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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, et al., Plaintiffs, vs. Joseph M. Arpaio, et al., Defendants.	No. CV 07-2513-PHX-GMS **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** **ORAL ARGUMENT REQUESTED** The Honorable Judge G. Murray Snow

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I. INTRODUCTION

Defendants Sheriff Joseph M. Arpaio and the Maricopa County Sheriff's Office ("the MCSO") have moved this Court for summary judgment. *See* Defs.' Mot. for Summ. J, Dkt. No. 413 (hereinafter "Defs.' MSJ"). In their motion, Defendants contend that Plaintiffs Manuel de Jesus Ortega Melendres, Jessika Quitugua Rodriguez, David Rodriguez, Velia Meraz, Manuel Nieto, Jr. and Somos America/We Are America ("Plaintiffs") lack standing to pursue their claims for equitable relief. Defendants also assert that Plaintiffs' claims of unlawful racial profiling and unreasonable search and seizure fail as a matter of law. At its core, Defendants' motion is simply a re-hashing of arguments previously rejected by this Court. Defendants' motion must fail when the evidence is considered in the light most favorable to Plaintiffs.

Defendants' motion should be denied for the following reasons:

1) Plaintiffs have Article III standing to seek equitable relief from the MCSO's racially discriminatory traffic stops. As this Court has previously held, "the essential question" with respect to "standing to seek equitable remedies" is whether Plaintiffs can establish "a sufficient likelihood of future injury." Order dated Aug. 24, 2009 ("Order"), Dkt. 155, at 5. Thus, contrary to Defendants' contention, the question is *not* whether Plaintiffs have been stopped more than once by the MCSO during the pendency of this lawsuit, but whether Plaintiffs can show "a widespread, ongoing, and officially-sanctioned policy, practice, or pattern" of Defendants targeting Hispanic drivers and passengers that realistically threatens future injury. *Id.* at 7-8; *see also Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001) ("[H]arm [that] is part of a 'pattern of officially sanctioned . . . behavior, violative of the plaintiffs' [federal] rights'" sufficient to satisfy the 'realistic repetition' requirement. (internal quotation omitted)). As discussed below, Plaintiffs have amply made this showing in their Renewed Motion for Class Certification (Dkt. No. 420) and Plaintiffs' Motion for Partial Summary Judgment (Dkt. No. 421) (hereinafter "Pls.' MSJ").

2) Defendants fail to meet their burden for summary judgment on Plaintiffs' Fourth Amendment and Arizona constitutional claims for unreasonable search and seizure. In seeking summary judgment on Plaintiffs' claims under the Fourth Amendment of the U.S. Constitution and Article II, Section 8 of the Arizona Constitution, Defendants ask the Court to grant undue deference to MCSO officers' asserted justifications for their actions towards each named Plaintiff, ignoring both controlling law and material factual disputes in the process. In particular:

The Detention and Arrest of Manuel de Jesus Ortega Melendres. Defendants lacked reasonable suspicion to detain Mr. Ortega Melendres for purposes of an immigration investigation after Deputy Louis DiPietro released the Caucasian driver of the car in which Mr. Ortega Melendres was riding as a passenger. Once the driver was released, the traffic stop was over, yet the MCSO continued to detain Mr. Ortega Melendres to conduct an immigration investigation for which no reasonable suspicion existed. In addition, Defendants' justification for the arrest of Mr. Ortega Melendres is disputed: contrary to the testimony of Deputy Carlos Rangel, Mr. Ortega Melendres testified that he provided all necessary immigration documents when asked, and that he did not say to Deputy Rangel that he was working. Thus, Defendants have not established that their detention and subsequent arrest of Mr. Ortega Melendres for 7 to 8 hours was reasonable as a matter of law.

The Stop of David and Jessika Rodriguez. According to Plaintiffs' testimony, when Deputy Matthew Ratcliffe stopped the Rodriguezes for driving on Bartlett Dam Road, he learned that they had not seen the "Road Closed" sign because they had been off-roading. Many other vehicles driving on the same stretch of the road were also apparently not aware of the road closure. Instead of releasing them—as the MCSO did with the other motorists—Deputy Ratcliffe detained the Rodriguezes to issue a citation. He asked Mr. Rodriguez for a Social Security card, and then for his Social Security number, not releasing Mr. Rodriguez and his family until he provided it. Deputy Ratcliffe insisted on the Social Security information even *after* Mr. Rodriguez

had provided a valid driver's license, registration, and proof of insurance and even though none of the other motorists had been asked for this information. Deputy Ratcliffe thus unreasonably prolonged the stop to issue the Rodriguezes a citation and to investigate their immigration status without any reasonable suspicion or probable cause to believe that they had violated the law.

The Stop of Manuel Nieto and Velia Meraz. Manuel Nieto and Velia Meraz testified that they did not interfere with Deputy Charley Armendariz's traffic stop or threaten him, and that they complied with Deputy Armendariz's orders to leave the scene. Defendants' own testimony establishes that Deputy Armendariz was unharmed and in control of the situation when back-up officers arrived at the gas station. Thus, there was no reason to pursue Mr. Nieto and Ms. Meraz after they had left, or to investigate them for disorderly conduct, obstruction, or any crime. In addition, Defendants have failed to establish that their conduct after Mr. Nieto and Ms. Meraz were stopped (drawing their guns and forcibly removing Mr. Nieto from his car and handcuffing him) was reasonable as a matter of law.

3) Summary judgment on Plaintiffs' Fourteenth Amendment claims of racial discrimination should be granted in favor of Plaintiffs. For all the reasons stated in Plaintiffs' Motion for Partial Summary Judgment, Plaintiffs are entitled to summary judgment on their Fourteenth Amendment claims. The undisputed record shows that the MCSO, led by Sheriff Arpaio, and acting with discriminatory intent against Hispanics, launched a "crackdown" on illegal immigration that targeted Hispanic individuals. The result was a greater number of stops and investigations of Hispanic drivers and passengers in Maricopa County. Defendants' motion should accordingly be denied.

First, Defendants contend that there is "insufficient evidence" that the MCSO's immigration enforcement actions have a discriminatory effect on Latinos. *See* Defs. MSJ at 24-27. In doing so, they disregard undisputed statistical evidence that Hispanics in Maricopa County are stopped at significantly higher rates during the MCSO's saturation patrols than at other times. Defendants' attempt to distinguish this evidence

because it relates to saturation patrols fails, as: (i) most of the named Plaintiffs were stopped during saturation patrols, which are a central concern of Plaintiffs' lawsuit; (ii) the MCSO's pattern of racially disparate actions on saturation patrols is probative of its behavior during other immigration enforcement activities; and (iii) Plaintiffs have also presented uncontested evidence that stops involving Hispanics are about 25% longer on average, a finding that applies to *all* of the MCSO's stops, not just those occurring on saturation patrols. Finally, Defendants' assertion that there is no disparate impact when aggregating several years of stops on an agency-wide basis ignores that such an approach is methodologically unreliable and can easily mask discriminatory conduct.

