sands' selection of saturation patrol locations. *Id.* at p. 182, ln. 24 to
22 p.183, ln. 4. The ethnic constituency in a neighborhood plays **no role** in
23 selecting locations for saturation patrols. *Id.* at p. 183, Ins. 6-15. Even
24 with an MCSO emphasis on enforcing laws related to illegal
25 immigration, the MCSO does **not** focus or target areas believed to
26 contain a high percentage of illegal immigrants. *Id.* at p. 94, ln. 22 to p.
27 95, ln. 10 ("*the [illegal] immigration problems that we have are so*
28 *widespread throughout Maricopa County there [are] very few places*
you can go [on a saturation patrol] where you are not going to
encounter an illegal alien. Whether to focus on a group of people
standing on a corner because they look a certain way is not good practice
and would certainly be easier to just go up and start grabbing people off
the street corner because they are day laborers, but it is not a practice or
anything that we condone in the sheriff's office.") (emphasis added); *see*
also Deposition of Joseph Sousa dated 12/10/09 at p. 96, ln. 25 to p. 97,
ln. 11, attached as Exhibit 5 (areas for saturation patrols are not selected
because they may have a high concentration of suspected illegal aliens).

Sites for saturation patrols are determined based on a combination of the
following types of information or factors:

- The area's crime history and statistics. *Id.* at p. 71, Ins. 9-16; p.

139, ln. 7 to p.140, ln. 5; p. 142; lns. 5-25; and p. 143, lns. 7-16; *see also* Deposition of Joseph Sousa dated 12/10/09 at p. 89, lns. 20 to p. 91, ln. 23, attached as Exhibit 5.

- Intelligence and data regarding possible criminal activity at the possible site *Id.* at p. 71, lns 9-16; p. 124, ln. 19 to p. 125, ln. 13; p. 133, lns. 7-19; p. 138, ln. 5 to p. 139, ln. 4; p. 139, ln. 7 to p.140, ln. 5; p. 142, lns. 5-25; p. 143, lns. 7-16; p. 143, ln. 24 to p.144, 15; and p.146, ln. 9 to p.147, ln. 15.
- Requests for assistance in a particular area from Arizona Legislators and information offered in the request. *Id.* at p. 133, ln. 23 to p. 134, ln. 9.
- Requests for assistance from city officials for a particular area. *Id.* at p. 71, lns. 9-16.
- Information provided by local police officers from other law enforcement agencies. *Id.* at p. 80, ln. 18 to p. 81, ln. 2.
- Requests for assistance from private citizens in the community providing information about possible criminal activity; but such information provided by private citizens is independently evaluated and confirmed by the MCSO. *Id.* at 71, lns. 9-16; p. 79, lns.17-22. In evaluating private citizen complaints, there is an independent investigation of the complaint made to determine its legitimacy and whether there is any basis to do anything. *Id.* at p. 82, lns. 5-23) (“Generally speaking, I [Chief Sands] likes to know what is going on in the community as a whole relative to crime before we do a saturation patrol.”); *see* Deposition of Joseph Sousa dated 12/10/09 at p. 86, ln. 3 to p. 88, ln. 11, attached as Exhibit 5 (discussing the investigation of citizen complaints; that if the citizen is racially profiling and not describing any criminal activity, the complaint is rejected; the efforts MCSO takes to independently evaluate whether criminal activity is taking place); Deposition of Brian Sands dated 12/14/09 at p. 81, ln. 3 to p. 85, ln. 6, attached as Exhibit 14 (providing a detailed discussion of the MCSO rejecting racially motivated tips that provide no evidence of criminal activity).

More specifically as to how the MCSO handles citizen complaints that may be made by persons with racial prejudice, Chief Brian Sands testified as follows:

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

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

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

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

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

9 A. ***Keep in mind I am not supporting racial or prejudicial attitudes in***
 10 ***the community at all when I say this, but sometimes the information***
 11 ***sources that we end up using in law enforcement are people that are in***
 12 ***involved in – in criminal elements in their community or neighborhood***
 13 ***they live in and oftentimes these people give us information. It can be***
 14 ***corroborated to solve a murder or human smuggling case, that person***
 15 ***may be, in fact, motivated for ulterior motives of his own, and I am just***
 16 ***being honest with you in saying that he may be racially prejudiced at***
 17 ***the same time and its- it would be hard to disqualify that information***
 18 ***and say that the information source doesn't like certain groups of***
 19 ***people so we are not going to- we are not going to investigate the crime***
 20 ***that he very well be a witness to."***

21 Deposition of Brian Sands dated 12/14/09 at p. 82, ln. 24 to p. 84, ln. 12,
 22 attached as Exhibit 14 (emphasis added).

23 Chief Sands further testified:

24 "Q. *Are you aware of your office having received tips relating to*
 25 *illegal immigration that have come from persons or members of groups*
 26 *that have expressed hatred for illegal immigrants?*

27 A. *I don't typically receive all these tips or the communication so it is*
 28 *hard for me to analyze what motivates people that are giving us*
 29 *information. I will say, though, that I have sat in on meetings over tips*
 30 ***that have come in and when there is no need to follow up on***
 31 ***something based n the caller's information and it only attributed—the***
 32 ***information is only attributed to somebody's ethnicity or appearance,***
 33 ***we don't follow up on it. Whether those are racially motivated***
 34 ***complaints, I wouldn't know. But when the information is only such***
 35 ***directed towards a group of people or a business or—and just solely on***
 36 ***their race or ethnicity, we don't follow-up on it."***

37 See Deposition of Brian Sands dated 12/14/09 at p. 84, ln. 24 to p. 85, ln.
 38 16, attached as Exhibit 14 (emphasis added).

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Plaintiffs’ police practices and racial profiling expert, Robert Stewart, testified that he did not draw the conclusion, based on his analysis, that any saturation patrol was unjustified or unwarranted:.

“*Q. Have you formed the opinion that any particular MCSO saturation patrol was unjustified or unwarranted?*”

A. Based on crime data?

Q. For any reason.

A. I did not draw that conclusion.”

See Deposition of Robert Stewart at p. 23, lns. 14-21, attached as Exhibit 17. (emphasis added).

Defendants police practices expert, Bennie Click, testified that “[t]he method by which the MCSO chooses target area for saturation patrols is reasonable and is consistent with standard law enforcement practices.” See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).

Objections: Defendants object to the following documents as inadmissible hearsay without any exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): (1) Melendres MCSO 075852, Ex. 11 to Arpaio Depo. II; (2) Melendres MCSO 075859, Ex. 12 to Arpaio Depo. II; (3) OSLS002976-89; and (4) OSLS0004172. See *Cox v. Amerigas Propane, Inc.*, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005) (“Evidence a party relies upon with respect to a summary judgment motion must have an appropriate foundation and must be supported... by admissible evidence”). Defendants also object to the documents on the grounds of relevance. They are irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.

26	<p>Disputed.</p> <p>Controverting Statement: While Defendants do not dispute that Arpaio receives letters and communications from private citizens, and</p>
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	<p>writes thank-you notes to those citizens for their communications, and on occasion, will send a copy of the citizen communications to members of his executive management staff for appropriate determination, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere writing of a “thank-you” note by an elected official in response to a citizen’s communication to him does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of the same.</p> <p>Arpaio, via his secretary, normally writes “thank-you” notes or letters to all people that write to him. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio forwards the letter to people in his office when he believes the letter may be of interest to them. <i>Id.</i> at p. 21, ln. 9 to p. 22, ln. 4. The testimony amply demonstrates that Arpaio does not agree with, adopt, or endorse everything that a person writes to him in a letter. <i>Id.</i> at p. 23, lns. 5-23 (“This is their comment, not mine.”); (as to whether he agrees with a comment, “No, I have no idea what he’s talking about.”); (as to whether he disagrees with a comment, “I have no comment at all on that [as to whether he disagreed with a letter’s statement]. Many people write me letter and make different comments and opinions.”)</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p>
<p>27</p>	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio received the stated letter that contained the cited opinion of its third party author, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere receipt of a letter, and keeping it, by an elected official does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of the same.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p><u>Objections:</u> Defendants object to the following document as inadmissible hearsay without any exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): OSLS02990. <i>See Cox v. Amerigas Propane, Inc., 2005</i></p>

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	<p>U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
<p>28</p>	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio received the stated letter that contained the cited opinion of its third party author and forwarded it to select executive in MCSO management, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere forwarding of a letter or communication to select executive does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of the same.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p><u>Objections:</u> Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): OSLS02990. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
<p>29</p>	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio received the stated letter that contained the cited opinion of its third party author, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere receipt of a letter, and keeping it, by an elected official does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of the same. Moreover, Plaintiffs never even questioned Arpaio about this communication to determine his position regarding its contents.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p><u>Objections:</u> Defendants object to the following document as</p>

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	<p>inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): OSLS003221. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
<p>30</p>	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio wrote a thank-you note for the cited letter, and sent a copy of the citizen communication to Chief Sands, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere writing of a “thank-you” note by an elected official does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of the citizen communication or took official action because of the same.</p> <p>Arpaio, via his secretary, normally writes “thank-you” notes or letters to all people that write to him. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio forwards the letter to people in his office when he believes the letter may be of interest to them. <i>Id.</i> at p. 21, ln. 9 to p. 22, ln. 4. The testimony amply demonstrates that Arpaio does not agree with, adopt, or endorse everything that a person writes to him in a letter. <i>Id.</i> at p. 23, lns. 5-23 (“This is their comment, not mine.”); (as to whether he agrees with a comment, “No, I have no idea what he’s talking about.”); (as to whether he disagrees with a comment, “I have no comment at all on that [as to whether he disagreed with a letter’s statement]. Many people write me letter and make different comments and opinions.”)</p> <p>In addition, the mere forwarding of the letter to Chief Sand also does not mean Arpaio adopts, agrees, or endorses all of the contents of the letter. Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p>
<p>31</p>	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio received the stated letter that contained the cited opinion of its third party author, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere receipt of a letter, and keeping it, by an elected official does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or</p>

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	<p>took official action because of the same. Moreover, Plaintiffs never even questioned Arpaio about this communication to determine his position regarding its contents.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p>Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): OSLS003259-60. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
32	<p>Disputed.</p> <p>Controverting Statement: While Defendants do not dispute that Arpaio received the stated letter and that he indicated he would forward it to his illegal immigration officers to look into, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere forwarding of a letter or communication to a select executive does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of the same. Defendants herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p>
33	<p>Disputed.</p> <p>Controverting Statement: While Defendants do not dispute that Arpaio received the stated letter that contained the cited opinion of its third party author, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere receipt of a letter, and keeping it or forward it to select executive management, by an elected official does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of the same. Moreover, Plaintiffs never even questioned Arpaio about this communication to determine his position regarding its contents.</p> <p>Arpaio, via his secretary, normally writes “thank-you” notes or letters to all people that write to him. <i>See Deposition of Joseph Arpaio dated</i></p>

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	<p>11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio forwards the letter to people in his office when he believes the letter may be of interest to them. <i>Id.</i> at p. 21, ln. 9 to p. 22, ln. 4.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p>Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): OSLS003243-44. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
<p>34</p>	<p>Disputed.</p> <p>Controverting Statement: While Defendants do not dispute that Arpaio received the stated email that contained the cited opinion of its third party author, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere receipt of a letter, and keeping it or forwarding it to select executive management, by an elected official does not, legally or factually, mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of it. Moreover, when question about whether he agreed with Richard H.’s statement, Arpaio responded: “Once again, that’s his statement, and I don’t know what context he’s talking about, about ducks or whatever he’s mentioning.... I can’t read his mind. This is his opinion, not mine.” <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 85, ln. 18 to p. 86, ln. 24, attached as Exhibit 15. (emphasis added).</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p>Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): Melendres MCSO 072425, Ex. 13 to Arpaio Depo. II. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>

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35	<p><i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants agree with the statement that Richard H. is known to Arpaio to have written on the subject of illegal immigration, the actual testimony of whether Arpaio has talked to Richard H personally in the past is that Arpaio “<i>may have met him one time.</i>” See Deposition of Joseph Arpaio dated 11/16/10 at p. 85, ln. 18 to p. 86, ln. 24, attached as Exhibit 15. (emphasis added).</p>
36	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants admit that Arpaio forwarded Melendres MCSO 07425 to Chief Brian Sands, Defendants dispute this statement as it is used in Plaintiffs’ motion. The mere forwarding of the email does not mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of it. In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p>
37	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants admit that Richard H. has sent other correspondence advocating racial profiling and that Arpaio retained copies of such correspondence and circulated some to select MCSO executive management, the mere receipt or forwarding of the correspondence does not mean that Arpaio adopts, agrees, or endorses all of the contents of every citizen communication or took official action because of it. When questioned about the contents of Melendres MCSO 075284, Arpaio testified that he had “no knowledge of percentage or whatever he’s talking about. Once again, that’s his comment not mine.” See Deposition of Joseph Arpaio dated 11/16/10 at p. 88, ln. 22 to p. 89, ln. 23, attached as Exhibit 15.</p> <p>As for documents OSKS00004525 and OSLS0005154, Plaintiff did not even question Arpaio as to whether he agreed or not with Richard H’s statements.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p><u>Objections:</u> Defendants object to the following documents as inadmissible hearsay without any applicable exception (Defendants do</p>

1 2 3 4 5 6	<p>not object to any comments or notes written by Arpaio on the hearsay communication):</p> <p>(1) Melendres MCSO 075284, Ex. 14 to Arpaio Depo. II; (2) OSLS0004525; and (3) OSLS00005154. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the documents on the grounds of relevance. They are irrelevant to whether the named Plaintiffs' Fourteenth Amendment rights were violated.</p>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>38</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants admit that Richard H. has sent two other emails wherein he equates probable cause to racial profiling and Arpaio kept the emails in his file, Defendants disputed that the mere receipt or preservation of such communications means that Arpaio adopts, agrees, or endorses all of the contents of such emails. To the contrary, Arpaio testified that racial profiling is morally wrong. <i>See</i> Deposition of Joseph Arpaio dated 12/16/09 at p. 113, lns. 10-11; 115, lns. 2-17, attached as Exhibit 16; <i>see also</i> Arpaio Deposition dated 11/16/10 at p. 77, lns. 22-23, attached as Exhibit 15. Arpaio further testified that the MCSO does not racially profile. <i>Id.</i> at p. 113, ln. 21 to p. 114, ln. 10 (“Well, all I can say, we don’t do that. We don’t stop people by their appearance.”).</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p><u>Objections:</u> Defendants object to the following documents as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication):</p> <p>(1) Carveout MCSO 0209953-54; and (2) Carveout MCSO 297781. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the emails on the grounds of relevance. They are irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
26 27 28	<p>39</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> Defendants admit that in 2005 an organization calling itself the Minutemen Project wrote Arpaio and</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>stated the cited matters in their correspondence. They further admit that Arpaio sent a note to his then Chief Deputy, David Hendershott, about how to respond to the communication from the Minutemen Project. Defendants, however, dispute that the mere receipt of such a communication and seeking staff direction on how to respond to it means that Arpaio adopts, agrees, or endorses all of the contents of such emails or took any official action in response to the same. In addition, Plaintiffs never questioned Arpaio regarding his position as to anything stated by the author.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 set forth above.</p> <p>Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): OSL0005516. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs' Fourteenth Amendment rights were violated.</p>
<p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>40</p> <p>Disputed.</p> <p>Controverting Statement: Plaintiffs do not cite correctly what Carol B reported. While Defendants admit that in July 2007 Carole B. sent a letter to Arpaio stating that Carole B.'s Italian mother was subject to racial profiling and that "<i>she [i.e., the mother] believe it was the right thing to do,</i>" and Arpaio wrote a thank you note, Defendants dispute that the mere receipt of such a communication and writing a "thank-you" note means that Arpaio adopts, agrees, or endorses Carole B.'s recitation of her Italian mother's opinion (or if that opinion is held by Carol B.) that racial profiling is the right thing to do. Moreover, when asked whether he agreed with Carole B's opinion, or more accurately, with the opinion of Carol B.'s Italian mother, Arpaio testified that "This is just her comments, her opinions. I have no comment on her comment. I wasn't there. I wasn't involved with her family." <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 277, ln. 23 to p. 278, ln. 11, attached as Exhibit 15 (emphasis added).</p> <p>Arpaio, via his secretary, normally writes "thank-you" notes or letters to all people that write to him. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio</p>

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forwards the letter to people in his office when he believes the letter may be of interest to them. *Id.* at p. 21, ln. 9 to p. 22, ln. 4.

In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.

Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): MCSO 068791-92, Ex. 42 to Arpaio Depo. II. *See Cox v. Amerigas Propane, Inc.*, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.

Defendants also object to document OSLS000121 because it is irrelevant as to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.

41 **Disputed.**

Controverting Statement: While Defendants do not dispute that CT S. wrote the referenced communication and it contained the comments described and that Arpaio wrote a “thank you” letter stating he will “continue to fight the [illegal immigration] problem facing our country, Defendants dispute that such receipt and writing a “thank-you” note means that Arpaio adopts, agrees, or endorses all of the contents of the communication or took any official action in response to the same. In addition, Plaintiffs never questioned Arpaio regarding his position as to anything stated by CT S. in document OSLS000591-95.

Arpaio, via his secretary, normally writes “thank-you” notes or letters to all people that write to him. *See* Deposition of Joseph Arpaio dated 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio forwards the letter to people in his office when he believes the letter may be of interest to them. *Id.* at p. 21, ln. 9 to p. 22, ln. 4.

In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.

Objections: Defendants object to the following document as

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	<p>inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): OSLS000591-95. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
42	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Diana E authored a 200-page book on <i>illegal</i> immigration that contains the referenced chapter and sent a copy of the same to Arpaio, Defendants dispute that such receipt and forwarding to select executive management means that Arpaio adopts, agrees, or endorses all of the contents of the book or the referenced chapter in the book. In addition, Plaintiffs never questioned Arpaio regarding his position as to anything stated by Diana E in her book or the referenced chapter.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p><u>Objections:</u> Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): Melendres MCSO 74447-74738. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
43	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Sarah M. and Erika S wrote the referenced letter to Arpaio and that it contained the referenced comments, the Defendants dispute that the mere receipt of the letter, sending a thank you note, and sending a copy of the letter to Chief Brian Sands means that Arpaio adopts, agrees, or endorses all of the contents of the letter. Arpaio provided a detailed explanation of why he sent a thank you letter to these authors and it is abundantly clear that he did not adopt or agree or endorse their comments. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 107, ln. 20 to p. 109, ln. 14, attached as Exhibit 15.</p>

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	<p>Arpaio, via his secretary, normally writes “thank-you” notes or letters to all people that write to him. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio forwards the letter to people in his office when he believes the letter may be of interest to them. <i>Id.</i> at p. 21, ln. 9 to p. 22, ln. 4.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p>Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): Melendres MCSO 078209, Ex. 17 to Arpaio Depo. II. <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants also object to the document on the grounds of relevance. It is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p> <p>Defendants also object to document Melendres MCSO 076783, Ex. 10 to Arpaio Depo. II on the grounds of relevance. It is immaterial to whether Plaintiffs’ Fourteenth Amendment rights were violated.</p>
<p>44</p>	<p>Disputed.</p> <p>Controverting Statement: While Defendants do not dispute that Arpaio has received and retained some letters and emails from private citizens that contain language that is, or reasonably could be interpreted, as “racially charged” and “stigmatizing towards Hispanic” <i>and illegal immigrants</i>, Defendants dispute that the mere receipt and keeping of such communications means that Arpaio adopts, agrees, or endorses all of the contents of the communication.</p> <p>When Arpaio was asked whether he agreed with the referenced language in document Melendres MCSO 76123, Ex. 24 to Arpaio Depo. II, Arpaio testified that “I don’t agree with that.” <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 160, ln. 19 to p. 161, ln. 10, attached as Exhibit 15.</p> <p>When Arpaio was asked whether he agreed with the referenced language in document Melendres MCSO 7540304, Ex. 23 to Arpaio Depo. II, Arpaio testified that he did not even understand what the author was thinking and “I can’t believe what he’s thinking when he wrote this.”</p>

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	<p><i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 157, lns. 18-25, attached as Exhibit 15.</p> <p>Plaintiffs never asked Arpaio whether he agreed with any comments contained within documents Melendres MCSO 76267, Melendres MCSO 71945, OSLS001235, OSLS0001057, and OSLS001058-60. However, given Arpaio’s prior testimony when he was asked whether he agreed with arguably less offensive remarks, it is reasonable to conclude that it is likely that Arpaio would have testified, had he been asked by Plaintiffs, that he disagreed with the offensive remarks in each of the foregoing documents.</p> <p>Arpaio provided a detailed explanation of why he sent a thank you letter to these authors and it is abundantly clear that he did not adopt or agree or endorse their comments. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 107, ln. 20 to p. 109, ln. 14, attached as Exhibit 15</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.</p> <p><u>Objections:</u> Defendants object to the following documents as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): (1) Melendres MCSO 76123, Ex. 24 to Arpaio Depo. II; (2) Melendres MCSO 7540304, Ex. 23 to Arpaio Depo. II; (3) Melendres MCSO 76267; (4) Melendres MCSO 71945; (5) OSLS001235; (6) OSLS0001057; and (7) OSLS001058-60. Defendants also object to the foregoing documents on the grounds of relevance. They are irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
45	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio has written “thank-you” notes to private citizens, including those that may have expressed or used racially offensive opinions or comments, and circulated on some occasions to select executive management copies of the same, Defendants dispute that this means that Arpaio adopts, agrees, or endorses all of the contents of the communication or that it resulted in any official action, such as a saturation patrol. Arpaio, via his secretary, normally writes “thank-you” notes or letters to</p>

1 all people that write to him. *See* Deposition of Joseph Arpaio dated
 2 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio
 3 forwards the letter to people in his office when he believes the letter may
 4 be of interest to them. *Id.* at p. 21, ln. 9 to p. 22, ln. 4.

5 In addition, Defendants further herein incorporate by this reference their
 6 Response and Controverting Statement as to Plaintiffs' Statement of Fact
 7 No. 25 set forth above, and their responses to Statement of Facts Nos. 26
 8 to 45.

9 **Objections:** Defendants object to the following documents as
 10 inadmissible hearsay without any applicable exception (Defendants do
 11 not object to any comments or notes written by Arpaio on the hearsay
 12 communication):

13 (1) Melendres MCSO 76123, Ex. 24 to Arpaio Depo. II; (2) Melendres
 14 MCSO 77958, Ex. 3 to Sand Depo. II (3) OSLS01235; (4)
 15 OSLS0001057; and (5) OSLS001058-60. Defendants also object to the
 16 foregoing documents on the grounds of relevance. They are irrelevant to
 17 whether the named Plaintiffs' Fourteenth Amendment rights were
 18 violated.

46

Disputed.

19 **Controverting Statement:** This statement is misleading as used in the
 20 Motion because it suggests, without actually proving, that MCSO
 21 executive staff, such as Chief Brian Sands, assume that Arpaio agrees
 22 with the contents of everything that is forwarded to them and that they
 23 would or should take official action, such as conducting a saturation
 24 patrol, without any MCSO independent analysis. As to the cited
 25 document MCSO074133, Ex. 2B to Arpaio Depo. II, Arpaio testified
 26 that he did *not* agree with the comments made by the author. *See*
 27 Deposition of Joseph Arpaio dated 11/16/10 at p. 27, ln. 5 to p. 28, ln.
 28 25, attached as Exhibit 15. In fact, Arpaio thought the comments were
 "rather nasty. And this is their opinion. *It doesn't mean it is my
 opinion.* I've been a federal official, law enforcement official, for 26
 years. I have respect to the courts, and I don't agree with that."). *Id.*
 (emphasis added).

As for the citation to Chief Brian Sands' deposition for the principal that
 every document that Arpaio forwards to him is something that Arpaio
 agrees with, Plaintiffs' mischaracterize the testimony following a
 confusing, and ambiguous question. For example, the following is the
 question and answer:

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“Q. Has the Sheriff ever, to your memory, forwarded to you, for your information, any statements that you know the sheriff disagrees with?”

Mr. Liddy: Objection. Form of the question.

A. I can’t think of any right offhand.”

Deposition of Brian Sands dated 11/15/10 at p. 218, lns. 18-24, attached as Exhibit 18. Moreover, there are times when Chief Sands **does not know** the reason Arpaio forwards a citizen’s letter to him. *Id.* at p. 33, ln. 21 to p. 34, ln. 9 (he did not know why Arpaio forwarded to him the letter from John B. (Melendres MCSO 77958, Ex. 3 to Sands Depo. II) stating that certain countries allow their citizens to “run amuck like wild feral [sic] animals” and that “we have too many dysfunctional Hispanics [in the United States] already.”)..

In light of the testimony of Arpaio set forth elsewhere in this Response, it is unfair, inappropriate, and unreasonable for the Plaintiffs to conclude from Chief Sand’s answer that he has “knowledge” that Arpaio agreed with the contents of every citizen communication he forward to Chief Sands. It is also unreasonable to conclude that Chief Sands believed that Arpaio agreed with every document and thus initiated a saturation patrol in response to the same. *See* Deposition of Brian Sands dated 12/14/09 at p. 82, ln. 24 to p. 84, ln. 12, attached as Exhibit 14 (emphasis added). In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above, and their responses to Statement of Facts Nos. 26 to 45.

47

Disputed.

Controverting Statement: While Defendants do not dispute that Arpaio received an email from a private citizen that contained racially prejudiced statement and forwarded it to Chief Brian Sands, there is no evidence that either Arpaio or Chief Sands agreed with, adopted or endorsed the contents of the letter in any manner or took any action based on the same.

To the contrary, the evidence shows that Chief Sands did **not** take any action in response to the letter. *See* Deposition of Brian Sands dated 11/15/10 at p. 33, ln. 21 to p. 34, ln. 9, attached as Exhibit 18. When Plaintiffs asked Chief Sands whether he agreed with the author’s statement that “we have too many dysfunctional Hispanics already here,” he **expressly rejected the statement.** *Id.* at p. 34, ln. 21 to p. 35, ln. 4.

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In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.

Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): Melendres MCSO 77958, Ex. 3 to Sands Depo. II. *See Cox v. Amerigas Propane, Inc.*, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). This document is also objectionable because it is irrelevant to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.

48

Disputed.

Controverting Statement: While Defendants do not dispute that Arpaio received an email from a private citizen that was racially prejudiced and unfavorable to United States District Court Judge Mary Murguia and forwarded it to select MCSO management executives, Defendants dispute this statement as it is used in Plaintiffs’ motion. Arpaio forwarded the email to select MCSO management executive because they were involved in the MCSO programs related to illegal immigration and the handling of litigation cases involving the MCSO. *See* Deposition of Joseph Arpaio dated 11/16/10 at p. 27, ln. 5 to p. 28, ln. 25, attached as Exhibit 15. Arpaio testified that he did *not* agree with the comments made by the author. *Id.* In fact, Arpaio thought the comments were “*rather nasty*. And this is their opinion. *It doesn’t mean it is my opinion*. I’ve been a federal official, law enforcement official, for 26 years. I have respect to the courts, and I don’t agree with that.”). *Id.* (emphasis added).

In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 set forth above.

Objections: Defendants object to the following document as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): MCSO074133, Ex. 2B to Arpaio Depo. II. *See Cox v. Amerigas Propane, Inc.*, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005) (“Evidence a party relies upon with respect to a summary judgment motion must have an appropriate foundation and must be supported... by

1	admissible evidence”).
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>49 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While the Defendants do not dispute that Arpaio sent a copy of document Melendres MCSO 076783 to executive management, namely Chiefs Brian Sands and Scott Freeman, that Arpaio did not check the document for accuracy, and that Arpaio testified that some of the statistics in the document did not sound accurate, this statement contains unsupported argument and, as used in the motion, is misleading. Defendants dispute that: (a) the <i>Los Angeles Times</i> discredited the document; (b) that Arpaio sent it to his “officers” other than Chiefs Sands and Freeman.</p> <p>The evidence cited by Plaintiffs does not support the statement that the <i>Los Angeles Times</i> newspaper discredited the document.</p> <p>The evidence cited does not support the statement or suggestion that Arpaio forwarded document Melendres MCSO 076783 to anyone in the MCSO other than Chiefs Sands and Freeman. It is, therefore, misleading to suggest that Sgt. Brett Palmer, who received the document on his own, received the document from Arpaio or believed he was to act on it pursuant to Arpaio’s desire. To the contrary, Sgt Palmer received the document from another deputy at MCSO. <i>See Ex. 5 to Palmer Depo. II at p. 1(Hickey Dec. Ex. 62); see also Deposition of Brett Palmer dated 11/09/10 at p. 50, ln. 19 to. p. 51, ln. 5, attached as Exhibit 12 (“Q. Do you remember receiving this email from Detective Little? A.. It is familiar to me, yes.”).</i></p> <p>The evidence shows that Sgt. Palmer did not agree with all of the contents of the document. <i>See Deposition of Brett Palmer dated 11/09/10 at p. 50, ln. 19 to. p. 54, ln. 6, attached as Exhibit 12</i></p> <p>The evidence shows that Arpaio did not agree with all of the contents of the document. <i>See Deposition of Joseph M. Arpaio dated 11/16/10 at p. 73, lns. 11-19, attached as Exhibit 15 (“Does not sound right....”).</i></p> <p>As for Arpaio not checking the document’s statistics for accuracy, Arpaio testified that he sent it to Chiefs Sands and Freeman so <i>they could check on it</i> “[b]ecause this is another piece of intelligence. It could be true, or it could not. That’s why I sent it to them.” <i>See Deposition of Joseph M. Arpaio dated 11/16/10 at p. 72, lns. 8-14, attached as Exhibit 15; see also p. 72, lns. 4-6 (The document is “[j]ust another intelligence-type report, whether its true or not, I think that they</i></p>

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	<p><i>[Chiefs Sands and Freeman] should look at it.”).</i></p> <p>Finally, there is no evidence cited by Plaintiffs or elsewhere that the MCSO took any official action in response to, or in regards to, the document.</p> <p>Objections: Defendants object to the document Melendres MCSO as inadmissible hearsay without any applicable exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication): <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005) (“Evidence a party relies upon with respect to a summary judgment motion must have an appropriate foundation and must be supported... by admissible evidence”). They also object to it on the grounds of relevance. The document is immaterial to whether the named Plaintiffs’ Fourteenth Amendment rights were violated.</p>
50	<p>Disputed</p> <p>Controverting Statement: While Defendants do not dispute that this statement contains the opinion of Plaintiffs’ police practices/racial profiling expert Robert Stewart, they dispute that Arpaio forwarded communications received from third party private citizens, including communications that contain actual or perceived racial prejudiced or offensive comments, to any MCOS deputies other than executive members of his management staff, namely Chief Brian Sands, for his information, consideration, and possible evaluation. The MCSO acted reasonable or pursuant to the law enforcement standard of care in its handling of citizen complaints of all types.</p> <p>Defense police practices expert Bennie Click testified the “[t]he method by which the MCSO chooses target areas for saturation patrols is reasonable and consistent with standard law enforcement practices.” As for citizen complaints that contained actual or perceived racially prejudice comments, the “MCSO took step not to respond to request to that [which] would have amounted to racial profiling.” <i>See</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as Exhibit 16; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p> <p>The MCSO consistently rejected racially charged citizen complaints</p>

1 when there was no mention of any facts indicating criminal activity, and
 2 when there was criminal activity identified, the MCSO independently
 3 evaluated the same. *See* Deposition of Joseph Sousa dated 12/10/09 at p.
 4 86, ln. 3 to p. 88, ln. 11, attached as Exhibit 5 (discussing the
 5 investigation of citizen complaints; that if the citizen is racially profiling
 6 and not describing any criminal activity, the complaint is rejected; the
 7 efforts MCSO takes to independently evaluate whether criminal activity
 8 is taking place); Deposition of Brian Sands dated 12/14/09 at p. 81, ln. 3
 9 to p. 85, ln. 6, attached as Exhibit 14 (providing a detailed discussion of
 10 the MCSO rejecting racially motivated tips by citizens that provide no
 11 evidence of criminal activity).

12 In addition, Defendants further herein incorporate by this reference their
 13 Response and Controverting Statement as to Plaintiffs' Statement of Fact
 14 No. 25 set forth above.

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Disputed

15 **Controverting Statement:** While Defendants do not dispute that this
 16 statement contains the opinion of Plaintiffs' police practices/racial
 17 profiling expert Robert Stewart, they dispute that it is accurate in this
 18 case. To the contrary, the evidence shows that Arpaio's circulation of
 19 materials to executive management, namely Chief Brian Sands, did not
 20 convey the message that the particular communication's contents were
 21 truthful, accurate, or appropriate for action. Moreover, the mere
 22 forwarding of such communications did not "communicate [Arpaio's]
 23 desire for the agency's operations" and there is no evidence offered by
 24 Plaintiffs or elsewhere that the MCSO took action based solely on the
 25 actual or perceived racial prejudices of any third party communication.

26 Defense police practices expert Bennie Click testified the "[t]he method
 27 by which the MCSO chooses target areas for saturation patrols in
 28 reasonable and consistent with standard law enforcement practices." As
 for citizen complaints that contained actual or perceived racially
 prejudice comments, the "MCSO took step not to respond to request to
 that [which] would have amounted to racial profiling." *See* Defendants'
 Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
 21, 2011, at pg. 47, attached thereto as Exhibit 16; *see also* March 18,
 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342,
 ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified
 to the foundation for his opinions and that his opinions in the report were
 the same he would provide at trial to a reasonable degree of probability
 in his field of expertise).

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The MCSO consistently rejected racially charged citizen complaints when there was no mention of any facts indicating criminal activity, and when there was criminal activity identified, the MCSO independently evaluated the same. *See* Deposition of Joseph Sousa dated 12/10/09 at p. 86, ln. 3 to p. 88, ln. 11, attached as Exhibit 5 (discussing the investigation of citizen complaints; that if the citizen is racially profiling and not describing any criminal activity, the complaint is rejected; the efforts MCSO takes to independently evaluate whether criminal activity is taking place); Deposition of Brian Sands dated 12/14/09 at p. 81, ln. 3 to p. 85, ln. 6, attached as Exhibit 14 (providing a detailed discussion of the MCSO rejecting racially motivated tips by citizens that provide no evidence of criminal activity).

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In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 set forth above.

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Disputed.

Controverting Statement: While Defendants do not dispute the cited portions of expert Bennie Click's deposition testimony, they state that Mr. Click's opinions are taken out of context and are, therefore, misleading as used in the Motion. In proper context, Mr. Click's opinion as cited does not support Plaintiffs' statement as used in their motion.

More precisely, Mr. Click testified as follows in regard to an email sent by a Mr. H.:

"Q. [In regards to Arpaio forwarding Mr. H.'s email to Chief Sands], [w]ould that be appropriate to do by the Sheriff?"

*A. Well, I'm not sure whether it's appropriate or inappropriate. I don't know if I can comment on that. I think you've got a citizen out there. I mean, it well may be that the intention is that you need to be careful of taking any action based on, you know, an email like this because we're not really sure who this guy is. But I think it gives you a sense. We talk about having community meetings and getting a sense of what, you know, community feedback is. And maybe it wasn't done for that purpose. I don't know what his purpose is. **I don't think that—certainly Chief Sands is by just the nature of his position has been around a long time, and I don't think he's going to be influenced by an email like this. It would be just more informative or more just educational as to what a citizen is saying out there.**"*

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See Deposition of Bennie Click at p. 163, ln.16 to p. 164, ln. 22, attached as Exhibit 20 (emphasis added); *see also* p. 164, ln. 20 to p. 165, ln. 16 (unlikely that someone with Chief Sands’ law enforcement experience would take any action based just on this email).

It is also clear that Mr. Click was stating his personal practice, and not a law enforcement standard of care opinion, when he stated that he would not have responded to the email of Mr. H. *Id.* at p. 166, ln. 20 to p. 166, ln. 15.

Most notable, is that Mr. Click, as a former police chief of the City of Dallas, Texas, would have handled Mr. H.’s email in the same or similar way as it was handled by Arpaio:

“Q. But would you expect and want the head—in terms of best practices the head of a law enforcement agency, like the MCSO, to indicate, well, we can’t help this kind of stuff. Some racist folks out there, but, of course, we don’t want to have anything to do with them. You would want that to take place in some way, shape, or form, don’t you?”

A I certainly don’t think you align yourself with people that have views that you should do something that that’s unlawful or unconstitutional.

Q. And if you had seen this particular letter as head of the Dallas Department, what would you have done upon receiving it?

*A. I would have given it to probably my administrative assistant and may have shared it with one of my chiefs. I would have interpreted it as, you know, here we’ve got a person out there that appears—and we don’t know his intent was, but appears to suggest that we need to just assume that people coming—and I think he uses Mexico here, but he talks about Latinos—that we should just assume that just because they’re Latino that that’s probable cause or reasonable suspicion. **But I don’t think they’re going to put much weight on something like this.**”*

Id. at p. 167, lns. 1-24 (emphasis added).

53	<i>Admit.</i>
54	<i>Admit.</i>

1	55	<i>Admit.</i>
2	56	<i>Disputed.</i>
3		<u>Controverting Statement:</u> While Defendants do not dispute that a
4		single MCSO employee, Detention Officer Jennifer McGlone, referred
5		to MCSO HSU saturation patrols as “roundups of illegal immigrants,”
6		they dispute that the single statement by a single employee in the MCSO
7		means that the MCSO, in the field, is conducting “roundups” or
8		otherwise acting unlawfully or illegally.
9		The MCSO has some 4,000 employees. Some employees are on the
10		field side of operations, such as Enforcement and the Human Smuggling
11		Unit (“HSU”). Other employees are on the detention side of MCSO
12		operations. Detention officers at the MCSO are not deputies and not
13		equipped with the same authority as deputies. Lt. Jennifer McGlone is
14		on the detention side of operations and thus works in the County jails.
15		She is a detention officer, not a field officer. It is, therefore, not
16		surprising that someone that lacks field authority of a deputy, and is in
17		neither Enforcement nor HSU would mischaracterize the MCSO
18		saturation patrols in a manner similar to what lay people might
19		characterize it.
20		There are no “roundups of illegal immigrants.” <i>See</i> Deposition of
21		Joseph Sousa dated 12/10/09 at p. 96, ln. 25 to p. 97, ln. 3, attached as
22		Exhibit 5 (sites for saturation patrols also are not selected because they
23		may have a high concentration of suspected illegal immigrants). When
24		Lt. Sousa learned that Lt. McGlone was using the term “roundup,” he
25		contacted Lt. McGlone’s supervising commander to let the detention
26		side know “that’s not we [HSU or Enforcement] do. These saturation
27		patrols are not illegal [immigrant] roundups or sweeps.” <i>See</i> Deposition
28		of Joseph Sousa dated 10/22/10 at p. 26, ln. 2 to p. 29, ln. 22, attached as
		Exhibit 5
		In addition, Defendants further herein incorporate by this reference their
		Response and Controverting Statement as to Plaintiffs’ Statement of Fact
		Nos. 25 and 112. .
		<u>Objection:</u> The witness lacks the foundation for the statement.
26	57	<i>Admit.</i>
27	58	<i>Admit.</i>
28	59	<i>Admit.</i>

1	60	<i>Admit.</i>
2	61	<i>Admit.</i>
3	62	<i>Admit.</i>
4	63	<i>Admit.</i>
5	64	<i>Admit.</i>
6	65	<i>Admit.</i>
7	66	<i>Admit.</i>
8	67	<i>Admit.</i>
9	68	<i>Admit.</i>
10	69	<i>Admit.</i>
11	70	<i>Admit.</i>
12	71	<i>Admit.</i>
13	72	<i>Admit.</i>
14	73	<i>Admit.</i>
15	74	<i>Admit.</i>
16	75	<i>Disputed.</i>
17		<u>Controverting Statement:</u> This statement is misleading because it isolates facts and takes them out of context and does not address other facts that explain what role, if any, a citizen complaint has on the consideration of whether to conduct a saturation patrol.
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19		Defendants dispute the statement, as it is used in Plaintiffs' motion, that any of the citizens' letters or tips cited by the Plaintiffs in their Motion that actually call for racial profiling, or that are fairly perceived as calling for racial profiling or motivated by racial prejudice, ever caused or resulted in Arpaio or the MCSO taking official action such as conducting a saturation patrol. <i>The evidence shows that Defendants determine where to conduct a saturation patrol on race-neutral factors:</i>
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25		MCSO Deputy Chief Brian Sands makes the decision of where, when, and how to do a saturation patrol. <i>See</i> Deposition of Brian Sands dated 12/14/09 at p. 71, Ins. 19-21; p. 79, Ins. 23-25, attached as Exhibit 14.
26		There are a multitude of different law enforcement reasons a saturation patrol is conducted, and conducted in a particular area. <i>Id.</i> at p. 71, Ins. 9-16. The race or ethnicity of people, however, plays no role in Chief
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1 Sands' selection of saturation patrol locations. *Id.* at p. 182, ln. 24 to
 2 p.183, ln. 4. The ethnic constituency in a neighborhood plays **no role** in
 3 selecting locations for saturation patrols. *Id.* at p. 183, lns. 6-15. Even
 4 with an MCSO emphasis on enforcing laws related to illegal
 5 immigration, the MCSO does **not** focus or target areas believed to
 6 contain a high percentage of illegal immigrants. *Id.* at p. 94, ln. 22 to p.
 7 95, ln. 10 (“*the [illegal] immigration problems that we have are so*
 8 *widespread throughout Maricopa County there [are] very few places*
 9 *you can go [on a saturation patrol] where you are not going to*
 10 *encounter an illegal alien.* Whether to focus on a group of people
 11 standing on a corner because they look a certain way is not good practice
 12 and would certainly be easier to just go up and start grabbing people off
 13 the street corner because they are day laborers, but it is not a practice or
 14 anything that we condone in the sheriff’s office.”) (emphasis added); *see*
 15 *also* Deposition of Joseph Sousa dated 12/10/09 at p. 96, ln. 25 to p. 97,
 16 ln. 11, attached as Exhibit 5 (areas for saturation patrols are not selected
 17 because they may have a high concentration of suspected illegal aliens).

18 Sites for saturation patrols are determined based on a combination of the
 19 following types of information or factors:

- 20 • The area’s crime history and statistics. *Id.* at p. 71, lns. 9-16; p.
 21 139, ln. 7 to p.140, ln. 5; p. 142; lns. 5-25; and p. 143, lns. 7-16;
 22 *see also* Deposition of Joseph Sousa dated 12/10/09 at p. 89, lns.
 23 20 to p. 91, ln. 23, attached as Exhibit 5.
- 24 • Intelligence and data regarding possible criminal activity at the
 25 possible site *Id.* at p. 71, lns 9-16; p. 124, ln. 19 to p. 125, ln. 13;
 26 p. 133, lns. 7-19; p. 138, ln. 5 to p. 139, ln. 4; p. 139, ln. 7 to
 27 p.140, ln. 5; p. 142, lns. 5-25; p. 143, lns. 7-16; p. 143, ln. 24 to
 28 p.144, 15; and p.146, ln. 9 to p.147, ln. 15.
- Requests for assistance in a particular area from Arizona
 Legislators and information offered in the request. *Id.* at p. 133,
 ln. 23 to p. 134, ln. 9.
- Requests for assistance from city officials for a particular area.
Id. at p. 71, lns. 9-16.
- Information provided by local police officers from other law
 enforcement agencies. *Id.* at p. 80, ln. 18 to p. 81, ln. 2.
- Requests for assistance from private citizens in the community
 providing information about possible criminal activity; but such
 information provided by private citizens is independently
 evaluated and confirmed by the MCSO. *Id.* at 71, lns. 9-16; p. 79,
 lns.17-22. In evaluating private citizen complaints, there is an
 independent investigation of the complaint made to determine its
 legitimacy and whether there is any basis to do anything. *Id.* at p.

1 82, Ins. 5-23) (“Generally speaking, I [Chief Sands] like to know
 2 what is going on in the community as a whole relative to crime
 3 before we do a saturation patrol.”); *see* Deposition of Joseph
 4 Sousa dated 12/10/09 at p. 86, ln. 3 to p. 88, ln. 11, attached as
 5 Exhibit 5 (discussing the investigation of citizen complaints; that
 6 if the citizen is racially profiling and not describing any criminal
 7 activity, the complaint is rejected; the efforts MCSO takes to
 8 independently evaluate whether criminal activity is taking place);
 Deposition of Brian Sands dated 12/14/09 at p. 81, ln. 3 to p. 85,
 ln. 6, attached as Exhibit 14 (providing a detailed discussion of
 the MCSO rejecting racially motivated tips that provide no
 evidence of criminal activity).

9 More specifically as to how the MCSO handles citizen complaints that
 10 may be made by persons with racial prejudice, Chief Brian Sands
 testified as follows:

11 *“Q. How do you satisfy yourself that a complaint that you are about to*
 12 *act on was not motivated by race or ethnicity?”*

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

17 *Q. So even if you have reason to believe that a complaint may be*
 18 *motivated by racism, you would not discount the complaint solely on that*
 19 *basis?”*

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

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

28 *A. Keep in mind I am not supporting racial or prejudicial attitudes in*
the community at all when I say this, but sometimes the information
sources that we end up using in law enforcement are people that are in
involved in – in criminal elements in their community or neighborhood
they live in and oftentimes these people give us information. It can be
corroborated to solve a murder or human smuggling case, that person
may be, in fact, motivated for 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

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	<p><i>people so we are not going to- we are not going to investigate the crime that he very well be a witness to.”</i></p> <p>Deposition of Brian Sands dated 12/14/09 at p. 82, ln. 24 to p. 84, ln. 12, attached as Exhibit 14 (emphasis added).</p> <p>Chief Sands further testified:</p> <p><i>“Q. Are you aware of your office having received tips relating to illegal immigration that have come from persons or members of groups that have expressed hatred for illegal immigrants?”</i></p> <p><i>A. I don’t typically receive all these tips or the communication so it is hard for me to analyze what motivates people that are giving us information. I will say, though, that I have sat in on meetings over tips that have come in and when there is no need to follow up on something based n the caller’s information and it only attributed—the information is only attributed to somebody’s ethnicity or appearance, we don’t follow up on it. Whether those are racially motivated complaints, I wouldn’t know. But when the information is only such directed towards a group of people or a business or—and just solely on their race or ethnicity, we don’t follow-up on it.”</i></p> <p>Deposition of Brian Sands dated 12/14/09 at p. 84, ln. 24 to p. 85, ln. 16, attached as Exhibit 14 (emphasis added).</p>
18	76 <i>Admit.</i>
19	77 <i>Admit.</i>
20 21 22 23 24 25 26 27 28	<p>78 <i>Disputed.</i></p> <p>Controverting Statement: Defendants do not dispute that private citizen Gina M. authored a letter dated June 24, 2008 that contained the referenced language, and requested a saturation patrol at the area specific, and that she sent that letter to Arpaio. Defendants, however, dispute that: (1) Plaintiffs have fully and accurately characterized the contents of the letter; (2) that Arpaio supposedly agreed with the racially charged language in Gina M.’s letter; and (3) that Gina M.’s letter had a causal link to a saturation patrol that occurred near the area identified in her letter.</p> <p>Gina M.’s letter identified gunshots and criminal activity in the area where she requested a saturation patrol. <i>See</i> Deposition of Joseph M.</p>

1 Arpaio dated 11/16/10 at p. 115, ln. 8 to p. 116, ln. 24, attached as
 2 Exhibit 15. Chief Brian Sands testified that Gina M.'s letter, while
 3 stating her perception that illegal aliens were the cause of crime in the
 4 area did state facts indicative of criminal activity and appropriate of
 5 independent evaluation by the MCSO *See* Deposition of Brian Sands
 6 dated 11/15/10 at p. 97, ln. 19 to p. 98, ln. 16, attached as Exhibit 18.
 7 Chief Sand does not remember if he took any action in response to Gina
 8 M.'s letter. *Id.* at p. 95, lns. 17-19.

9 As for the racially charged language, when Plaintiffs asked Arpaio
 10 whether he agreed with it, Arpaio stated no. Exhibit 15 (Arpaio II Depo)
 11 at p. 118, ln. 8 to p. 119, ln. 2.

12 Finally, as for Plaintiffs' argument that Gina M's letter caused or was a
 13 cause of the MCSO conducting a saturation patrol near the requested
 14 area of 29th Street/Greenway Parkway, that argument is inaccurate. Gina
 15 M's letter requesting a saturation patrol in the area of 29th
 16 Street/Greenway Parkway is dated June 24, 2008. The saturation patrol
 17 that the MCSO conducted that would have possibly covered the area of
 18 29th Street/Greenway Parkway was the MCSO saturation patrol that was
 19 centered at Cave Creek and Bell Road in March, 2008—nearly four
 20 (four) months before Gina M ever wrote her letter. *See* Deposition of
 21 Brian Sands dated 11/15/10 at p. 99, lns. 8-15, attached as Exhibit 18.
 22 While the MCSO conducted other saturation patrols later in time in that
 23 area requested by Gina M, Chief Sands does not recall whether Gina
 24 M.'s letter was used as source for MCSO analysis as to whether to
 25 conduct those saturation patrols. *Id.* at p. 99, ln. 16 to p. 104, ln. 22. At
 26 most, it is possible that the MCSO used Gina M.'s letter in its decision-
 27 making process about whether to do a saturation patrol in the area.
 28 Chief Sands explained:

29 *“Q. If you get a letter like this from a member of the public begging*
 30 *you, or begging the sheriff's office, to come to a particular location,*
 31 *would that play a role in your decision making about where to have a*
 32 *crime saturation patrol?*

33 *A. If there are shots being fired out on an apartment complex on a*
 34 *routine basis, **it might be** something that we'd utilize to do a saturation*
 35 *patrol.*

36 *Q. So you **could have used this letter** in your decision-making process*
 37 *about where to do a saturation patrol?*

38 *A. Oh, certainly. **That's a serious crime. People randomly shooting***

<p>1 2 3 4 5 6 7</p>	<p><i>off guns is and has been a big problem in this community. We've had people murdered by falling bullets. People do get concerned about that. And that's why the state, I think, tow years ago, enacted it as a felony offense."</i></p> <p><i>Id.</i> at p. 104, lns. 3-22 (emphasis added).</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p>
<p>8 9 10 11</p>	<p>79</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 78 set forth above.</p>
<p>12 13 14 15 16 17 18 19 20 21 22 23</p>	<p>80</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute the cited date or portion of Stella C.'s letter and Arpaio's receipt of the same, they do dispute, as Plaintiffs use this statement in their motion, that Arpaio supposedly agreed with the racial language in Stella C.'s letter and/or that Stella's C.'s letter had an causal link to any official MCSO action.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p> <p><u>Objections:</u> Defendants object to document Melendres MCSO 074346, Ex. 19 to Arpaio Depo. II, as inadmissible hearsay without any exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication). <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants further object to the document on the grounds of relevance. The document is immaterial to whether the Fourteenth Amendment rights of the named Plaintiffs were violated.</p>
<p>24 25 26 27 28</p>	<p>81</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute that Arpaio forwarded the May 26, 2009 letter of Stella C. to Chief David Trombi and directed him to keep the letter and contact the author and the letter indicates no criminal activity, they do dispute, as Plaintiffs use this statement in their motion, that Arpaio supposedly agreed with the racial language in Stella C.'s letter and/or that Stella's C.'s letter had an causal</p>

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	<p>link to any official MCSO action.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p>
82	<p><i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute the cited date or portion of Bob and Lynette W's letter, Arpaio's receipt of the same, and that Arpaio forward the letter to Chief Brian Sands, they do dispute, as Plaintiffs use this statement in their motion, that Arpaio supposedly agreed with the contents of the letter and/or that the letter had any causal link to any official MCSO action.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p> <p><u>Objections:</u> Defendants object to document Melendres MCSO 76087, Ex. 21 to Arpaio Depo. II, as inadmissible hearsay without any exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication). <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants further object to the document on the grounds of relevance. The document is immaterial to whether the Fourteenth Amendment rights of the named Plaintiffs were violated.</p>
83	<p><i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute the cited date or portion of Gail V.s letter, and Arpaio's receipt of the same, they do dispute, as Plaintiffs use this statement in their motion, that Arpaio supposedly agreed with the contents of the letter and/or that the letter had any causal link to any official MCSO action.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p> <p><u>Objections:</u> Defendants object to document Melendres MCSO 076091, Ex. 11 to Arpaio Depo. II, as inadmissible hearsay without any exception (Defendants do not object to any comments or notes written</p>

1 2 3 4	by Arpaio on the hearsay communication). <i>See Cox v. Amerigas Propane, Inc.</i> , 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants further object to the document on the grounds of relevance. The document is immaterial to whether the Fourteenth Amendment rights of the named Plaintiffs were violated.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<p>84 <i>Disputed.</i></p> <p><u>Controverting Certificate:</u> While Defendants do not dispute that the letter contained no evidence of criminal activity and that Arpaio wrote the thank you note with the cited language, they dispute that Arpaio supposedly agreed with the contents of the letter and/or that the letter had any causal link to any official MCSO action.</p> <p>Arpaio, via his secretary, normally writes “thank-you” notes or letters to all people that write to him. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15. Arpaio forwards the letter to people in his office when he believes the letter may be of interest to them. <i>Id.</i> at p. 21, ln. 9 to p. 22, ln. 4. The testimony amply demonstrates that Arpaio does not agree with, adopt, or endorse everything that a person writes to him in a letter. <i>Id.</i> at p. 23, lns. 5-23 (“This is their comment, not mine.”); (as to whether he agrees with a comment, “No, I have no idea what he’s talking about.”); (as to whether he disagrees with a comment, “I have no comment at all on that [as to whether he disagreed with a letter’s statement]. Many people write me letter and make different comments and opinions.”)</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 at section (B) set forth above.</p>
21 22 23 24 25 26 27	<p>85 <i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute the cited evidence, they do dispute, as Plaintiffs use this statement in their motion, that Arpaio acted solely on requests from private citizens to conduct saturation patrols. <i>The evidence shows that Defendants determine where to conduct a saturation patrol on race-neutral factors.</i> Defendants herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 at section (B) set forth above.</p>
28	86 <i>Admit in part and disputed in part.</i>

1 2 3 4 5 6 7	<p><u>Controverting Statement:</u> While Defendants admit they conducted a saturation patrol in Sun City on August 13-14, 2008, they deny that the citizen communications contained within statement nos. 82 and 83 were the cause of such patrol and the evidence cited by Plaintiffs does not establish such conclusion. <i>The evidence shows that Defendants determine where to conduct a saturation patrol on race-neutral factors.</i> Defendants herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p>
8 9 10 11 12 13 14	<p>87 <i>Admit.</i></p> <p><u>Objections:</u> Defendants object to document Melendres MCSO 75403-04, Ex. 23 to Arpaio Depo. II, as inadmissible hearsay without any exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication). <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants further object to the document on the grounds of relevance. The document is immaterial to whether the Fourteenth Amendment rights of the named Plaintiffs were violated.</p>
15	<p>88 <i>Admit.</i></p>
16 17 18 19 20 21 22 23 24 25 26 27 28	<p>89 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute this statement as to its accurate description of Chief Brian Sands' testimony, they dispute that it shows racially discriminatory intent or motive of Chief Sands or the MCSO law enforcement policies to enforce law relating to illegal immigration.</p> <p>MCSO deputies testified that it was their professional law enforcement <i>experience</i>, not merely their unfounded beliefs, that most day laborers or most illegal immigrants in Maricopa County are from Mexico. For example, Deputy Louis DiPietro testified that, in his experience, most day laborers in Maricopa County are from Mexico or Central or South America. <i>See</i> Deposition of Louis DiPietro dated 10/21/09 at p. 51, Ins. 2-4, attached as Exhibit 13. Deputy Carlos Rangel, based on his experience, shares this observation. <i>See</i> Deposition of Carlos Rangel dated 10/20/09 at p. 93, ln. 24 to p. 94, ln. 1, attached as Exhibit 11. It is the law enforcement experience of others in the MCSO that most illegal immigrants in Maricopa County originate from Mexico or Central or South America. <i>See, e.g.</i>, Deposition of Manual Madrid dated 10/27/09 at p. 189, Ins. 18-21, attached as Exhibit 10; Deposition of Brett Palmer dated 10/23/09 at p. 30, Ins. 2-16, attached as Exhibit 9; Deposition of</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<p>Brian Sands dated 12/14/09 at p. 94, Ins. 3-6, attached as Exhibit 14; Deposition of Joseph Arpaio dated 11/16/10 at p. 81, Ins 6-18, attached as Exhibit 15 (“In Arizona, because of the proximity to the border, I believe it’s a fact that many people arrested here, in the state of Arizona, border area, may come from Latin America or Mexico.”); Deposition of Joseph Arpaio dated 12/16/09 at p. 9, Ins. 17-23; p. 219, Ins. 1-12, attached as Exhibit 16.</p> <p>This law enforcement experience by MCSO personnel is neither surprising nor indicative of racially discriminatory intent, motive, or animus by those persons. It is undisputed that Arizona is a border state near the Republic of Mexico, Maricopa County is a major human smuggling corridor, and the objective, race-neutral evidence shows that “[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 <i>94 percent</i> of illegal immigrants in Arizona <i>are from Mexico alone</i>, not including the rest of Latin America.” See Defendants’ Statement of Facts (Dkt# 413-1) at Ex. 19 (Dr. Camarota Report) at pg. 14; DSOE (Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, Ins. 13-16 (foundation for his report); <i>see also</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg 49, attached thereto as Exhibit 16 (“<i>Major smuggling corridors have been identified that lead from the Mexico border to Maricopa County and beyond.</i>”); <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
20	<p>90 <i>Disputed.</i></p> <p><u>Controverting Certificate.</u> The evidence that Plaintiffs cite does not support the statement that Arpaio asked for “police action against the day laborers” based on the “intelligence.”</p>
21 22 23 24 25 26 27 28	<p>91 <i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute the cited evidence, they do dispute, as Plaintiffs use this statement in their motion, that Arpaio acted solely on requests from private citizens to conduct saturation patrols. <i>The evidence shows that Defendants determine where to conduct a saturation patrol on race-neutral factors.</i> Defendants herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 at section (B) set</p>

1		forth above.
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3		<u>Objections:</u> Defendants object to document Melendres MCSO 76195,
4		Ex. 22 to Arpaio Depo. II, as inadmissible hearsay without any
5		exception (Defendants do not object to any comments or notes written
6		by Arpaio on the hearsay communication). <i>See Cox v. Amerigas</i>
7		<i>Propane, Inc.</i> , 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants
8		further object to the document on the grounds of relevance. The
9	92	<i>Admit.</i>
10	93	<i>Admit in part and deny in part.</i>
11		<u>Controverting Statement:</u> While Defendants admit they conducted a
12		saturation patrol in Mesa at the cited time periods, they deny that actual
13		or perceived racially prejudiced statement made by third parties were the
14		cause of such patrol and the evidence cited by Plaintiffs does not
15		establish such conclusion. <i>The evidence shows that Defendants</i>
16		<i>determine where to conduct a saturation patrol on race-neutral factors.</i>
17	94	<i>Admit.</i>
18	95	<i>Admit in part and deny in part.</i>
19		<u>Controverting Statement:</u> While Defendants admit they conducted a
20		saturation patrol in Mesa at the cited time periods, they deny that actual
21		or perceived racially-prejudiced statements made by third parties were
22		the cause of such patrol and the evidence cited by Plaintiffs does not
23		establish such conclusion. <i>The evidence shows that Defendants</i>
24		<i>determine where to conduct a saturation patrol on race-neutral factors.</i>
25		Defendants herein incorporate by this reference their Response and
26		Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at
27		section (B) set forth above.
28	96	<i>Disputed.</i>
		<u>Controverting Statement:</u> While Defendants do dispute that the
		MCSO received a letter dated October 3, 2007 from Debora B. that had
		been forwarded by the Town Manager of Queen Creek and that Debora

1 2 3 4 5 6 7 8 9 10 11 12	<p>B. made the cited statements, they deny that actual or perceived racially-prejudiced statements made by third parties were the cause of saturation patrols and the evidence cited by Plaintiffs does not establish such conclusion. <i>The evidence shows that Defendants determine where to conduct a saturation patrol on race-neutral factors.</i> Defendants herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p> <p><u>Objections:</u> Defendants object to document Melendres MCSO 75244-47, Ex. 30 to Arpaio Depo. II, as inadmissible hearsay without any exception (Defendants do not object to any comments or notes written by Arpaio on the hearsay communication). <i>See Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005). Defendants further object to the document on the grounds of relevance. The document is immaterial to whether the Fourteenth Amendment rights of the named Plaintiffs were violated.</p>
13 14 15 16 17 18	<p>97 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While the Defendants do not dispute the cited information, it is misleading as used in Plaintiffs' motion because the evidence shows that Defendants determine where to conduct a saturation patrol on race-neutral factors. Defendants herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p>
19 20 21 22 23 24 25 26 27	<p>98 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that statement, it is misleading and mischaracterizes the evidence. Emails from town council members are just one consideration in determining whether and where to conduct a saturation patrol. Defendants deny that actual or perceived racially- prejudiced statements made by third parties were the cause of such patrol and the evidence cited by Plaintiffs does not establish such conclusion. <i>The evidence shows that Defendants determine where to conduct a saturation patrol on race-neutral factors.</i> Defendants herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 at section (B) set forth above.</p>
28	<p>99 <i>Admit.</i></p>

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100	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that statement, it is misleading and mischaracterizes the evidence. Emails from town council members are just one consideration in determining whether and where to conduct a saturation patrol. Defendants refer the Court to their Response to Plaintiffs’ statement no. 25 at section (B), which is expressly incorporated herein by this reference.</p>
101	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that this statement accurately reflects the opinion of Plaintiffs’ police practices and racial profiling expert Robert Stewart, it lacks foundation, and is misleading and mischaracterizes the evidence.</p> <p>Plaintiffs’ police practices and racial profiling expert, Robert Stewart, testified that he did not draw the conclusion, based on his analysis, that any saturation patrol was unjustified or unwarranted.:</p> <p><i>“Q. Have you formed the opinion that any particular MCSO saturation patrol was unjustified or unwarranted?”</i></p> <p><i>A. Based on crime data?</i></p> <p><i>Q. For any reason.</i></p> <p><i>A. I did not draw that conclusion.”</i></p> <p><i>See Deposition of Robert Stewart at p. 23, Ins. 14-21, attached as Exhibit 17. (emphasis added).</i></p> <p>Defendants police practices expert, Bennie Click, testified that “[t]he method by which the MCSO chooses target areas for saturation patrols is reasonable and is consistent with standard law enforcement practices.” <i>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, In. 24 to p. 342, In. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</i></p> <p>The materials Arpaio forwards, whether racially charged or perceived as</p>

1		racially charged, are forwarded to executive management at MCSO and
2		not line deputies. The communications that contain actual or perceived
3		racially charged information may also contain information showing
4		knowledge of criminal activity. Where it does so, the MCSO conducts its
5		own analysis to verify such information or otherwise determine if some
6		official action is necessary or appropriate. If the communications contain
7		on racially offensive information, nothing becomes of the
8	102	<i>Admit.</i>
9	103	<i>Admit.</i>
10	104	<i>Disputed.</i>
11		The MCSO's police practices expert, Mr. Bennie Click, testified to a
12		reasonable degree of probability in his field of expertise that that
13		MCSO's use of saturation patrols is a long-standing, common, and
14		reasonable tool of law enforcement, and that is an agency policy decision
15		as to what particular problem to address with a saturation patrol. More
16		specifically, Mr. Click testified:
17		<i>"Saturation patrol operations have long been an accepted strategy</i>
18		<i>used by law enforcement agencies to address specific crime problems</i>
19		<i>in a particular location. They generally are of short duration, nor more</i>
20		<i>than several days, because the additional personnel needed for the</i>
21		<i>operation are taken from other assignments. Historically, saturation</i>
22		<i>patrols have targeted gangs, drugs, alcohol, DUI, and curfew violations.</i>
23		<i>They are also used to address traffic issues such as high collision</i>
24		<i>locations. The saturation patrols not only address crime problems, but</i>
25		<i>also reassure the residents and businesses that their crime concerns are</i>
26		<i>being addressed. A strong law enforcement presence also deters crime</i>
27		<i>in the area. Saturation patrols play an important role in the practice of</i>
28		<i>community policing. It is an agency policy decision to use saturation</i>
		<i>patrols to address a particular problem.</i>
		<i>Saturation patrols/crime suppression/task force operations usually</i>
		<i>involve officers making increased number of lawful traffic stops and</i>
		<i>street contacts. The goal of these lawful stops and contacts is [to]</i>
		<i>discover other crime. This can also have a deterrent effect. Lawful</i>
		<i>stops and contacts is also used to gather intelligence about criminal</i>
		<i>activity.</i>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	<p><i>The specific criminal activity that is identified as the focus of a saturation patrol operations is any agency policy decision. This is a common law enforcement practice. The Sheriff has the authority to designate illegal immigration an enforcement priority.</i></p> <p><i>Arizona's proximity to the Mexican border results in enforcement issues not faced by non-border states. Major smuggling corridors have been identified that lead from the Mexico border to Maricopa County and beyond. This can result in different and reasonable law enforcement policies in Maricopa County than in other parts of the country. Arizona has specific immigration-related statutes that many other states do not have. These statutes make certain immigration related activities a crime and therefore can impact agency policies.</i></p> <p>See Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 46 and 48-49, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
16 17 18 19 20 21	<p>105 <i>Disputed.</i></p> <p><u>Controverting Statement.</u> This statement is misleading and takes the testimony of Defendants' expert Bennie R. Click out of context to suggest that Defendants, namely Arpaio, are improperly using saturation patrols to deal with crime, and problems associated with illegal immigration. Defendants, therefore, refer the Court to their response above to paragraph no. 104 and incorporate the same herein by this reference.</p>
22 23 24 25 26	<p>106 <i>Admit with clarification.</i></p> <p>MCSO deputies were instructed to look for all violations of the traffic and motor vehicle code. See, e.g., Madrid Depo I at p. 221, lns. 16-23 (traffic stops)(Hickey Dec. Ex. 50); Palmer Depo. I at p. 57, ln. 12 to p. 58, ln. 16 (traffic stops) (Hickey Dec. Ex. 56); Kikes Depo at p. 47, ln. 4 to p. 49, ln. 15 (traffic stops) (Hickey Dec. Ex. 49).</p>
27 28	<p>107 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that they did not conduct so-called comparative analysis of crime or traffic</p>

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hazards to determine a saturation patrol or selection of a site for the patrol, they dispute this statement as used in the motion. The evidence shows that saturation patrols were selected based on a number of race-neutral factors. *See* Defendants’ Response and Controverting Statement as to Plaintiffs’ Statement of Fact Nos. 25 and 112, and expressly incorporated herein by this reference (MCSO used statistics and crime data). In addition, Plaintiffs’ police practices and racial profiling expert, Robert Stewart, testified that he did not draw the conclusion, based on his analysis, that any saturation patrol was unjustified or unwarranted:.

“*Q. Have you formed the opinion that any particular MCSO saturation patrol was unjustified or unwarranted?*”

A. Based on crime data?

Q. For any reason.

A. I did not draw that conclusion.”

See Deposition of Robert Stewart at p. 23, lns. 14-21, attached as Exhibit 17. (emphasis added).

Defendants police practices expert, Bennie Click, testified that “[t]he method by which the MCSO chooses target area for saturation patrols is reasonable and is consistent with standard law enforcement practices.” *See* Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).

Objection: Defendants object to Plaintiffs’ statement because it is irrelevant to the site selection for a saturation patrol.

108 *Admit.*

109 *Admit.*

110 *Disputed.*

Controverting Statement: This statement is misleading as stated and as used in the motion. The cited testimony does not establish that the cited MCSO deputies understood that “*the focus*” of saturation patrols

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	<p>was on illegal immigration. Instead, the testimony demonstrates that the cited MCSO deputies understood that “<i>one of the purposes</i>” or one of the focuses of the saturation patrols in which they were involved was illegal immigration. In addition, Plaintiffs’ statement here directly conflicts with their own proffered statement of fact at paragraph 102, above (“In this litigation, some MCSO officers have taken the position that the saturation patrols are designed to address crime generally. Officers were instructed to simply ‘enforce the law’ or ‘enforce the traffic laws.’”).</p> <p>Defendants’ police practice expert Mr. Bennie Click testified that “[i]t is an agency policy decision to use saturation patrols to address a particular problem,” Arpaio “has the authority to designate illegal immigration an enforcement priority,” “Arizona’s proximity to the Mexican border results in enforcement issues not faced by non-border states,” and Arizona law “make certain immigration related activities a crime and therefore can impact agency policies.” See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 46 and 48-49, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
17	111 <i>Admit.</i>
18 19 20 21 22 23 24 25 26 27 28	<p>112 <u><i>Disputed.</i></u></p> <p><u>Controverting Statement:</u> MCSO Deputy Chief Brian Sands makes the decision of where, when, and how to do a saturation patrol. See Deposition of Brian Sands dated 12/14/09 at p. 71, Ins. 19-21; p. 79, Ins. 23-25, attached as Exhibit 14. Chief Sands does not select locations for saturation patrols because of the sole factor that there are day-laborers, or so-called day-laborers at a particular location. <i>Id.</i> at p. 183, Ins. 16-20. While some saturation patrols involved day laborers, every saturation patrol in an area with day laborers was conducted because there were other factors related to criminal activity which guided Chief Brian Sands’ decision to conduct a particular saturation patrol at a particular location. <i>Id.</i> at p. 183, Ins. 21-25; see also Deposition of Manuel Madrid dated 10/27/09 at p. 86, ln. 17 to p. 87, ln. 4, attached as Exhibit 10 (day laborers at site of saturation patrol had been harassing children going to school); Deposition of Joseph Sousa dated 12/10/09 at p. 111, ln. 11 to p. 112, ln. 1, attached as Exhibit 5 (day laborers at site</p>

1 of saturation patrol were being aggressive toward other citizens; day
 2 laborers congregating in area were “making catcalls at little girls;” ICE
 3 advised MCSO “that day laborers were also being forced to work human
 4 smuggling charges off.”); Deposition of Joseph Sousa dated 12/10/09 at
 5 p. 94, Ins. 20-24, attached as Exhibit 5 (sites are not selected because
 6 they have a high concentration of day laborers); *Id.* at p. 96, ln. 25 to p.
 7 97, ln. 3 (site for saturation patrols also are not selected because they
 8 may have a high concentration of suspected illegal immigrants); *see also*
 9 Defendants’ Statement of Facts (Dkt#413-1) at ¶ 12 (On September 26,
 10 2007, the MCSO Human Smuggling Unit (“HSU”) was in Cave Creek,
 Arizona investigating a particular church building/parking lot in
 response to citizen complaints that the church or its grounds may be
 serving as a possible “drop house” for human smuggling and because
 “day laborers” congregating or loitering near the church were stepping
 into the traffic lanes of Cave Creek Road and causing traffic problems.).

11 113

Disputed.

Controverting Statement: The cited MCSO deputies testified that it
 was their professional law enforcement *experience*, not merely their
 unfounded beliefs, that most day laborers or most illegal immigrants in
 Maricopa County are from Mexico. For example, Deputy Louis
 DiPietro testified that, in his experience, most day laborers in Maricopa
 County are from Mexico or Central or South America. *See* Deposition
 of Louis DiPietro dated 10/21/09 at p. 51, Ins. 2-4, attached as Exhibit
 13. Deputy Carlos Rangel, based on his experience, shares this
 observation. *See* Deposition of Carlos Rangel dated 10/20/09 at p. 93,
 ln. 24 to p. 94, ln. 1, attached as Exhibit 11. It is the law enforcement
 experience of others in the MCSO that most illegal immigrants in
 Maricopa County originate from Mexico or Central or South America.
See, e.g., Deposition of Manual Madrid dated 10/27/09 at p. 189, Ins. 18-
 21, attached as Exhibit 10; Deposition of Brett Palmer dated 10/23/09 at
 p. 30, Ins. 2-16, attached as Exhibit 9; Deposition of Brian Sands dated
 12/14/09 at p. 94, Ins. 3-6, attached as Exhibit 14; Deposition of Joseph
 Arpaio dated 11/16/10 at p. 81, Ins 6-18, attached as Exhibit 15 (“In
 Arizona, because of the proximity to the border, I believe it’s a fact that
 many people arrested here, in the state of Arizona, border area, may
 come from Latin America or Mexico.”); Deposition of Joseph Arpaio
 dated 12/16/09 at p. 9, Ins. 17-23; p. 219, Ins. 1-12, attached as Exhibit
 16.