Second, Defendants are incorrect that Plaintiffs have not shown that "any MCSO personnel" acted with discriminatory intent. *See* Defs. MSJ at 27-33. As detailed in Plaintiffs' Motion for Partial Summary Judgment, the undisputed documentary evidence shows that Sheriff Arpaio and MCSO command staff instituted a policy of targeting Hispanics during MCSO immigration enforcement operations that was motivated by discriminatory intent. Sheriff Arpaio and the command staff were the "decisionmakers" instituting this policy, and thus it is *their intent* that matters. *See Wayte v. United States*, 470 U.S. 598, 610 (1985) (discriminatory intent of "decisionmaker" is the key Equal Protection inquiry). Defendants ignore the actions of MCSO leadership and focus solely on the self-serving denials of MCSO deputies to make their case for summary judgment. That is clearly insufficient. But even under such a limited view of the evidence, Defendants' motion fails; there is considerable evidence in the record showing that the individual MCSO deputies involved in the stops of the named Plaintiffs acted with discriminatory intent when they treated the Hispanic Plaintiffs differently than similarly-situated non-Hispanics.

II. ARGUMENT

A "genuine issue" of material fact precluding summary judgment arises if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A court must view the evidence and all reasonable inferences in the light most favorable to the non-movant. *Id* at 255; *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1289 (9th Cir. 1987).

Concurrently with this motion, Plaintiffs are submitting a detailed response to each fact in Defendants' Separate Statement of Fact in support of their motion ("Pls.' Resp. to Defs.' SOF"). Plaintiffs also incorporate here their Statement of Facts submitted in support of their motion for partial summary judgment, *see* Separate Statement of Facts in Supp. of Pls.' Partial Mot. for Summ. J., Dkt. No. 422 (hereinafter "Pls.' SOF"), and have submitted concurrently with this motion additional statements of fact precluding summary judgment, *see* Plaintiffs' Supplemental Statements of Facts Precluding Summary Judgment in Favor of Defendants (hereinafter "Pls.' SSOF").

A. Plaintiffs Have Standing to Seek Equitable Relief Because Plaintiffs Are Subject to a Pattern and Practice of Racial Discrimination That Realistically Threatens Recurrent Injury

Defendants first contend that Plaintiffs' case should be dismissed because Plaintiffs lack standing to seek equitable relief if they have not suffered the constitutional injury they complain of more than once. Defs.' MSJ at 14-17. In essence, Defendants would require that Plaintiffs wait until they are stopped again by the MCSO before they ask the Court to entertain their request for declaratory or injunctive relief. As shown below, this is an incorrect statement of the law.

1. A Pattern and Practice of Racial Discrimination Establishes a Sufficient Likelihood of Future Injury

"[T]he essential question" with respect to Plaintiffs "standing to seek equitable remedies" is whether they can establish "a sufficient likelihood of *future* injury." Order, Dkt. 155, at 5; *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (emphasis added). While the fact that a single individual may have been harmed more than once in the past may be one way that a plaintiff can show the likelihood of being harmed in the future, it is not the only way.

As this Court has previously recognized, Plaintiffs can establish that they "are

personally subject to the likelihood of future harm" by showing that there is an "officially-sanctioned policy, practice, or pattern of conduct" of racial profiling. *See* Order, Dkt. No. 155, at 7-8, 12 (collecting cases); *see also, e.g.*, *Armstrong*, 275 F.3d at 861 ("There are at least two ways in which to demonstrate that such injury is likely to recur. . . . [T]he plaintiff may demonstrate that the harm is part of a 'pattern of officially sanctioned . . . behavior, violative of the plaintiffs' federal rights.'" (internal quotation omitted)); *Rodriguez v. Cal. Highway Patrol*, 89 F. Supp. 2d 1131, 1142 (N.D. Cal. 2000) (distinguishing *Lyons* on the basis that plaintiffs claimed "a pattern and practice of illegal law enforcement activity"). The ultimate inquiry is whether Defendants' pattern and practice of behavior creates a realistic threat that Plaintiffs will be subjected to the same harm, *not* how many times Plaintiffs happen to have been harmed by Defendants in the past. *Armstrong*, 275 F.3d at 860-861; *see also LaDuke v. Nelson*, 762 F.2d 1318, 1323 (9th Cir. 1985) ("[W]hen injunctive relief is sought, litigants must adduce a 'credible threat' of recurrent injury.").

Because Plaintiffs have demonstrated a pattern and practice of discriminatory conduct, the cases relied on by Defendants are distinguishable. *Lyons*, for example, involved a "string of contingencies necessary to produce an injury," including a "stop by police, followed by post-stop behavior culminating in a chokehold." *Hodgers-Durgin v. de la Vina,* 199 F.3d 1037, 1041-42 (9th Cir. 1999). The *Lyons* plaintiffs lacked standing because they had the "ability to avoid engaging in illegal conduct." *Id.* at 1041. In contrast, Plaintiffs here need do "nothing illegal to warrant the actions of MCSO officers . . . . Just another stop, search, or interrogation would [] itself constitute[] further injury . . . ." Order, Dkt. 155, at 6 (discussing *Hodgers-Durgin* and finding that Plaintiffs' case is likewise distinguishable from *Lyons*).[1]

[1] Contrary to Defendants' contention, Defs.' MSJ at 17 n.10, Plaintiffs cannot avoid being stopped simply by complying with the traffic code. Plaintiffs have previously explained, and MCSO deputies have confirmed, that the Arizona traffic code contains so many provisions that MCSO officers effectively have the ability to stop any car at any time. *See* Pls.' Opp'n to Defs.' Mot. for J. on the Pleadings, Dkt. 98, at 10-11; Pls.' SOF 116. Indeed, Plaintiffs' past stops demonstrate that they can be subject to MCSO's pattern and practice of racial profiling and unreasonable stops without violating

In addition, unlike here, the *Lyons* plaintiff "did not assert that there was a pattern and practice of applying chokeholds without provocation or, if [he] did state such a claim, the Court found it was not supported by the record." *Maryland State Conference*, 72 F. Supp. 2d at 564-65. The Supreme Court specifically noted that in *Lyons* that there was no "evidence showing a pattern of police behavior that . . . would permit the application of the control holds on a suspect that was not offering, or threatening to offer, physical resistance." 461 U.S. at 110 n.9.