This experience by MCSO personnel is neither surprising nor indicative
 of racially discriminatory intent, motive, or animus by those persons. It

1 2 3 4 5 6 7 8 9 10 11 12 13	<p>is undisputed that Arizona is a border state near the Republic of Mexico, Maricopa County is a major human smuggling corridor, and the objective, race-neutral evidence shows that “[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 <i>94 percent</i> of illegal immigrants in Arizona <i>are from Mexico alone</i>, not including the rest of Latin America.” See Defendants’ Statement of Facts (Dkt# 413-1) at Ex. 19 (Dr. Camarota Report) at pg. 14; DSOF (Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, lns. 13-16 (foundation for his report); <i>see also</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg 49, attached thereto as Exhibit 16 (“<i>Major smuggling corridors have been identified that lead from the Mexico border to Maricopa County and beyond.</i>”); <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
14	<p>114 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> Defendants dispute this statement for the same reasons the dispute statement No. 115 below, and therefore refer the Court to Defendants’ Response to statement No. 115, which is expressly incorporated herein by this reference.</p>
18 19 20 21 22 23 24 25 26 27 28	<p>115 <i>Disputed.</i></p> <p><u>Controverting Statement.</u> This statement is misleading as stated and as used in the motion because Plaintiffs suggest that MCSO traffic stops are based on the race or ethnicity of the driver or the occupants of the vehicle. That is not true.</p> <p>The MCSO does not use race as an indicator or factor to initiate or make vehicle stops. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7; p. 145, lns. 12-25; p. 150, ln. 25 to p. 151, ln. 3, attached as Exhibit 9.</p> <p>The MCSO makes only lawful traffic stops based on probable cause or reasonable suspicion that a violation of the traffic code or vehicle code exists. <i>See, e.g.,</i> Defendants’ Statement of Facts (Dkt#413-1) at ¶¶ 17, and 107-109 (Deputy DiPietro had probable cause to stop the truck in which Plaintiff Melendres was a passenger); at ¶¶ 44-45, 51-52, and 113-</p>

1 116 (Deputy Ratcliffe had probable cause to stop the Plaintiff Rodriguez
2 truck because it was driving on a closed road); and at ¶¶ 117-119
3 (Deputy Kikes had either probable cause or reasonable suspicion to stop
4 the Plaintiffs Meraz and Nieto).

5 Plaintiffs' use of the term "pre-textual traffic stops" has a negative
6 implication that is not consistent with the law permitting, under Fourth
7 Amendment analysis, the police to make lawful traffic stops even if the
8 subjective intent of the stopping officer is to discover another crime. *See*
9 *Whren v. United States*, 517 U.S. 806, 810 (1996) (subjective intentions
10 or motivations of the stopping officer in making the traffic stop is
11 irrelevant under Fourth Amendment analysis); *United States v.*
12 *Robinson*, 414 U.S. 218, 221 n.1 (1973) ("a traffic violation arrest would
13 not be rendered invalid under the Fourth Amendment by the fact that it
14 was a mere pretext for a narcotics search."); *United States v. Ramirez*,
15 473 F.3d 1026, 1030-31 (9th Cir. 2007) (pre-textual traffic stops based
16 on probable cause that are also motivated by some other reason do not
17 violate Fourth Amendment); *United States v. Willis*, 431 F.3d 709, 715
18 (9th Cir. 2005) (same); *Rodriquez v. California Highway Patrol*, 89
19 F.Supp.2d 1131, 1139 (N.D. Cal. 2000) (same).

20 Even Plaintiffs' police practices/racial profiling expert, Robert L.
21 Stewart admits that a traffic stop can be made for probable cause even if
22 the stopping police officer has some other motivation to stop the
23 motorist. *See* Deposition of Robert L. Stewart at p. 36, Ins. 13-16; p.
24 115, Ins. 4-8; p. 118, Ins. 10-14, attached as Exhibit 17.

25 The MCSO's police practices expert, Mr. Bennie Click, testified to a
26 reasonably degree of probability in his field of expertise that MCSO's
27 use of traffic stops as an element of saturation patrols is a long-standing,
28 common, and reasonable tool of law enforcement, and that is an agency
policy decision as to what particular problem to address with a saturation
patrol. More specifically, Mr. Click testified:

"Saturation patrol operations have long been an accepted strategy used by law enforcement agencies to address specific crime problems in a particular location. They generally are of short duration, nor more than several days, because the additional personnel needed for the operation are taken from other assignments. Historically, saturation patrols have targeted gangs, drugs, alcohol, DUI, and curfew violations. They are also used to address traffic issues such as high collision locations. The saturation patrols not only address crime problems, but also reassure the residents and businesses that their crime concerns are being addressed. A strong law enforcement presence also deters crime

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*in the area. Saturation patrols play an important role in the practice of community policing. **It is an agency policy decision to use saturation patrols to address a particular problem.***

*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 activity.***

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

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

See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 46 and 48-49, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).

116 **Admit.**

117 **Disputed.**
Controverting Statement: While Defendants do not dispute that on some saturation patrols undercover units would identify vehicles that were suspected of being engaged in the human smuggling of illegal immigrants, an Arizona crime, they dispute that they were targeting “day laborers” solely because they were “day laborers.”
MCSO Deputy Chief Brian Sands makes the decision of where, when,

1 and how to do a saturation patrol. *See* Deposition of Brian Sands dated
2 12/14/09 at p. 71, Ins. 19-21; p. 79, Ins. 23-25, attached as Exhibit 14.
3 Chief Sands does **not** select locations for saturation patrols because of
4 the sole factor that there are day-laborers, or so-called day-laborers at a
5 particular location. *Id.* at p. 183, Ins. 16-20. While some saturation
6 patrols involved day laborers, every saturation patrol in an area with day
7 laborers was conducted because there *were other factors related to*
8 *criminal activity* which guided Chief Brian Sands' decision to conduct a
9 particular saturation patrol at a particular location. *Id.* at p. 183, Ins. 21-
10 25; *see also* Deposition of Manuel Madrid dated 10/27/09 at p. 86, ln. 17
11 to p. 87, ln. 4, attached as Exhibit 10 (day laborers at site of saturation
12 patrol had been harassing children going to school); Deposition of
13 Joseph Sousa dated 12/10/09 at p. 111, ln. 11 to p. 112, ln. 1, attached as
14 Exhibit 5 (day laborers at site of saturation patrol were being aggressive
15 toward other citizens; day laborers congregating in area were "making
16 catcalls at little girls;" ICE advised MCSO "that day laborers were also
17 being forced to work human smuggling charges off."); Deposition of
18 Joseph Sousa dated 12/10/09 at p. 94, Ins. 20-24, attached as Exhibit 5
19 (sites are not selected because they have a high concentration of day
20 laborers); *Id.* at p. 96, ln. 25 to p. 97, ln. 3 (site for saturation patrols also
21 are not selected because they may have a high concentration of
22 suspected illegal immigrants); *see also* Defendants' Statement of Facts
23 (Dkt#413-1) at ¶ 12 (On September 26, 2007, the MCSO Human
24 Smuggling Unit ("HSU") was in Cave Creek, Arizona investigating a
25 particular church building/parking lot in response to citizen complaints
26 that the church or its grounds may be serving as a possible "drop house"
27 for human smuggling and because "day laborers" congregating or
28 loitering near the church were stepping into the traffic lanes of Cave
Creek Road and causing traffic problems.).

Several MCSO deputies testified that it was their professional law
enforcement *experience*, that most day laborers or most illegal
immigrants in Maricopa County are from Mexico. For example, Deputy
Louis DiPietro testified that, in his experience, most day laborers in
Maricopa County are from Mexico or Central or South America. *See*
Deposition of Louis DiPietro dated 10/21/09 at p. 51, Ins. 2-4, attached
as Exhibit 13. Deputy Carlos Rangel, based on his experience, shares
this observation. *See* Deposition of Carlos Rangel dated 10/20/09 at p.
93, ln. 24 to p. 94, ln. 1, attached as Exhibit 11. It is the law
enforcement experience of others in the MCSO that most illegal
immigrants in Maricopa County originate from Mexico or Central or
South America. *See, e.g.,* Deposition of Manuel Madrid dated 10/27/09
at p. 189, Ins. 18-21, attached as Exhibit 10; Deposition of Brett Palmer
dated 10/23/09 at p. 30, Ins. 2-16, attached as Exhibit 9; Deposition of

1		Brian Sands dated 12/14/09 at p. 94, Ins. 3-6, attached as Exhibit 14;
2		Deposition of Joseph Arpaio dated 11/16/10 at p. 81, Ins 6-18, attached
3		as Exhibit 15 (“In Arizona, because of the proximity to the border, I
4		believe it’s a fact that many people arrested here, in the state of Arizona,
5		border area, may come from Latin America or Mexico.”); Deposition of
6		Joseph Arpaio dated 12/16/09 at p. 9, Ins. 17-23; p. 219, Ins. 1-12,
7		attached as Exhibit 16.
8		This experience by MCSO personnel is not indicative of racially
9		discriminatory intent, motive, or animus by those persons. It is
10		undisputed that Arizona is a border state near the Republic of Mexico,
11		Maricopa County is a major human smuggling corridor, and the
12		objective, race-neutral evidence shows that “[i]t is well established that
13		illegal immigrants in Arizona and in the United States as a whole are
14		overwhelmingly Hispanic. The Pew Hispanic Center has estimated that
15		94 percent of illegal immigrants in Arizona are from Mexico alone,
16		not including the rest of Latin America.” See Defendants’ Statement of
17		Facts (Dkt# 413-1) at Ex. 19 (Dr. Camarota Report) at pg. 14; DSOF
18		(Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, Ins. 13-16
19		(foundation for his report); <i>see also</i> Defendants’ Statement of Facts
20	118	(Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg 49,
21	119	attached thereto as Exhibit 16 (“ Major smuggling corridors have been
22	120	identified that lead from the Mexico border to Maricopa County and
23		beyond.”); <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben
24		Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to
25		Dkt#413-1 (wherein Mr. Click testified to the foundation for his
26		opinions and that his opinions in the report were the same he would
27		provide at trial to a reasonable degree of probability in his field of
28		expertise).
	118	<i>Admit.</i>
	119	<i>Admit.</i>
	120	<i>Disputed.</i>
		<u>Controverting statement:</u> While Defendants do not dispute that Chief
		Brian Sands testified that “it is difficult to have a so-called zero tolerance
		policy on traffic stops,” Plaintiffs’ statement as used in the motion is
		misleading and takes Chief Sands’ testimony out of context. Chief
		Sands did not testify that the zero tolerance policy was not in effect or
		used during traffic stops, he was merely testifying to the realities in
		Maricopa County that it was difficult to apply the policy to each and
		every traffic violation given the traffic volume in Maricopa County and
		the volume of violations experienced by deputies.

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3 In proper context, Chief Sands testified that because there is so much
4 traffic, “[t]he zero tolerance [as to traffic stops] is not a hard and fast
5 rule that you will make every traffic violator that you see. **You may only**
6 **have the opportunity to stop one of three at the same given time.** So in
7 itself, it is difficult to have a so-called zero tolerance policy on traffic
8 stops.” See Deposition of Brian Sands dated 12/14/09 at p. 123, lns. 9-
9 17, attached as 14; see also p. 123, ln. 18 to p. 124, ln. 18 (questions that
10 immediately follow address that the goal is to stop as many vehicles as
11 possible).

12 Plaintiffs’ citation to the testimony of MCSO Deputy Ramon
13 Armendariz also is taken wholly out of context. Plaintiffs *never*
14 questioned Deputy Armendariz about the zero tolerance policy during
15 saturation patrols. In fact, when Plaintiffs questioned Deputy
16 Armendariz about his discretion used during traffic stops, the line of
17 questioning was *not* related to saturation patrols **or** his later membership
18 in the Human Smuggling Unit, but to his every-day traffic patrol
19 operations during his prior assignment to the MCSO Special Assistance
20 Unit (“SAU”) for Maricopa County District. See deposition of Ramon
21 Armendariz dated 11/24/09 at p. 26, ln. 13 to p. 30, ln. 10, attached as
22 Exhibit 21.

23 **There was a zero tolerance policy for traffic stops during saturation**
24 **patrols:** i.e., a deputy that observed a moving violation or equipment
25 code violation would be required to stop the vehicle. See Deposition of
26 Brett Palmer dated 10/23/09 at p.56, ln. 2 to p. 58, ln. 16, attached as
27 Exhibit 9 (zero tolerance policy on saturation patrols adopted to try to
28 stop every vehicle with a violation and write tickets to all to avoid
charges of racial profiling); see also p. 94, ln. 20 to p. 95, ln. 1 (zero
tolerance policy for any traffic or vehicle violations); p. 98, ln. 18 to p.
99, ln. 17 (the zero tolerance for arrests made and the zero tolerance
policy for traffic violators); see also Deposition of Manuel Madrid dated
10/27/09 at p. 125, ln. 12 to p. 127, ln. 7, attached as Exhibit 10 (on large
scale saturation patrols, there was a zero tolerance policy to pull over
and cite all infractions); p. 130, lns. 18-23 (same); see also Deposition of
Joseph Sousa dated 12/10/09 at p. 144, lns. 22-25 (on zero tolerance
operation, any vehicle that is observed to violate the vehicle or traffic
code that can be stopped will be stopped).

Defense police practices expert Bennie Click testified:

“In order to reduce the potential of racial profiling during saturation

<p>1 2 3 4 5 6 7 8</p>	<p><i>patrol operations, supervisors reasonably and appropriately instituted a zero tolerance policy requiring all violators be stopped. This is a reasonable practice. Zero tolerance removed the deputies' discretion to pick and choose who they stopped."</i></p> <p>See Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg 46, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
<p>9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>121</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> The MCSO's police practices expert, Mr. Bennie Click, testified to a reasonable degree of probability in his field of expertise that that MCSO acted reasonably and appropriately in instituting a zero tolerance policy in an effort to reduce the potential for racial profiling during saturation patrols. Mr. Click testified:</p> <p><i>"In order to reduce the potential of racial profiling during saturation patrol operations, supervisors reasonably and appropriately instituted a zero tolerance policy requiring all violators be stopped. This is a reasonable practice. Zero tolerance removed the deputies' discretion to pick and chose who they stopped. Sergeant [Manuel] Madrid reasonably instituted a policy in the HSU [Human Smuggling Unit] that all passengers in vehicles that had been stopped would be contacted. He stated that this was done to avoid the appearance that deputies could pick and chose whom they contacted."</i></p> <p>See Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 46 attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
<p>25 26 27 28</p>	<p>122</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> The MCSO's police practices expert, Mr. Bennie Click, testified to a reasonable degree of probability in his field of expertise that that MCSO acted reasonably and appropriately in instituting a zero tolerance policy in an effort to reduce the potential for</p>

1 racial profiling during saturation patrols. Mr. Click testified:

2 *“In order to reduce the potential of racial profiling during saturation*
3 *patrol operations, supervisors reasonably and appropriately instituted a*
4 *zero tolerance policy requiring all violators be stopped. This is a*
5 *reasonable practice. Zero tolerance removed the deputies’ discretion to*
6 *pick and chose who they stopped. Sergeant [Manuel] Madrid*
7 *reasonably instituted a policy in the HSU [Human Smuggling Unit] that*
8 *all passengers in vehicles that had been stopped would be contacted. He*
9 *stated that this was done to avoid the appearance that deputies could*
10 *pick and chose whom they contacted.”*

11 See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben
12 Click dated January 21, 2011, at pg. 46 attached thereto as Exhibit 16;
13 see also March 18, 2011 Deposition of Defense Expert Ben Click at p.
14 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1
15 (wherein Mr. Click testified to the foundation for his opinions and that
16 his opinions in the report were the same he would provide at trial to a
17 reasonable degree of probability in his field of expertise).

18 In addition, the MCSO’s police practices expert, Mr. Bennie Click,
19 testified to a reasonable degree of probability in his field of expertise
20 that that MCSO acted reasonably and appropriately in not collecting data
21 about the ethnicity of persons stopped or contacted by the MCSO. Mr.
22 Click testified:

23 *“The racial profiling issue pivots on the question of whether collecting*
24 *information on each police contact/encounter will determine if racial*
25 *profiling exists. Many agencies do not collect such data because they*
26 *feel the information will be misinterpreted and have a chilling effect on*
27 *law enforcement activity, putting the communities’ safety at great risk.*
28 *Not collective this data [as opined by Plaintiffs’ expert Mr. Stewart]*
does not fall below the standard of care. The collection of data is a
policy decision for each agency. There are numerous factors that may
any evaluation of this data difficult at best. These include such as
community demographics, officer experience level, officer training,
officer performance history, officer work ethic, location assigned,
traffic/pedestrian volume, different duties, call volume and the nature of
investigations officer can be involved in.

Mandated data collection is suspect when used to determine the race or
ethnicity of persons officer stopped. In many instances, a person’s race
or ethnicity is not obvious. Race may be easier to determine because of
kin color, however, ethnicity is less apparent. Many people have

<p>1 2 3 4 5 6 7 8 9 10</p>	<p><i>surnames that are not indicative of their ethnicity. A number of ethnic groups have similar physical characteristics. Most countries have citizens of various races and ethnicities and country of origin may be misleading. Even self-identification is problematic because of the increasing number of persons with mixed racial and ethnic backgrounds. Officers misidentifying a person’s race or ethnicity can be controversial in itself and could create a perception of a racially or ethnically insensitive department.”</i></p> <p><i>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 45-46 attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</i></p>
<p>11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>123 <i>Disputed.</i></p> <p><i>Controverting Statement.</i> While Defendants do not dispute that they did not perform a data analysis to ensure that the zero tolerance was being applied, they dispute that they did nothing to ensure that its saturation patrols were conducted professionally and lawfully. The MCSO conducts a debriefing after each operation to identify any issues that need to be addressed in future operations. <i>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise). The nature of the debriefing and what is included in an after-action report is ultimately a decision made by the Sheriff or his designee. Id.</i></p>
<p>23 24 25</p>	<p>124 <i>Admit in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> Defendants do not deny this statement as it relates to regular operations but dispute it as to traffic enforcement techniques during special operations such as saturation patrols.</p>
<p>26 27 28</p>	<p>125 <i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute that the cited statement contains the opinions of Plaintiffs’ law enforcement</p>

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expert Robert Taylor, this statement is disputed as used in Plaintiffs' motion.

The duties of the MCSO Human Smuggling Unit during saturation patrols is to go out and enforce all traffic laws and, in the course of enforcing all traffic laws, any criminal offenders are taken into custody and booked. *See* Deposition of Joseph Sousa dated 12/10/09 at p. 25, Ins. 20-24, attached as Exhibit 5.

The finding of illegal immigrants during saturation patrols is a secondary result of the patrol. *Id.* at p. 38, Ins. 6-20; see also p. 39, Ins. 5-11.

“When we have a crime suppression operation, we – our intent is to go out and saturate the area that we are targeting and the effect is to arrest as many violators of the law as you can. With the [illegal] immigration problem as large as it is in our community, the probability seems to be quite high that you are going to encounter people that are here illegally as you arrest people.” *See* Deposition of Brian Sands dated 12/14/09 at p. 86, ln. 21 to p. 87, ln. 6, attached as Exhibit 14.

126

Disputed.

Controverting Statement. The cited section does not pertain to motor vehicle stops during saturation patrols involving a 287(g) certified officer. The authority cited by Plaintiffs makes the distinction clear between questioning conducted by a 287(g) certified MCSO deputy and a non-certified deputy.

During saturation patrols, to avoid charges of selective enforcement, MCSO deputies would ask all passengers for identification. *See* Deposition of Bennie Click at p. 228, ln. 4 to p. 229, ln. 17, attached as Exhibit 20.

This was a reasonable and proper law enforcement practice. *See* Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 48, attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).

In addition, Mr. Alonzo Pena, the Special Agent in Charge for ICE

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	<p>Phoenix testified that it was completely proper for MCSO deputies to make traffic stops of motorists under Arizona law and call for a 287(g) certified deputy if the deputy that made the traffic stop had reasonable suspicion that someone in the stopped vehicle might be unlawfully present in the country. <i>See</i> Deposition Alonzo Pena at p. 167, ln. 1 to p. 168, ln. 22, attached as Ex. 1.</p> <p>Finally, Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that Arpaio had the authority under the ICE-MCO Memorandum of Agreement to do pure immigration enforcement. Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 159, lns. 13-20 (the MOA “does not limit the type of enforcement”), attached as Exhibit 2.</p> <p>Both federal and state officials with wide discretion to ask persons about immigration status. <i>INS v. Delgado</i>, 466 U.S. 210, 212 (1984) (immigration officers could question an individual although they lacked reasonable suspicion that the individual was an illegal alien); <i>Muehler v. Mena</i>, 544 U.S. 93, 101 (2005) (“[M]ere police questing does not constitute a seizure.... Hence, the officers did not need reasonable suspicion to ask Mena for her name, date and place of birth, or immigration status.”).</p>
16 17 18 19 20	<p>127 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute this statement, it is misleading and taken out of context as used in Plaintiffs’ motion. The Court is referred to Defendants’ response to Plaintiffs’ statement no. 126, immediately above, which is expressly incorporated contained herein by this reference.</p>
21 22 23 24 25 26 27 28	<p>128 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> The cited testimony of Lt. Joe Sousa of the Human Smuggling Unit is misleading and taken out of context. While Lt. Sousa testified that MCSO deputies have wide discretion to question passengers on immigration violations, this testimony was, in proper context, in reference to MCSO 287(g) certified deputies. <i>See</i> Deposition of Joseph Sousa dated 12/10/09 at p. 74, ln. 25 to p. 79, ln. 2, attached as Exhibit 5 (making clear that Sousa is discussing the discretion of 287(g) certified deputies).</p> <p>The law also provides both federal and state officials have wide</p>

1 2 3 4 5	discretion to ask persons about immigration status. <i>INS v. Delgado</i> , 466 U.S. 210, 212 (1984) (immigration officers could question an individual although they lacked reasonable suspicion that the individual was an illegal alien); <i>Muehler v. Mena</i> , 544 U.S. 93, 101 (2005) (“[M]ere police questioning does not constitute a seizure.... Hence, the officers did not need reasonable suspicion to ask Mena for her name, date and place of birth, or immigration status.”).
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>129 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio and defense expert Bennie Click did not identify a specific MCSO written policy limited only to the prohibition of racial profiling, this statement as used in the motion is misleading and taken out of context.</p> <ul style="list-style-type: none"> • The MCSO has a policy prohibiting racial profiling. <i>See</i> Deposition of Brian Sands dated 12/14/09 at p. 194, lns. 14-17, attached as Exhibit 14. • The MCSO instructs each of its deputies that are to participate in a saturation patrol during the pre-saturation patrol briefing that they are not to racially profile any person during the up-coming saturation patrol that day. <i>Id.</i> at p. 194, lns. 18-21; <i>see also</i> p. 195, lns. 2-5. • Each MCSO deputy has undergone education and training about the improper and unlawful use of race in law enforcement, i.e., racial profiling, while at the police academy at the start of their law enforcement careers. <i>Id.</i> at p. 194, ln. 22 to p. 195, ln. 1. When the deputy graduates from the police academy and joins the MCSO for active duty, he or she is taught about the MCSO policy and prohibition against racial profiling. <i>Id.</i> • Each MCSO deputy that underwent ICE education and training to become 287(g) certified to enforce federal immigration law learned about the law enforcement prohibition against racial profiling. <i>Id.</i> at p. 195, lns. 6-10. • Defendants’ expert Bennie Click testified: “The MCSO maintains comprehensive and detailed policies and procedures that all personnel are required to have a working knowledge of. A number of MCSO policies prohibit racial profiling. The MCSO policies are reasonable and conform to nationally

1 2 3 4 5 6	<p>recognized standards.” See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44, attached thereto as Exhibit 16; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
7 8 9 10 11 12	<p>130 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that these specific policies do not contain a dedicated policy against racial profiling, this statement as used in the motion is misleading and taken out of context. Defendants refer the Court to their response to Plaintiffs’ statement no. 129, above, and expressly incorporate the same herein by this reference.</p>
13	<p>131 <i>Admit.</i></p>
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>132 <i>Disputed.</i></p> <p><u>Controverting Statement.</u> While the Defendants do not dispute the fact that not all of the early MCSO Operations Plans for saturation patrols contained a specific prohibition reminding MCSO deputies of the prohibition against racial profiling, and that not all the deputies participating in a given saturation patrol received a copy of the Operations Plan, the Defendants dispute the statement that the MCSO’s prohibition and policy against racial profiling was ever confusing to any of its deputies or that the operation plan was not read to the deputies or not understood. As stated by defense police practices expert Bennie Click:</p> <p><i>“Every MCSO deputy and supervisor deposed understood, without equivocation, that 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.”</i></p> <p>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44, attached thereto as Exhibit 16; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a</p>

1 2 3 4 5 6 7 8	<p>reasonable degree of probability in his field of expertise).</p> <p>Although every deputy may not have received a copy of the plan, “<i>the operations plans were read to each participant and/or they received a copy.</i>” <i>Id.</i> at 47 (click Report). The “<i>Operations Plans were reasonable and met the standard of care. There is no evidence that there was confusion over the objective of the operations, personnel assignments or the specific duties to be performed.</i>” <i>Id.</i></p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 25 as section (A) set forth above.</p>
9 10	133 <i>Admit.</i>
11 12 13 14 15 16 17 18	<p>134 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> Former ICE Special Agent in Charge, Phoenix, Mr. Alonzo Pena testified that ICE 287(g) certification program provides a five-week curriculum to attendees that specifically includes training on the subjects of racial profiling and the civil rights of people. <i>See</i> Deposition of Alonzo Pena (former ICE SAC Phoenix) at p. 28, ln. 231, ln. 21 to p. 235, ln. 1; p. 243, ln. 24 to p. 245, ln. 5, attached as Ex. 1; <i>see also</i> Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 23, ln. 6 to p. 24, ln. 6, attached as Exhibit 2.</p> <p><u>Objections:</u> The document ORT1292 is inadmissible hearsay that does not qualify for an exception.</p>
19 20 21 22 23 24 25 26 27 28	<p>135 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute the accuracy of the statement, the statement is misleading and taken out of context as it is used in the Plaintiffs’ motion.</p> <p>There are a number of ICE-approved articulable “indicators” that a local law enforcement officer that is 287(g) certified is trained by ICE to look for when determining whether a person may be in the United States unlawfully. One of the ICE-approved indicators is that person’s race or ethnicity, including Mexican ancestry. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7, attached as Exhibit 9. ICE approves of the use of race as one indicator among several in the exercise of 287(g) authority in the determination of whether someone may be in the United States unlawfully. <i>See</i> Deposition of ICE former Special Agent in Charge, Phoenix, Mr. Alonzo Pena, at p.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<p>54, Ins. 16-22, attached as Exhibit 1 (“[Race] could be used, but, again, it couldn’t—it is not to be used solely. It is never to be used just as a—as an individual factor.”); <i>see also</i> Deposition of Brett Palmer dated 10/23/09 at p. 25, Ins. 9-18 attached as Exhibit 9 (“That is part of the 287(g) training that is part of our SOP, yes.”); Exhibit 9 at p. 151, Ins. 4-9 (“MCSO 287(g) officers can consider race as one relevant factor with others to have reasonable suspicion that human smuggling may be occurring.”); <i>see also United States v. Vandyck-Aleman</i>, 201 Fed. Appx. 215, 218, 2006 U.S. App. LEXIS 24245 *9 (5th Cir. 2006), <i>cert. denied</i>, 549 U.S. 1188 (2007) (“Although ethnicity generally may play no role in the enforcement of criminal law of this country, enforcement of the immigration laws demands that the officials focus on individuals most likely to violate those laws. In the poultry-producing region of Scott County, Mississippi, as the agent testified without contradiction, the population of illegal aliens is predominately Hispanic, not (non-Hispanic) white.”).</p> <p>Although ICE approves of the use of race as one indicator, among several other indicators, as a basis to form reasonable suspicion of unlawful status, the MCSO does not use race as an indicator or factor to make vehicle stops under Arizona law. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7; p. 145, Ins. 12-25; p. 150, ln. 25 to p. 151, ln. 3, attached as Exhibit 9.</p> <p>Deputies Palmer and Madrid, who were both at the time, 287(g) certified by ICE correctly stated permissible and ICE approved indicators of possible unlawful presence in the United States.</p>
19 20 21 22 23 24 25 26 27	<p>136 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that an ICE-approved indicator for a 287(g) certified MCSO deputy to determine unlawful presence in the United States is a person’s race, this statement as used in the motion is misleading and taken out of context because: (a) Plaintiffs suggest that racial appearance is the sole indicator used by MCSO 287(g) certified deputies in investigating immigration violations; and (b) Plaintiffs suggest that MCSO non-287(g) certified deputies are using race as an indicator for immigration investigations when they did not perform such investigations. Defendants refer the Court to their response to Plaintiffs’ statement of fact no. 135, immediately above, and expressly incorporate that response herein by reference.</p>
28	<p>137 <i>Disputed.</i></p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<p><u>Controverting Statement:</u> While Defendants do not dispute that an ICE-approved indicator for a 287(g) certified MCSO deputy to determine unlawful presence in the United States is a person's language speaking ability (i.e., the suspect only speaks Spanish and cannot speak English), this statement as used in the motion is misleading and taken out of context because: (a) Plaintiffs suggest that Spanish speaking is the sole indicator used by MCSO 287(g) certified deputies in investigating immigration violations; and (b) Plaintiffs suggest that MCSO non-287(g) certified deputies are using Spanish speaking as an indicator for immigration investigations when they did not perform such investigations.</p> <p>There are a number of ICE-approved articulable "indicators" that a local law enforcement officer that is 287(g) certified is trained by ICE to look for in determining whether a person may be in the United States unlawfully. <i>Cf. INS v. Delgado</i>, 466 U.S. 210, 212 (1984) (immigration officers could question an individual although they lacked reasonable suspicion that the individual was an illegal alien); <i>Muehler v. Mena</i>, 544 U.S. 93, 101 (2005) ("[M]ere police questing does not constitute a seizure.... Hence, the officers did not need reasonable suspicion to ask Mena for her name, date and place of birth, or immigration status."). One such ICE approved indicator is that the person does not speak the English language. <i>See</i> Deposition of Manuel Madrid dated 10/27/09 at p. 31, Ins. 10-18, attached as Exhibit 10; <i>see</i> Deposition of Ramon Armendariz at p. 44, Ins. 1-4, attached as Exhibit 8; <i>see</i> Deposition of Carlos Rangel dated 10/20/09 at p.21, ln. 3 to p. 22, ln. 5, attached as Exhibit 11.</p>
19 20 21 22 23 24 25	<p>138 <i>Admit with clarification.</i></p> <p>Sgt. Manuel Madrid was a 287(g) certified deputy. The ICE training on racial profiling was not insignificant. Former ICE Special Agent in Charge, Phoenix, Mr. Alonzo Pena testified that ICE 287(g) certification program provides a five-week curriculum to attendees that specifically includes training on the subjects of racial profiling and the civil rights of people. <i>See</i> Deposition of Alonzo Pena (former ICE SAC Phoenix) at p. 28, ln. 231, ln. 21 to p. 235, ln. 1; p. 243, ln. 24 to p. 245, ln. 5, attached as Ex. 1; <i>see also</i> Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 23, ln. 6 to p. 24, ln. 6, attached as Exhibit 2.</p>
26 27 28	<p>139 <i>Admit with clarification.</i></p> <p>Deputy Matthew Ratcliffe was a 287(g) certified deputy. The ICE training on racial profiling was not insignificant. Former ICE Special</p>

1 2 3 4 5 6	Agent in Charge, Phoenix, Mr. Alonzo Pena testified that ICE 287(g) certification program provides a five-week curriculum to attendees that specifically includes training on the subjects of racial profiling and the civil rights of people. <i>See</i> Deposition of Alonzo Pena (former ICE SAC Phoenix) at p. 28, ln. 231, ln. 21 to p. 235, ln. 1; p. 243, ln. 24 to p. 245, ln. 5, attached as Ex. 1; <i>see also</i> Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 23, ln. 6 to p. 24, ln. 6, attached as Exhibit 2.
7 8 9 10 11 12 13 14	140 <i>Admit with clarification.</i> Deputy Ramon Armendariz was a 287(g) certified deputy. The ICE training on racial profiling was not insignificant. Former ICE Special Agent in Charge, Phoenix, Mr. Alonzo Pena testified that ICE 287(g) certification program provides a five-week curriculum to attendees that specifically includes training on the subjects of racial profiling and the civil rights of people. <i>See</i> Deposition of Alonzo Pena (former ICE SAC Phoenix) at p. 28, ln. 231, ln. 21 to p. 235, ln. 1; p. 243, ln. 24 to p. 245, ln. 5, attached as Ex. 1; <i>see also</i> Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 23, ln. 6 to p. 24, ln. 6, attached as Exhibit 2.
15	141 <i>Admit.</i>
16 17 18	142 <i>Admit.</i> Objections: Defendants object to the term “sensitivity” as undefined, vague, and ambiguous.
19 20 21 22 23 24 25 26 27 28	143 <i>Disputed.</i> Controverting Statement: While Defendants do not dispute that this is the opinion of Plaintiffs’ police practices/racial profiling expert Robert Stewart, it is disputed by Defendants’ expert Bennie Click. Mr. Click testified: “ The MCSO maintains comprehensive and detailed policies and procedures that all personnel are required to have a working knowledge of. A number of MCSO policies prohibit racial profiling. The MCSO policies are reasonable and conform to nationally recognized standards. ” <i>See</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44, attached thereto as Exhibit 16; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of

1	expertise).
<p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p>144</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that the cited statement is the opinion held by Plaintiffs’ police practices/racial profiling expert Robert Stewart, it ignores the evidence.</p> <p><i>“The MCSO provides academy training to deputies emphasizing that racial profiling is unacceptable conduct. The deputies that were 287(g) received additional training from ICE personnel. This training is reinforced at each saturation patrol operation briefing as it is contained in the operations plan. The effectiveness of training is not measured by how recently the training was done or how frequently it is presented, but measured by how well the deputies conduct and performance reflect the performance objectives of the training. Mr. Kidd [of ICE] stated that during ICE training for 287(g) certification, there is a block of instruction that discusses racial profiling and that it is prohibited.”</i></p> <p>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p> <p><i>“Mr. Pena, the Special Agent in Charge of the Phoenix ICE Office, and Mr. Jim Pendergraph, the ICE Executive Director of State and Local Coordination, indicated, from their observations, the MCSO did nothing but good police work.”</i></p> <p><i>Id.</i> at p. 45.</p>
<p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>145</p> <p><i>Admit in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute this statement, the statement is misleading as used in Plaintiffs’ motion because as soon as the person with day-to-day responsibilities for the Human Smuggling Unit, Lt. Joseph Sousa, learned of these types of communications he became “livid” and immediately stopped all such emails. See Deposition of Joseph Sousa dated 10/22/10 at p. 90, ln. 19 to p. 91, ln. 21, attached as Exhibit 19.</p> <p>The Defendants dispute that the referenced email resulted in any MCSO</p>

1 2 3 4	deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general. There is no evidence provided by the Plaintiffs, or at all, that would support such a causal connection.
5 6 7 8 9 10 11 12 13 14	<p>146 <i>Admit with clarification and disputed in part.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute the statement that <i>two (2)</i> HSU deputies circulated the emails, the statement is misleading as used in Plaintiffs’ motion because as soon as the person with day-to-day responsibilities for the Human Smuggling Unit, Lt. Joseph Sousa, learned of these types of communications he became “livid” and immediately stopped all such emails. <i>See</i> Deposition of Joseph Sousa dated 10/22/10 at p. 90, ln. 19 to p. 91, ln. 21, attached as Exhibit 19.</p> <p>The Defendants dispute that the referenced email resulted in any MCSO deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general. There is no evidence provided by the Plaintiffs, or at all, that would support such a causal connection.</p>
15 16 17 18 19 20 21 22 23 24	<p>147 <i>Admit in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute this statement, they do dispute the phrase “regularly.” The cited evidence does not support the use of the phrase. This statement also is misleading as used in Plaintiffs’ motion because as soon as the person with day-to-day responsibilities for the Human Smuggling Unit, Lt. Joseph Sousa, learned of these types of communications he became “livid” and immediately stopped all such emails. <i>See</i> Deposition of Joseph Sousa dated 10/22/10 at p. 90, ln. 19 to p. 91, ln. 21, attached as Exhibit 19.</p> <p>The Defendants further dispute that his email resulted in any MCSO deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general. There is no evidence provided by the Plaintiffs, or at all, that would support such a causal connection.</p>
25 26 27 28	<p>148 <i>Admit in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute this statement, they do dispute the phrase “regularly.” The cited evidence does not support the use of the phrase. This statement also is misleading</p>