Hodgers-Durgin is distinguishable for the same reasons. Even after discovery, the evidentiary record in *Hodgers-Durgin* was devoid of evidence of an officially-sanctioned policy, pattern or practice of unconstitutional stops. *See Durgin v. de la Vina*, 174 F.R.D. 469 (D. Ariz. 1997). Indeed, Ms. Hodgers-Durgin testified that she was unaware of any incidents in which Border Patrol had stopped her family or friends along the highways in Southern Arizona. *Id.* at 474 & n.18. The Ninth Circuit has held, before and after *Hodgers-Durgin*, that the existence of a pattern of officially-sanctioned behavior is sufficient to show the likelihood of repetition in the future. *See LaDuke*, 762 F.2d at 1324; *Armstrong*, 275 F.3d at 861.

2. Because Plaintiffs Have Shown a Pattern and Practice of Racial Discrimination, They Have Standing to Seek Equitable Relief

In this case, Plaintiffs, with the benefit of a full evidentiary record, have proven a pattern and practice of racial discrimination by Defendants. *See* Pls.' MSJ at 14-31; Pls.' Renewed Mot. for Class Cert., Dkt. No. 420, at 2-10. The evidence detailed in

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the law. Plaintiff Ortega Melendres was riding as a *passenger* in a vehicle where the driver was stopped for speeding. Pls.' SOF 171, 177. Plaintiffs David and Jessika Rodriguez were not aware of the "Road Closed" sign that they were stopped for allegedly disobeying. Pls.' SOF 189; Defs.' SOF 51, 57; Pls.' Resp. to Defs.' SOF 50, 56. Finally, Plaintiffs Nieto and Meraz were stopped without any justification at all, and were released without citation or charge. *See infra* Section II.B.3. Thus, wholly unlike *Lyons*, Plaintiffs in the instant case can do nothing to avoid Defendants' unconstitutional practices, short of ceasing the entirely lawful activity of driving or riding in vehicles in Maricopa County. *See Md. State Conference of NAACP Branches v. Md. Dept. of State Police*, 72 F. Supp. 2d 560, 565 (D. Md. 1999) (standing exists where "[a]ny 'illegal' action on [plaintiffs'] part need be no more than a minor, perhaps unintentional, traffic infraction" and plaintiffs "expect they will continue to travel on [the highway]").

Plaintiffs' Motion for Partial Summary Judgment shows that Sheriff Arpaio and the MCSO's have instituted a pattern and practice of targeting Hispanics in order to investigate immigration status. Sheriff Arpaio acknowledges planning saturation patrols based on material that is racially charged, contains no evidence of any crime, and explicitly advocates racial profiling. Pls.' MSJ at 15-24. The MCSO has failed to institute effective safeguards against racial profiling, and has adopted policies that encourage racial profiling. *Id.* at 24-31. The result has been disproportionately many stops of Hispanics during saturation patrols and unreasonably extended stops of Hispanics generally. *Id.* at 31-34. The existence of this ongoing, officially-sanctioned pattern and practice "lends special weight to the likelihood of future harm." Order, Dkt. 155, at 7. The Hispanic Plaintiffs in this case travel on the roads in Maricopa County,[2] are therefore exposed to the MCSO's policies, and have more than a "conjectural" or "hypothetical" probability of being harmed again. *Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles*, 246 F.R.D. 621, 628 (C.D. Cal. 2007).

This conclusion is reinforced by the analyses of the MCSO's stop data performed by Plaintiffs' statistical expert, Dr. Ralph B. Taylor. Contrary to Defendants' contention, Defs.' MSJ at 16-17, Dr. Taylor opined that Mr. Ortega Melendres would have "a higher chance[] of being stopped all else equal compared to [a similarly-situated] non-Hispanic driver." Pls.' Resp. to Defs.' SOF 146. Regarding the probability of Mr. Rodriguez getting pulled over in a saturation patrol, Dr. Taylor testified that "it's my opinion, that his chances of being stopped during a major saturation patrol are higher than would be the chances of a person driving with a non-Hispanic name driving in exactly the same way, exactly the same type of vehicle." Pls.'

[2] Plaintiffs David Rodriguez, Jessika Rodriguez, Manuel Nieto and Velia Meraz all live and drive in Maricopa County. Pls.' SSOF 268. While Defendants contend that Mr. Ortega Melendres is not likely to be stopped again because he lives in Mexico, Defs.' MSJ at 16, Mr. Ortega Melendres had returned to Maricopa County "once or twice" in the two years between 2007 and 2009, and it is fair to presume Mr. Ortega Melendres will continue to visit and travel in Maricopa County in the future. Pls.' Resp. to Defs.' SOF 101.

Resp. to Defs.' SOF 147. Dr. Taylor had the same answer with respect to the probability that Mr. Nieto or Ms. Meraz would be stopped in the future. Pls.' Resp. to Defs.' SOF 148. Although Dr. Taylor declined to estimate a "specific probability" for any particular individual, he stated unequivocally that each of the Plaintiffs has a higher likelihood of being stopped in the future due to Defendants' pattern of targeting Hispanics. Plaintiffs are thus realistically threatened by future discriminatory traffic stops.

Discovery in this case has also confirmed that Defendants' unlawful pattern and practice is not only officially-sanctioned, but "widespread and ongoing." Order, Dkt. 155, at 7. The MCSO appears to conduct large-scale saturation patrols six to seven times per year. Pls.' SOF 61-73. Between 2008 and 2009, at least 1,312 Hispanics were stopped by the MCSO just on those large-scale patrols. Pls.' SSOF 262. And Sheriff Arpaio has emphatically stated that nothing will change about his immigration enforcement activities, even though the MCSO lost its certification to enforce federal immigration laws in the field in October 2009. Pls.' SOF 10. The MCSO's saturation patrols and immigration enforcement activities are continuing, and so Plaintiffs continue to be threatened with improper racial targeting.

The MCSO's conduct toward the named Plaintiffs is consistent with its larger pattern of conduct on routine traffic stops. For example, Deputy DiPietro's treatment of Mr. Ortega Melendres was nearly identical to another traffic stop Deputy DiPietro conducted later in the day during the Cave Creek operation, *see* Pls.' SOF 180, and matches the practice of prolonged pretextual traffic stops and questioning of passengers on other MCSO operations targeted at day laborers and illegal immigrants. *See* Pls.' SOF 115, 117, 127; Pls.' Renewed Mot. for Class Cert. at 4-6. Deputy Ratcliffe's pointed requests for a Social Security card and number (a potential indicator of citizenship or immigration status) from the Rodriguezes are consistent with other putative class members' reports of being asked for such information. *See* Pls.' SOF 215, 217; Pls.' Renewed Mot. for Class Cert. at 4. And Mr. Nieto and Ms. Meraz's stop at

gunpoint echoes other incidents of baseless and overly aggressive stops. *See, e.g.*, Pls.' SOF 215 (Jorge Urteaga stopped at gunpoint and asked to prove his citizenship); Pls.' SOF 220 (Lorena Escamilla slammed into vehicle while pregnant); Pls.' Renewed Mot. for Class Cert. at 5-6. All of this evidence is highly probative of the named Plaintiffs' likelihood of future harm.

Indeed, members of Plaintiff Somos America has been stopped more than once by the MCSO. *See* Pls.' Resp. to Defs.' SOF 152; Pls.' SSOF 269. For example, Mr. Adolfo Maldonado was stopped during two different MCSO saturation patrols in 2008. Pls.' SSOF 269.[3] The experiences of other putative class members who have been stopped multiple times offer further proof that the threat Plaintiffs face is both real and cannot be avoided.[4] Lino Garcia was stopped four times for minor equipment violations, and once for no reason other than that he "looked suspicious." Pls.' SOF 217. Anabel Avitia was stopped twice by the MCSO, once during a saturation patrol. Pls.' SSOF 257. On both occasions, she asserts that neither she nor her husband had violated the law. *Id.*

3. Somos America Has Organizational Standing

Organizational Plaintiff Somos America also has standing. If at least one plaintiff has standing, the court need not address the standing of the other parties. *See Ortega Melendres v. Arpaio*, 598 F. Supp. 2d 1025, 1039-40 (D. Ariz. 2009) (citing

[3] Defendants contend that the evidence that members of Plaintiff Somos America have been stopped is inadmissible, and therefore, that Somos America lacks representational standing to sue on behalf of its members. However, at least two members of Somos America have provided declarations regarding their traffic stops. Pls.' SSOF 258, 269; *see also* Pls.' SOF 224. Furthermore, as Ms. Guzman has explained, many members of Somos who have been stopped are afraid to come forward in person. Pls.' SSOF 259. Given that Somos has many Hispanic members who live and work in this jurisdiction, the likelihood that any one of its members will be stopped in the future is much greater than that of a single individual, even an individual who has been stopped twice before. *See* Pls.' Resp. to Defs.' SOF 152 (listing stops of Somos America members).

[4] "When a named plaintiff asserts injuries that have been inflicted upon a class of plaintiffs, [a court] may consider those injuries in the context of the harm asserted by the class as a whole, to determine whether a credible threat that the named plaintiff's injury will recur has been established." *Armstrong*, 275 F.3d at 861.

Preminger v. Peake, 536 F.3d 1000, 1006 (9th Cir. 2008)). Somos America has standing to represent its members who are at risk of being stopped. Pls.' Renewed Mot. for Class Cert., Dkt. No. 420, at 8-9. In addition, Somos America has organizational standing based on the frustration of its mission and diversion of its resources. *See* Pls.' Resp. in Opp'n to Defs.' Mot. to Dismiss, Dkt. 48 at 4-6; Pls.' SOF 224, Pls.' SSOF 260.

An organization "may satisfy the Article III requirement of injury in fact if it can demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular [] discrimination in question." *Smith v. Pac. Props. & Dev. Corp*., 358 F.3d 1097, 1105 (9th Cir. 2004); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (finding that the organization HOME had standing if its efforts to provide equal access to housing had been frustrated by defendants' practices and HOME had devoted significant resources to identify and counteract defendants' practices).

Here, Somos America's mission in advocating for comprehensive immigration reform and educating the community has been frustrated by Defendants' activities. Pls.' SSOF 260. Rather than focusing their time on trying to organize the community, or conduct citizen and voter drives and educational forums, Somos America's volunteers have had to monitor and observe Defendants' saturation patrols and assist persons who report mistreatment by Defendants. *Id.* As a result, Somos America's limited resources have been diverted. *Id.* In sum, Somos America has standing based on injury to itself.

For all these reasons, Plaintiffs have standing to seek equitable relief, and so summary judgment on this issue must be denied.

B. Defendants Fail to Meet Their Burden for Summary Judgment on Plaintiffs' Claims under the Fourth Amendment to the U.S. Constitution and Article II, Section 8 of the Arizona Constitution

Defendants argue that the existence of reasonable suspicion or probable cause to conduct a traffic stop automatically rendered their conduct toward Plaintiffs lawful. Defs.' MSJ at 18. This argument fails for two reasons. First, this Court has already

rejected the argument that probable cause at the outset of a stop justifies any subsequent unreasonable conduct during the course of the stop. *See Ortega Melendres*, 598 F. Supp. 2d at 1032-36 (denying Defendants' motion to dismiss Plaintiffs' Fourth Amendment claims because "[t]he length and scope of detention must be justified by the circumstances authorizing its initiation" (citing *Terry v. Ohio,* 392 U.S. 1, 16 (1968)). Defendants violated the Fourth Amendment by subjecting each of the Plaintiffs to stops that were unreasonable in length or scope. Second, the evidence shows that the initial stops of at least two Plaintiffs occurred without *any* reasonable suspicion or probable cause whatsoever.[5]

1. Plaintiff Ortega Melendres was Detained and Arrested in Violation of his Fourth Amendment Rights

During one of the MCSO's early suppression patrols on September 27, 2007, Mr. Ortega Melendres was stopped while riding as a passenger in a vehicle that had just left the parking lot of a church in Cave Creek. Pls.' SOF 171, 174. Like many other such MCSO operations, units observing vehicles that appeared to pick up day laborers in the parking lot called out descriptions of those vehicles so that other MCSO units could follow them and "develop[]" probable cause of a traffic violation (and hence, a reason to stop the vehicle). Pls.' SOF 117, 174. Mr. Ortega Melendres was one of the occupants in a vehicle that was stopped by Deputy Louis DiPietro just moments after he and two other Hispanic men entered it. Pls.' SOF 171; *see also* Pls.' Resp. to Defs.' SOF 15.

Speculating that officers had reason to believe Mr. Ortega Melendres was involved in unlawful activity before he was detained, Defendants claim that deputies were in the area to investigate complaints that the church was serving as a possible "drop house" for human smuggling. Defs.' MSJ at 4. This claim is not only implausible, it is disproved by the MCSO's own internal correspondence confirming

[5] Article 2, Section 8 of the Arizona Constitution is the state equivalent to the Fourth Amendment to the U.S. Constitution, and was "intended to incorporate the federal protections[.]" *State v. Bolt*, 689 P.2d 519, 523 (Ariz. 1984) (citing *Malmin v. State*, 246 P. 548, 549 (1926)). Thus, Plaintiffs' arguments with respect to the Fourth Amendment apply equally to their Arizona constitutional claims.

that a prior undercover effort revealed *no* information pertaining to human smuggling, drop houses, or even illegal immigration. Pls.' SOF 173. Next, Defendants claim that they were in Cave Creek because day laborers were reportedly stepping into the traffic lanes while looking for work. Defs.' MSJ at 4. This claim is belied by the MCSO's own witness testimony that the "pickup location" being surveilled was a parking lot, away from the road, and that the operation did not target traffic issues but rather used traffic stops as a pretext to investigate potential immigration violations. Pls.' SOF 172, 174. Further, Defendants have not come forward with any citizen complaints alleging that day laborers were blocking traffic in Cave Creek. In fact, the type of citizen complaints regarding day laborers that Plaintiffs have been provided in this case described no criminal activity, requesting instead that law enforcement action be taken against the Hispanic men standing on the corner based on racial stereotypes and prejudice. Pls.' MSJ at 20-24.