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	<p>as used in Plaintiffs’ motion because as soon as the person with day-to-day responsibilities for the Human Smuggling Unit, Lt. Joseph Sousa, learned of these types of communications he became “livid” and immediately stopped all such emails. <i>See</i> Deposition of Joseph Sousa dated 10/22/10 at p. 90, ln. 19 to p. 91, ln. 21, attached as Exhibit 19.</p> <p>The Defendants further dispute that his email resulted in any MCSO deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general. There is no evidence provided by the Plaintiffs, or at all, that would support such a causal connection.</p>
149	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While defendants do not dispute that MCSO Deputy Carlos Rangel received an offensive email, this statement is unsupported by the authority cited by the Plaintiffs, or any at all. While Deputy Rangel is the 287(g) certified deputy that interacted with named Plaintiff Melendres, the following deputies involved with the traffic stops of the named Plaintiffs in this case did not send or receive offensive or allegedly offense emails or communications: Deputy Louis DiPietro; Deputy Matthew Ratcliffe; Deputy Douglas Beeks; and Michael Kikes.</p> <p>The Defendants further dispute this statement to the extent it suggests, as used in Plaintiffs’ motion, that the referenced emails resulted in any MCSO deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general. There is no evidence provided by the Plaintiffs, or at all, that would support such a causal connection.</p>
150	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> The authority cited by the Plaintiffs does not stand for the proposition stated. Moreover, Sgt. Brett Palmer forwarded only a document attributed to the <i>Los Angeles Times</i> that apparently had exaggerated statistics about crime committed by illegal immigrants.</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs’ Statement of Fact No. 49 set forth above.</p> <p>The Defendants further dispute that any email resulted in any MCSO</p>

1 2 3	deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general. There is no evidence provided by the Plaintiffs, or at all, that would support such a causal connection.
4 5 6 7 8 9 10 11 12 13 14	<p>151 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While the Defendants do not dispute the fact that one (1) volunteer posse member sent an email praising the 1950's federal program known as "Operation Wetback," there is no evidence that this single volunteer was involved in any saturation patrol in any capacity, or that he was involved in any manner with any of the traffic stops of the named Plaintiffs, or that this email resulted in any MCSO deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general.</p> <p>In addition, Lt. Joseph Sousa testified that the single volunteer posse member's email was unacceptable and inappropriate in the MCSO. <i>See</i> Deposition of Joseph Sousa dated 10/22/10 at p. 87, ln. 19 to p. 88, ln. 17, attached as Exhibit 19. The email from the posse member was an "isolated incident" to Lt. Sousa's knowledge. <i>Id.</i></p>
15 16 17 18 19	<p>152 <i>Admit in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute that Arpaio could not state whether the circulation of the Mexifornia license email violated a policy of his department, he testified that it was in poor taste. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 217, lns. 3-13, attached as Exhibit 15.</p>
20 21 22 23 24 25 26 27 28	<p>153 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While the Defendants do not dispute the statement that the described emails are racially derogatory, unacceptable, and should be dealt with as soon as they are discovered, this statement is misleading as used in Plaintiffs' motion because as soon as the person with day-to-day responsibilities for the Human Smuggling Unit, Lt. Joseph Sousa, learned of the same he became "livid" and immediately stopped all such emails. <i>See</i> Deposition of Joseph Sousa dated 10/22/10 at p. 90, ln. 19 to p. 91, ln. 21, attached as Exhibit 19.</p> <p>The Defendants further dispute that his email resulted in any MCSO deputy or employing having racially discriminatory intent or motive against the named Plaintiffs specifically, or Latinos in general.</p>

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<p>154</p>	<p><u>Disputed.</u></p> <p><u>Controverting Statement.</u> While Defendants do not dispute that the cited statement is the opinion expressed by Plaintiffs’ police practices and racial profiling expert Robert Stewart, they dispute the following as used in the motion: (a) that MCSO supervisors, when they learned of the offensive and inappropriate email communication, allegedly did not immediately put an end to their circulation; and (b) that anyone other than Mr. Stewart was left with the impression that the MCSO accepted racial stereotyping as policy, practice, or custom.</p> <p>As soon as the person with day-to-day responsibilities for the Human Smuggling Unit, Lt. Joseph Sousa, learned about an inappropriate email he became “livid” and immediately stopped all such emails. <i>See</i> Deposition of Joseph Sousa dated 10/22/10 at p. 90, ln. 19 to p. 91, ln. 21, attached as Exhibit 19.</p> <p>Arpaio testified that a fake “Mexifornia license” was in poor taste. <i>See</i> Deposition of Joseph Arpaio dated 11/16/10 at p. 217, lns. 3-13, attached as Exhibit 15.</p>
<p>155</p>	<p><u>Disputed.</u></p> <p>Defendants submit this statement is misleading as cited and as used in the motion. The standard of care does not require the collection of race data on law enforcement traffic stops or encounters.</p> <p><u>Controverting Statement:</u> The MCSO’s police practices expert, Mr. Bennie Click, testified to a reasonable degree of probability in his field of expertise that that MCSO acted reasonably and appropriately in not collecting data about the ethnicity of persons stopped or contacted by the MCSO. Mr. Click testified:</p> <p><i>“The racial profiling issue pivots on the question of whether collecting information on each police contact/encounter will determine if racial profiling exists. Many agencies do not collect such data because they feel the information will be misinterpreted and have a chilling effect on law enforcement activity, putting the communities’ safety at great risk. Not collective this data [as opined by Plaintiffs’ expert Mr. Stewart] does not fall below the standard of care. The collection of data is a policy decision for each agency. There are numerous factors that may any evaluation of this data difficult at best. These include such as community demographics, officer experience level, officer training,</i></p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16</p>	<p><i>officer performance history, officer work ethic, location assigned, traffic/pedestrian volume, different duties, call volume and the nature of investigations officer can be involved in.</i></p> <p><i>Mandated data collection is suspect when used to determine the race or ethnicity of persons officer stopped. In many instances, a person’s race or ethnicity is not obvious. Race may be easier to determine because of kin color, however, ethnicity is less apparent. Many people have surnames that are not indicative of their ethnicity. A number of ethnic groups have similar physical characteristics. Most countries have citizens of various races and ethnicities and country of origin may be misleading. Even self-identification is problematic because of the increasing number of persons with mixed racial and ethnic backgrounds. Officers misidentifying a person’s race or ethnicity can be controversial in itself and could create a perception of a racially or ethnically insensitive department.</i></p> <p><i>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 45-46 attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</i></p>
<p>17 18 19 20 21 22</p>	<p>156 <i>Admit in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> Defendants do not dispute that MCSO deputies do not record all encounters with citizens. The cited authority does not stand for the proposition that “MCSO deputies,” to the extent they do record their encounters with citizens, that they do so on pads of paper and then destroy the same at the end of their tour of duty. The cited testimony is from a single deputy, Ramon Armendariz, about his personal practice of discarding notes at the end of shift.</p>
<p>23</p>	<p>157 <i>Admit.</i></p>
<p>24</p>	<p>158 <i>Admit.</i></p>
<p>25 26 27 28</p>	<p>159 <i>Disputed.</i></p> <p><u>Controverting Statement.</u> While the Defendants do not dispute the fact that the MCSO Operations Plans do not detail the specific roles for supervisors working during the saturation patrol, the defendants dispute that the suggestion as made in Plaintiffs’ motion and supported by this</p>

1 2 3 4 5 6 7 8 9 10 11	<p>statement that supervision was inappropriate or that there was confusion. The “<i>Operations Plans were reasonable and met the standard of care. There is no evidence that there was confusion over the objective of the operations, personnel assignments or the specific duties to be performed.</i>”</p> <p>See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise). In addition, the “<i>level of supervision required generally depends on a deputies’ training, experience and past performance. There is no evidence that any deputy lacked supervision.</i>” Id. at p. 44.</p>
12 13	160 <i>Admit.</i>
14 15 16 17 18 19 20 21 22 23	<p>161 <i>Disputed.</i></p> <p>Controverting Statement: This statement is misleading as used in the motion because it does not disclose the volume of arrests during the Fountain Hills saturation patrol, or the fact that one of the arrestees had a felony arrest warrant out on him with an ICE detainer.</p> <p>Chief Brian Sands testified that there were only ten (10) arrests in Fountain Hills during a saturation patrol, and that nine (9) of those ten arrestees appeared to have Latino surnames. See Deposition of Brian Sands dated 12/14/09 at p. 132, lns. 5-7, attached as Exhibit 14.</p> <p>Plaintiffs also did not disclose that one of the persons with a Latino appearing surname was arrested due to a felony warrant with an ICE detainer on him. See Melendres MCSO 14434, Ex. 8 to Sand Depo. I (Hickey Dec. Ex. 77). The MCSO could not have had racially discriminatory intent or motive in arresting this person given the outstanding arrest warrant.</p>
24 25 26 27 28	<p>162 <i>Admitted in part and disputed in part.</i></p> <p>Controverting Statement. Defendants do not dispute that, during saturation patrols, individual deputies provide from their individual stat sheets only quantitative data to their supervisors and that such data is compiled into master data sheets. The remaining statement is argument, and Defendants incorporate herein their Responses contained in DKT# 235 and 283.</p>

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163	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> The MCSO conducts after-action debriefing after saturation patrols. <i>See</i> Deposition of Joseph Sousa dated 12/10/09 at p. 24, Ins. 9-20, attached as Exhibit 5 (“Q. After these sweeps occur, do you have debriefing meetings with others? A. Yes, we do....”).</p> <p><i>“The MCSO conducts a debriefing after each operation to identify any issues that need to be addressed in future operations. The nature of the debriefing and what is included in an after-action report is ultimately a decision made by the Sheriff or his designee.”</i></p> <p><i>See</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as Exhibit 16; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>
164	<p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> The Plaintiffs’ citation to pages 56-59 do not support their statement.</p> <p>While Defendants do not dispute this statement as an accurate citation to <i>one of the points addressed</i> by Lt. Sousa, this statement as used by Plaintiffs is misleading and incomplete.</p> <p>Lt. Sousa concluded that racial profiling was not a concern based on the following factors: (a) the training and education of the deputies; (b) the supervision of the deputies by himself and his sergeants during saturation patrols; and (c) his knowledge and familiarity with the deputies under his command and the resulting trust that he had in those deputies. <i>See</i> Deposition of Joseph Sousa dated 12/10/09 at p. 136, ln. 22 to p. 137, ln. 3 (training); p. 29, Ins. 11-23 (supervision); and p. 135, Ins. 13-17 (knowledge and familiarity with his staff), attached as Exhibit 5.</p>
165	<p><i>Disputed.</i></p> <p><u>Controverting Statement.</u> While Defendants do not dispute that Arpaio testified that there is not a need for specific “regular” training on the subject matter of racial profiling, the statement is misleading as used</p>

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in the Plaintiffs’ motion and is taken out of context.
 The section cited by Plaintiffs shows that Arpaio explained the reasons why he believed there was little risk of racial profiling occurring at the time of his deposition (he was *not* addressing the previous question about the need for racial profiling training that already was asked and answered at p. 41, Ins. 12-19). Arpaio testified: “*I have confidence in my staff and they know how to supervise our deputies and our detention officers, so I rely on their expertise and management abilities.*” See Deposition of Joseph Arpaio dated 12/16/09 at p. 41, Ins. 20-25, attached as Exhibit 16.

The evidence also shows that MCSO deputies receive training on racial profiling:

“The MCSO provides academy training to deputies emphasizing that racial profiling is unacceptable conduct. The deputies that were 287(g) received additional training from ICE personnel. This training is reinforced at each saturation patrol operation briefing as it is contained in the operations plan. The effectiveness of training is not measured by how recently the training was done or how frequently it is presented, but measured by how well the deputies conduct and performance reflect the performance objectives of the training. Mr. Kidd [of ICE] stated that during ICE training for 287(g) certification, there is a block of instruction that discusses racial profiling and that it is prohibited.”

See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44, attached thereto as Exhibit 16; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).

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Admit in part and disputed in part.

Controverting Statement: Defendants do not dispute the cited section regarding former Chief Deputy David Hendershott, Chief Brian Sands, and Lt. Joseph Sousa testifying to their memory that they are unaware of the MCSO needing to discipline a deputy for racial profiling. Defendants, however, dispute the description of Arpaio’s testimony because it is taken out of context and misleading as used in the motion.

The question and answer exchange on the pertinent subject related to whether Arpaio would personally view himself as being harmed by

1 racial profiling in a traffic stop:

2 “Q. If you’re stopped on the road because you’ve been racially
3 profiled, but you actually haven’t committed a crime, would you think
4 that you’ve **been harmed**?”

5 A. Me, personally?

6 Q. Yes.

7 A. It would not bother me.”

8 See Deposition of Joseph Arpaio dated 11/16/10 at p. 284, ln. 25 to p.
9 285, ln. 7, attached as Exhibit 15 (emphasis added).

10 The Defendants further dispute that Arpaio’s personal view as to
11 whether he would be “harmed” by being racially profiled does not mean
12 that either he or any of his employees believe it is acceptable to racial
13 profile. Arpaio testified that racial profiling is morally wrong. See
14 Deposition of Joseph Arpaio dated 12/16/09 at p. 113, lns. 10-11; 115,
15 lns. 2-17, attached as Exhibit 16; see also Arpaio Deposition dated
16 11/16/10 at p. 77, lns. 22-23, attached as Exhibit 15. Arpaio further
17 testified that the MCSO does not racially profile. *Id.* at p. 113, ln. 21 to
18 p. 114, ln. 10 (“Well, all I can say, we don’t do that. We don’t stop
19 people by their appearance.”).

20 Chief Sands testified that racial profiling is morally wrong. See
21 Deposition of Brian Sands dated 12/14/09 at p. 147, ln. 20 to p. 148, ln.
22 5, attached as Exhibit 14. Chief Sands further understands that racial
23 profiling is illegal. See Deposition of Brian Sands dated 11/15/10 at p.
24 92, ln. 24 to p. 93, ln. 1, attached as Exhibit 14.

25 MCSO Lieutenant Joseph Sousa, the head of MCSO’s Human
26 Smuggling Unit (“HSU”), and one of the top planners for executing and
27 supervising saturation patrols, testified that racial profiling is prohibited
28 by MCSO policy, is illegal, and HSU members do not racially profile.
See Deposition of Joseph Sousa dated 12/10/09 at p.135, ln. 24 to p. 136,
ln. 17, attached as Exhibit 5; see also Sousa Deposition dated 10/22/10
at p. 30, lns. 14-17, attached as Exhibit 19.

HSU Sergeant Manuel Madrid, one of two supervising sergeants for the
unit, and a Latino himself, testified that racial profiling is illegal, that
race or ethnicity can never be used in making a traffic stop, and that the
HSU members he supervises do not racially profile. See Deposition of

1 Manuel Madrid dated 10/27/09 at p. 20, Ins. 14-23; p. 195, Ins. 15-17l,
2 and p. 202, 18-22, attached as Exhibit 10.

3 HSU Sergeant Brett Palmer, the remaining supervisory sergeant for the
4 unit, testified that racial profiling is wrong and illegal, and that the HSU
5 members he supervises do not racially profile. *See* Deposition of Brett
6 Palmer dated 10/23/09 at p. 36, Ins 10-25; p. 135, Ins. 5-25; p. 139, In.
7 21 to p. 140, In 18; p. 145, Ins. 12-25; and p. 153, Ins. 13-15, attached as
8 Exhibit 9.

9 Louis DiPietro, the deputy that made the traffic stop on Plaintiff
10 Melendres, knows and understands that racial profiling is illegal. *See*
11 Deposition of Louis DiPietro dated 10/21/09 at p. 87, Ins. 17-19,
12 attached as Exhibit 13. Race was not a factor in Deputy DiPietro's
13 finding that he had probable cause to stop the truck in which Plaintiff
14 Melendres was a passenger. *See* Defendants Statement of Facts (Dkt#
15 413-1) at ¶¶ 125-126

16 Matthew Ratcliffe, the deputy that made the traffic stop on the
17 Rodriguez Plaintiffs knows and understands that racial profiling is illegal
18 and wrong. *See* Deposition of Matthew Ratcliffe dated 10/15/09 at p.
19 115, Ins.18-25, attached as Exhibit 6. Race was not a factor in Deputy
20 Ratcliffe's finding that he had probable cause to stop the truck in which
21 the Rodriguez Plaintiffs were driving or occupying. *See* Defendants
22 Statement of Facts (Dkt# 413-1) at ¶¶ 132-135.

23 Michael Kikes, the deputy that made the traffic stop on the Plaintiffs
24 Meraz and Nieto knows and understands that racial profiling is illegal
25 and wrong. *See* Deposition of Michael Kikes dated 02/15/10 at p. 46,
26 Ins. 14-17, p. 108, Ins. 9-15, attached as Exhibit 7. Race was not a factor
27 in Deputy Kikes' finding that he had probable cause to stop the truck in
28 which Plaintiffs Meraz and Nieto were driving or occupying. *See*
Defendants Statement of Facts (Dkt# 413-1) at ¶¶ 85-86.

Former ICE Special Agent in Charge, Phoenix, Mr. Alonzo Pena
testified that ICE 287(g) certification program provides a five-week
curriculum to attendees that specifically includes training on the subjects
of racial profiling and the civil rights of people. *See* Deposition of
Alonzo Pena (former ICE SAC Phoenix) at p. 28, In. 231, In. 21 to p.
235, In. 1; p. 243, In. 24 to p. 245, In. 5, attached as Ex. 1; *see also*
Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 23, In. 6 to
p. 24, In. 6, attached as Exhibit 2.

The MCSO has a policy prohibiting racial profiling. *See* Deposition of

1 Brian Sands dated 12/14/09 at p. 194, Ins. 14-17, attached as Exhibit 14.
 2 The MCSO instructs each of its deputies that are to participate in a
 3 saturation patrol during the pre-saturation patrol briefing that they are
 4 not to racially profile any person during the up-coming saturation patrol
 that day. *Id.* at p. 194, Ins. 18-21; *see also* p. 195, Ins. 2-5.

5 Each MCSO deputy has undergone education and training about the
 6 improper and unlawful use of race in law enforcement, i.e., racial
 7 profiling, while at the police academy at the start of their law
 8 enforcement careers. *Id.* at p. 194, ln. 22 to p. 195, ln. 1. When the
 9 deputy graduates from the police academy and joins the MCSO for
 active duty, he or she is taught about the MCSO policy and prohibition
 again racial profiling. *Id.*

10 Finally, the Defendants further dispute that Arpaio's personal view as to
 11 whether he would be "harmed" by being racially profiled does not mean
 12 that either he or any of his employees believe it is acceptable to racial
 13 profile or that he or any MCSO deputy or employee had racially
 discriminatory intent or motive against the named Plaintiffs specifically,
 or Latinos in general.

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Disputed.

15 **Controverting Statement:** The MCSO's police practices expert, Mr.
 16 Bennie Click, testified to a reasonable degree of probability in his field
 17 of expertise that that MCSO acted reasonably and appropriately in its
 documentation of saturation patrols. Mr. Click testified:

18 *"The racial profiling issue pivots on the question of whether collecting*
 19 *information on each police contact/encounter will determine if racial*
 20 *profiling exists. Many agencies do not collect such data because they*
 21 *feel the information will be misinterpreted and have a chilling effect on*
 22 *law enforcement activity, putting the communities' safety at great risk.*
 23 ***Not collective this data [as opined by Plaintiffs' expert Mr. Stewart]***
 24 ***does not fall below the standard of care. The collection of data is a***
 25 ***policy decision for each agency. There are numerous factors that may***
 26 ***any evaluation of this data difficult at best. These include such as***
community demographics, officer experience level, officer training,
officer performance history, officer work ethic, location assigned,
traffic/pedestrian volume, different duties, call volume and the nature of
investigations officer can be involved in."

27 *See* Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben
 28 Click dated January 21, 2011, at pgs. 45-46 attached thereto as Exhibit

1 2 3 4	16; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).
5 6 7 8 9 10 11 12 13 14 15 16	168 <i>Disputed.</i> <u>Controverting Statement:</u> The MCSO’s police practices expert, Mr. Bennie Click, testified to a reasonable degree of probability in his field of expertise that that MCSO acted reasonably and appropriately to prepare for, conduct, monitor, and supervise its saturation patrols. <i>See</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 43-48 attached thereto as Exhibit 16 (containing his bullet points of miscellaneous opinions in response to the opinions of Plaintiffs’ police practices/racial profiling expert Robert Stewart, including but not limited to Mr. Click’s opinion that “there is no evidence that any deputy [during an saturation patrol] lacked appropriate supervision” (bullet point at p. 44)); <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).
17 18 19 20 21 22 23 24 25 26 27 28	169 <i>Disputed.</i> <u>Controverting Statement.</u> This statement is misleading. HSU Sergeant Brett Palmer, a supervisory sergeant for HSU, testified that racial profiling is wrong and illegal, and that the HSU members he supervises do not racially profile. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p. 36, lns 10-25; p. 135, lns. 5-25; p. 139, ln. 21 to p. 140, ln 18; p. 145, lns. 12-25; and p. 153, lns. 13-15, attached as Exhibit 9. As stated by defense police practices expert Bennie Click: <i>“Every MCSO deputy and supervisor deposed understood, without equivocation, that 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.”</i> <i>See</i> Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44, attached thereto as Exhibit 16;

1 2 3 4 5 6 7	<p><i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p> <p>In addition, Defendants further herein incorporate by this reference their Response and Controverting Statement as to Plaintiffs' Statement of Fact No. 25 as section (A) set forth above.</p>
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>170 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants do not dispute the statements that ICE personnel did attend all saturation patrols or personally observe all traffic stops, the statement is misleading as used in the Plaintiffs' motion and omits the following material contraverting facts:</p> <p><u>ICE Special Agent in Charge Alonzo Pena</u></p> <ul style="list-style-type: none"> • While Mr. Alonzo Pena was ICE SAC in Phoenix, he never had an occasion to report an MCSO 287(g) certified deputy for racial profiling. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 60, lns. 7-10, attached as Exhibit 1. • While Mr. Pena was ICE SAC in Phoenix, he never had to confront the Maricopa County Sheriff's Office with an allegation that any of its deputies may have been engaged in racial profiling. <i>Id.</i> at p. 60, lns. 11-13. • While Mr. Pena was ICE SAC in Phoenix, he never reported to ICE headquarters in Washington, D.C. that any deputy from the Maricopa County Sheriff's Office may have been engaged in racial profiling. <i>Id.</i> at p. 60, lns. 14-18. • While Mr. Pena was ICE SAC in Phoenix, he did not have concern about, or voice a complaint to anyone about, the fact that the MCSO was identifying suspected illegal aliens during traffic stops. <i>Id.</i> at p. 93, ln. 21 to p. 94, ln. 21. • While Mr. Pena was ICE SAC in Phoenix, he was aware that MCSO non-287(g) certified officers that had made lawful traffic stops and had reasonable suspicion that someone in the vehicle may be in the country unlawfully were calling for assistance of

1 MCSO 287(g) certified officers. *Id.* at p. 96, ln. 23 to p. 98, ln.
2 20.

- 3
- 4 • During the 2008 ICE audit of the 287(g) field program between
5 ICE and the MCSO, the United States Attorney's Office
6 responsible for immigration issues had no complaint about the
7 MCSO's 287(g) program or the MCSO's compliance with the
8 Memorandum of Agreement between ICE and the MCSO. *Id.* at
9 p. 122, ln. 11 to p. 123, ln. 10.
 - 10 • Mr. Pena testified that the MCSO did not violate the
11 Memorandum of Agreement in any manner except on one
12 occasion in regards to providing the public with information
13 and/or publicity. *Id.* at p. 156, ln. 25, to p. 157, ln. 10.
 - 14 • At no time did Mr. Pena ever write to Sheriff Arpaio or the
15 MCSO any letter or email providing them with a warning or
16 admonition about the MCSO's use of 287(g) authority. *Id.* at p.
17 157, lns. 12-19, attached as Exhibit 1

18 ICE Assistant Special Agent in Charge Jason Kidd

- 19 • Mr. Jason Douglas Kidd is an ICE employee and served in 2006-
20 09 in Phoenix, Arizona either as an ICE Group Supervisor, or an
21 ICE Assistant Special Agent in Charge, or as an ICE Acting
22 Deputy Special Agent in Charge for the Phoenix ICE office. *See*
23 October 1, 2010 Deposition of Jason Douglas Kidd at p. 11, lns.
24 10 to p. 12, ln. 2, attached as Exhibit 2.
- 25 • Mr. Kidd worked closely with MCSO personnel in the 287(g)
26 program and the implementation of it under the ICE-MCSO
27 Memorandum of Agreement. *Id.* at p. 19, lns. 4-9.
- 28 • The MCSO advised Mr. Kidd when it was planning on
conducting a saturation patrol that might encompass the MCSO's
287(g) authority. *Id.* at p. 20, ln. 18 to p. 21, ln. 14. Mr. Kidd
also received from the MCSO in advance the MCSO Operations
Plans for certain saturation patrols. *Id.* at p. 34, ln. 18 to p. 35, ln.
11. Mr. Kidd also received from the MCSO post-saturation
patrol Shift Summaries. *Id.* at p. 36, ln. 7 to p. 37, ln. 11.
- Mr. Kidd is familiar with the MCSO's use of saturation patrols.
Id. at p. 25, lns. 6-12. Mr. Kidd attended some MCSO saturation

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patrols and stationed himself at the MCSO command center. *Id.* at p. 26, lns. 3-14. Mr. Kidd attended some of the saturation patrols as an ICE observer. *Id.* at p. 27, lns. 13-15.

- Mr. Kidd never expressed to the MCSO any criticism of its use of saturation patrols. *Id.* at p. 31, lns. 2-8.
- Mr. Kidd was knowledgeable or aware of the fact that the MCSO saturation patrols were using violations of the Arizona motor vehicle equipment and moving codes to make traffic stops of persons. *Id.* at p. 33, lns. 4-8. Mr. Kidd was further knowledgeable or aware of the fact that during MCSO conducted traffic stops MCSO deputies were encountering people in the United States unlawfully. *Id.* at p. 33, lns. 9-14. Mr. Kidd never expressed in writing, or verbally, to the MCSO any concerns about the MCSO using traffic stops and during those stops identifying people in the country unlawfully. *Id.* at p. 33, ln. 16 to p. 34, ln. 17.
- ICE was responsible for supervising MCSO 287(g) deputies when they exercised their 287(g) authority. *Id.* at p. 38, lns. 16-19.
- Mr. Kidd never expressed any concern to the MCSO that MCSO 287(g) certified officers were racially profiling Latinos. *Id.* at p. 42, 15-21.
- Mr. Kidd has no knowledge that any MCSO 287(g) deputy ever used race as a basis for making a traffic stop or in using their 287(g) authority. *Id.* at p. 43, lns. 6-18.

171 ***Admit with clarification.***

While Deputy DiPietro considered the operation a saturation patrol, it is not the type of “saturation patrol” complained of by the Plaintiffs’ in their First Amended Complaint. Plaintiffs complain of saturation patrols where MCSO deputies make wide spread traffic stop violations based on any vehicle for any probable cause or reasonable suspicion, not specific isolation of a vehicle leaving a specific location under law enforcement surveillance. At the Good Sheppard of the Hills Church, the HSU conducted surveillance on the church and its property, and conducted a narrow traffic patrol *that related exclusively to stopping for probable cause following traffic violations only those vehicles that were observed to have picked up people congregating at the church property and that*

1 2	<i>had left the property. See Defendants' Statement of Facts (Dkt#413-1) at ¶ 12.</i>
3 4 5 6 7 8 9 10 11 12	<p>172 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> On September 26, 2007, the MCSO Human Smuggling Unit ("HSU") was in Cave Creek, Arizona investigating a particular church building/parking lot in response to citizen complaints that the church or its grounds may be serving as a possible "drop house" for human smuggling and because "day laborers" congregating or loitering near the church were stepping into the traffic lanes of Cave Creek Road and causing traffic problems. <i>See Defendants' Statement of Facts (Dkt#413-1) at ¶ 12.</i> As such, the HSU conducted surveillance on the church and its property, and conducted a narrow traffic patrol that related exclusively to stopping for probable cause following traffic violations only those vehicles that were observed to have picked up people congregating at the church property and that had left the property. <i>Id.</i></p>
13 14 15 16 17 18 19 20 21 22	<p>173 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> On September 26, 2007, the MCSO Human Smuggling Unit ("HSU") was in Cave Creek, Arizona investigating a particular church building/parking lot in response to citizen complaints that the church or its grounds may be serving as a possible "drop house" for human smuggling and because "day laborers" congregating or loitering near the church were stepping into the traffic lanes of Cave Creek Road and causing traffic problems. <i>See Defendants' Statement of Facts (Dkt#413-1) at ¶ 12.</i> As such, the HSU conducted surveillance on the church and its property, and conducted a narrow traffic patrol that related exclusively to stopping for probable cause following traffic violations only those vehicles that were observed to have picked up people congregating at the church property and that had left the property. <i>Id.</i></p>
23	174 <i>Admit.</i>
24 25 26 27 28	<p>175 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> On September 26, 2007, the MCSO Human Smuggling Unit ("HSU") was in Cave Creek, Arizona investigating a particular church building/parking lot in response to citizen complaints that the church or its grounds may be serving as a possible "drop house" for human smuggling and because "day laborers" congregating or loitering near the church were stepping into the traffic lanes of Cave Creek Road and causing traffic problems. <i>See Defendants' Statement of</i></p>

1 2 3 4 5	Facts (Dkt#413-1) at ¶ 12. As such, the HSU conducted surveillance on the church and its property, and conducted a narrow traffic patrol that related exclusively to stopping for probable cause following traffic violations only those vehicles that were observed to have picked up people congregating at the church property and that had left the property. <i>Id.</i>
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>176 <i>Disputed.</i></p> <p>Deputy DiPietro had no reason to believe that any passengers of the truck had committed any violation of Arizona criminal law. However, he had reason to believe that the truck’s passengers may have been in the United States unlawfully. On September 26, 2007, the MCSO Human Smuggling Unit (“HSU”) was in Cave Creek, Arizona investigating a particular church building/parking lot in response to citizen complaints that the church or its grounds may be serving as a possible “drop house” for human smuggling and because “day laborers” congregating or loitering near the church were stepping into the traffic lanes of Cave Creek Road and causing traffic problems. <i>See</i> Defendants’ Statement of Facts (Dkt#413-1) at ¶ 12. As such, the HSU conducted surveillance on the church and its property, and conducted a narrow traffic patrol that related exclusively to stopping for probable cause following traffic violations only those vehicles that were observed to have picked up people congregating at the church property and that had left the property. <i>Id.</i> Mr. Melendres and the other persons were picked up by the driver of the white colored truck at the church that was under HSU surveillance. <i>Id.</i> at ¶ 15.</p> <p>The fact that Deputy DiPietro suspected the truck’s occupants of being in the country unlawfully based on the HSU surveillance, is immaterial to the probable cause for the traffic stop under Fourth Amendment analysis. <i>Whren v. United States</i>, 517 U.S. 806, 810 (1996) (addressing Fourth Amendment analysis only).</p> <p>Likewise, Deputy DiPietro’s reasonable suspicion that the truck’s occupants might be in the country unlawfully based on the HSU surveillance does not support the conclusion that he stopped the truck due to racially discriminatory intent or motive under Fourteenth Amendment analysis. Deputy Louis DiPietro testified that, in his experience, most day laborers in Maricopa County are from Mexico or Central or South America. <i>See</i> Deposition of Louis DiPietro dated 10/21/09 at p. 51, Ins. 2-4, attached as Exhibit 13. Deputy Carlos Rangel, based on his experience, shares this observation. <i>See</i> Deposition of Carlos Rangel dated 10/20/09 at p. 93, ln. 24 to p. 94, ln. 1, attached</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	<p>as Exhibit 11. It is the law enforcement experience of others in the MCSO that most illegal immigrants in Maricopa County originate from Mexico or Central or South America. <i>See, e.g.</i>, Deposition of Manuel Madrid dated 10/27/09 at p. 189, Ins. 18-21, attached as Exhibit 10; Deposition of Brett Palmer dated 10/23/09 at p. 30, Ins. 2-16, attached as Exhibit 9; Deposition of Brian Sands dated 12/14/09 at p. 94, Ins. 3-6, attached as Exhibit 14; Deposition of Joseph Arpaio dated 11/16/10 at p. 81, Ins 6-18, attached as Exhibit 15 (“In Arizona, because of the proximity to the border, I believe it’s a fact that many people arrested here, in the state of Arizona, border area, may come from Latin America or Mexico.”); Deposition of Joseph Arpaio dated 12/16/09 at p. 9, Ins. 17-23; p. 219, Ins. 1-12, attached as Exhibit 16.</p> <p>The law enforcement experience of the MCSO that most of the illegal immigrants in Maricopa County come from Mexico is supported by the objective, race-neutral facts. “It 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 <i>94 percent</i> of illegal immigrants in Arizona <i>are from Mexico alone</i>, not including the rest of Latin America.” Defendants’ Statement of Facts (Dkt#413-1) at Ex. 19 (Dr. Camarota Report) at pg. 14; DSOF (Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, Ins. 13-16 (foundation for his report).</p>
17	177 <i>Admit.</i>
18	178 <i>Admit.</i>
19 20 21 22 23 24 25 26 27 28	<p>179 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> Defendants dispute the timing of events as suggested by Plaintiffs. Deputy DiPietro contacted the Melendres truck’s driver, and based on information provided by the driver, formed reasonable suspicion that the truck’s occupants may have been in the country unlawfully. <i>See</i> Defendants’ Statement of Facts (Dkt#413-1) at ¶ 18. Deputy DiPietro, therefore, called on his radio for a 287(g) MCSO deputy to assist at the stop to investigate the truck’s occupants. <i>Id.</i> at ¶ 19. MCSO Deputy Carlos Rangel arrived at the traffic stop within <i>one minute</i> of receiving the call for a 287(g) deputy. <i>Id.</i> at ¶ 20.</p> <p>Deputy Rangel questioned the truck’s passengers while Deputy DiPietro was simultaneously questioning the driver of the truck. <i>Id.</i> at ¶ 23. The total amount of time Deputy Rangel spent questioning the truck’s passengers was <i>fifteen (15) minutes</i>. <i>Id.</i> at ¶ 34;</p>

1 2 3 4 5 6	<p>In addition, Mr. Alonzo Pena, the Special Agent in Charge for ICE Phoenix, testified that it was completely proper for MCSO deputies to make traffic stops of motorists under Arizona law and call for a 287(g) certified deputy if the deputy that made the traffic stop had reasonable suspicion that someone in the stopped vehicle might be unlawfully present in the country. <i>See</i> Deposition Alonzo Pena at p. 167, ln. 1 to p. 168, ln. 22, attached as Ex. 1.</p>
7 8 9 10	<p>180 <i>Admit.</i></p> <p><u>Objections:</u> This statement is irrelevant to any issues relating to whether Plaintiff Melendres' rights under the Fourteenth Amendment were violation and, therefore, is a fact immaterial to the Court's resolution of Plaintiffs' Motion.</p>
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>181 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> There was no prolonged detention of Plaintiff Melendres at the scene of the traffic stop.</p> <p>Deputy Rangel questioned the truck's passengers <i>while</i> Deputy DiPietro was <i>simultaneously questioning</i> the driver of the truck. <i>See</i> Defendants' Statement of Facts (Dkt#413-1) at ¶ 23. The total amount of time Deputy Rangel spent questioning the truck's passengers was <i>fifteen (15) minutes</i>. <i>Id.</i> at ¶ 34; <i>see also Muehler v. Mena</i>, 544 U.S. 93, 101 (2005) ("mere police questioning [regarding identification] does not constitute a seizure unless it prolongs the detention of the individual, and, thus, no reasonable suspicion is required to justify questioning that does not prolong the stop."); <i>Florida v. Bostick</i>, 501 U.S. 429, 434-35 (1991) (holding that officers did not need reasonable suspicion to ask questions of an individual or to ask to examine the individual's identification); <i>United States v. Turvin</i>, 517 F.3d 1097, 1100-1104 (9th Cir. 2008) (reasonable suspicion is not required to ask questions unrelated to purpose of an initially lawful stop); <i>United States v. Mendez</i>, 476 F.3d 1077, 1080 (9th Cir. 2007) (<i>Muehler</i> applies equally to traffic stops); <i>United States v. Soriano-Jarquín</i>, 492 F.3d 495, 500-501 (4th Cir. 2007) ("request for identification from passengers falls within purview of a lawful traffic stop....").</p>
26 27 28	<p>182 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> This statement is misleading as it is written and used in Plaintiffs' Motion. The lack of identification documents is merely one ICE-approved indicator that 287(g) certified deputies may</p>

1 use to develop reasonable suspicion in order to investigate whether a
2 particular person is in the United States lawfully.

3 There are a number of ICE-approved articulable “indicators” that a local
4 law enforcement officer that is 287(g) certified is trained by ICE to look
5 for when developing reasonable suspicion that a person may be in the
6 United States unlawfully. One ICE-approved indicator is that the person
7 is **unable to offer the investigating deputy any identification**, such as
8 a driver’s license or identification card, issued either by the United
9 States government or by any of the fifty states. *See* Deposition of
10 Manuel Madrid dated 10/27/09 at p. 31, lns. 10-18, attached as Exhibit
11 10; *see* Deposition of Carlos Rangel dated 10/20/09 at p.21, ln. 3 to p.
12 22, ln. 5, attached as Exhibit 11.

13 Another ICE-approved indicator is that the person **does not speak the**
14 **English** language. *See* Deposition of Manuel Madrid dated 10/27/09 at
15 p. 31, lns. 10-18, attached as Exhibit 10; *see* Deposition of Ramon
16 Armendariz at p. 44, lns. 1-4, attached as Exhibit 8; *see* Deposition of
17 Carlos Rangel dated 10/20/09 at p.21, ln. 3 to p. 22, ln. 5, attached as
18 Exhibit 11.

19 Another ICE-approved indicator is that the person **does not possess**
20 **valid documents**. *See* Deposition of ICE former Special Agent in
21 Charge, Phoenix, Mr. Alonzo Pena, at p. 53, ln. 10 to p. 54, ln. 25,
22 attached as Exhibit 1

23 Another number of ICE-approved indicators are: (a) an **overcrowded**
24 **vehicle**; (b) none of the occupants have **luggage** or only **small items of**
25 **property** easily transported; (c) the people in the vehicle are **unrelated**
26 **or do not know each other**; (d) whether the people in the vehicle are
27 **dressed in a disheveled manner**; (e) **pungent body odor** of the people
28 in the vehicle; (f) the vehicle is a known human **smuggling corridor**.
See Deposition of Carlos Rangel dated 10/20/09 at p.95, ln. 12 to p. 96,
ln. 12 attached as Exhibit 11; *see* Deposition of Manuel Madrid dated
10/27/09 at p. 38, ln. 9 to p. 39, ln. 4, attached as Exhibit 10; *see*
Deposition of Brett Palmer dated 11/09/10 at p. 38, ln. 21 to p. 39, ln.
14, attached as Exhibit 12.

Finally, another ICE-approved indicator is **that person’s race or**
ethnicity, including Mexican ancestry. *See* Deposition of Brett Palmer
dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7, attached as Exhibit 9. **ICE**
approves of the use of race as one indicator among several in the
exercise of 287(g) authority in the determination of whether someone

<p>1 2 3 4 5 6 7 8 9 10 11</p>	<p>may be in the United States unlawfully. <i>See</i> Deposition of ICE former Special Agent in Charge, Phoenix, Mr. Alonzo Pena, at p. 54, lns. 16-22, attached as Exhibit 1 (“[Race] could be used, but, again, it couldn’t—it is not to be used solely. It is never to be used just as a—as an individual factor.”); <i>see also</i> Deposition of Brett Palmer dated 10/23/09 at p. 25, lns. 9-18 attached as Exhibit 9 (“That is part of the 287(g) training that is part of our SOP, yes.”); Exhibit 9 at p. 151, lns. 4-9 (“MCSO 287(g) officers can consider race as one relevant factor with others to have reasonable suspicion that human smuggling may be occurring.”)</p> <p>Although ICE approves of the use of race as one indicator, among several other indicators, as a basis to form reasonable suspicion of unlawful status, the MCSO does not use race as an indicator or factor to make vehicle stops. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7; p. 145, lns. 12-25; p. 150, ln. 25 to p. 151, ln. 3, attached as Exhibit 9.</p>
<p>12</p>	<p>183 <i>Admit.</i></p>
<p>13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>184 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> This statement is misleading as it is written and used in Plaintiffs’ Motion.</p> <p>Plaintiff Melendres told Deputy Carlos Rangel that he had lawfully entered the United States through a legitimate port of entry, had obtained an I-94 Form, but did not have the I-94 Form with him at the moment. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 30. Plaintiff Melendres also told Deputy Rangel that he was working while on his tourist visa, which made him out-of-compliance with the law. <i>Id.</i> at ¶ 27. Based on Mr. Melendres not having his I-94 Form on him at the time and his statement that he was working, Deputy Rangel detained Mr. Melendres with handcuffs and directed that he be delivered to ICE for handling and/or verification of status. <i>Id.</i> at ¶¶ 32-33.</p> <p>ICE eventually released Mr. Melendres from detention. The ICE agent that determined Mr. Melendres’ status told Deputy Rangel that ICE released Mr. Melendres because it concluded that there was insufficient evidence that Mr. Melendres was actually working during his visit to the United States, and because he had an I-94 Form issued to him, even though he was “out-of-status” at the time of the traffic stop (i.e., not having the I-94 Form on him when questioned by Deputy Rangel). <i>Id.</i> at ¶ 37.</p>

1 2 3 4 5 6 7 8 9 10	<p>185</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> This statement is misleading as it is written and used in Plaintiffs’ Motion.</p> <p>The total amount of time Deputy Carlos Rangel spent questioning the truck’s passengers, including Plaintiff Melendres, was fifteen (15) minutes at the scene. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 34. All of the truck’s passengers were detained. <i>Id.</i> at ¶ 35. The passengers/detainees were taken to an MCSO substation and held for roughly two hours, and then the MCSO transported them to ICE’s Detention and Removal Office near Central Avenue and McDowell Road where Mr. Melendres waited in federal detention for six to seven hours for federal officials. <i>Id.</i> at ¶ 36.</p>
11	186 <i>Admit.</i>
12	187 <i>Admit.</i>
13 14 15 16	<p>188</p> <p><i>Admit with clarification in part and disputed in part .</i></p> <p><u>Controverting Statement:</u> Deputy Ratcliffe denies asking Mr. Rodriguez for his Social Security card. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 49. Indeed, Deputy Ratcliffe never asks any driver for his Social Security card. <i>Id.</i></p>
17 18 19 20 21 22 23 24 25 26 27 28	<p>189</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While Defendants acknowledge that Plaintiff David Rodriguez testified to this point, this point is disputed by deputy Ratcliff.</p> <p>After obtaining Mr. Rodriguez’ identification, Deputy Ratcliffe asked him why he was driving his truck on the closed Bartlett Dam Road. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 50. Mr. Rodriguez stated that “he had driven around the [road closed] sign and was taking the kids down to the lake.” <i>Id.</i> (Mr. Rodriguez admits that he saw a “<i>Road Damaged</i>” sign but drove past it. <i>Id.</i> at ¶ 51. He denied ever seeing a “<i>Road Closed</i>” sign. <i>Id.</i>)</p> <p>In addition, Defendants refer the Court to their Controverting Statement below in response to paragraph 198 wherein they provide the undisputed evidence that Deputy Ratcliffe had probable cause to stop the Rodriguez vehicle and that he had no racially discriminatory intent or motive in do so.</p>

1 2	Objections: Relevance. Whether Mr. Rodriguez saw the sign or not is immaterial as to whether the Plaintiffs' Fourteenth Amendment Rights were violated.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>190 Disputed and Defendants object to this statement of fact purposes of summary judgment motion practice. It is inadmissible. The Court should strike this statement of fact.</p> <p>Controverting Statement: While Defendants do not dispute that this statement is contained in the <i>AZ Post Model Lesson Plan: Traffic Citations 4 2</i>, the evidence shows that during large scale saturation patrols the MCSO instituted a "zero tolerance" policy where every traffic violator observed would be pulled over, to the extent they could be pulled over, and given a citation.</p> <p>There was a zero tolerance policy for traffic stops during saturation patrols, i.e., a deputy that observed a moving violation or equipment code violation would be required to stop the vehicle. <i>See</i> Deposition of Brett Palmer dated 10/23/09 at p.56, ln. 2 to p. 58, ln. 16, attached as Exhibit 9 (zero tolerance policy on saturation patrols adopted to try to stop every vehicle with a violation and write tickets to all to avoid charges of racial profiling); <i>see also</i> p. 94, ln. 20 to p. 95, ln. 1 (zero tolerance policy for any traffic or vehicle violations); p. 98, ln. 18 to p. 99, ln. 17 (the zero tolerance for arrests made and the zero tolerance policy for traffic violators); <i>see also</i> Deposition of Manuel Madrid dated 10/27/09 at p. 125, ln. 12 to p. 127, ln. 7, attached as Exhibit 10 (on large scale saturation patrols, there was a zero tolerance policy to pull over and cite all infractions); p. 130, lns. 18-23 (same); <i>see also</i> Deposition of Joseph Sousa dated 12/10/09 at p. 144, lns. 22-25 (on zero tolerance operation, any vehicle that is observed to violate the vehicle or traffic code that can be stopped will be stopped).</p> <p>Defense police practices expert Bennie Click testified:</p> <p><i>"In order to reduce the potential of racial profiling during saturation patrol operations, supervisors reasonably and appropriately instituted a zero tolerance policy requiring all violators be stopped. This is a reasonable practice. Zero tolerance removed the deputies' discretion to pick and choose who they stopped."</i></p> <p><i>See</i> Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg 46, attached thereto as Exhibit 16; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13</p>	<p>his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p> <p><u>Objections:</u></p> <p>(A) Relevance: This statement of fact is irrelevant to whether the named Plaintiffs have suffered a constitutional injury and whether there is a zero tolerance in effect during a given saturation patrol.</p> <p>(B) Hearsay: Defendants object to the use of the AZPOST Model Lesson Plan: Traffic Citations 4 2 on the grounds that it is hearsay of a third party and no exception allows it admissibility into evidence.</p> <p>(C) Foundation. There is no foundation established for the AZPOST Model Lesson Plan: Traffic Citations 4 2. <i>Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005) (“Evidence a party relies upon with respect to a summary judgment motion must have an appropriate foundation and must be supported... by admissible evidence”).</p>
<p>14</p>	<p>191 <i>Admit.</i></p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>192 <i>Disputed.</i></p> <p><u>Controverting Statement:</u> This statement is misleading as it is written and used in Plaintiffs’ Motion.</p> <p>Upon receipt of the citation, Mr. or Mrs. Rodriguez then told Deputy Ratcliff that he/she did not see any other drivers on the closed road receiving citations. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 54. The race of those drivers was not specified. <i>Id.</i> Deputy Ratcliffe responded by telling Mr. and Mrs. Rodriguez that he was only dealing with them and not dealing with other drivers at that time. <i>Id.</i> It was at this time that Mrs. Rodriguez accused Deputy Ratcliffe of “selective enforcement” in issuing the traffic citation to her husband. <i>Id.</i> at ¶ 55. Mrs. Rodriguez became “argumentative” with Deputy Ratcliffe. <i>Id.</i></p> <p>Deputy Ratcliffe did <i>not</i> recall the race of the other drivers he referred to the Tonto National Forest Ranger, and he actually observed the Forest Ranger give citations to those other drivers regardless of their race. <i>Id.</i> at ¶ 138.</p> <p>Another MCSO officer working Lake Patrol with Deputy Ratcliffe, Deputy Maltz, had on the same day allowed other motorists (of unknown</p>

1 2 3 4 5 6	<p>ances) to drive on the closed Bartlett Dam Road in order to go to the lake to repair either their recreational vehicles or boats that had been damaged in the storm. <i>Id.</i> at ¶ 139. Deputy Maltz was responsible for deciding whether to cite or warn those drivers, not Deputy Ratcliffe. <i>Id.</i> Deputy Ratcliffe has known Deputy Maltz for 2.5 years and does not believe that Deputy Maltz’ decision to allow other people to use Bartlett Dam Road to repair their property without the issuance of a traffic citation was based in any way on racial considerations. <i>Id.</i> at ¶ 140.</p>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<p>193</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> This statement is misleading as it is written and used in Plaintiffs’ Motion.</p> <p>Deputy Ratcliffe stopped the truck and asked Mr. Rodriguez for his driver’s license, vehicle registration, and proof of insurance documents. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 47. He also asked Mr. Rodriguez for his Social Security number so he could complete the MCSO citation form which includes a space for recording such information. <i>Id.</i> at ¶ 48. Mr. and Mrs. Rodriguez asked Deputy Ratcliffe why he asked for David’s Social Security number. <i>Id.</i> at ¶ 52. Deputy Ratcliffe explained that it was for identification purposes only and to fill in the blanks on the MCSO citation form. <i>Id.</i> There is no evidence of badgering by Deputy Ratcliffe for the social security number, including in the sections cited by Plaintiff.</p> <p>After completing the traffic stop, Deputy Ratcliffe drove behind the Rodriguez’ truck as it left the area. He was behind the Rodriguez truck for roughly two miles, <i>not to escort them out, or to harass or intimidate them</i>, but in order for Deputy Ratcliffe to reach the location where he could take a picture of the “<i>Road Closed</i>” sign. <i>Id.</i> at ¶ 59. “Due to the argumentative nature of the passenger in the vehicle [Mrs. Rodriguez], [Deputy Ratcliffe] wanted to take photographs of the ‘<i>Road Closed</i>’ sign and the ‘<i>Road Closed Ahead</i>’ signs for later defense in court.” <i>Id.</i> Mr. Rodriguez later pled responsible to the citation. <i>Id.</i></p>
24 25 26 27 28	<p>194</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> This statement is misleading because it suggests, as used in Plaintiffs’ Motion, that Deputy Ratcliffe asked Plaintiff David Rodriguez for his identification after issuing the actual traffic citation to Mr. Rodriguez. That is not accurate. Deputy Ratcliffe asked Plaintiff David Rodriguez for his identification before filling out</p>

1 the citation and **before** giving the citation to him.

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3 Deputy Ratcliffe stopped the truck and asked Mr. Rodriguez for his
4 driver's license, vehicle registration, and proof of insurance documents.
5 *See* Defendants' SOF (Dkt#413-1) at ¶ 47. He also asked Mr. Rodriguez
6 for his Social Security **number** so he could complete the MCSO citation
7 form, which includes a space for recording such information. *Id.* at ¶ 48.

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

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22 Upon receipt of the citation, Mr. Rodriguez asked Deputy Ratcliffe what
23 possible affect such a citation would have on his commercial driver's
24 license, and either Mr. or Mrs. Rodriguez then told Deputy Ratcliff that
25 he/she did not see any other drivers on the closed road receiving
26 citations. *Id.* at ¶ 54. Deputy Ratcliffe responded by telling Mr. and
27 Mrs. Rodriguez that he was only dealing with them and not dealing with
28 other drivers at that time. *Id.* It was at this time that Mrs. Rodriguez
accused Deputy Ratcliffe of "selective enforcement" in issuing the
traffic citation to her husband. *Id.* at ¶ 55. Mrs. Rodriguez became
"argumentative" with Deputy Ratcliffe. *Id.* According to Deputy
Ratcliffe, neither Mr. nor Mrs. Rodriguez ever told him that they had not
seen the "Road Closed" sign, or that they were off-road driving and must
have missed seeing the sign. *Id.* at ¶ 56.

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Disputed.

Controverting Statement: The Plaintiffs' cited portion of the record
does not support the statement that "Officers regularly leave this block
blank."

The remaining part of the statement is *misleading* because it suggests
that an MCSO deputy cannot ask for other forms of identification. The

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>cited policy Melendres MCSO 14926-28 (MCSO Policy & Procedure Contacts and Citation Issuance at p. 14927) does <u>not</u> limit what a deputy in the field can ask for in terms of identification.</p> <p>An MCSO deputy can ask a driver or person for <i>another</i> other form of identification to try to determine who the person is in terms of identity. <i>See</i> Deposition of Joe Sousa dated 12/10/99 at p. 230, Ins. 18-22, attached as Exhibit 5; Deposition of Ramon Arnedariz dated 11/08/10 at p. 30, Ins. 8-19, attached as Exhibit 8.</p> <p>If an MCSO deputy asks a person for their social security number and the driver or person refuses it, the deputy must accept that refusal. <i>See</i> Deposition of Joe Sousa dated 12/10/99 at p. 228, ln. 22 to p. 229, ln. 6; p. 257, ln. 24 to p. 258, ln. 12, attached as Exhibit 5; Deposition of Matthew Ratcliffe dated 10/15/09 at p. 98, Ins. 1-5, attached as Exhibit 6; Deposition of Michael Kikes dated 02/15/10 at p. 125, ln. 14 to p. 126, ln. 10, attached as Exhibit 7</p>
<p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>196</p> <p><i>Disputed.</i></p> <p><u>Controverting Statement:</u> While the statement that the traffic citation form has a block called “Military Status” is not disputed, the cited portion of the record does not contain testimony that supports the statement that “Deputy Ratcliffe did not insist on this information.”</p> <p><u>Objections:</u></p> <p>(A) Relevance. The cited MCSO form is immaterial to Plaintiffs’ Fourteenth Amendment Claim. The fact that some MCSO deputies may record “Military Status” on a traffic citation does not mean that a deputy that did not do so (i.e., Deputy Matthew Ratcliffe in the traffic stop involving the Rodriguez Plaintiffs) acted unreasonably or was deficient in his law enforcement practice or acted with racial animus or intent.</p> <p>(B) Hearsay and Foundation. Defendants further object to the documents on the grounds of hearsay, and lack of foundation. <i>Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005) (“Evidence a party relies upon with respect to a summary judgment motion must have an appropriate foundation and must be supported... by admissible evidence”); <i>Cornwell v. Electra Cen. Credit Union</i>, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006) (explaining that a plaintiff may not defeat a defendant’s motion for summary judgment “by relying solely on the plaintiff’s subjective belief that the challenged action was [wrong].”); <i>August v. Office Unlimited, Inc.</i>, 981 F.2d 576, 580 (1st Cir. 1992) (“Mere allegations or conjecture supported in the record, are insufficient</p>

1 2 3	to raise a genuine issue of material fact.”); <i>cf. Moore Drug Co. v. Shaneman</i> , 461 P.2d 95, 98 (Ariz. App. 1969) (“mere suspicion, innuendo, insinuation, and speculation are not substitutes for evidence.”)
4 5 6 7 8 9 10 11 12 13 14 15 16	<p>197</p> <p><i>Disputed</i></p> <p><u>Controverting Statement:</u> Deputy Ratcliffe did <i>not</i> recall the race of the other drivers he referred to the Tonto National Forest Ranger. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 138. Deputy Ratcliffe actually observed the Forest Ranger give citations to those other drivers regardless of their race. <i>Id.</i></p> <p>Another MCSO officer working Lake Patrol with Deputy Ratcliffe, Deputy Maltz, had on the same day allowed other motorists (of unknown races) to drive on the closed Bartlett Dam Road in order to go to the lake to repair either their recreational vehicles or boats that had been damaged in the storm. <i>Id.</i> at ¶ 139. Deputy Maltz was responsible for deciding whether to cite or warn those drivers, not Deputy Ratcliffe. <i>Id.</i> Deputy Ratcliffe has known Deputy Maltz for 2.5 years and does not believe that Deputy Maltz’ decision to allow other people to use Bartlett Dam Road to repair their property without the issuance of a traffic citation was based in any way on racial considerations. <i>Id.</i> at ¶ 140. Again, however, that was a decision of Deputy Maltz, not Deputy Ratcliffe and cannot, therefore, serve as a basis for Mr. Stewart’s opinion as to Deputy Ratcliffe’s alleged racially discriminatory motive.</p>
17 18 19 20 21 22 23 24 25 26 27 28	<p>198</p> <p><u>Disputed and Defendants object to this statement of fact for purposes of summary judgment motion practice.</u> It is inadmissible. The Court should strike this statement of fact. The support for the dispute and objections are as follows:</p> <p><u>Controverting Statement:</u> Deputy Ratcliffe had probable cause to stop the Rodriguez truck because it was driving on a closed road. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶¶ 44-45, and 51-52. Knowingly or unknowingly disobeying a traffic control sign is a violation of Arizona law. A.R.S. § 28-644. Mrs. Rodriguez <i>admits</i> there was probable cause to stop her vehicle. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 112. Mrs. Rodriguez is not even critical of the actual traffic stop. <i>Id.</i> at ¶ 113. Defense expert Mr. Bennie Click testified that Deputy Ratcliffe had probable cause to stop the Rodriguez truck. <i>Id.</i> at ¶ 114. The opinion of Plaintiffs’ own police practices/racial profiling expert, Mr. Robert Stewart, is in accord:</p>

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

A. **Yes.**

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

Mrs. Rodriguez admits that Deputy Ratcliffe was not acting with racially discriminatory intent or motive:

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

A. **No.**

Id. at ¶ 133 (emphasis added).

Defense expert Mr. Click testified that there is no direct or circumstantial evidence that Deputy Ratcliffe racially profiled or otherwise acted with racially discriminatory intent or motive toward Mr. and Mrs. Rodriguez. *Id.* at ¶ 134. Plaintiffs’ expert, Mr. Stewart, has no opinion as to whether Deputy Ratcliffe had racially discriminatory intent or motive in stopping the Rodriguez vehicle:

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

A. **Don’t know.**

Id. at ¶ 135 (emphasis added).

Objections:

(A) **Relevance:** This statement of fact is irrelevant to whether the named Plaintiffs have suffered a constitutional injury.

(B) **Hearsay:** Defendants object to the Plaintiffs’ recitation of what unknown persons allegedly told them on the grounds that such statements are hearsay without any exception allowing their admissibility into evidence. There are no names, addresses, or contact

1 2 3 4 5 6 7	<p>information for the persons that the Plaintiffs supposedly talked to and the Defendants have no ability to cross examine these third parties as to what, if anything, they told the Plaintiffs. <i>Murphy v. Yavapai County</i>, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006) (if affiant is not available to undergo cross-examination at trial or in a pre-trial deposition, affidavit of third party is hearsay).</p> <p>(C) Foundation. There is no foundation that any of the persons that Plaintiffs allegedly spoke to were stopped by MCSO Deputy Matthew Ratcliffe, the deputy who actually stopped the Rodriguez Plaintiffs.</p>
8 9 10 11 12 13 14 15	<p>199 <i>Admit with clarification.</i></p> <p>The MCSO's investigation into the Rodriguez Plaintiffs' traffic stop/citation concluded that Deputy Matthew Ratcliffe acted in accordance with MCSO policy and that there was "no basis for the accusation of racial profiling." Document Melendres MCSO 000001-03 at p. 02 (Hickey Dec. Ex. 118) (handwritten conclusion of MCSO lieutenant). In addition, during the investigation Plaintiff Jessica Rodriguez "apologized [to the MCSO] for throwing out the 'Race Card'", but felt they did not deserve a citation. <i>Id.</i> (text of type written document) (emphasis added).</p>
16 17 18 19 20 21	<p>200 <i>Disputed</i></p> <p><u>Controverting Statement:</u> This statement of fact is misleading as written. While it is true that the MCSO was conducting a saturation patrol on the referenced date, the Meraz and Nieto Plaintiffs were not pulled over in a traffic stop as part of that saturation patrol. The traffic stop of Ms. Meraz and Mr. Nieto, while occurring when a saturation patrol was simultaneously on-going in the area, was <i>unrelated</i> to that saturation patrol. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶¶ 64-88.</p>
22	<p>201 <i>Admit.</i></p>
23 24 25 26 27 28	<p>202 <i>Disputed</i></p> <p><u>Controverting Statement:</u> This statement is misleading as written. As Deputy Ramon Armendariz was handling two arrestees, momentarily a dark colored vehicle (driven by Plaintiff Nieto and occupied by his sister, Plaintiff Meraz) pulled into the convenience mart/gas station and parked directly behind Deputy Armendariz' patrol car. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶ 68. Deputy Armendariz was standing in front of his patrol car handling the detained passenger of the car he stopped. <i>Id.</i> The dark colored vehicle was playing load music, the passenger side</p>

1 windows were down, and Deputy Armendariz could see a female
2 passenger (later known to be Ms. Meraz) and a male driver (later known
3 to be Mr. Nieto). *Id.* at ¶ 69. The female passenger started **yelling**
4 **repeatedly** in Spanish out her window at Deputy Armendariz' detainee
5 sitting on the bumper of the patrol car, "no diga nada,' 'no diga nada,' ...
6 which means don't – 'don't say anything,' 'don't say anything'; 'pida un
7 abogado,' 'pida un abogado,' which means 'ask for a lawyer,' 'ask
8 for a lawyer.'" *Id.* at ¶ 70.

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

19 Deputy Armendariz was worried about his safety and the safety of the
20 two men he had in custody. *Id.* at ¶ 75. Because the vehicle with the
21 yelling passenger would not leave, Deputy Armendariz called on his
22 radio for back-up. *Id.* at ¶ 76.

23 Despite Deputy Armendariz' repeated commands for them to leave, the
24 male in the dark colored vehicle then opened his door and started to get
25 out. *Id.* at ¶ 78. Deputy Armendariz believed that the male was going to
26 get out of the car to "try to kick my ass." *Id.* The vehicle occupants
27 appeared very "angry" and were acting "very threatening." *Id.* at 79.
28 "[T]heir actions towards [Deputy Armendariz] were as if it was personal
towards [him]." *Id.*

Deputy Armendariz testified as to his state of mind when he saw the
male in the vehicle open his door and start to get out:

I had other responsibilities that I was taking care of. I had two
people that I was in -- that I had in custody that I was responsible
for. I didn't know if he [Mr. Nieto] was going to come out with a
gun. I didn't know if he was going to come out with a knife. Am
I going to have to -- am I going to have to defend myself while
protecting my suspect that I have in custody? You know, is this
going to turn into -- is he going to get out with a knife? Am I
going to have to shoot him? Is he going to come out with a gun?

1 2 3 4 5 6 7 8 9 10	<p>Am I going to have to spray -- you know, pepper spray to get him away from me? I mean, just the array of, you know, "what-ifs." That situation could have gone bad, really bad, really quick.</p> <p><i>Id.</i> at 80.</p> <p>Seeing this, Deputy Armendariz grew more worried, in fact he was afraid, and ordered the man to stay in his car or he would be arrested for disorderly conduct. <i>Id.</i> at ¶ 82. In short, the occupants of the vehicle (Ms. Meraz and Mr. Nieto) made "a big scene" at the convenience mart/gas station. <i>Id.</i> at ¶ 83.</p> <p>Finally, the vehicle's occupants complied with Deputy Armendariz' command and left the scene while yelling profanities at him.</p>
11 12 13 14	<p>203 <i>Admit with clarification</i></p> <p>Plaintiffs' statement of fact is misleading because it ignores the actions, conduct, and time delay of the Plaintiffs in leaving the property. Defendants refer the Court to the Controverting Statement of Facts contained in response to paragraph no. 202 above.</p>
15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>204 <i>Disputed</i></p> <p><u>Controverting Statement:</u> Deputy Ramon Armendariz identified the vehicle to MCSO motorcycle Deputy Michael Kikes and then pointed Deputy Kikes in the general direction of the departed vehicle. Deputy Beeks, in a patrol car, followed Deputy Kikes. (Plaintiffs' Statement of Fact at Kikes deposition at 71, ln. 15 to p. 73, ln. 14). Due to the Meraz-Nieto vehicle's window tinting, Deputy Kikes could <u>not</u> see the race, sex, or other characteristics of the vehicle's occupants. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶ 86.</p> <p>Additionally, Plaintiffs' police practices/racial profiling expert, Mr. Robert Stewart, admittedly has no evidence of racially discriminatory intent or motive by Deputy <u>Ramon Armendariz</u>. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶ 141. According to Mr. Stewart, there is no evidence that Deputy <u>Michael Kikes</u> had racially discriminatory intent or motive in making the traffic stop of the Meraz-Nieto vehicle. <i>Id.</i> at ¶ 143. Finally, Mr. Stewart testified that there is no evidence that Ms. Meraz and Mr. Nieto were racially profiled in either the traffic stop or during their subsequent treatment by the MCSO deputies. <i>Id.</i> at ¶ 144.</p>

<p>1 2 3 4 5 6 7 8 9 10 11</p>	<p>205</p> <p><i>Disputed</i></p> <p><u>Controverting Statement:</u> This statement of fact is misleading as written by the Plaintiffs.</p> <p>MCSO Deputy Douglas Beeks heard Deputy Ramon Armendariz’ radio call for back-up and described Deputy Armendariz’ voice as sounding “excited” and “agitated”. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 77. Deputy Beeks also recalls hearing words used by Deputy Armendariz that led Deputy Beeks to believe in good faith that “a vehicle had tried to run over or hit Deputy Armendariz as it left the area” and that a crime may have been committed. <i>Id.</i> Accordingly, Deputy Beeks was concerned for the safety of Deputy Armendariz. <i>Id.</i></p> <p>In addition, the cited section of Deputy Beeks deposition does not state that “he could see that deputy Armendariz was unharmed.” On the other hand, Deputy Beeks testified that Deputy Armendariz told him that “he was okay” p. 120, Ins. 9-10.</p>
<p>12 13 14 15 16 17 18 19</p>	<p>206</p> <p><i>Disputed</i></p> <p><u>Controverting Statement:</u> This statement of fact is misleading as written by the Plaintiffs.</p> <p>Deputy Kikes conducted a radio check on the driver’s status (Mr. Nieto’s) and it came back clear. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 95. Deputy Beeks then contacted Deputy Armendariz to determine what had actually occurred between him and the vehicle’s occupants. <i>Id.</i> at ¶ 96. Following that communication, Mr. Nieto was released without being charged with either a traffic violation (i.e., failure to stop when directed) or for obstructing Deputy Armendariz. <i>Id.</i> at ¶ 97</p>
<p>20 21 22 23 24 25 26 27 28</p>	<p>207</p> <p><i>Disputed</i></p> <p><u>Controverting Statement:</u> Deputy Michael Kikes heard Deputy Ramon Armendariz’ radio call for assistance and believed, based on the pitch of Deputy Armendariz’ voice, that something was wrong at the time of Deputy Armendariz’ call. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 77. Deputy Kikes, therefore, believed in good-faith that he had probable cause to stop the dark colored vehicle (driven by Plaintiff Nieto and occupied by his sister, Plaintiff Meraz) because he believed there was an emergency situation of some type involving Deputy Armendariz. <i>Id.</i> at ¶ 85. Due to the vehicle’s window tinting, Deputy Kikes could <u>not</u> see the race, sex, or other characteristics of the vehicle’s occupants. <i>Id.</i> at ¶ 86.</p>

1 2 3 4 5 6 7 8 9 10 11	<p>While Defendants acknowledge that Plaintiff Nieto testified that he pulled into his family’s auto shop because it was “just south of their location,” Nieto’s refusal to obey Deputy Kikes’ traffic command was a law enforcement concern. Deputy Kikes testified that the driver of the vehicle (i.e., Mr. Nieto) would <i>not</i> stop in response to Deputy Kikes’ signals (in itself a violation of the traffic law), and that Nieto drove another 300 feet until he turned left into an auto shop instead of pulling over on the right side of the public roadway as required by law. <i>Id.</i> at ¶ 87. Deputy Kikes was concerned about the driver’s (Nieto’s) behavior, where he parked, and what that behavior meant. <i>Id.</i> at ¶ 88.</p> <p>Additionally, defense expert Mr. Bennie Click testified that Deputy Kikes had reasonable suspicion to stop the Meraz-Nieto vehicle. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 118. Plaintiffs’ expert Mr. Stewart <i>agrees</i> that Deputy Kikes had reasonable suspicion under the circumstances that allowed him to properly stop the Meraz-Nieto vehicle. <i>Id.</i> at ¶ 119.</p>
12 13 14 15 16 17	<p>208 <i>Disputed</i></p> <p><u>Controverting Statement:</u> This statement of fact is misleading as written by the Plaintiffs. Once the Nieto-Meraz vehicle pulled into the auto repair shop, the driver (Mr. Nieto) refused to exit his vehicle. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ <i>Id.</i> at ¶ 89. He also refused to roll down his window to speak with Deputy Michael Kikes. <i>Id.</i> at ¶ 90. He claims that he was calling 911 to report harassment by the MCSO.</p>
18 19 20 21 22 23 24 25 26 27 28	<p>209 <i>Disputed</i></p> <p><u>Controverting Statement:</u> This statement of fact is misleading as written by the Plaintiffs.</p> <p>Once the Nieto-Meraz vehicle pulled into the auto repair shop, the driver (Mr. Nieto) refused to exit his vehicle. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ <i>Id.</i> at ¶ 89. He also refused to roll down his window to speak with Deputy Michael Kikes. <i>Id.</i> at ¶ 90. At this time, two unknown men in mechanic’s clothing immediately came out from the auto repair shop and were “angry”, “yelling” and “cursing” at Deputy Douglas Kikes. <i>Id.</i> at ¶ 91. Deputy Beeks, now at the scene, saw the driver acting very “belligerent”, “non-compliant”, and “almost hostile in nature” toward Deputy Kikes, and Deputy Beeks thought that the driver might drive his vehicle forward or backward; therefore, Deputy Beeks <i>pulled his handgun to his side for safety purposes.</i> <i>Id.</i> at ¶ 92. There is no testimony other than from the Plaintiffs Nieto and Meraz that other deputies had their guns drawn and there is no testimony that any MCSO</p>

1 2 3	deputy ever “pointed [their gun] at [Plaintiffs].” The Plaintiffs’ cited authority from MCSO deputy Beeks does not support this statement of fact as written.
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>210 <i>Disputed</i></p> <p><u>Controverting Statement:</u> This statement of fact is misleading as written by the Plaintiffs.</p> <p>The driver of the vehicle (i.e., Mr. Nieto) would <i>not</i> stop in response to Deputy Michael Kikes’ signals (in itself a violation of the traffic law), and he drove another 300 feet until he turned left into an auto shop instead of pulling over on the right side of the public roadway as required by law. <i>See</i> Defendants’ SOF (Dkt#413-1) at ¶ 87. Deputy Kikes was concerned about the driver’s behavior, where he parked, and what that behavior meant. <i>Id.</i> at ¶ 88.</p> <p>Once the Nieto-Meraz vehicle pulled into the auto repair shop, the driver (Mr. Nieto) refused to exit his vehicle. <i>Id.</i> at ¶ 89. He also refused to roll down his window to speak with Deputy Kikes. <i>Id.</i> at ¶ 90. At this time, two unknown men in mechanic’s clothing immediately came out from the auto repair shop and were “angry”, “yelling” and “cursing” at Deputy Kikes. <i>Id.</i> at ¶ 91. Deputy Beeks, now at the scene, saw the driver acting very “belligerent”, “non-compliant”, and “almost hostile in nature” toward Deputy Kikes, and Deputy Beeks thought that the driver might drive his vehicle forward or backward; therefore, Deputy Beeks pulled his handgun to <i>his side</i> for safety purposes. <i>Id.</i> at ¶ 92.</p> <p>Finally, Deputy Kikes opened the vehicle’s door, grabbed the driver, and removed him from the vehicle where he then handcuffed him. <i>Id.</i> at ¶ 93. Deputy Kikes moved the driver to the rear of the vehicle away from the angry mechanics and obtained his driver’s license information. <i>Id.</i> at ¶ 94.</p> <p>Deputy Kikes conducted a radio check on the driver’s status (Mr. Nieto’s) and it came back clear. <i>Id.</i> at ¶ 95. Deputy Beeks then contacted Deputy Armendariz to determine what had actually occurred between him and the vehicle’s occupants. <i>Id.</i> at ¶ 96. Following that communication, Mr. Nieto was released without being charged with either a traffic violation (i.e., failure to stop when directed) or for obstructing Deputy Armendariz. <i>Id.</i> at ¶ 97.</p> <p>Additionally, Deputy Kikes’ post-traffic stop treatment of Mr. Nieto (i.e., removing him from the vehicle and handcuffing him) was <i>not</i></p>