Moreover, it is undisputed that the MCSO had no information prior to the stop that Mr. Ortega Melendres had violated any law. The stop of the car in which Mr. Ortega Melendres rode as a passenger was initiated because the driver was speeding. At no point before or during that initial encounter did MCSO deputies develop any lawful justification to seize Mr. Ortega Melendres beyond the time it took to deal with the driver's traffic violation. Though a traffic stop of a driver necessarily results in the seizure of any passengers, *see Brendlin v. California*, 551 U.S. 249, 257-58 (2007), it is nevertheless the case that, absent independent suspicion of wrongdoing, passengers are innocent bystanders who simply "have the misfortune to be seated in a car whose driver has committed a minor traffic offense." *Maryland v. Wilson*, 519 U.S. 408, 420-21 (1997) (Stevens, J., dissenting). A routine traffic stop does not give license for deputies to embark on a fishing expedition that results in a detention of the passengers that is "longer than [] necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983).

In this case, Deputy DiPietro spoke to the Caucasian driver and decided not to

cite him. Pls.' SOF 178. Deputy DiPietro candidly admits that while he was dealing with the driver, he called for HSU to come to the scene to "check the status" of the passengers. Pls.' SOF 179. His sole basis for doing so was because they seemed to be Hispanic day laborers. Pls.' Resp. to Defs.' SOF 18; *see also* Pls.' SOF 113. Deputy Carlos Rangel arrived and detained the passengers *beyond* the time it took for Deputy DiPietro to finish with the driver. Pls.' Resp. to Defs.' SOF 23 (citing testimony of Deputy DiPietro explaining that officers who "t[ook] over" investigation removed the passengers from the vehicle and permitted the driver to leave the scene). Since being a part of an Hispanic "work crew" and a Spanish speaker does not give rise to reasonable suspicion of an immigration violation, *see United States v. Manzo-Jurado*, 457 F.3d 928, 937-38 (9th Cir. 2006), it was not lawful for the MCSO to continue to detain the passengers. *See Royer* 460 U.S. at 500; *United States v. Mitchell*, 2010 WL 2838614, at *3-4 (E.D. Cal. 2010) ("[W]here an officer's inquiries into matters unrelated to the justification for the traffic stop measurably extend the duration of the stop, the officer must have an independent reasonable suspicion to inquire into those unrelated matters."). The further detention and interrogation of Mr. Ortega Melendres therefore violated the Fourth Amendment.

The cases cited by Defendants do not depart from the basic rule that officers may not extend a traffic stop without justification. *See* Defs' MSJ at 6; *United States v. Turvin*, 517 F.3d 1097, 1101, 1103-04 (9th Cir. 2008) (questions did not "unreasonably prolong" stop); *United States v. Mendez*, 476 F.3d 1077, 1079-80 (9th Cir. 2007) (eight minute stop not "unnecessarily prolonged"); *United States v. Soriano-Jarquin*, 492 F.3d 495, 501 (4th Cir. 2007) (request for identification "did not extend the stop").

Defendants also rely on several cases that hold that pretextual traffic stops do not generally violate the Fourth Amendment. Defs.' MSJ at 19. But their reliance on these cases misses the point. Plaintiffs do not argue that Defendants violated the Fourth Amendment because they performed a pretextual stop of the car in which Mr. Ortega Melendres was a passenger. Plaintiffs instead object to the unreasonable *extension* of

that pretextual traffic stop beyond the time necessary to investigate the driver's traffic violation. *See United States v. Molina*, 626 F. Supp. 2d 1073, 1078-79 (D. Idaho 2009) ("The only explanation for the length of this stop is that there was more going on than a routine traffic stop"). Indeed, one case on which Defendants' rely held that Plaintiffs could proceed with a Fourth Amendment claim on the basis that the stops were unreasonably prolonged and led to baseless interrogations. *Rodriguez*, 89 F. Supp. 2d 1131 at 1140.

Defendants' argue that Deputy Rangel spent only 15 minutes with the passengers. Defs.' MSJ at 7. The computer record of the traffic stop indicates that it was closer to 21 minutes. Pls.' Resp. to Defs.' SOF 34. In any case, the decisive inquiry with respect to the reasonableness of the length of a traffic stop is not the absolute number of minutes, but whether officers were diligently investigating the traffic violation during that time and ended the stop upon the conclusion of that investigation. *See Molina*, 626 F.Supp.2d at 1078-79 (stop lasting just over 20 minutes was "unreasonably prolonged"); *Liberal v. Estrada*, 632 F.3d 1064, 1080 (9th Cir. 2011) (rejecting argument that traffic stops of up to 20 minutes are per se reasonable). The record reveals that Deputy DiPietro had already run the driver's information by the time Deputy Rangel arrived. Pls.' Resp. to Defs.' SOF 23. Deputy DiPietro did not need to fill out any paperwork for the traffic violation, Pls.' SOF 178, and warning the driver is unlikely to have required another 15 to 20 minutes. In short, though the purported justification for the stop was the driver's speeding violation, Deputy DiPietro did nothing to pursue that violation while the passengers were removed from the vehicle and interrogated.

Mr. Ortega Melendres's stop starkly illustrates the problem with allowing routine traffic stops to turn into fishing expeditions. Based on Deputy Rangel's questioning of Mr. Ortega Melendres, the MCSO arrested him. Defs.' SOF 32, 36 (describing how Mr. Ortega Melendres was handcuffed and transported to an MCSO substation, then to ICE station); *see United States v. Bravo*, 295 F.3d 1002, 1009-10 (9th Cir. 2002). This warrantless arrest was not supported by probable cause to believe that any crime was

committed. Defendants' contend the arrest was lawful because Deputy Rangel was authorized to "arrest [any alien] without warrant . . . if the officer has reason to believe the alien . . . is in the United States in violation of law and is likely to escape before a warrant can be obtained.[6] Defs.' MSJ at 6 (quoting Memorandum of Agreement with ICE). Defendants claim that Deputy Rangel had reason to believe Mr. Ortega Melendres was out of status because he did not have his I-94 form on him and he stated that he was "working." *Id.* at 7. However, this *still* would not have made the arrest lawful, because Defendants have failed to establish Mr. Ortega Melendres was a flight risk. *See Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (federal law forecloses permissible civil arrest where "INS did not allege nor do appellants concede . . . that they were particularly likely to escape").