1 2 3 4	unreasonable. Plaintiffs' police practice/racial profiling expert Mr. Robert Stewart testified that Deputy Kikes acted "reasonably" in his post-stop conduct and treatment of Mr. Nieto. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶ 120.
5 6 7 8 9 10 11	211 <i>Disputed</i> <u>Controverting Statement:</u> Plaintiff Nieto pulled his vehicle into an auto repair shop. At this time, two unknown men in mechanic's clothing immediately came out from the auto repair shop and were "angry", "yelling" and "cursing" at Deputy Michael Kikes. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶ 91. While Plaintiff Nieto and Meraz testified that these unknown men were family members and supposedly identified Nieto and Meraz to the MCSO deputies as United State citizens, the Plaintiff citation to Kikes deposition at p. 79, lns. 11-15 does not support this statement of fact.
12 13 14 15 16	212 <i>Admit with clarification.</i> Deputy Kikes' post-traffic stop treatment of Mr. Nieto (i.e., removing him from the vehicle and handcuffing him) was not unreasonable. Plaintiffs' police practice/racial profiling expert Mr. Robert Stewart testified that Deputy Kikes acted "reasonably" in his post-stop conduct and treatment of Mr. Nieto. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶ 120.
17 18 19 20 21 22 23 24 25 26 27 28	213 <i>Disputed</i> <u>Controverting Statement:</u> This statement of fact is misleading as written by the Plaintiffs. The driver of the vehicle (i.e., Mr. Nieto) would not stop in response to Deputy Michael Kikes' signals (in itself a violation of the traffic law), and he drove another 300 feet until he turned left into an auto shop instead of pulling over on the right side of the public roadway as required by law. <i>See</i> Defendants' SOF (Dkt#413-1) at ¶ ¶ 87. Deputy Kikes was concerned about the driver's behavior, where he parked, and what that behavior meant. <i>Id.</i> at ¶ 88. Once the Nieto-Meraz vehicle pulled into the auto repair shop, the driver (Mr. Nieto) refused to exit his vehicle. <i>Id.</i> at ¶ 89. He also refused to roll down his window to speak with Deputy Kikes. <i>Id.</i> at ¶ 90. At this time, two unknown men in mechanic's clothing immediately came out from the auto repair shop and were "angry", "yelling" and "cursing" at Deputy Kikes. <i>Id.</i> at ¶ 91. Deputy Beeks, now at the scene, saw the

1 2 3 4 5 6 7 8 9 10 11 12	<p>driver acting very “belligerent”, “non-compliant”, and “almost hostile in nature” toward Deputy Kikes, and Deputy Beeks thought that the driver might drive his vehicle forward or backward; therefore, Deputy Beeks pulled his handgun to <i>his side</i> for safety purposes. <i>Id.</i> at ¶ 92.</p> <p>Finally, Deputy Kikes opened the vehicle’s door, grabbed the driver, and removed him from the vehicle where he then handcuffed him. <i>Id.</i> at ¶ 93. Deputy Kikes moved the driver to the rear of the vehicle away from the angry mechanics and obtained his driver’s license information. <i>Id.</i> at ¶ 94.</p> <p>Deputy Kikes conducted a radio check on the driver’s status (Mr. Nieto’s) and it came back clear. <i>Id.</i> at ¶ 95. Deputy Beeks then contacted Deputy Armendariz to determine what had actually occurred between him and the vehicle’s occupants. <i>Id.</i> at ¶ 96. Following that communication, Mr. Nieto was released without being charged with either a traffic violation (i.e., failure to stop when directed) or for obstructing Deputy Armendariz. <i>Id.</i> at ¶ 97</p>
13 14 15 16 17 18 19 20 21	<p>214</p> <p><i>Disputed</i></p> <p><u>Controverting Statement:</u> While Defendants acknowledge that Plaintiff Nieto testified that he supposedly called the MCSO to lodge a complaint, Nieto’s truthfulness is in question. Plaintiff Nieto is a three-time convicted felon who spent 3.5 years in prison for domestic violence and was released from prison only one month earlier in February 2008. Defendants’ SOF (Dkt#413-1) at ¶ 81. In addition, Nieto never wrote a <u>written</u> complaint about the MCSO’s alleged conduct and send it to anyone. <i>See</i> Deposition of Manuel Nieto, Jr. at p. 31, lns. 9-14, attached as Exhibit 4. After everything he alleges he experienced, Nieto still did not write a complaint to the MCSO, the City of Phoenix Police Department, or the FBI. <i>Id.</i> at p. 32, lns. 9-20.</p>
22 23 24 25 26 27 28	<p>215</p> <p>Disputed and Defendants object to the use of this particular declaration for purposes of summary judgment motion practice. It is, in whole or in part, inadmissible. The Court should strike this declaration and statement of fact. The support for the dispute and objections are as follows:</p> <p><u>Objections:</u></p> <p>(A) Relevance: This declaration is irrelevant to whether the named Plaintiffs have suffered a constitutional injury. “Any injury <i>unnamed</i></p>

1 *members* of this proposed class may have suffered is simply **irrelevant**
 2 to the question whether *the named plaintiffs* are entitled to the injunctive
 3 relief they seek.” *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1045
 4 (9th Cir. 1999); *see also Lewis v. Casey*, 518 U.S. 343, 357 (1996) (“The
 5 remedy must of course be limited to the inadequacy that produced the
 6 injury in fact **that the [named] plaintiff** has established. This is no less
 7 true with respect to class actions than with respect to other suits.”; *see*
 8 *also* at p. 357 “That a suit may be a class action . . . **adds nothing** to the
 9 question of standing, for even named plaintiffs who represent a class
 10 “must allege and show that **they personally have been injured, not**
 11 **that injury has been suffered by other, unidentified members of the**
 12 **class to which they belong and which they purport to represent.”**”);
 13 *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995) (“The nature of the . . .
 14 remedy is to be determined by the nature and scope of the constitutional
 15 violation” to the named plaintiffs; not by reference to what other non
 16 parties claim) (citation and internal quotation marks omitted); *Huss v.*
 17 *Spokane County*, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007)
 18 (alleged injury by unnamed class members irrelevant to determination of
 19 named plaintiffs’ claims.

20 In addition, the Urteaga declaration is irrelevant to the issue of whether
 21 the MCSO’s traffic stops violated each of the named Plaintiffs’ rights to
 22 equal treatment under the Fourteenth Amendment. Rule 401, Federal
 23 Rules of Evidence. The information contained in the declaration does
 24 not make it more or less probable that the rights of the named Plaintiffs
 25 were violated, and none of the Plaintiffs were present in the declarant’s
 26 vehicle or at the specifically mentioned saturation patrol.

27 It is undisputed that the traffic stop of Plaintiffs Jessica and David
 28 Rodriguez did **not** occur during a saturation patrol. DSOF (Dkt# 413-1)
 at ¶¶ 42-43. The traffic stop of Plaintiffs Meraz and Nieto, while
 occurring when a saturation patrol was on-going nearby, did **not** occur as
 a result of a saturation patrol. DSOF (Dkt# 413-1) at ¶¶ 64-88. Finally,
 the traffic stop of Plaintiff Melendres technically could be considered as
 part of an MCSO saturation patrol, and was considered as such by
 Deputy DiPietro, but the operation was actually a small HSU detail
 targeting only specific vehicles that had picked up persons from a
 suspected human smuggling drop house/day laborer location, and did not
 involve the MCSO making general traffic stops of any vehicles other
 than those that had visited the church property and picked-up passengers
 and where probable cause was found to stop those particular vehicles.
 DSOF (Dkt# 413-1) at ¶ 12. Even if Melendres stop occurred during a
 saturation patrol, that stop was not during the declarant’s saturation
 patrol.

1 The declarant represents that his stop occurred on January 2, 2009. The
2 traffic stop of Plaintiff Melendres occurred on September 26, 2007.
3 DSOF (Dkt# 413-1) at ¶ 12. The traffic stop of the Rodriguez Plaintiffs
4 occurred on December 2, 2007. *Id.* at ¶ 40. The traffic stop of Plaintiff
5 Meraz and Nieto occurred on March 28, 2009. *Id.* at ¶ 63.

6 The declaration is irrelevant, and Court should not consider this
7 declaration for this reason.

8 (B) **Hearsay.** While the use of affidavits is permissible in summary
9 judgment practice, this declaration is of a third party and is hearsay
10 because it is being offered for the truth of the matter contained therein,
11 and there is no exception to the hearsay rule that would allow its
12 admission into evidence. Defendants also lack the ability to effectively
13 cross examine this witness on the matter set forth in the declaration and
14 given the limitations in the numbers of depositions permitted in this
15 case, could not cross-examine the declarant in deposition. *Murphy v.*
16 *Yavapai County*, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006)
17 (if affiant is not available to undergo cross-examination at trial or in a
18 pre-trial deposition, affidavit of third party is hearsay). Also, because
19 the declarant does not identify by name or serial number any of the
20 deputies he supposedly encountered, there is no meaningful way that
21 Defendants could identify the deputies and obtain their knowledge about
22 what occurred with the declarant, if anything.

23 The declaration **also contains another layer of hearsay** in that it
24 purports to relate the statement of an unknown MCSO deputy and it does
25 not constitute an admission in this case. *See Horta v. Sullivan*, 4 F.3d 2,
26 8 (1st Cir. 1993) (“hearsay within hearsay” is “inadmissible at trial to
27 establish the truth of the reported facts.”) The unknown and unidentified
28 deputy is **not** a defendant to this action and the fact that he is an
employee of the MCSO does **not** equate to his statements amounting to
admissions by a party opponent. The Court should not consider this
declaration for this reason.

(C) **Lack of Foundation and Speculation.** Declarant’s first statement
at ¶ 10 (“I believe that the first MCSO deputy was trying to intimidate
me by asking me for proof of my citizenship.”) is inadmissible
speculation and conjecture. *Cox v. Amerigas Propane, Inc.*, 2005 U.S.
Dist. LEXIS 26344 (Ariz. 2005) (“Evidence a party relies upon with
respect to a summary judgment motion must have an appropriate
foundation and must be supported... by admissible evidence”);
Cornwell v. Electra Cen. Credit Union, 439 F.3d 1018, 1028-29 n.6 (9th
Cir. 2006) (explaining that a plaintiff may not defeat a defendant’s

1 motion for summary judgment “by relying solely on the plaintiff’s
 2 subjective belief that the challenged action was [wrong].”); *August v.*
 3 *Office Unlimited, Inc.*, 981 F.2d 576, 580 (1st Cir. 1992) (“Mere
 4 allegations or conjecture supported in the record, are insufficient to raise
 5 a genuine issue of material fact.”); *cf. Moore Drug Co. v. Shaneman*, 461
 P.2d 95, 98 (Ariz. App. 1969) (“mere suspicion, innuendo, insinuation,
 and speculation are not substitutes for evidence.”)

6 Declarant’s final statement at ¶ 10 (“I believe that I was pulled over
 7 solely because I am Latino.”) lacks the foundation to support this
 8 conclusion and is inadmissible speculation and conjecture. *Cox*, 2005
 U.S. Dist. LEXIS 26344; *Cornwel*, 439 F.3d at 1028-29 n.6; *August*,
 9 981 F.2d at 580; *Shaneman*, 461 P.2d at 98”).

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11 **Disputed and Defendants object to the use of this particular**
 12 **declaration for purposes of summary judgment motion practice.** It
 13 is, in whole or in part, inadmissible. The Court should strike this
 14 declaration and statement of fact. The support for the dispute and
 15 objections are as follows:

16 **Objections:**

17 (A) **Relevance:** This declaration is irrelevant to whether the named
 18 Plaintiffs have suffered a constitutional injury. “Any injury *unnamed*
 19 *members* of this proposed class may have suffered is simply **irrelevant**
 20 to the question whether *the named plaintiffs* are entitled to the injunctive
 relief they seek.” *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1045
 (9th Cir. 1999); *see also Lewis v. Casey*, 518 U.S. 343, 357 (1996);
Missouri v. Jenkins, 515 U.S. 70, 88, 89 (1995); *Huss v. Spokane*
County, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007).

21 In addition, the Magos declaration is irrelevant to the issue of whether
 22 the MCSO’s traffic stops violated each of the named Plaintiffs’ rights to
 23 equal treatment under the 14th Amendment. Rule 401, Federal Rules of
 24 Evidence. The information contained in the declaration does not make it
 25 more or less probable that the rights of the named Plaintiffs were
 violated, and none of the Plaintiffs were present in the declarant’s
 vehicle.

26 (B) **Hearsay.** While the use of affidavits is permissible in summary
 27 judgment practice, this declaration is of a third party and is hearsay
 28 because it is being offered for the truth of the matter contained therein,
 and there is no exception to the hearsay rule that would allow its

1 admission into evidence. Defendants also lack the ability to effectively
 2 cross-examine this witness on the matter set forth in the declaration and
 3 given the limitations in the numbers of depositions permitted in this
 4 case, could not cross-examine the declarant in deposition. *Murphy v.*
 5 *Yavapai County*, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006)
 (if affiant is not available to undergo cross-examination at trial or in a
 pre-trial deposition, affidavit of third party is hearsay).

6 The declaration **also contains another layer of hearsay** in that it
 7 purports to relate the statement of an MCSO deputy (“Don’t go thinking
 8 this is racial profiling”) and it does not constitute an admission in this
 9 case, and what “my daughter’s boyfriend” did or did not do and the
 10 MCSO’s response. *See Horta v. Sullivan*, 4 F.3d 2, 8 (1st Cir. 1993)
 (“hearsay within hearsay” is “inadmissible at trial to establish the truth
 11 of the reported facts.”) The deputy is **not** a defendant to this action and
 12 the fact that he is an employee of the MCSO does **not** equate to his
 statements amounting to admissions by a party opponent. The Court
 should not consider this declaration for this reason.

13 (C) **Lack of Foundation and Speculation.** Declarant’s statement at ¶
 14 17 (“I believe that we were stopped and harassed because of the color of
 15 our skin.”) is inadmissible speculation and conjecture. *Cox v. Amerigas*
 16 *Propane, Inc.*, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005) (“Evidence a
 17 party relies upon with respect to a summary judgment motion must have
 18 an appropriate foundation and must be supported... by admissible
 19 evidence”); *Cornwell v. Electra Cen. Credit Union*, 439 F.3d 1018,
 20 1028-29 n.6 (9th Cir. 2006) (explaining that a plaintiff may not defeat a
 21 defendant’s motion for summary judgment “by relying solely on the
 22 plaintiff’s subjective belief that the challenged action was [wrong].”);
August v. Office Unlimited, Inc., 981 F.2d 576, 580 (1st Cir. 1992)
 (“Mere allegations or conjecture supported in the record, are insufficient
 to raise a genuine issue of material fact.”); *cf. Moore Drug Co. v.*
Shaneman, 461 P.2d 95, 98 (Ariz. App. 1969) (“mere suspicion,
 innuendo, insinuation, and speculation are not substitutes for evidence.”)

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23 **Disputed and Defendants object to the use of this particular**
 24 **declaration for purposes of summary judgment motion practice.** It
 25 is inadmissible. The Court should strike this declaration and statement
 of fact. The support for the dispute and objections are as follows:

26 **Objections:**

27 (A) **Relevance:** This declaration is irrelevant to whether the named
 28 Plaintiffs have suffered a constitutional injury. “Any injury *unnamed*

1 *members* of this proposed class may have suffered is simply **irrelevant**
 2 to the question of whether *the named plaintiffs* are entitled to the
 3 injunctive relief they seek.” *Hodgers-Durgin v. De La Vina*, 199 F.3d
 4 1037, 1045 (9th Cir. 1999); *see also Lewis v. Casey*, 518 U.S. 343, 357
 5 (1996); *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995); *Huss v. Spokane*
 6 *County*, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007).

7 In addition, the Garcia declaration is irrelevant to the issue of whether
 8 the MCSO’s traffic stops violated each of the named Plaintiffs’ rights to
 9 equal treatment under the Fourteenth Amendment. Rule 401, Federal
 10 Rules of Evidence. The information contained in the declaration does
 11 not make it more or less probable that the rights of the named Plaintiffs
 12 were violated, and none of the Plaintiffs were present in the declarant’s
 13 vehicle on the occasions identified in the declaration.

14 (B) **Hearsay**. While the use of affidavits is permissible in summary
 15 judgment practice, this declaration is of a third party and is hearsay
 16 because it is being offered for the truth of the matter contained therein,
 17 and there is no exception to the hearsay rule that would allow its
 18 admission into evidence. Defendants also lack the ability to effectively
 19 cross examine this witness on the matter set forth in the declaration and
 20 given the limitations in the numbers of depositions permitted in this
 21 case, could not cross-examine the declarant in deposition. *Murphy v.*
 22 *Yavapai County*, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006)
 23 (if affiant is not available to undergo cross-examination at trial or in a
 24 pre-trial deposition, affidavit of third party is hearsay). Also, because
 25 the declarant does not identify by specific date or time, or location, or
 26 the name or serial number any of the deputies he supposedly
 27 encountered, there is no meaningful way that Defendants could identify
 28 the deputies and obtain their knowledge about what occurred with the
 declarant, if anything.

The declaration **also contains another layer of hearsay** in that it
 purports to relate the statement of an unknown MCSO deputy and it does
 not constitute an admission in this case. *See Horta v. Sullivan*, 4 F.3d 2,
 8 (1st Cir. 1993) (“hearsay within hearsay” is “inadmissible at trial to
 establish the truth of the reported facts.”) The unknown and unidentified
 deputy is **not** a defendant to this action and the fact that he is an
 employee of the MCSO does **not** equate to his statements amounting to
 admissions by a party opponent. The Court should not consider this
 declaration for this reason.

(C) **Lack of Foundation and Speculation**. Declarant’s statement at ¶
 10 (“We believe that we were stopped each time because we are

1 Hispanic, and not because of anything we had done wrong.”) is
 2 inadmissible speculation and conjecture. *Cox v. Amerigas Propane,*
 3 *Inc.*, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005); *Cornwell v. Electra*
 4 *Cen. Credit Union*, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006); *August*
 5 *v. Office Unlimited, Inc.*, 981 F.2d 576, 580 (1st Cir. 1992); *Moore Drug*
 6 *Co. v. Shaneman*, 461 P.2d 95, 98 (Ariz. App. 1969).

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7 **Disputed and Defendants object to the use of this particular**
 8 **declaration for purposes of summary judgment motion practice.** It
 9 is inadmissible. The Court should strike this declaration and statement
 10 of fact. The support for the dispute and objections are as follows:

11 **Objections:**

12 (A) **Relevance:** This declaration is irrelevant to whether the named
 13 Plaintiffs have suffered a constitutional injury. “Any injury *unnamed*
 14 *members* of this proposed class may have suffered is simply **irrelevant**
 15 to the question of whether *the named plaintiffs* are entitled to the
 16 injunctive relief they seek.” *Hodgers-Durgin v. De La Vina*, 199 F.3d
 17 1037, 1045 (9th Cir. 1999); *see also Lewis v. Casey*, 518 U.S. 343, 357
 18 (1996); *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995); *Huss v. Spokane*
 19 *County*, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007).

20 In addition, the Villaman declaration is irrelevant to the issue of whether
 21 the MCSO’s traffic stops violated each of the named Plaintiffs’ rights to
 22 equal treatment under the Fourteenth Amendment. Rule 401, Federal
 23 Rules of Evidence. The information contained in the declaration does
 24 not make it more or less probable that the rights of the named Plaintiffs
 25 were violated, and none of the Plaintiffs were present in the declarant’s
 26 vehicle.

27 (B) **Hearsay.** While the use of affidavits is permissible in summary
 28 judgment practice, this declaration is of a third party and is hearsay
 because it is being offered for the truth of the matter contained therein,
 and there is no exception to the hearsay rule that would allow its
 admission into evidence. Defendants also lack the ability to effectively
 cross examine this witness on the matter set forth in the declaration and
 given the limitations in the numbers of depositions permitted in this
 case, could not cross-examine the declarant in deposition. *Murphy v.*
Yavapai County, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006)
 (if affiant is not available to undergo cross-examination at trial or in a
 pre-trial deposition, affidavit of third party is hearsay).

1 2 3 4 5 6 7 8 9 10 11 12	<p>The declaration also contains another layer of hearsay in that it purports to relate the statement of three MCSO deputies and those statements do not constitute admissions in this case. <i>See Horta v. Sullivan</i>, 4 F.3d 2, 8 (1st Cir. 1993) (“hearsay within hearsay” is “inadmissible at trial to establish the truth of the reported facts.”) The deputies are not defendants to this action and the fact that they are employees of the MCSO does not equate to their purported statements amounting to admissions by a party opponent. The Court should not consider this declaration for this reason.</p> <p>(C) Lack of Foundation and Speculation. Declarant’s statement at ¶ 19 (“I believe that I was stopped not because I had done anything wrong, but because of the color of my skin.”) is inadmissible speculation and conjecture, and lacks foundation. <i>Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005); <i>Cornwell v. Electra Cen. Credit Union</i>, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006); <i>August v. Office Unlimted, Inc.</i>, 981 F.2d 576, 580 (1st Cir. 1992); <i>Moore Drug Co. v. Shaneman</i>, 461 P.2d 95, 98 (Ariz. App. 1969)</p>
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>219</p> <p>Disputed and Defendants object to the use of this particular declaration for purposes of summary judgment motion practice. It is inadmissible. The Court should strike this declaration and statement of fact. The support for the dispute and objections are as follows:</p> <p><u>Objections:</u></p> <p>(A) Relevance: This declaration is irrelevant to whether the named Plaintiffs have suffered a constitutional injury. “Any injury <i>unnamed members</i> of this proposed class may have suffered is simply irrelevant to the question whether <i>the named plaintiffs</i> are entitled to the injunctive relief they seek.” <i>Hodgers-Durgin v. De La Vina</i>, 199 F.3d 1037, 1045 (9th Cir. 1999); <i>see also Lewis v. Casey</i>, 518 U.S. 343, 357 (1996) <i>Missouri v. Jenkins</i>, 515 U.S. 70, 88, 89 (1995); <i>Huss v. Spokane County</i>, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007).</p> <p>In addition, the Cosio declaration is irrelevant to the issue of whether the MCSO’s traffic stops violated each of the named Plaintiffs’ rights to equal treatment under the Fourteenth Amendment. Rule 401, Federal Rules of Evidence. The information contained in the declaration does not make it more or less probable that the rights of the named Plaintiffs were violated, and none of the Plaintiffs were present in the declarant’s vehicle.</p>

1 (B) **Hearsay.** The declaration **contains hearsay** in that it purports to
 2 relate the statements of an MCSO deputy and it does not constitute an
 3 admission in this case. *See Horta v. Sullivan*, 4 F.3d 2, 8 (1st Cir. 1993)
 4 (“hearsay within hearsay” is “inadmissible at trial to establish the truth
 5 of the reported facts.”) The deputy is **not** a defendant to this action and
 6 the fact that he is an employee of the MCSO does **not** equate to his
 7 statements amounting to admissions by a party opponent. The Court
 8 should not consider this declaration for this reason.

9 (C) **Lack of Foundation and Speculation.** Declarant’s first statement
 10 at ¶ 14 (“I believe that I was targeted for investigation based on the color
 11 of my skin.”) is inadmissible speculation and conjecture. *Cox v.*
 12 *Amerigas Propane, Inc.*, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005);
Cornwell v. Electra Cen. Credit Union, 439 F.3d 1018, 1028-29 n.6 (9th
 13 Cir. 2006); *August v. Office Unlimited, Inc.*, 981 F.2d 576, 580 (1st Cir.
 14 1992); *Moore Drug Co. v. Shaneman*, 461 P.2d 95, 98 (Ariz. App. 1969)
 15 (“mere suspicion, innuendo, insinuation, and speculation are not
 16 substitutes for evidence.”).

220

17 **Disputed and Defendants object to the use of this particular**
 18 **declaration for purposes of summary judgment motion practice.** It
 19 is inadmissible. The Court should strike this declaration and statement
 20 of fact. The support for the dispute and objections are as follows:

21 **Objections:**

22 (A) **Relevance:** This declaration is irrelevant to whether the named
 23 Plaintiffs have suffered a constitutional injury. “Any injury *unnamed*
 24 *members* of this proposed class may have suffered is simply **irrelevant**
 25 to the question whether *the named plaintiffs* are entitled to the injunctive
 26 relief they seek.” *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1045
 27 (9th Cir. 1999); *see also Lewis v. Casey*, 518 U.S. 343, 357 (1996);
 28 *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995); *Huss v. Spokane*
County, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007)..

In addition, the Escamilla declaration is irrelevant to the issue of whether
 the MCSO’s traffic stops violated each of the named Plaintiffs’ rights to
 equal treatment under the 14th Amendment. Rule 401, Federal Rules of
 Evidence. The information contained in the declaration does not make it
 more or less probable that the rights of the named Plaintiffs were
 violated, and none of the Plaintiffs were present in the declarant’s
 vehicle.

1 (B) **Hearsay.** While the use of affidavits is permissible in summary
 2 judgment practice, this declaration is of a third party and is hearsay
 3 because it is being offered for the truth of the matter contained therein,
 4 and there is no exception to the hearsay rule that would allow its
 5 admission into evidence. Defendants also lack the ability to effectively
 6 cross examine this witness on the matter set forth in the declaration and
 7 given the limitations in the numbers of depositions permitted in this
 8 case, could not cross-examine the declarant in deposition. *Murphy v.*
 9 *Yavapai County*, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006)
 10 (if affiant is not available to undergo cross-examination at trial or in a
 11 pre-trial deposition, affidavit of third party is hearsay).

12 The declaration **also contains another layer of hearsay** in that it
 13 purports to relate the statements of an MCSO deputy and it does not
 14 constitute an admission in this case. *See Horta v. Sullivan*, 4 F.3d 2, 8
 15 (1st Cir. 1993) (“hearsay within hearsay” is “inadmissible at trial to
 16 establish the truth of the reported facts.”) The deputy is **not** a defendant
 17 to this action and the fact that he is an employee of the MCSO does **not**
 18 equate to his statements amounting to admissions by a party opponent.
 19 The Court should not consider this declaration for this reason.

221

20 **Disputed and Defendants object to the use of this particular**
 21 **declaration for purposes of summary judgment motion practice.** It
 22 is inadmissible. The Court should strike this declaration and statement
 23 of fact. The support for the dispute and objections are as follows:

24 **Objections:**

25 (A) **Relevance:** This declaration is irrelevant to whether the named
 26 Plaintiffs have suffered a constitutional injury. “Any injury *unnamed*
 27 *members* of this proposed class may have suffered is simply **irrelevant**
 28 to the question of whether *the named plaintiffs* are entitled to the
 injunctive relief they seek.” *Hodgers-Durgin v. De La Vina*, 199 F.3d
 1037, 1045 (9th Cir. 1999); *see also Lewis v. Casey*, 518 U.S. 343, 357
 (1996); *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995); *Huss v. Spokane*
County, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007).

In addition, the Smith declaration is irrelevant to the issue of whether the
 MCSO’s traffic stops violated each of the named Plaintiffs’ rights to
 equal treatment under the Fourteenth Amendment. Rule 401, Federal
 Rules of Evidence. The information contained in the declaration does
 not make it more or less probable that the rights of the named Plaintiffs
 were violated, and none of the Plaintiffs were present in the declarant’s

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	<p>vehicle.</p> <p>(B) Hearsay. While the use of affidavits is permissible in summary judgment practice, this declaration is of a third party and is hearsay because it is being offered for the truth of the matter contained therein, and there is no exception to the hearsay rule that would allow its admission into evidence. Defendants also lack the ability to effectively cross examine this witness on the matter set forth in the declaration and given the limitations in the numbers of depositions permitted in this case, could not cross-examine the declarant in deposition. <i>Murphy v. Yavapai County</i>, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006) (if affiant is not available to undergo cross-examination at trial or in a pre-trial deposition, affidavit of third party is hearsay). Also, because the declarant does not identify by name or serial number the deputy supposedly encountered, there is no meaningful way that Defendants could identify the deputies and obtain their knowledge about what occurred with the declarant, if any thing.</p> <p>The declaration also contains another layer of hearsay in that it purports to relate the statement of an unknown MCSO deputy and it does not constitute an admission in this case. <i>See Horta v. Sullivan</i>, 4 F.3d 2, 8 (1st Cir. 1993) (“hearsay within hearsay” is “inadmissible at trial to establish the truth of the reported facts.”) The unknown and unidentified deputy is not a defendant to this action and the fact that he is an employee of the MCSO does not equate to his statements amounting to admissions by a party opponent. The Court should not consider this declaration for this reason.</p> <p>(C) Lack of Foundation and Speculation. Declarant’s statement at ¶ 9 (“I believe that we were pulled over not because I was speeding, but because of [his family member’s] Hispanic appearance.”) is inadmissible speculation and conjecture. <i>Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005); <i>Cornwell v. Electra Cen. Credit Union</i>, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006) ;<i>August v. Office Unlimited, Inc.</i>, 981 F.2d 576, 580 (1st Cir. 1992); <i>Moore Drug Co. v. Shaneman</i>, 461 P.2d 95, 98 (Ariz. App. 1969) .</p>
222	<p>Disputed and Defendants object to the use of this particular declaration for purposes of summary judgment motion practice. It is inadmissible. The Court should strike this declaration and statement of fact. The support for the dispute and objections are as follows:</p>

1 **Objections:**

2 (A) **Relevance:** This declaration is irrelevant to whether the named
3 Plaintiffs have suffered a constitutional injury. “Any injury *unnamed*
4 *members* of this proposed class may have suffered is simply **irrelevant**
5 to the question of whether *the named plaintiffs* are entitled to the
6 injunctive relief they seek.” *Hodgers-Durgin v. De La Vina*, 199 F.3d
7 1037, 1045 (9th Cir. 1999); *see also Lewis v. Casey*, 518 U.S. 343, 357
8 (1996); *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995); *Huss v. Spokane*
9 *County*, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007)

10 In addition, the Solis declaration is irrelevant to the issue of whether the
11 MCSO’s traffic stops violated each of the named Plaintiffs’ rights to
12 equal treatment under the Fourteenth Amendment. Rule 401, Federal
13 Rules of Evidence. The information contained in the declaration does
14 not make it more or less probable that the rights of the named Plaintiffs
15 were violated, and none of the Plaintiffs were present in the declarant’s
16 vehicle.

17 (B) **Hearsay.** While the use of affidavits is permissible in summary
18 judgment practice, this declaration is of a third party and is hearsay
19 because it is being offered for the truth of the matter contained therein,
20 and there is no exception to the hearsay rule that would allow its
21 admission into evidence. Defendants also lack the ability to effectively
22 cross examine this witness on the matter set forth in the declaration and
23 given the limitations in the numbers of depositions permitted in this
24 case, could not cross-examine the declarant in deposition. *Murphy v.*
25 *Yavapai County*, 2006 U.S. Dist. LEXIS 63732 at 14-16 (D. Ariz. 2006)
26 (if affiant is not available to undergo cross-examination at trial or in a
27 pre-trial deposition, affidavit of third party is hearsay). Also, because
28 the declarant does not identify by name or serial number any of the
 deputies she supposedly encountered, there is no meaningful way that
 Defendants could identify the deputies and obtain their knowledge about
 what occurred with the declarant, if any thing.

 The declaration **also contains another layer of hearsay** in that it
 purports to relate the statement of an unknown MCSO deputy and it does
 not constitute an admission in this case. *See Horta v. Sullivan*, 4 F.3d 2,
 8 (1st Cir. 1993) (“hearsay within hearsay” is “inadmissible at trial to
 establish the truth of the reported facts.”) The unknown and unidentified
 deputy is **not** a defendant to this action and the fact that he is an
 employee of the MCSO does **not** equate to his statements amounting to
 admissions by a party opponent. The Court should not consider this
 declaration for this reason.

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	<p>(C) Lack of Foundation and Speculation. Declarant’s first statement at ¶ 10 (“I believe that the deputy treated us rudely and asked Jaime about his legal status because of his Hispanic ethnicity and that of our sons.”) is inadmissible speculation and conjecture. <i>Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005); <i>Cornwell v. Electra Cen. Credit Union</i>, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006); <i>August v. Office Unlimited, Inc.</i>, 981 F.2d 576, 580 (1st Cir. 1992) <i>Moore Drug Co. v. Shaneman</i>, 461 P.2d 95, 98 (Ariz. App. 1969).</p>
<p>223</p>	<p>Disputed and Defendants object to the use of this particular declaration for purposes of summary judgment motion practice. It is inadmissible. The Court should strike this declaration and statement of fact. The support for the dispute and objections are as follows:</p> <p><u>Objections:</u></p> <p>(A) Relevance: This traffic stop occurred during the execution of an MCSO search warrant at a business called Handyman Maintenance, Inc. and is the subject of a separate lawsuit by the Moras for money damages. See <i>Mora v. Arpaio</i>, United States District Court for the District of Arizona, No. CV 09-01719-PHX-DGC</p> <p>This declaration is irrelevant to whether the named Plaintiffs have suffered a constitutional injury. “Any injury <i>unnamed members</i> of this proposed class may have suffered is simply irrelevant to the question of whether <i>the named plaintiffs</i> are entitled to the injunctive relief they seek.” <i>Hodgers-Durgin v. De La Vina</i>, 199 F.3d 1037, 1045 (9th Cir. 1999); <i>see also Lewis v. Casey</i>, 518 U.S. 343, 357 (1996); <i>Missouri v. Jenkins</i>, 515 U.S. 70, 88, 89 (1995); <i>Huss v. Spokane County</i>, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007)</p> <p>In addition, the Mora declaration is irrelevant to the issue of whether the MCSO’s traffic stops violated each of the named Plaintiffs’ rights to equal treatment under the Fourteenth Amendment. Rule 401, Federal Rules of Evidence. The information contained in the declaration does not make it more or less probable that the rights of the named Plaintiffs were violated, and none of the Plaintiffs were present in the declarant’s vehicle.</p> <p>(B) Lack of Foundation and Speculation. Declarant’s final statement at ¶ 10 (“I believe that we were pulled over solely because we are Latino) lacks foundation for this statement and is inadmissible speculation and conjecture. <i>Cox v. Amerigas Propane, Inc.</i>, 2005 U.S. Dist. LEXIS 26344 (Ariz. 2005); <i>Cornwell v. Electra Cen. Credit Union</i>,</p>

1 2 3	439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006); <i>August v. Office Unlimited, Inc.</i> , 981 F.2d 576, 580 (1st Cir. 1992); <i>Moore Drug Co. v. Shaneman</i> , 461 P.2d 95, 98 (Ariz. App. 1969).
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>224 <i>Admit in part and disputed in part.</i></p> <p><u>Controverting Statement:</u> While Defendants admit that SOMOS America is a membership organization that includes individual and organization members, and that it has used resources to oppose Arpaio’s law enforcement policies, they <i>deny</i> there is any admissible evidence that some members of the organization have been stopped by the MCSO. The evidence supplied in Defendants’ Statement of Facts (“DSOF”) (Dkt# 413-1) at ¶¶ 150-152 demonstrates that there is no evidence supporting this statement. In addition, the testimony cited by Plaintiffs from the deposition of Lydia Guzman, a Rule 30(b)(6) representative of SOMOS America does not contain admissible evidence (for lack of personal knowledge and foundation) upon which the Court can rely upon to support this statement made by Plaintiffs.</p> <p><u>Objections:</u></p> <p>(A) Relevance: The statement that “[s]ome members of Somos America have been stopped by MCSO” is irrelevant to whether the named Plaintiffs have suffered a constitutional injury. “Any injury <i>unnamed members</i> of this proposed class may have suffered is simply irrelevant to the question whether <i>the named plaintiffs</i> are entitled to the injunctive relief they seek.” <i>Hodgers-Durgin v. De La Vina</i>, 199 F.3d 1037, 1045 (9th Cir. 1999); <i>see also Lewis v. Casey</i>, 518 U.S. 343, 357 (1996) (“The remedy must of course be limited to the inadequacy that produced the injury in fact that the [named] plaintiff has established. This is no less true with respect to class actions than with respect to other suits.”; <i>see also</i> at p. 357 “That a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class “must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.”); <i>Missouri v. Jenkins</i>, 515 U.S. 70, 88, 89 (1995) (“The nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation” to the named plaintiffs; not by reference to what other non parties claim) (citation and internal quotation marks omitted); <i>Huss v. Spokane County</i>, 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007) (alleged injury by unnamed class members irrelevant to determination of named plaintiffs’ claims.</p>

1		In addition, the statement that the Somos America “organization has also had to divert resources in responses to MCSO’s actions” is irrelevant to whether the named Plaintiffs have suffered a constitutional injury.
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4	225	<i>Admit.</i>
5	226	<i>Admit.</i>
6	227	<i>Admit.</i>
7	228	<i>Admit.</i>
8	229	<i>Admit.</i>
9	230	<i>Admit.</i>
10	231	<i>Admit.</i>
11	232	<i>Admit.</i>
12	233	<i>Admitted in part and disputed in part.</i>
13		Defendants admit only that Plaintiffs’ statistical expert, Ralph Taylor, Ph.D., asserts that he conducted an analysis of the MCSO’s CAD database for possible racial and ethnic patterns and differences, with a focus on the alleged impact of the MCSO’s saturation patrol operations on Hispanic individuals.
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16		<u>Objections and Controverting Statement:</u>
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18		(A) Relevance. Dr. Taylor’s opinion regarding the impact of the MCSO’s <u>saturation patrol operations</u> on Hispanic individuals is <i>irrelevant</i> under Rule 401, Federal Rules of Evidence. “Any injury <i>unnamed members</i> of this proposed class may have suffered is simply irrelevant to the question of whether <i>the named plaintiffs</i> are entitled to the injunctive relief they seek.”
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22		<i>Hodgers-Durgin v. De La Vina</i> , 199 F.3d 1037, 1045 (9th Cir. 1999); <i>see also Lewis v. Casey</i> , 518 U.S. 343, 357 (1996); <i>Missouri v. Jenkins</i> , 515 U.S. 70, 88, 89 (1995); <i>Huss v. Spokane County</i> , 2007 U.S. Dist. LEXIS 27667 (E.D. Wash. 2007).
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25		Dr. Taylor’s data, and opinion, do not make it more or less probable that the named individual Plaintiffs in this case were the subject of racially discriminatory intent or motive by any MCSO deputy that made the traffic stop on them, or that interacted with them, nor do they show that these Plaintiffs were discriminatorily impacted by the MCSO saturation patrols.
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1 It is undisputed that the traffic stop of Plaintiffs Jessica and David
2 Rodriguez did *not* occur during a saturation patrol. DSOF (Dkt# 413-1)
3 at ¶¶ 42-43. Dr. Taylor's saturation patrol opinions, therefore, are
4 irrelevant to the determination of whether the Rodriguez Plaintiffs'
5 Fourteenth Amendment rights were violated.

6 The traffic stop of Plaintiffs Meraz and Nieto, while occurring when a
7 saturation patrol was on-going nearby, did *not* occur as a result of a
8 saturation patrol. DSOF (Dkt# 413-1) at ¶¶ 64-88. Dr. Taylor's
9 saturation patrol opinions, therefore, are irrelevant to the determination
10 of whether the Plaintiffs Meraz and Nieto's Fourteenth Amendment
11 rights were violated.

12 The traffic stop of Plaintiff Melendres technically could be considered as
13 part of an MCSO saturation patrol, and was considered as such by
14 Deputy DiPietro, but the operation was actually a small HSU detail
15 targeting only specific vehicles that had picked up persons from a
16 suspected human smuggling drop house/day laborer location, and did not
17 involve the MCSO making general traffic stops of any vehicles other
18 than those that had visited the church property and picked up passengers
19 and where probable cause was found to stop those particular vehicles.
20 DSOF (Dkt# 413-1) at ¶ 12

21 Plaintiff Somos America's Rule 30(b)(6) representative, Ms. Lydia
22 Guzman, has never experienced a traffic stop by the MCSO. DSOF
23 (Dkt# 413-1) at ¶ 150. Somos America is a non-profit advocacy
24 organization, with no paid staff, no membership dues, and any person or
25 entity that attends its monthly meetings may consider itself a member of
26 Somos America. *Id.* at ¶ 151. It has only 35 members such as *Latino*
27 *American Citizens, No More Deaths, MECHHA*, and various labor
28 unions, and there is no admissible evidence that any Somos America
member -- or employee of a member organization -- has been subject to
an MCSO traffic stop. *Id.* at ¶ 152.

The evidence further shows each of the Plaintiffs was stopped for, and
based on, probable cause or reasonable suspicion. DSOF (Dkt# 413-1)
at ¶¶ 17, 108, and 109 (Melendres); *Id.* at ¶¶ 44-45, and 112-116
(Rodriguez); *Id.* at ¶¶ 85 and 117-119 (Meraz and Nieto).

The evidence further shows that the factor of race or ethnicity had no
role, and was *not* a factor or consideration, in any of MCSO's decisions
to make the traffic stops of the Plaintiffs. DSOF (Dkt# 413-1) at ¶¶ 125,
126, 128, 129, and 131 (Melendres); *Id.* at ¶¶ 132-136 (Rodriguez); and
at ¶¶ 86, and 141-145 (Meraz and Nieto).

1 In other words, the MCSO stopped each of the Plaintiffs' vehicles
2 because of the characteristics of the vehicle, not the racial or ethnic
3 characteristics of the occupants of the vehicle.

4 Finally, because the Plaintiffs were not involved in saturation patrol
5 traffic stops, the opinion of Dr. Taylor's that arguably would be relevant
6 to any issue related to these named Plaintiffs is Dr. Taylor's opinions
7 about the MCSO overall traffic stops and the Hispanic percentage of the
8 same. Dr. Taylor conducted a statistical analysis of *all* the MCSO traffic
9 stops conducted from January 1, 2007 to October 31, 2009 and
10 *concluded that Latinos in Maricopa County are stopped by MCSO
11 personnel in roughly the same proportion to their share of Maricopa
12 County's population.* DSOF (Dkt# 413-1) at ¶ 122.

13 Defense expert statistician Steve Camarota, Ph.D., opines:

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

26 DSOF (Dkt# 413-1) at ¶ 123.

27 (B) **Foundation.** Dr. Taylor's opinion regarding the impact of the
28 MCSO's saturation patrol operations on Hispanic individuals lacks
foundation and reliability to be properly admissible and/or considered
for purposes of summary judgment motion practice. Under Rule 702,
Federal Rules of Evidence, in order for expert testimony to be
admissible, it must assist the trier of fact to understand the evidence or
determine a fact in issue. Dr. Taylor's saturation patrol opinions lack
foundation and reliability, and are not relevant to the issues regarding the
traffic stops of the named Plaintiffs. *Daubert v. Merrell Dow
Pharmaceutical, Inc.*, 509 U.S. 579, 589 (1993); *Kumho Tire Co. v.
Carmichael*, 526 U.S. 137, 141 (1999) (applying the general principals
in *Daubert* to all expert opinion testimony).

1 Dr. Taylor's saturation patrol opinions lack sufficient foundation and are
2 unreliable because the process in which he reached them, according to
3 him, was "quasi-experimental" in nature. DSOF (Dkt# 413-1) at ¶ 124.
4 His "quasi-experimental" study does not result in definitive findings or
5 conclusions, only "inferences." *Id. California ex rel. Brown v. Safeway,*
6 *Inc.*, 615 F.3d 1171, 1181 n.4 (9th Cir. 2010) ("An expert's opinions that
7 are without factual basis and are based on speculation or conjecture are
8 inadmissible at trial and are inappropriate material for consideration on a
9 motion for summary judgment.")

10 Dr. Taylor's saturation patrol "quasi-experimental" opinions lack
11 sufficient foundation and are unreliable because: (1) he failed to exclude
12 in his underlying analysis those patrols that included a human smuggling
13 interdiction component, or otherwise exclude human smuggling load
14 vehicles found containing multiple illegal immigrants as occupants,
15 which skews his saturation patrol results; (2) he failed to exclude in his
16 underlying analysis duplicate records in the MCSO Computer Aided
17 Dispatch database, which skews his saturation patrol results; (3) he
18 improperly excluded from his analysis thousands of other cases that
19 should have been included in the analysis, which artificially inflates his
20 saturation patrol results (he admits that he excluded 18% of all MCSO
21 traffic stops per year because they did not "align" with Plaintiffs' case
22 theory or Plaintiffs' "concerns"); and (4) he failed to account for any
23 socio-economic variables that affected his saturation patrol model.
24 DSOF (Dkt# 413-1) at ¶ 124.

25 Defense expert Steven Camarota, Ph.D. opines that "CAD data is very
26 complex and difficult to use. Moreover it was not designed for analysis
27 of this kind [referring to Dr. Taylor's saturation patrol "quasi-
28 experimental" analysis]. DSOF (Dkt# 413-1) at Ex. 19 at p. 22 (Dr.
Camarota Report); DSOF (Dkt#413-1) at Ex. 20 (Camarota deposition)
at p. 122, lns. 13-16 (foundation for his report).

Dr. Camarota further testified at length regarding his professional
dispute with, and concerns about, Dr. Taylor's failure to include socio
economic variables in his analysis. *See* Deposition of Steven Camarota,
Ph.D. at p. 221, ln. 21 to p. 223, ln. 23, attached as Exhibit 3.

Dr. Camarota explained in great detail the specific problems with Dr.
Taylor's "quasi-experimental" saturation patrol analysis that his opinions
are based on and show that Dr. Taylor's opinions on the subject are
inherently unreliable in the field of quantitative analysis. These specific
problems center on Dr. Taylor's data preparation, misunderstanding of
the data, misuse of the data, and failure to factor that saturation patrols

1		often focus on human smuggling. DSOF (Dkt# 413-1) at Ex. 19 (Dr. Camarota Report) at pgs. 20-32; DSOF (Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, lns. 13-16 (foundation for his report).
2	234	<i>Admit.</i>
3	235	<i>Admitted in part and disputed in part.</i> Defendants admit only that Plaintiffs' statistical expert, Ralph Taylor, Ph.D., asserts that he tried to ensure the robustness of his "quasi-experimental" analysis. Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
4	236	<i>Admitted in part and disputed in part.</i> Defendants admit only that Plaintiffs' statistical expert, Ralph Taylor, Ph.D., asserts that this was part of his "quasi-experimental" analysis. Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
5	237	<i>Admitted in part and disputed in part.</i> Defendants admit only that Plaintiffs' statistical expert, Ralph Taylor, Ph.D., asserts that this was part of his "quasi-experimental" analysis. Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
6	238	<i>Admitted in part and disputed in part.</i> Defendants admit only that Plaintiffs' statistical expert, Ralph Taylor, Ph.D., asserts that this was part of his "quasi-experimental" analysis. Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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1	239	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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5	240	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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8	241	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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12	242	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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15	243	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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19	244	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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22	245	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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25	246	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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1	247	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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5	248	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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8	249	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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12	250	<i>Disputed.</i> Defendants incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.
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15	251	<i>Disputed.</i> <u>Controverting Statement:</u> The Center for Immigration Studies is a 501(c)(3) think tank organization that does not lobby and, therefore, does not “advocate” on immigration as asserted by the Plaintiffs. <i>See</i> Deposition of Steven Camarota, Ph.D. at p. 87, ln. 5 to p. 88, ln. 23; p. 92, lns. 15-20, attached as Exhibit 3. The Center for Immigration Studies has “a lot of diversity [in its] view within our organization.” <i>Id.</i> at p. 87, lns. 13-14. Its overall view regarding immigration is as follows: “I would say that it is a fair characterization to say that we believe in the more moderate pace of immigration, you know, would make sense for the country.” <i>Id.</i> at p. 88, lns. 2-5 That means “lower numbers of people entering the country” and “some changes maybe in selection criteria [of people to enter the country] to more skills-based.” <i>Id.</i> at p. 88, lns. 6-9. Dr. Camarota does not favor immigration quotas based on country of origin. <i>Id.</i> at p. 89, ln. 24 to p. 90, ln. 1.
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25	252	<i>Disputed.</i> <u>Controverting Statement:</u> While it is not disputed that Dr. Camarota used the MCSO CAD data and U.S. Census data to prepare his opinions, the citations listed by Plaintiffs do support this statement of fact.
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28	253	<i>Disputed.</i>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17</p>	<p><u>Controverting Statement and Objection:</u> Plaintiffs mischaracterize Dr. Camarota’s opinion by omitting the context in which it was offered. In proper context Dr. Camarota opines then, when trying to use the type of “quasi-experimental” analysis used by Dr. Taylor and given the fact that Dr. Taylor does not factor into his analysis those saturation patrols wherein the HSU written Operations Plan has listed a specific component to also identify human smuggling via load vehicles, there is a difference in stop rates of Hispanics between saturation patrol days and non-saturation patrols days. DSOF (Dkt# 413-1) at Ex. 19 (Dr. Camarota Report) at pg. 31; DSOF (Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, lns. 13-16 (foundation for his report). But, Dr. Camarota opines that the difference is 4.8% (and only on those saturation patrols with a human smuggling component), and therefore the increase is due to MCSO HSU looking for human smuggling via load vehicles. <i>Id.</i></p> <p>Dr. Camarota further testified at length regarding his professional dispute with, and concerns about, Dr. Taylor’s determination that Hispanics were being stopped on saturation patrol day in higher percentages than on non-saturation patrol days. <i>See</i> Deposition of Steven Camarota, Ph.D. at p. 122, ln. 14 to p. 125, ln. 5, attached as Exhibit 3.</p> <p>Defendants also incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above, and this reference is offered in support of it dispute to this statement of fact.</p>
<p>18 19 20 21 22 23 24 25 26 27 28</p>	<p>254 <i>Disputed.</i></p> <p><u>Controverting Statement and Objection:</u> Plaintiffs mischaracterizes Dr. Camarota’s opinion. Dr. Camarota testified that it only “would be a <i>possibility</i>” that Hispanics were being targeted if they were being stopped at rates higher than their share of the population. <i>See</i> Deposition of Steven Camarota, Ph.D. at p. 116, lns. 1-6, attached as Exhibit 3. He explained: “Again, there are lots of other intervening variables. And if you don’t have them, then you better be very cautious about any kind of conclusion that you might draw....” <i>Id.</i> at p. 116 at lns. 6-9.</p> <p>If Hispanics are being stopped at a rate higher than their share of the population, that fact alone would <u>not</u> be statistically definitive evidence that Hispanics were being targeted. <i>See</i> Deposition of Steven Camarota, Ph.D. at p. 114, lns. 19-25, attached as Exhibit 3.</p> <p>Defendants also incorporate herein by this reference their Controverting Statement and Objections set forth in response to PSOF No. 233 above,</p>

1		and this reference is offered in support of it dispute to this statement of fact.
2	255	<i>Disputed.</i>
3		<u>Controverting Statement and Objection:</u> Plaintiffs' cited testimony
4		does not support the statement. On the other hand, Dr. Camarota
5		testified that excluding the problems with Dr. Taylor's methodology, the
6		traffic stop time length differences between Hispanics and non-Hispanic
7		"doesn't seem meaningful to me. The omitted or the lack in variables
8		[by Dr. Taylor, such as English language speaking ability, education
9		level, and understanding of the traffic and motor vehicle code regarding
10		maintaining vehicles and driving practices] explain what are relatively
11		modest differences [in length of traffic stops under Dr. Taylor's
12		analysis.]" See Deposition of Steven Camarota, Ph.D. at p. 139, ln. 6 to
13		p. 141, ln. 7, attached as Exhibit 3.
14		Defendants also incorporate herein by this reference their Controverting
15		Statement and Objections set forth in response too PSOF No. 233 above,
16		and this reference is offered in support of it dispute to this statement of
17		fact.
18	256	<i>Admit.</i>

15 **II. DEFENDANTS' LOCAL RULE 56.1(b)(2) SEPARATE**
16 **STATEMENT OF ADDITIONAL FACTS THAT EITHER**
17 **ESTABLISH A GENUINE ISSUE OF MATERIAL FACT**
18 **OR OTHERWISE PRECLUDE JUDGMENT IN FAVOR OF PLAINTIFFS AND**
19 **THAT ARE CITED WITHIN THEIR RESPONSIVE MEMORANDUM**
20 **SUBMITTED IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL**
21 **SUMMARY JUDGMENT ("SSOF").**

22 1. Plaintiffs' Fourteenth Amendment claim asserts that each of the named
23 Plaintiffs during the operation of a motor vehicle on a public roadway in Maricopa County
24 was stopped, detained, questioned, and/or searched by MCSO deputies allegedly in violation
25 of their Fourteenth Amendment rights to equal protection. See Defendants' Statement of
26 Facts (Dkt#413-1) at ¶¶ 1-2.

27 2. MCSO Deputy Louis DiPietro stopped the truck in which Plaintiff Melendres
28 was a passenger. See Defendants' Statement of Facts (Dkt#413-1) at ¶¶ 16-17.

3. Before Deputy Louis DiPietro found probable cause to stop the truck in which
Mr. Melendres was a passenger, he did not know or see the race of the truck's driver or the

1 race of the passengers in the truck. *See* Defendants' Statement of Facts (Dkt#413-1) at ¶
2 125.

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

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

7 A. No.

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

9 A. No, I don't.

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

11 A. No.

12 *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 126.

13 5. Plaintiff Manuel Melendres does not have an opinion on whether he was
14 racially profiled:

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

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

19 *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 128.

20 6. Defense police practices expert Bennie Click opines that "[t]here is no
21 evidence that Deputy DiPietro knew the race or ethnicity of the vehicle's occupants prior to
22 the truck stopping or that race or ethnicity played any role in Deputy DiPietro's actions."

23 *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 129.

24 7. Plaintiffs' police practices/racial profiling expert Robert Stewart testified that
25 he lacks any factual basis to support a conclusion that Deputy DiPietro acted with racially
26 discriminatory intent or motive in stopping the Melendres truck:

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

A. I don't know.

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

3 A. I don't know.

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

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

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

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

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

12 A. No, sir.

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

15 A. Not that I know of.

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

18 A. We don't know.

19
20 *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 131).

21 8. Deputy DiPietro made the traffic stop involving Mr. Melendres based on race-
22 neutral probable cause. *See* Defendants' Statement of Facts (Dkt#413-1) at ¶¶ 17, 107-109).

23 9. MCSO Deputy Matthew Ratcliffe made the traffic stop of the Rodriguez
24 Plaintiffs. *See* Defendants' Statement of Facts (Dkt#413-1) at ¶¶ 44-45.

25 10. Before making the decision to conduct the traffic stop of the Rodriguez' truck,
26 and to issue a citation to the truck's driver, Deputy Ratcliffe did not see the race of the
27 truck's driver or of any occupants of the truck. *See* Defendants' Statement of Facts
28 (Dkt#413-1) at ¶ 132.

1 11. Plaintiff Jessica Rodriguez testified that Deputy Ratcliffe was not acting with
2 racially discriminatory intent or motive:

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

5 A. No.

6 *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 133.

7 12. Defense police practices expert Mr. Bennie Click testified that there is no
8 evidence that Deputy Matthew Ratcliffe racially profiled or otherwise acted with racially
9 discriminatory intent or motive toward Mr. and Mrs. Rodriguez. *See* Defendants' Statement
10 of Facts (Dkt#413-1) at ¶ 134.

11 13. Plaintiffs' police practices/racial profiling expert, Mr. Robert Stewart, has no
12 opinion as to whether Deputy Matthew Ratcliffe had racially discriminatory intent or motive
13 in stopping the Rodriguez vehicle:

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

16 A. Don't know.

17 *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 135.

18 14. Deputy Matthew Ratcliffe made the traffic stop involving the Rodriguez
19 Plaintiffs based on race-neutral probable cause. *See* Defendants' Statement of Facts
20 (Dkt#413-1) at ¶¶ 44-45, 51-52, and 112-116

21 15. MCSO Deputy Michael Kikes made the traffic stop of siblings, Plaintiffs Mr.
22 Nieto and Ms. Meraz. *See* Defendants' Statement of Facts (Dkt#413-1) at ¶¶ 84-85.

23 16. Due to the Plaintiffs Meraz-Nieto vehicle's window tinting, Deputy Michael
24 Kikes could not see the race, sex, or other characteristics of the vehicle's occupants. *See*
25 Defendants' Statement of Facts (Dkt#413-1) at ¶ 86.

26 17. Plaintiffs' police practice/racial profiling expert, Mr. Robert Stewart, testified
27 that he had no evidence of racially discriminatory intent or motive by Deputy Michael Kikes
28 in making the traffic stop of the Meraz-Nieto vehicle. *See* Defendants' Statement of Facts
(Dkt#413-1) at ¶ 143.

1 18. There is no evidence that MCSO Deputy Ramon Armendariz, who had the
2 initial interaction with the Plaintiffs Meraz and Nieto and called for back-up that led to the
3 traffic stop of the Plaintiffs made by Deputy Michael Kikes, had any racially discriminatory
4 intent or motive in any manner dealing with the Plaintiffs. *See* Defendants' Statement of
5 Facts (Dkt#413-1) at ¶ 141.

6 19. There is no evidence of racially discriminatory intent or motive by Deputy
7 Douglas Beeks in drawing his weapon when he joined Deputy Michael Kikes after the traffic
8 stop of Plaintiff Meraz and Nieto was made. *See* Defendants' Statement of Facts (Dkt#413-
9 1) at ¶ 142.

10 20. Plaintiffs' police practices/racial profiling expert Robert Stewart testified that
11 there is no evidence that Plaintiffs Ms. Meraz and Mr. Nieto were racially profiled in either
12 the traffic stop or during their subsequent treatment by the MCSO deputies. *See* Defendants'
13 Statement of Facts (Dkt#413-1) at ¶ 144.

14 21. MCSO Deputy Michael Kikes made the traffic stop involving Plaintiffs Meraz
15 and Nieto either on race-neutral probable cause or reasonable suspicion. *See* Defendants'
16 Statement of Facts (Dkt#413-1) at ¶¶ 117-119.

17 22. Sheriff Joseph Arpaio determined that public safety in Maricopa County would
18 benefit if the MCSO would enforce federal immigration law under the federal government's
19 287(g) program (allowing local enforcement officer to enforce federal immigration law)
20 while concurrently enforcing Arizona law related to human smuggling. *See* Plaintiffs'
21 Statement of Facts (Dkt#422) at ¶ 3 and Defendants' Response, Rule 56(c)(2) Objections,
22 and Controverting Statement of Fact at ¶ 3 admitting to the same.

23 23. Plaintiffs' police practices/racial profiling expert, Robert L. Stewart, testified
24 that: (a) crime related to illegal immigration is a problem in Maricopa County; and (b) that
25 human smuggling is a crime in Arizona and is a problem in Maricopa County. *See*
26 Deposition of Robert L. Stewart at p. 31, ln. 23 to p. 32, ln. 4 (for point "a) and p. 34, lns. 12-
27 17 (for point "b" above), attached as Exhibit 17.

28 24. Robert Stewart testified that a local law enforcement agency has broad
discretion in setting its enforcement policies. *See* Deposition of Robert L. Stewart at p. 26,

1 Ins. 19-23, attached as Exhibit 17.

2 25. Robert Stewart testified that a local law enforcement agency has discretion in
3 determining what crimes it should prioritize for enforcement. *See* Deposition of Robert L.
4 Stewart at p. 26, ln. 25 to p. 27, ln. 4; *see also* p. 27, ln. 23 to p. 28, ln. 1, attached as Exhibit
5 17.

6 26. Sheriff Joseph Arpaio properly designated illegal immigration as an
7 enforcement priority for the MCSO. *See* Defendants' Statement of Facts (Dkt#413-1) at the
8 Report of Ben Click dated January 21, 2011, at pgs. 46 and 48-49, attached thereto as Exhibit
9 16; *see also* March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p.
10 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the
11 foundation for his opinions and that his opinions in the report were the same he would
12 provide at trial to a reasonable degree of probability in his field of expertise).

13 27. Mr. Bennie Click, testified that the MCSO's use of law enforcement saturation
14 patrols is a long-standing, common, and reasonable tool of law enforcement, and that it is an
15 agency policy decision as to what particular problems are to be addressed by or with a
16 saturation patrol. More specifically, Mr. Click testified:

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

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

25 The specific criminal activity that is identified as the focus of a saturation patrol
26 operations is any agency policy decision. This is a common law enforcement
27 practice. The Sheriff has the authority to designate illegal immigration an
28 enforcement priority.

Arizona's proximity to the Mexican border results in enforcement issues not faced by
non-border states. Major smuggling corridors have been identified that lead from the
Mexico border to Maricopa County and beyond. This can result in different and
reasonable law enforcement policies in Maricopa County than in other parts of the
country. Arizona has specific immigration-related statutes that many other states do

1 not have. These statutes make certain immigration related activities a crime and
2 therefore can impact agency policies.”

3 See Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
4 21, 2011, at pgs. 46-49, attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition
5 of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to
6 Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
7 opinions in the report were the same he would provide at trial to a reasonable degree of
8 probability in his field of expertise).

9 28. It is the experience of many MCSO deputies that most illegal immigrants
10 discovered in Maricopa County are from Mexico or Central or South American. *See*
11 Deposition of Louis DiPietro dated 10/21/09 at p. 51, lns. 2-4, attached as Exhibit 13;
12 Deposition of Carlos Rangel dated 10/20/09 at p. 93, ln. 24 to p. 94, ln. 1, attached as Exhibit
13 11; Deposition of Manual Madrid dated 10/27/09 at p. 189, lns. 18-21, attached as Exhibit
14 10; Deposition of Brett Palmer dated 10/23/09 at p. 30, lns. 2-16, attached as Exhibit 9; and
15 Deposition of Brian Sands dated 12/14/09 at p. 94, lns. 3-6, attached as Exhibit 14.

16 29. Joseph Arpaio’s professional experience in his law enforcement career as
17 Sheriff is that most of the illegal immigrants he has observed in Maricopa County are
18 originally from Mexico, or Central or South America. *See* Deposition of Joseph Arpaio
19 dated 11/16/10 at p. 81, lns. 6-18, attached as Exhibit 15 (“In Arizona, because of the
20 proximity to the border, I believe it’s a fact that many people arrested here, in the state of
21 Arizona, border area, may come from Latin America or Mexico.”); Deposition of Joseph
22 Arpaio dated 12/16/09 at p. 9, lns. 17-23; p. 219, lns. 1-12, attached as Exhibit 16.

23 30. “It is well established that illegal immigrants in Arizona and in the United
24 States as a whole are overwhelmingly Hispanic. The Pew Hispanic Center has estimated that
25 *94 percent* of illegal immigrants in Arizona *are from Mexico alone*, not including the rest of
26 Latin America.” *See* Defendants’ Statement of Facts (Dkt#413-1) at Ex. 19 (Dr. Camarota
27 Report) at pg. 14; DSOF (Dkt#413-1) at Ex. 20 (Camarota deposition) at p. 122, lns. 13-16
28 (foundation for his report).

31. Jason Kidd, the ICE Assistant Agent in Charge Phoenix, testified that the

1 MCSO had the authority under the ICE-MCO Memorandum of Agreement to perform pure
2 immigration enforcement. *See* Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p.
3 159, Ins. 13-20, attached as Exhibit 2.

4 32. The ICE-MCSO Memorandum of Agreement expressly allowed MCSO 287(g)
5 certified deputies to enforce federal immigration law. *See* Deposition of Jason Kidd (ICE
6 Assistant SAC Phoenix) at p. 55, ln. 14 to p. 56, ln. 11; *see also* p. 52, Ins. 8-25, attached as
7 Exhibit 2.

8 33. Mr. Jason Kidd of ICE testified that the MCSO “has the authority to enforce
9 the state laws, and some of those [Arizona] law do include immigration related matters.” .
10 *See* Deposition of Jason Kidd (ICE Assistant SAC Phoenix) at p. 56, Ins. 14-19; *see also* p.
11 53, Ins. 3-7, attached as Exhibit 2.

12 34. Mr. Alonzo Pena, the Special Agent in Charge for ICE Phoenix, testified that it
13 was completely proper for MCSO deputies to make traffic stops of motorists under Arizona
14 law during saturation patrols and call for a 287(g) certified deputy to determine if someone
15 in the stopped vehicle might be unlawfully present in the country. *See* Deposition Alonzo
16 Pena at p. 167, ln. 1 to p. 168, ln. 22, attached as Ex. 1.

17 35. Arizona is a border state close to the US-Mexico border and
18 Maricopa County is a major human smuggling corridor. *See* Defendants’ Statement of Facts
19 (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pgs. 46 and 48-49,
20 attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of Defense Expert Ben
21 Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr.
22 Click testified to the foundation for his opinions and that his opinions in the report were the
23 same he would provide at trial to a reasonable degree of probability in his field of expertise).

24 36. Most of the day-laborers in Maricopa County, in the experience of many
25 MCSO deputies, are illegal immigrants. *See* Deposition of Louis DiPietro dated 10/21/09 at
26 p. 51, Ins. 2-4, attached as Exhibit 13; Deposition of Carlos Rangel dated 10/20/09 at p. 93,
27 ln. 24 to p. 94, ln. 1, attached as Exhibit 11; Deposition of Brett Palmer dated 10/23/09 at p.
28 30, Ins. 2-16, attached as Exhibit 9; and Deposition of Brian Sands dated 12/14/09 at p. 94,
Ins. 3-6, attached as Exhibit 14.

1 37. Under the ICE-MCSO Memorandum of Agreement, the MCSO had deputies
2 trained and certified to conduct immigration enforcement under the 287(g) program. *See*
3 Plaintiffs' Statement of Facts (Dkt#422) at ¶ 3 and Defendants' Response, Rule 56(c)(2)
4 Objections, and Controverting Statement of Fact at ¶ 3 admitting to the same.

5 38. Under that program, there are a number of ICE-approved articulable
6 "indicators" that a local law enforcement officer that is 287(g) certified is trained by ICE to
7 look for in determining whether a person may be in the United States unlawfully. One of the
8 ICE approved indicators is that person's race or ethnicity, including Mexican ancestry. *See*
9 Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 6, attached as Exhibit 9.

10 39. ICE approves of the use of race as one indicator among several in the exercise
11 of 287(g) authority in the determination of whether someone may be in the United States
12 unlawfully. *See* Deposition of ICE former Special Agent in Charge, Phoenix, Mr. Alonzo
13 Pena, at p. 54, lns. 16-22, attached as Exhibit 1 ("[Race] could be used, but, again, it
14 couldn't—it is not to be used solely. It is never to be used just as a—as an individual
15 factor."); *see also* Deposition of Brett Palmer dated 10/23/09 at p. 25, lns. 9-18 attached as
16 Exhibit 9 ("That is part of the 287(g) training that is part of our SOP, yes."); Exhibit 9 at p.
17 151, lns. 4-9 ("MCSO 287(g) officers can consider race as one relevant factor with others to
18 have reasonable suspicion that human smuggling may be occurring.").

19 40. Although ICE approves of the use of race as one indicator, among several other
20 indicators, as a basis to form reasonable suspicion of unlawful status, the MCSO does not
21 use race as an indicator or factor to make vehicle stops under Arizona law. *See* Deposition
22 of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 6; p. 145, lns. 12-25; p. 150, ln. 25
23 to p. 151, ln. 3, attached as Exhibit 9.

24 41. Another ICE approved indicator is that the person does not speak the English
25 language. *See* Deposition of Manuel Madrid dated 10/27/09 at p. 31, lns. 10-18, attached as
26 Exhibit 10; *see* Deposition of Ramon Armendariz at p. 44, lns. 1-4, attached as Exhibit 8; *see*
27 Deposition of Carlos Rangel dated 10/20/09 at p.21, ln. 3 to p. 22, ln. 5, attached as Exhibit
28 11.

 42. Additional ICE approved indicators of unlawful presence are: (a) an

1 overcrowded vehicle; (b) none of the occupants have luggage or only small items of property
2 easily transported; (c) the people in the vehicle are unrelated or do not know each other; (d)
3 whether the people in the vehicle are dressed in a disheveled manner; (e) pungent body odor
4 of the people in the vehicle; (f) the vehicle is a known human smuggling corridor. *See*
5 Deposition of Carlos Rangel dated 10/20/09 at p. 95, ln. 12 to p. 96, ln. 12 attached as
6 Exhibit 11; *see* Deposition of Manuel Madrid dated 10/27/09 at p. 38, ln. 9 to p. 39, ln. 4,
7 attached as Exhibit 10; *see* Deposition of Brett Palmer dated 11/09/10 at p. 38, ln. 21 to p.
8 39, ln. 14, attached as Exhibit 12.

9 43. Joseph Arpaio gave an interview with *GQ* magazine online in late 2008 or
10 early 2009. In that story, there is statement attributed to him that illegal immigrants coming
11 over the Mexican border as being “dirty.” That statement was likely taken out of context by
12 the reporter. According to Arpaio,

13 It reflects my views only those that come across the border and do not go through the
14 proper checks, through the regular ports to come in her with no checks at all. And
15 there is no way to determine whether they have a disease or not. I can talk about
16 swine flu, tuberculosis and I believe I was referring to those instances when people
17 come across with doing the proper checks.

18 *See* Deposition of Joseph Arpaio dated 12/16/09 at p. 19, ln. 17 to p. 20, ln. 12, attached as
19 Exhibit 16.

20 44. Joseph Arpaio testified that he did not agree with the comments made by an
21 author about federal judge Mary Murguia. *See* Deposition of Joseph Arpaio dated 11/16/10
22 at p. 26, ln. 5 to p. 28, ln. 25, attached as Exhibit 15. In fact, Arpaio thought the comments
23 were “rather nasty. And this is their opinion. It doesn’t mean it is my opinion. I’ve been a
24 federal official, law enforcement official, for 26 years. I have respect to the courts, and I
25 don’t agree with that.”). *Id.*

26 45. When Joseph Arpaio was asked whether he agreed with the referenced
27 language in document Melendres MCSO 76123, Ex. 24 to Arpaio Depo. II, Arpaio testified
28 that “I don’t agree with that.” *See* Deposition of Joseph Arpaio dated 11/16/10 at p. 160, ln.
19 to p. 161, ln. 10, attached as Exhibit 15.

46. When Richard H. wrote to him and Joseph Arpaio was questioned about the

1 contents of Melendres MCSO 075284, Arpaio testified that he had “no knowledge of
2 percentage or whatever he’s talking about. Once again, that’s his comment not mine.” *See*
3 Deposition of Joseph Arpaio dated 11/16/10 at p. 88, ln. 22 to p. 89, ln. 23, attached as
4 Exhibit 15.

5 47. When questioned about whether he agreed with Richard H.’s statement, Joseph
6 Arpaio responded: “Once again, that’s his statement, and I don’t know what context he’s
7 talking about, about ducks or whatever he’s mentioning.... I can’t read his mind. This is his
8 opinion, not mine.” *See* Deposition of Joseph Arpaio dated 11/16/10 at p. 85, ln. 18 to p. 86,
9 ln. 24, attached as Exhibit 15.

10 48. When a Carol B. indicated racial profiling was a desirable law enforcement
11 tool because her own Italian mother experienced many years ago, Joseph Arpaio testified
12 that “This is just her comments, her opinions. I have no comment on her comment. I wasn’t
13 there. I wasn’t involved with her family.” *See* Deposition of Joseph Arpaio dated 11/16/10
14 at p. 277, ln. 23 to p. 278, ln. 11, attached as Exhibit 15.

15 49. Joseph Arpaio testified that racial profiling is morally wrong. *See* Deposition
16 of Joseph Arpaio dated 12/16/09 at p. 113, lns. 10-11; 115, lns. 2-17, attached as Exhibit 16;
17 *see also* Arpaio Deposition dated 11/16/10 at p. 77, lns. 22-23, attached as Exhibit 15.
18 Arpaio further testified that the MCSO does not racially profile. *Id.* at p. 113, ln. 21 to p.
19 114, ln. 10 (“Well, all I can say, we don’t do that. We don’t stop people by their
20 appearance.”).

21 50. MCSO Deputy Chief Brian Sands makes the decision of where, when, and how
22 to do a saturation patrol. *See* Deposition of Brian Sands dated 12/14/09 at p. 71, lns. 19-21;
23 p. 79, lns. 23-25, attached as Exhibit 14. Chief Sands testified that racial profiling is morally
24 wrong. *Id.* at p. 147, ln. 20 to p. 148, ln. 5, attached as Exhibit 14. Chief Sands further
25 understands that racial profiling is illegal. *See* Deposition of Brian Sands dated 11/15/10 at
26 p. 92, ln. 24 to p. 93, ln. 1, attached as Exhibit 18.

27 51. MCSO Lieutenant Joseph Sousa, the head of MCSO’s Human Smuggling Unit
28 (“HSU”), and one of the top planners for executing and supervising saturation patrols,
testified that racial profiling is prohibited by MCSO policy, is illegal, and HSU members do

1 not racially profile. *See* Deposition of Joseph Sousa dated 12/10/09 at p.135, ln. 24 to p.
2 136, ln. 17, attached as Exhibit 5; *see also* Sousa Deposition dated 10/22/10 at p. 30, lns. 14-
3 17, attached as Exhibit 19.