Furthermore, Mr. Ortega Melendres testified that he *did* provide his I-94 Form, Pls.' Resp. to Defs.' SOF 26, 30-31,[7] and that he did *not* tell Deputy Rangel that he was working, Pls.' Resp. to Defs.' SOF 27. Indeed, ICE released Mr. Ortega Melendres after 7 to 8 hours, stating that "the detention was not justified" because "he was here legally (in status)," his documents were "in order," and "there was a lack of evidence by MCSO such as pay stubs or sworn statement [of his alleged admission]." Pls.' SOF 184-85; Pls.' Resp. to Defs.' SOF 31, 37. Thus, on a view of the evidence most

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[6] "The phrase 'has reason to believe' [in the warrantless arrest provision of the Immigration and Nationality Act] has been equated with the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). At the time of the traffic stop, Deputy Rangel had authority to enforce federal immigration laws pursuant to an agreement MCSO had with U.S. Immigration and Customs Enforcement (ICE) under the Immigration and Nationality Act § 287(g), 8 U.S.C. § 1357(g). Pls.' Resp. to Defs.' SOF 25; Pls.' SOF 3. In October 2009, MCSO lost this authority, and an arrest based on reason to believe Mr. Ortega Melendres was in the country unlawfully today would clearly violate the Fourth Amendment. *See, e.g. United States v. Arizona*, __ F.3d __, 2011 WL 1346945, at *17 (9th Cir. Apr. 11, 2011).

[7] Defendants improperly attempt to discredit Mr. Ortega Melendres' testimony that he provided his I-94 Form by noting that the form has not been produced in this litigation. *See* Defs.' MSJ at 7 n.2. However, as Mr. Melendres explained in his deposition, he no longer has a copy of the document because he was required to surrender it to border officials upon returning to Mexico. Pls.' Resp. to Defs.' SOF 31. ICE officials have confirmed that Mr. Ortega Melendres had a valid I-94 at the time of his stop. *Id.* Further, federal immigration law does not provide that failing to carry the I-94 Form makes a person "out of status." *See* Pls.' Resp. to Defs.' SOF 8-9, 32.

favorable to Plaintiffs, Mr. Ortega Melendres' arrest was unreasonable because it was not based on probable cause in accordance with the Fourth Amendment.

2. Plaintiffs David and Jessika Rodriguez were Detained and Questioned in Violation of Their Fourth Amendment Rights

On December 7, 2007, David and Jessika Rodriguez were taking their children to Bartlett Lake when they observed two Maricopa County Sheriff's vehicles on the other side of a long wash in the road. Pls.' SOF 186. After making some effort to drive through the wash, they and a motorcycle that had been driving behind them decided to make a U-turn and started heading back up Bartlett Dam Road. Pls.' SOF 186. They were then stopped by 287(g) Deputy Matthew Ratcliffe, who has participated in at least four saturation patrols. Pls.' SOF 139, 187; Pls.' Resp. to Defs.' SOF 42-43. At the time he stopped them, Deputy Ratcliffe believed the Rodriguezes to be on a stretch of the road that was closed, but did not know whether the Rodriguezes had actually driven past the "Road Closed" sign. Pls.' Resp. to Defs.' SOF 45.

When Deputy Ratcliffe approached Mr. Rodriguez, Mr. Rodriguez told him that the family had been off-roading and did not see the "Road Closed" sign (they had only seen a "Road Damaged" sign). Pls.' SOF 189; Defs.' SOF 51, 57; Pls.' Resp. to Defs.' 50, 56. The Rodriguezes saw many other people driving this stretch of road, and indeed, even as they were speaking to Deputy Ratcliffe, several other vehicles came up behind them on Bartlett Dam Road. Pls.' SOF 192; Pls.' Resp. to Defs.' SOF 54-55. Deputy Matthew Multz was with Deputy Ratcliffe, and contacted the motorcycle driver and the other vehicles, each driven by non-Hispanic motorists. Pls.' SOF 192; Pls.' Resp. to Defs.' SOF 54-55. The record shows that Deputy Multz dealt with *at least three* of the other vehicles in less than 13 minutes, citing none of them. Pls.' Resp. to Defs.' SOF 58; *see also* Pls.' SOF 198. In contrast, the stop of the Rodriguezes lasted approximately 20 minutes, after which Deputy Ratcliffe followed them closely back out to the main road. Defs.' Resp. to Defs.' SOF 58.

Thus, Defendants' motion should be denied because there is evidence that the

Rodriguezes' traffic stop was unreasonably extended after any initial suspicion of a traffic violation was dispelled. After the Rodriguezes informed Deputy Ratcliffe that they did not have the opportunity to disobey the sign (because they had not seen it) and that many other motorists who had also apparently not seen the sign were being released, he no longer had probable cause to believe they had committed a traffic violation worthy of citation. *Cf. Liberal*, 632 F.3d at 1080 (reasonableness of the length of a stop depends on time necessary to dispel officers' suspicions).[8] The MCSO's own policy and training discourage officers from issuing citations in such circumstances. Pls.' SOF 190-91. The Rodriguezes' extended detention and two to three mile "escort" back to the main road was therefore unwarranted and violated the Fourth Amendment. *See Royer* 460 U.S. at 500; *Molina*, 626 F. Supp. 2d at 1078-79.

In addition, the Court in this case has previously held that Plaintiffs' complaint sufficiently alleged that "the scope and duration of [the Rodriguezes'] stop was exceeded when deputies requested Mr. Rodriguez's social security card." *Melendres*, 598 F. Supp. 2d at 1035.[9] The Court's earlier analysis of Deputy Ratcliffe's request relied on Plaintiffs' allegations that "such a request was not 'standard procedure' for all routine traffic stops" and that "none of the other drivers on the same road closure were asked to produce a Social Security card." *Melendres*, 598 F. Supp. 2d at 1035. Discovery in this case has confirmed that requests for Social Security numbers (or

[8] Defendants suggest that there can be no dispute that Plaintiffs disobeyed the "Road Closed" sign because Mr. Rodriguez later pled responsible for the citation. Defs.' MSJ at 10. However, there are many reasons why a motorist might simply pay a fine and not try to fight a traffic charge; doing so does not preclude a challenge to the constitutionality of a police action. *See Miranda v. City of Cornelius*, 429 F.3d 858 (9th Cir. 2005) (permitting plaintiff's claim of unreasonable seizure of vehicle to proceed even though he pled guilty to traffic violations and did not contest impoundment during traffic hearing). Mr. Rodriguez himself explained that he did not contest the charge because he felt doing so in traffic court would have been futile. Defs.' SOF 59.