4 52. HSU Sergeant Manuel Madrid, one of two supervising sergeants for the unit,
5 and a Latino himself, testified that racial profiling is illegal, that race or ethnicity can never
6 be used in making a traffic stop, and that the HSU members he supervises do not racially
7 profile. *See* Deposition of Manuel Madrid dated 10/27/09 at p. 20, lns. 14-23; p. 195, lns.
8 15-17, and p. 202, 18-22, attached as Exhibit 10.

9 53. HSU Sergeant Brett Palmer, the remaining supervisory sergeant for the unit,
10 testified that racial profiling is wrong and illegal, and that the HSU members he supervises
11 do not racially profiling. *See* Deposition of Brett Palmer dated 10/23/09 at p. 36, lns 10-25;
12 p. 135, lns. 5-25; p. 139, ln. 21 to p. 140, ln 18; p. 145, lns. 12-25; and p. 153, lns. 13-15,
13 attached as Exhibit 9.

14 54. Louis DiPietro, the deputy that made the traffic stop on Plaintiff Melendres,
15 knows and understands that racial profiling is illegal. *See* Deposition of Louis DiPietro
16 dated 10/21/09 at p. 87, lns. 17-19, attached as Exhibit 13. Race was not a factor in Deputy
17 DiPietro's finding that he had probable cause to stop the truck in which Plaintiff Melendres
18 was a passenger. *Id.* at Defendants Statement of Facts (Dkt# 413-1) at ¶¶ 125-126

19 55. Matthew Ratcliffe, the deputy that made the traffic stop on the Rodriguez
20 Plaintiffs knows and understands that racial profiling is illegal and wrong. *See* Deposition of
21 Matthew Ratcliffe dated 10/15/09 at p. 115, lns.18-25, attached as Exhibit 6. Race was not a
22 factor in Deputy Ratcliffe's finding that he had probable cause to stop the truck in which the
23 Rodriguez Plaintiffs were driving or occupying. *Id.* at Defendants Statement of Facts (Dkt#
24 413-1) at ¶¶ 132-135.

25 56. Michael Kikes, the deputy that made the traffic stop on the Plaintiffs Meraz
26 and Nieto knows and understands that racial profiling is illegal and wrong. *See* Deposition
27 of Michael Kikes dated 02/15/10 at p. 46, lns. 14-17, attached as Exhibit 7. Race was not a
28 factor in Deputy Kikes's finding that he had probable cause to stop the truck in which
Plaintiffs Meraz and Nieto were driving or occupying. *Id.* at Defendants Statement of Facts

1 (Dkt# 413-1) at ¶¶ 85-86.

2 57. Arpaio, via his secretary, normally writes “thank-you” notes or letters to all
3 people that write to him regardless of their contents. *Id.* at ¶ 57. *See* Deposition of Joseph
4 Arpaio dated 11/16/10 at p. 16, ln. 15 to p. 17, ln. 12, attached as Exhibit 15.

5 58. Arpaio forward the letters predominately to only Chief Brian Sands, when he
6 believes the letter may be of interest to them. *See* Deposition of Joseph Arpaio dated
7 11/16/10 at p. 21, ln. 9 to p. 22, ln. 4, attached as Exhibit 15.

8 59. When Arpaio was questioned about whether he agreed with the racially
9 charged comments contained within a letter co-written by a Sarah M. and an Erika S
10 Arpaio made it abundantly clear that he did not adopt or agree or endorse their comments.
11 *See* Deposition of Joseph Arpaio dated 11/16/10 at p. 107, ln. 20 to p. 109, ln. 14, attached as
12 Exhibit 15.

13 60. When Arpaio was asked whether he agreed with the racially charged language
14 in another letter, document Melendres MCSO 7540304, Ex. 23 to Arpaio Depo. II, Arpaio
15 testified that he did not even understand what the author was thinking and “I can’t believe
16 what he’s thinking when he wrote this.” *See* Deposition of Joseph Arpaio dated 11/16/10 at
17 p. 157, lns. 18-25, attached as Exhibit 15.

18 61. Defense expert Mr. Bennie Click opined:

19 The 3 incident that are the basis of this suit do not support that deputies engage in
20 improper tactics such as racial profiling and improper stops to carry out their
21 responsibilities.

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

26 *See* Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
27 21, 2011, at pgs. 43 and 44, attached thereto as Exhibit 16; *see also* March 18, 2011
28 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit
17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
opinions in the report were the same he would provide at trial to a reasonable degree of

1 probability in his field of expertise).

2 62. Joseph Arpaio forwards citizen letters to staff in his office when he believes
3 the letter may be of interest to them. *See* Deposition of Joseph Arpaio dated 11/16/10 at p.
4 21, ln. 9 to p. 22, ln. 4, attached as Exhibit 15.

5 63. MCSO Chief Brian Sands makes the decision of where, when, and how to do a
6 saturation patrol. *See* Deposition of Brian Sands dated 12/14/09 at p. 71, lns. 19-21; p. 79,
7 lns. 23-25, attached as Exhibit 14. There are a multitude of different law enforcement
8 reasons a saturation patrol is conducted, and conducted in a particular area. *Id. Id.* at p. 71,
9 lns. 9-16.

10 64. The race or ethnicity of people play no role in Chief Brian Sands' selection of
11 saturation patrol locations. *See* Deposition of Brian Sands dated 12/14/09 at p. 182, ln. 24 to
12 p. 183, ln. 5, attached as Exhibit 14.

13 65. The ethnic constituency in a neighborhood plays no role in Chief Brian Sands
14 selecting locations for saturation patrols. *See* Deposition of Brian Sands dated 12/14/09 at p.
15 183, lns. 6-15, attached as Exhibit 14.

16 66. Even with an MCSO emphasis on enforcing laws related to illegal
17 immigration, the MCSO does not focus or target areas believed to contain a high percentage
18 of illegal immigrants. *See* Deposition of Brian Sands dated 12/14/09 at p. 94, ln. 22 to p. 95,
19 ln. 10, attached as Exhibit 14. Chief Sands testified that "the [illegal] immigration problems
20 that we have are so widespread throughout Maricopa County there [are] very few places you
21 can go [on a saturation patrol] where you are not going to encounter an illegal alien.

22 Whether to focus on a group of people standing on a corner because they look a certain way
23 is not good practice and would certainly be easier to just go up and start grabbing people off
24 the street corner because they are day laborers, but it is not a practice or anything that we
25 condone in the sheriff's office." *Id.*;

26 67. MCSO Lt. Joe Sousa testified that the areas for saturation patrols are not
27 selected because they may have a high concentration of suspected illegal aliens. *See*
28 Deposition of Joseph Sousa dated 12/10/09 at p. 96, ln. 25 to p. 97, ln. 3, attached as Exhibit
5.

1 68. The sites for saturation patrols are determined based on a combination of the
2 following types of information or factors:

3 A. The area's crime history and statistics. *See* Deposition of Brian Sands dated
4 12/14/09 at p. 71, lns. 19-21; p. 79, lns. 23-25, p. 139, ln. 5 to p.140, ln. 6; p.
5 142; lns. 5-25; and p. 143, lns. 7-16, attached as Exhibit 14; *see also*
6 Deposition of Joseph Sousa dated 12/10/09 at p. 89, lns. 20 to p. 91, ln. 23,
7 attached as Exhibit 5.

8
9 B. Intelligence and data regarding possible criminal activity at the possible site.
10 *See* Deposition of Brian Sands dated 12/14/09 at p. 71, lns 9-16; p. 124, ln. 19
11 to p. 125, ln. 13; p. 133, lns. 7-19; p. 138, ln. 5 to p. 139, ln. 4; p. 139, ln. 5 to
12 p.140, ln. 15; p. 142, lns. 5-25; p. 143, lns. 7-16; p. 143, ln. 24 to p.144, ln 15;
13 and p.146, ln. 9 to p.147, ln. 15, attached as Exhibit 14.

14 C. Requests for assistance in a particular area from Arizona Legislators and
15 information offered in the request. *See* Deposition of Brian Sands dated
16 12/14/09 at p. 133, ln. 23 to p. 134, ln. 9, attached as Exhibit 14.

17
18 D. Requests for assistance from city officials for a particular area. *See* Deposition
19 of Brian Sands dated 12/14/09 at p. 71, lns. 9-16, attached as Exhibit 14.

20
21 E. Information provided by local police officers from other law enforcement
22 agencies. *See* Deposition of Brian Sands dated 12/14/09 at p. 80, ln. 18 to p.
23 81, ln. 2, attached as Exhibit 14.

24 F. Requests for assistance from private citizens in the community providing
25 information about possible criminal activity; but such information provided by
26 private citizens is independently evaluated and confirmed by the MCSO. *See*
27 Deposition of Brian Sands dated 12/14/09 at p. 71, lns. 9-16; p. 79, lns.17-22,
28

1 attached as Exhibit 14.

2 69. In evaluating private citizen complaints, there is an independent investigation
3 of the complaint made to determine its legitimacy and whether there is any basis to do
4 anything. *See* Deposition of Brian Sands dated 12/14/09 at p. 82, lns. 5-23), attached as
5 Exhibit 14. “Generally speaking, I [Chief Sands] likes to know what is going on in the
6 community as a whole relative to crime before we do a saturation patrol.” *See also*
7 Deposition of Joseph Sousa dated 12/10/09 at p. 86, ln. 3 to p. 88, ln. 11, attached as Exhibit
8 5 (discussing the investigation of citizen complaints; that if the citizen is racially profiling
9 and not describing any criminal activity, the complaint is rejected; the efforts MCSO takes to
10 independently evaluate whether criminal activity is taking place); Deposition of Brian Sands
11 dated 12/14/09 at p. 81, ln. 3 to p. 85, ln. 16, attached as Exhibit 14 (providing a detailed
12 discussion of the MCSO rejecting racially motivated tips that provide no evidence of
13 criminal activity).

14 70. More specifically as to how the MCSO handles citizen complaints that may be
15 made by persons with racial prejudice, or express racial prejudice as those letters Plaintiffs
16 complain of in their Motion, Chief Sands testified:

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

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

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

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

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

1 A. Keep in mind I am not supporting racial or prejudicial attitudes in the
2 community at all when I say this, but sometimes the information sources that we
3 end up using in law enforcement are people that are involved in – in criminal
4 elements in their community or neighborhood they live in and oftentimes these
5 people give us information. It can be corroborated to solve a murder or human
6 smuggling case, that person may be, in fact, motivated for ulterior motives of his
7 own, and I am just being honest with you in saying that he may be racially
8 prejudiced at the same time and its- it would be hard to disqualify that
9 information and say that the information source doesn't like certain groups of
10 people so we are not going to- we are not going to investigate the crime that he
11 very well be a witness to.”

12 *See* Deposition of Brian Sands dated 12/14/09 at p. 82, ln. 24 to p. 84, ln. 12, attached as
13 Exhibit 14.

14 71. It is standard practice for a top law enforcement officer to forward to support
15 staff letters received from the public, even letters containing racially offensive comments,
16 and this is what defense expert Bennie Click did when he was Chief of Police for Dallas,
17 Texas and received such letters:

18 Q. But would you expect and want the head—in terms of best practices the head
19 of a law enforcement agency, like the MCSO, to indicate, well, we can't help
20 this kind of stuff. Some racist folks out there, but, of course, we don't want to
21 have anything to do with them. You would want that to take place in some
22 way, shape, or form, don't you?

23 A I certainly don't think you align yourself with people that have views that you
24 should do something that that's unlawful or unconstitutional.

25 Q. And if you had seen this particular letter as head of the Dallas Department,
26 what would you have done upon receiving it?

27 A. I would have given it to probably my administrative assistant and may have
28 shared it with one of my chiefs. I would have interpreted it as, you know, here
we've got a person out there that appears—and we don't know his intent was,
but appears to suggest that we need to just assume that people coming—and I
think he uses Mexico here, but he talks about Latinos—that we should just
assume that just because they're Latino that that's probable cause or reasonable
suspicion. But I don't think they're going to put much weight on something
like this.”

See Deposition of Bennie Click at p. 167, ln. 1 to p. 168, ln 1, attached as Exhibit 20.

1 (emphasis added).

2 72. The MCSO rejects race-based information that it receives from its telephone
3 hot-line. Chief Sands testified:

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

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

16 *See* Deposition of Brian Sands dated 12/14/09 at p. 84, ln. 24 to p. 85, ln. 16, attached as
17 Exhibit 14.

18 73. The MCSO consistently rejected racially charged citizen complaints when
19 there was no mention of any facts indicating criminal activity, and when there was criminal
20 activity identified, the MCSO independently evaluated the same. *See* Deposition of Joseph
21 Sousa dated 12/10/09 at p. 86, ln. 3 to p. 88, ln. 11, attached as Exhibit 5 (discussing the
22 investigation of citizen complaints; that if the citizen is racially profiling and not describing
23 any criminal activity, the complaint is rejected; the efforts MCSO takes to independently
24 evaluate whether criminal activity is taking place); Deposition of Brian Sands dated 12/14/09
25 at p. 81, ln. 3 to p. 85, ln. 16, attached as Exhibit 14 (providing a detailed discussion of the
26 MCSO rejecting racially motivated tips by citizens that provide no evidence of criminal
27 activity).

28 74. Defendants' police practices expert Mr. Click testified the “[t]he method by
which the MCSO chooses target areas for saturation patrols in reasonable and consistent with
standard law enforcement practices.” *See* Defendants' Statement of Facts (Dkt#413-1) at the
Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as Exhibit 16; *see*
also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln.

1 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his
2 opinions and that his opinions in the report were the same he would provide at trial to a
3 reasonable degree of probability in his field of expertise).

4 75. As for citizen complaints that contained actual or perceived racially prejudice
5 comments, Mr. Click concluded that the “MCSO took steps not to respond to requests to that
6 [which] would have amounted to racial profiling.” *See* Defendants’ Statement of Facts
7 (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 47, attached thereto as
8 Exhibit 16; *see also* March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln.
9 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr. Click testified to the
10 foundation for his opinions and that his opinions in the report were the same he would
11 provide at trial to a reasonable degree of probability in his field of expertise).

12 76. Plaintiffs’ own police practices-racial profiling expert, Mr. Robert Stewart,
13 testified that he did not draw the conclusion, based on his analysis, that any MCSO
14 saturation patrol was unjustified or unwarranted:

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

17 A. Based on crime data?

18 Q. For any reason.

19 A. I did not draw that conclusion.

20 *See* Deposition of Robert Stewart at p. 23, lns. 14-18, attached as Exhibit 17. (emphasis
21 added).

22 77. When Chief Sands was asked whether he agreed with a particular author’s
23 statement in a document that Arpaio had forwarded to him that stated that “we have too
24 many dysfunctional Hispanics already here,” Chief Sands expressly rejected the statement.
25 *See* Deposition of Brian Sands dated 11/15/10 at p. 34, ln. 21 to p. 35, ln. 4, attached as
26 Exhibit 18. Chief Sands never drew the conclusion that because Arpaio sent him a letter that
27 he was to take law enforcement action on it. *Id.*

28 78. As for Arpaio not checking a particular document’s statistics for accuracy

1 before he forwarded it to management level staff, Arpaio testified that in that particular
2 situation he sent the document to Chiefs Sands and Freeman so they could check on it
3 “[b]ecause this is another piece of intelligence. It could be true, or it could not. That’s why I
4 sent it to them.” *See* Deposition of Joseph M. Arpaio dated 11/16/10 at p. 72, lns. 8-14,
5 attached as Exhibit 15. The document is “[j]ust another intelligence-type report, whether its
6 true or not, I think that they [Chiefs Sands and Freeman] should look at it.” *Id.* at p. 72, lns.
7 4-6.

8 79. Expert Mr. Click summarized Chief Sands handling of racially charged letters
9 succinctly:

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

14 *See* Deposition of Bennie Click at p. 163, ln.16 to p. 164, ln. 22, attached as Exhibit 20
15 (emphasis added); *see also* p. 164, ln. 20 to p. 165, ln. 16 (unlikely that someone with Chief
16 Sands’ law enforcement experience would take any action based just on this email).

17 80. Defense expert Mr. Bennie Click testified that the MCSO saturation patrols
18 were reasonably and appropriately planned, executed, supervised and de-briefed. *See*
19 Defendants’ Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21,
20 2011, at pgs. 43-48, attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of
21 Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to
22 Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
23 opinions in the report were the same he would provide at trial to a reasonable degree of
24 probability in his field of expertise).

25 81. The MCSO makes only lawful traffic stops based on probable cause or
26 reasonable suspicion that a violation of the traffic code or vehicle code exists. *See, e.g.,*
27 Defendants’ Statement of Facts (Dkt#413-1) at ¶¶ 17, and 107-109 (Deputy DiPietro had
28 probable cause to stop the truck in which Plaintiff Melendres was a passenger); at ¶¶ 44-45,
51-52, and 113-116 (Deputy Ratcliffe had probable cause to stop the Plaintiff Rodriguez
truck because it was driving on a closed road); and at ¶¶ 117-119 (Deputy Kikes had either

1 probable cause or reasonable suspicion to stop the Plaintiffs Meraz and Nieto).

2 82. The MCSO does not use race as an indicator or factor to make vehicle stops.
3 See Deposition of Brett Palmer dated 10/23/09 at p. 19, ln. 1 to p. 20, ln. 7; p. 145, lns. 12-
4 25; p. 150, ln. 25 to p. 151, ln. 3, attached as Exhibit 9.

5 83. Plaintiffs' police practices-racial profiling expert, Mr. Robert Stewart, admits
6 that a traffic stop can be made for probable cause even if the stopping police officer has
7 some other motivation to stop the motorist. See Deposition of Robert L. Stewart at p. 36, lns.
8 13-16; p. 115, lns. 4-8; p. 118, lns. 10-14, attached as Exhibit 17.

9 84. The Defendants' police practices expert, Mr. Click, testified
10 Saturation patrols/crime suppression/task force operations usually involve officers
11 making increased number of lawful traffic stops and street contacts. The goal of these
12 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
activity.

13 See Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
14 21, 2011, at pgs. 46 and 48-49, attached thereto as Exhibit 16; see also March 18, 2011
15 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit
16 17 to Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
17 opinions in the report were the same he would provide at trial to a reasonable degree of
18 probability in his field of expertise).

19 85. The MCSO acted reasonably and appropriately in instituting a policy of asking
20 all passengers in a vehicle stopped during a saturation patrol for their identification in an
21 effort to reduce the potential for racial profiling by deputies during saturation patrols. Mr.
22 Click testified:

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

26 See Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
27 21, 2011, at pg. 46 attached thereto as Exhibit 16; see also March 18, 2011 Deposition of
28 Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to

1 Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
2 opinions in the report were the same he would provide at trial to a reasonable degree of
3 probability in his field of expertise).

4 86. The MCSO's use of a "zero-tolerance" policy requiring deputies to stop all
5 vehicles they observed that had either a moving or equipment violation was "a reasonable
6 practice... that removed the deputies' discretion to pick and chose who they stopped" and
7 was intended to reduce the potential of racial profiling during saturation patrols. Defense
8 expert Mr. Click testified:

9 In order to reduce the potential of racial profiling during saturation patrol operations,
10 supervisors reasonably and appropriately instituted a zero tolerance policy requiring
11 all violators be stopped. This is a reasonable practice. Zero tolerance removed the
12 deputies' discretion to pick and chose who they stopped.

13 .
14 *See* Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
15 21, 2011, at pg. 46 attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of
16 Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to
17 Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
18 opinions in the report were the same he would provide at trial to a reasonable degree of
19 probability in his field of expertise).

20 87. There was a zero tolerance policy for traffic stops during saturation patrols.
21 *See* Deposition of Brett Palmer dated 10/23/09 at p.56, ln. 2 to p. 58, ln. 16, attached as
22 Exhibit 9 (zero tolerance policy on saturation patrols adopted to try to stop every vehicle
23 with a violation and write tickets to all to avoid charges of racial profiling); *see also* p. 94, ln.
24 20 to p. 95, ln. 1 (zero tolerance policy for any traffic or vehicle violations); p. 98, ln. 18 to
25 p. 99, ln. 17 (the zero tolerance for arrests made and the zero tolerance policy for traffic
26 violators); *see also* Deposition of Manuel Madrid dated 10/27/09 at p. 125, ln. 12 to p. 127,
27 ln. 7, attached as Exhibit 10 (on large scale saturation patrols, there was a zero tolerance
28 policy to pull over and cite all infractions); p. 130, lns. 18-23 (same); *see also* Deposition of
Joseph Sousa dated 12/10/09 at p. 144, lns. 22-25, attached as Exhibit 5 (on zero tolerance
operation, any vehicle that is observed to violate the vehicle or traffic code that can be
stopped will be stopped).

1 88. Plaintiffs' citations to the testimony of Chief Brian Sands, Lt. Joe Sousa and
2 Deputy Ramon Armendariz for the principal that deputies still had broad discretion on which
3 vehicles to actually stop during a large scale saturation patrol is mistaken. Chief Sands did
4 not testify that the zero tolerance policy was not in effect or used during traffic stops, he was
5 merely testifying to the realities in Maricopa County that it was difficult to apply the policy
6 given the traffic volume in Maricopa County and the volume of violations experienced by
7 deputies. In proper context, Chief Sands testified that because there is so much traffic, "[t]he
8 zero tolerance [as to traffic stops] is not a hard and fast rule that you will make every traffic
9 violator that you see. You may only have the opportunity to stop one of three at the same
10 given time. So in itself, it is difficult to have a so-called zero tolerance policy on traffic
11 stops." *See* Deposition of Brian Sands dated 12/14/09 at p. 123, lns. 9-17, attached as 14; *see*
12 *also* p. 123, ln. 18 to p. 124, ln. 18 (questions that immediately follow address that the goal is
13 to stop as many vehicles as possible).

14 Plaintiffs' citation to the testimony of MCSO Deputy Ramon Armendariz also is
15 taken wholly out of context. Plaintiffs never questioned Deputy Armendariz about the zero
16 tolerance policy during saturation patrols. In fact, when Plaintiffs questioned Deputy
17 Armendariz about his discretion used during traffic stops, the line of questioning was *not*
18 related to saturation patrols or his later membership in the Human Smuggling Unit, but to his
19 every-day traffic patrol operations during his prior assignment to the MCSO Special
20 Assistance Unit ("SAU") for Maricopa County District. *See* deposition of Ramon
21 Armendariz dated 11/24/09 at p. 26, ln. 13 to p. 30, ln. 10, attached as Exhibit 21; *see also*
22 Deposition of Joseph Sousa dated 12/10/09 at p. 144, lns. 22-25, attached as Exhibit 5 (on
23 zero tolerance operation, any vehicle that is observed to violate the vehicle or traffic code
24 that can be stopped will be stopped).

25 89. The MCSO has a policy prohibiting racial profiling. *See* Deposition of Brian
26 Sands dated 12/14/09 at p. 194, lns. 14-17, attached as Exhibit 14.

27 90. Defendants' expert Mr. Bennie Click testified to the following:

28 The MCSO maintains comprehensive and detailed policies and procedures that all
personnel are required to have a working knowledge of. A number of MCSO policies
prohibit racial profiling. The MCSO policies are reasonable and conform to

1 nationally recognized standards.

2
3 *See* Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
4 21, 2011, at pg. 44, attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of
5 Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to
6 Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
7 opinions in the report were the same he would provide at trial to a reasonable degree of
8 probability in his field of expertise).

9 91. The MCSO instructed the deputies that were to participate in a saturation patrol
10 during the pre-saturation patrol briefing that they were not to racially profile any person
11 during the up-coming saturation patrol that day. *See* Deposition of Brian Sands dated
12 12/14/09 at p. 194, lns. 18-21; p. 195, lns. 2-5, attached as Exhibit 14.

13 92. The MCSO deputies were appropriately trained about racial profiling first at
14 the police academy, again when they actually started their work at the MCSO, and, if the
15 deputy underwent 287(g) certification with ICE, again at the five-week ICE training
16 academy. Each MCSO deputy has undergone education and training about the improper and
17 unlawful use of race in law enforcement, i.e., racial profiling, while at the police academy at
18 the start of their law enforcement careers. *See* Deposition of Brian Sands dated 12/14/09 at
19 at p. 194, ln. 22 to p. 195, ln. 1, attached as Exhibit 14. When the deputy graduates from the
20 police academy and joins the MCSO for active duty, he or she is taught about the MCSO
21 policy and prohibition against racial profiling. *Id.* Each MCSO deputy that underwent ICE
22 education and training to become 287(g) certified to enforce federal immigration law learned
23 about the law enforcement prohibition against racial profiling. *Id.* at p. 195, lns. 6-10.

24 Defense expert Bennie Click testified:

25 The MCSO provides academy training to deputies emphasizing that racial profiling is
26 unacceptable conduct. The deputies that were 287(g) received additional training
27 from ICE personnel. This training is reinforced at each saturation patrol operation
28 briefing as it is contained in the operations plan. The effectiveness of training is not
measured by how recently the training was done or how frequently it is presented, but
measured by how well the deputies conduct and performance reflect the performance
objectives of the training. Mr. Kidd [of ICE] stated that during ICE training for
287(g) certification, there is a block of instruction that discusses racial profiling and

1 that it is prohibited.

2 *See* Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
3 21, 2011, at pgs. 43-44, attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition
4 of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to
5 Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
6 opinions in the report were the same he would provide at trial to a reasonable degree of
7 probability in his field of expertise).

8 93. As to the issue of whether there was proper supervision during saturation
9 patrols, expert Mr. Bennie Click testified that the "Operations Plans were reasonable and met
10 the standard of care. There is no evidence that there was confusion over the objective of the
11 operations, personnel assignments or the specific duties to be performed." *See* Defendants'
12 Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January 21, 2011, at pg. 44,
13 attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of Defense Expert Ben
14 Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to Dkt#413-1 (wherein Mr.
15 Click testified to the foundation for his opinions and that his opinions in the report were the
16 same he would provide at trial to a reasonable degree of probability in his field of expertise).
17 Mr. Click further testified that the "level of supervision required generally depends on a
18 deputies' training, experience and past performance. There is no evidence that any deputy
lacked supervision." *Id.* at p. 44.

19 94. Defendants' expert Mr. Bennie Click testified that the MCSO acted reasonably
20 and appropriately in not collecting data about the race ethnicity of persons stopped or
21 contacted by the MCSO and provided detail explanation for such data collection is not
22 standard in law enforcement. Mr. Click testified:

23 The racial profiling issue pivots on the question of whether collecting information on
24 each police contact/encounter will determine if racial profiling exists. Many agencies
25 do not collect such data because they feel the information will be misinterpreted and
26 have a chilling effect on law enforcement activity, putting the communities' safety at
27 great risk. Not collective this data [as opined by Plaintiffs' expert Mr. Stewart] does
28 not fall below the standard of care. The collection of data is a policy decision for each
agency. There are numerous factors that may any evaluation of this data difficult at
best. These include such as community demographics, officer experience level,
officer training, officer performance history, officer work ethic, location assigned,

1 traffic/pedestrian volume, different duties, call volume and the nature of
2 investigations officer can be involved in.

3 Mandated data collection is suspect when used to determine the race or ethnicity of
4 persons officer stopped. In many instances, a person's race or ethnicity is not
5 obvious. Race may be easier to determine because of kin color, however, ethnicity is
6 less apparent. Many people have surnames that are not indicative of their ethnicity.
7 A number of ethnic groups have similar physical characteristics. Most countries have
8 citizens of various races and ethnicities and country of origin may be misleading.
9 Even self-identification is problematic because of the increasing number of persons
with mixed racial and ethnic backgrounds. Officers misidentifying a person's race or
ethnicity can be controversial in itself and could create a perception of a racially or
ethnically insensitive department."

10 *See* Defendants' Statement of Facts (Dkt#413-1) at the Report of Ben Click dated January
11 21, 2011, at pgs. 45-46 attached thereto as Exhibit 16; *see also* March 18, 2011 Deposition of
12 Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14, attached as Exhibit 17 to
13 Dkt#413-1 (wherein Mr. Click testified to the foundation for his opinions and that his
14 opinions in the report were the same he would provide at trial to a reasonable degree of
15 probability in his field of expertise).

16 95. As soon as the person with day-to-day responsibilities for the Human
17 Smuggling Unit, Lt. Joseph Sousa, learned that MCSO deputies and personnel were using
18 MCSO email accounts to circulate inappropriate and offensive emails h became "livid" and
19 immediately stopped all such emails. *See* Deposition of Joseph Sousa dated 10/22/10 at p.
20 90, ln. 19 to p. 91, ln. 21, attached as Exhibit 19.

21 96. The traffic stop of Mr. and Rodriguez was unrelated to a saturation patrol. *See*
22 Defendants' Statement of Facts (Dkt#413-1) at ¶ 43.

23 97. The traffic stop of Ms. Meraz and Mr. Nieto, while occurring when a saturation
24 patrol was simultaneously on-going in the area, was unrelated to that saturation patrol. *See*
25 Defendants' Statement of Facts (Dkt#413-1) at ¶¶ 64-88.

26 98. While Mr. Melendres' traffic stop technically could be considered as part of a
27 small MCSO saturation patrol, and was considered as such by Deputy DiPietro, the operation
28 was actually a small HSU detail targeting only specific vehicles that had picked up persons
from a suspected human smuggling drop house/day laborer location, and did not involve the

1 MCSO making general traffic stops of any vehicles other than those that had visited the
2 church property and picked-up passengers and where probable cause was found to stop those
3 particular vehicles. *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 12.

4 99. Plaintiffs' statistical expert, Dr. Ralph Taylor conducted a statistical analysis of
5 all the MCSO traffic stops conducted from January 1, 2007 to October 31, 2009 and
6 concluded that Latinos in Maricopa County are stopped by MCSO personnel in roughly the
7 same proportion to their share of Maricopa County's population. *See* Defendants' Statement
8 of Facts (Dkt#413-1) at ¶ 122.

9 100. Defense expert statistician Steve Camarota, Ph.D., testified to his statistical
10 analysis:

11 [My] findings show that the Hispanic share of those stopped by the MCSO deputies is
12 roughly equal to their proportion of the county and the state's overall population.
13 About one-third of stops are of individuals with a Hispanic last name, which closely
14 matches their share of the county and state populations. Analysis at the sub-county
15 level also tends to show stops in proportion to local population shares.... *Equally*
16 *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 surname analysis shows
Hispanics are being stopped at a rate that reflects their share of the population.

17 *See* Defendants' Statement of Facts (Dkt#413-1) at ¶ 123.

18 101. Dr. Ralph Taylor's saturation patrol opinions are unreliable because his study
19 is admittedly "quasi-experimental" in nature. *See* Defendants' Statement of Facts (Dkt#413-
20 1) at ¶ 124.

21 102. Dr. Ralph Taylor's "quasi-experimental" study does not result in definitive
22 findings or conclusions, only "inferences." *See* Defendants' Statement of Facts (Dkt#413-1)
23 at ¶ 124.

24 103. Dr. Ralph Taylor's saturation patrol analysis also: (1) fails to exclude those
25 patrols that included a human smuggling interdiction component, or otherwise exclude
26 human smuggling load vehicles found containing multiple illegal immigrants as occupants,
27 which skews his saturation patrol results; (2) fails to exclude duplicate records in the MCSO
28 Computer Aided Dispatch database, which skews his saturation patrol results; (3) excludes

1 thousands of other cases that should have been included in the analysis, which artificially
2 inflates his saturation patrol results (he admits that he excluded 18% of all MCSO traffic
3 stops per year because they did not “align” with Plaintiffs’ case theory or Plaintiffs’
4 “concerns”); and (4) fails to account for any socio-economic variables that affected his
5 saturation patrol model. *See* Defendants’ Statement of Facts (Dkt#413-1) at ¶ 124.

6 104. Saturation patrols are infrequent events and do not occur on a daily, weekly, or
7 even monthly basis. *See* Defendants’ Response in Opposition to Plaintiffs’ Motion for
8 Sanctions (Dkt#235) at Siemens Affidavit, Exhibit 8 at ¶ 4 (Dkt235-2) (patrols do not occur
9 on a daily or weekly basis); *see* Plaintiffs’ Statement of Facts (Dkt#422) at ¶ 60
10 (indentifying 13 large scale saturation patrols over a 34 month time period).

11 105. Saturation patrols are, by the nature, special operations intended to address
12 concerns about criminal activity or possible problems in the community. *See* Defendants’
13 Response in Opposition to Plaintiffs’ Motion for Sanctions (Dkt#235) at Siemens Affidavit,
14 Exhibit 8 at ¶ 4(Dkt235-2).

15 106. For the 34 month time period covered by Plaintiffs’ Motion addressing January
16 1, 2007 to October 31, 2009, there were only thirteen (13) large scale saturation patrols
17 conducted by the MCSO. *See* Plaintiffs’ Statement of Facts (Dkt#422) at ¶ 60 (indentifying
18 13 large scale saturation patrols over a 34 month time period).

19 107. Chief Brian Sands does not select locations for saturation patrols because of
20 the sole factor that there are day-laborers, or so-called day-laborers, at a particular location.
21 *See* Deposition of Brian Sands dated 12/14/09 at p. 183, Ins. 16-20, attached as Exhibit 14.

22 108. While some saturation patrols involved sites where day laborers were located,
23 every saturation patrol in an area with day laborers was conducted because there were other
24 race neutral factors related to criminal activity which controlled Chief Bran Sands’ decision
25 to conduct a particular saturation patrol at a particular location. *See* Deposition of Brian
26 Sands dated 12/14/09 at p. 183, Ins. 21-25, attached as Exhibit 14; *see also* Deposition of
27 Manuel Madrid dated 10/27/09 at p. 86, ln. 17 to p. 87, ln. 4, attached as Exhibit 10 (day
28 laborers at site of saturation patrol had been harassing children going to school); Deposition
of Joseph Sousa dated 12/10/09 at p. 111, ln. 11 to p. 112, ln. 1, attached as Exhibit 5 (day

1 laborers at site of saturation patrol were being aggressive toward other citizens; day laborers
2 congregating in area were “making catcalls at little girls;” ICE advised MCSO “that day
3 laborers were also being forced to work human smuggling charges off.”); Deposition of
4 Joseph Sousa dated 12/10/09 at p. 94, Ins. 20-24, attached as Exhibit 5 (sites are not selected
5 because they have a high concentration of day laborers); *Id.* at p. 96, In. 25 to p. 97, In. 3
6 (site for saturation patrols also are not selected because they may have a high concentration
7 of suspected illegal immigrants); *see also* Defendants’ Statement of Facts (Dkt#413-1) at ¶
8 12 (On September 26, 2007, the MCSO Human Smuggling Unit (“HSU”) was in Cave
9 Creek, Arizona investigating a particular church building/parking lot in response to citizen
10 complaints that the church or its grounds may be serving as a possible “drop house” for
11 human smuggling and because “day laborers” congregating or loitering near the church were
12 stepping into the traffic lanes of Cave Creek Road and causing traffic problems.).

13 109. While the MCSO saturation patrols were designed to address crime in a given
14 geographic area, another focus of the patrols was the enforcement of the laws related to
15 illegal immigrations. *See* Plaintiffs’ Statement of Facts (Dkt#422) at ¶¶ 22 and 110, and
16 Defendants’ Response, Rule 56(c)(2) Objections, and Controverting Statement of Fact at
17 ¶110 above.

18 110. Regardless of whether an illegal immigrant’s unlawful presence in Maricopa
19 County is a civil or criminal violation of the law, the fact remains that MCSO deputies that
20 were 287(g) certified were authorized to enforce federal immigration law, criminal or civil.
21 *See* Plaintiffs’ Statement of Facts (Dkt#422) at ¶ 3 and Defendants’ Response, Rule 56(c)(2)
22 Objections, and Controverting Statement of Fact at ¶ 3 admitting to the same.

23 111. Plaintiffs’ expert Mr. Robert Stewart testified that Deputy Kikes acted
24 “reasonably” in his post-stop conduct and treatment of Mr. Nieto. *See* Plaintiffs’ Statement
25 of Facts (Dkt#422) at ¶ 120.

26 DATED this 3rd day of June, 2011.

27 SCHMITT, SCHNECK, SMYTH & HERROD,
28 P.C.

s/Timothy J. Casey
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16 **CERTIFICATE OF SERVICE**

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

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