[9] Defendants claim that Deputy Ratcliffe asked Mr. Rodriguez for only a Social Security number (rather than a card), but concede that this is the subject of a factual dispute. Defs.' MSJ at 9 n.4; *see also* Pls.' SOF 188; Pls.' Resp. to Defs.' SOF 48-48. Like with other factual disputes, they insist that this conflict in testimony does not matter. On the contrary, the request for a Social Security card is even more unusual and intrusive than a request for a Social Security number and would certainly have implications for any Fourth Amendment inquiry.

cards) in fact are not standard procedure for the MCSO, Pls.' SOF 195; that the other motorists on the road that day were not asked for Social Security numbers or cards, Pls.' Resp. to Defs.' SOF 52 140; Pls.' SOF 195, 198; and that Deputy Ratcliffe's repeated insistence on a Social Security number for the traffic citation extended the length of the Rodriguezes' traffic stop. Pls.' Resp. to Defs.' SOF 52 (citing to testimony of Mr. Rodriguez that Deputy Ratcliffe's requests for his Social Security number "dragged [] out" the traffic stop); *see also United States v. Garcia-Rosales*, No. CR-05-402-MO, 2006 WL 468320, at *9 (D. Or. Feb. 27, 2006) (traffic stop "unduly prolonged to gain more information" violated Fourth Amendment).

Defendants have therefore failed to meet their burden for summary judgment on the Rodriguezes' claims under the Fourth Amendment.

3. Plaintiffs Manuel Nieto and Velia Meraz Were Stopped and Detained in Violation of Their Fourth Amendment Rights

On March 28, 2008, during one of the MCSO's large-scale saturation patrols, Manuel Nieto and his sister Velia Meraz were dropping by a gas station near the auto body shop where they work when they encountered Deputy Charley Armendariz. Pls.' SOF 200. Deputy Armendariz was in the course of conducting a traffic stop on two other individuals and had them detained near the gas pumps (away from where Mr. Nieto parked, which was closer to the market area). Pls.' Resp. to Defs.' SOF 68. Mr. Nieto and Ms. Meraz were playing Spanish music with their windows rolled down when they pulled in. Pls.' SOF 202; Defs.' SOF 69. They testified that Deputy Armendariz immediately told them to leave, or he would arrest them for disorderly conduct. Pls.' Resp. to Defs.' SOF 71. Deputy Armendariz then called for backup. Pls.' SOF 203; Defs.' SOF 76. By the time the backup officers arrived, Mr. Nieto and Ms. Meraz had complied with Deputy Armendariz's order and left the gas station (having never exited their vehicle). Pls.' SOF 203.

Despite Mr. Nieto and Ms. Meraz's compliance with his order, Deputy Armendariz sent Deputy Michael Kikes and Douglas Beeks after them. Pls.' SOF 204-

05. Defendants claim he did this because Plaintiffs had heckled him at the gas station, not wanting to leave but instead instructing his detainees in Spanish to remain silent and ask for a lawyer, and referring to Sheriff Arpaio as a "fucking Nazi." Defs.' MSJ at 11. Plaintiffs directly dispute those allegations. Pls.' Resp. to Defs.' SOF 70-74. But even if those allegations were true, this conduct would not constitute a criminal offense or justify the officers' subsequent actions. "Inarticulate and crude as [the] conduct may have been . . . expression of disapproval toward a police officer . . . fell squarely within the protective umbrella of the First Amendment and any action to punish or deter such speech—such as stopping or hassling the speaker—is categorically prohibited by the Constitution." *Duran v. City of Douglas*, 904 F.2d 1372, 1377-78 & n.4 (9th Cir. 1990) (invalidating traffic stop of individual for disorderly conduct under Arizona law who was "making obscene gestures toward [officer] and yelling profanities"); *see also* Pls.' Resp. to Defs.' SOF 83.[10] There was simply no reason that Deputy Armendariz needed to send the backup officers to pursue Mr. Nieto and Ms. Meraz, especially after Plaintiffs had left the gas station and could no longer pose any safety concern.

From the perspective of the backup officers, there was likewise no reasonable suspicion or probable cause to detain Plaintiffs. Defendants refer to the testimony of Deputy Beeks that he heard words over the radio to the effect that the "vehicle had tried to run over or hit Deputy Armendariz as it left the area." Defs.' MSJ at 11 n.7. This testimony is refuted by the other evidence in the record. A recording of the actual radio

[10] Notably, Defendants' motion is not clear on what specific crime they believe warranted the stop of Mr. Nieto and Ms. Meraz, stating only that Deputy Kikes believed that "some type of crime" had occurred. Defs.' MSJ at 22. Defendants argue, based on some speculative testimony by their expert, Bennie Click, that Plaintiffs could have been arrested for "obstruction." Defs.' MSJ at 22. However, this is a conclusion of law that Mr. Click may not make for the court. *Elsayed Mukhtar v. Cal. State Univ., Hayward*, 299 F.3d 1053, 1063 & 1065 n.10 (9th Cir. 2002). Nor is there any indication here that Deputy Armendariz's investigation or arrest was actually obstructed. Pls.' Resp. to Defs.' SOF 117. The Arizona statute governing obstruction of criminal investigations is not designed to protect communications between a suspect and a police officer, but instead "the transmission of the words of a prospective informant or witness." *Walker v. Superior Court In and For County of Navajo*, 956 P.2d 1246, 1248-49 (Ariz. App. Ct. 1998); *see also* Ariz. Rev. Stat. § 13-2409.

transmission reveals that Deputy Armendariz said nothing further after he made the simple request for back up. Pls.' Resp. to Defs.' SOF 77. In any event, both Deputy Beeks and Kikes' suspicions were dispelled when they drove by and saw that Deputy Armendariz was unharmed. But they continued in their pursuit of Plaintiffs despite having no reason to do so at that point. Pls.' SOF 204-05. Plaintiffs' traffic stop was therefore made without articulable reasonable suspicion or probable cause, in violation of the Fourth Amendment. *See Delaware v. Prouse*, 440 U.S. 648, 661 (1979); *Duran*, 904 F.2d at 1378 (stops made on basis of officer speculation, "hunch[es]" or "suspicion in the air" are plainly unlawful).

Defendants' conduct *after* Plaintiffs were stopped constitutes a separate violation of the Fourth Amendment. Defendants do not dispute that Plaintiffs were pulled over by multiple units, at gunpoint, and that Mr. Nieto was forcefully removed from the vehicle and handcuffed. Pls.' SOF 209-210. These types of tactics are not part of a routine traffic stop and constitute a use of force that must have an independent justification under the Fourth Amendment. *See United States v. Del Viso*, 918 F.2d 821, 824-25 (9th Cir. 1990) (tactics requiring additional articulation of risk of physical harm include "an order to alight from [] vehicle and subsequent handcuffing, all done by officers brandishing weapons"). The entirety of Defendants' justification consists of speculation such as what officers heard over the radio, the fact that Mr. Nieto did not pull over for 300 feet, and the testimony of Deputy Beeks that Mr. Nieto had his hands on the steering wheel. Defs.' MSJ at 13. These factual allegations are all disputed. Pls.' Resp. to Defs.' SOF 87-92.[11]

After deputies removed Mr. Nieto's identification and ran a records check, they

[11] Defendants inexplicably attack the credibility of Ms. Meraz, for whom Defendants do not even attempt to try to explain the need to approach at gunpoint, by alluding to her criminal history. Defs.' MSJ at 13-14 n.9. However, they concede that credibility arguments have no place in a motion for summary judgment. *Id.* Similarly, Defendants' reference to Mr. Nieto's criminal history is also totally irrelevant, as Deputy Armendariz could not have known about it when he sent the backup officers after Plaintiffs. Pls.' Rep. to Defs.' SOF 81.

released Plaintiffs without any citation or charge. Pls.' SOF 213. A quick phone call to Deputy Armendariz confirmed that there was, in fact, "no crime" committed. Pls.' SOF 206.

In light of the evidence of unreasonable stops, questioning, and detentions, the Court should deny Defendants' motion for summary judgment on Plaintiffs' claims under the Fourth Amendment and Article II, Section 8 of the Arizona Constitution.

C. The Undisputed Record Shows that Sheriff Arpaio and MCSO Officers Acted with Discriminatory Intent and that Their Actions Had a Discriminatory Effect, Resulting in an Equal Protection Violation

Defendants also contend that Plaintiffs' claims under the Fourteenth Amendment of the U.S. Constitution and Title VI of the Civil Rights Act fail as a matter of law because there is no evidence that Defendants acted with discriminatory purpose or that any MCSO policy or practice had a discriminatory effect on Hispanics. Defs.' MSJ at 23-33. For all the reasons stated in Plaintiffs' Motion for Partial Summary Judgment, as well as those stated herein, Defendants' motion should be denied and summary judgment on Plaintiffs' Fourteenth Amendment racial discrimination claims should be granted in favor of Plaintiffs.[12]

First, the undisputed evidence—both statistical and otherwise—demonstrates that the immigration enforcement policies and practices of Sheriff Arpaio and the MCSO have had a marked and disproportionate effect on Hispanics in Maricopa County. Defendants' attempts to downplay or distinguish the statistical evidence in this case are not persuasive and are, in many cases, contrary to the opinions expressed by their own statistical expert. Second, the record contains abundant direct and circumstantial evidence that Sheriff Arpaio and MCSO officers have acted with discriminatory intent

[12] For these same reasons, Defendants' motion for summary judgment on Plaintiffs' Title VI claims should be denied. Because the standard for Title VI claims is substantially similar to the requirements for Equal Protection violations of the Fourteenth Amendment, *see Alexander v. Sandoval*, 523 U.S. 275, 285-293 (2001) (private Title VI action for intentional discrimination only), Plaintiffs will, like Defendants, consider these two causes of action jointly in this opposition. Plaintiffs' own motion for summary judgment, however, was based on their Fourteenth Amendment claims only.

in targeting Hispanics in Maricopa County. Defendants can only claim to the contrary by improperly ignoring the overwhelming evidence of racial and ethnic bias within the MCSO, as well as significant evidence of intentionally discriminatory treatment by the MCSO deputies engaged in the stops of the named Plaintiffs.

1. The MCSO's Saturation Patrols and Immigration Enforcement Operations Disproportionately Impact Hispanics in Maricopa County

Plaintiffs' statistical expert, Dr. Ralph B. Taylor, has undertaken a thorough study of the MCSO's Computer Aided Dispatch (CAD) database, which records information concerning the MCSO's traffic stops. The methodology of Dr. Taylor's study has been explained in detail in Plaintiffs' Motion for Partial Summary Judgment, and his expert reports have been entered in the record in support of the same. *See* Pls.' MSJ at 10-12, 31-34; Pls.' SOF 227-50; Dec. of Dr. Ralph Taylor in Support of Pls.' Mot. for Partial Summ. J., Dkt. No. 424, Ex. B ("Taylor Initial Report") & Ex. C ("Taylor Rebuttal Report").

In short, Dr. Taylor determined the ethnic composition of individuals stopped by the MCSO based on the surnames in the CAD database, and compared the stop rates of Hispanics on saturation patrol days, and by MCSO officers involved in saturation patrols, to comparable activity by MCSO officers on non-saturation patrol days. Pls.' SOF 234-50. His results showed disproportionate stops of Hispanics: (1) on saturation patrol days as compared to non-saturation patrol control days; (2) by officers actively working a saturation patrol (called "saturation patrol active officers") as compared to officers working that same day and on other days; and (3) by MCSO officers who had ever worked a saturation patrol ("saturation patrol involved officers") as compared to those MCSO officers who had never participated in any saturation patrol. *See* Pls.' SOF 239-47; Pls.' SSOF 264.

Defendants do not contradict Dr. Taylor's findings. Defendants' statistical expert, Dr. Steven Camarota, did not perform his own study showing that Hispanics

were in fact not stopped at higher rates on saturation patrol days and by officers participating in saturation patrols. Indeed, Dr. Camarota conceded that Hispanics are stopped more frequently on saturation patrols, and in fact he testified that such a disparity should be expected because deputies are looking for illegal immigrants. Pls.' SOF 253; Pls.' SSOF 265. Instead of contradicting Dr. Taylor' findings, Defendants rely on indirect criticisms of them, pointing to overall agency-wide stop rates and denying a connection between Dr. Taylor's findings and the stops of the named Plaintiffs. Defendants' efforts to cast doubt upon Plaintiffs' statistical evidence are unfounded and unpersuasive.[13]

a. Comparisons of Agency-wide Stop Rates to Hispanics' Share of the General Population are Invalid and Uninformative

Defendants' first assert that Dr. Taylor's results should be ignored because he focused on saturation patrols and not all traffic stops. Defendants argue that "if Latinos were being racially targeted by MCSO personnel during traffic stops, then the percentage of traffic stops of Latinos would be expected to occur at a much greater percentage than their percentage of the general population." *See* Defs.' MSJ at 25.

Defendants' argument is both scientifically invalid and factually uninformative in the context of this case. First, comparing minority traffic stop rates to population demographics is generally regarded as methodologically unsound. *See* Taylor Rebuttal Report at 38-40; G. Ridgeway, *Cincinnati Police Department Traffic Stops: Applying RAND's Framework to Analyze Racial Disparities* 10-11 (2009) (available at http://www.rand.org/pubs/monographs/MG914.html); *see also Chavez v. Ill. State Police*, 251 F.3d 612, 644-45 (7th Cir. 2001) (discrediting population benchmarking as a reliable way of determining racial makeup of motorists). This is because similarities or differences between traffic-stop rates of a particular group and overall population

[13] Further, Defendants ignore evidence that named Plaintiffs were treated differently than non-Hispanic motorists, as detailed below in Section II.C.2. Such evidence is directly relevant to discriminatory effect. *See, e.g., Melendres*, 598 F. Supp. 2d at 1037.

demographics may be explained by a number of factors, including the offense and exposure rates of the minority group under study. *See* Taylor Rebuttal Report at 38-40. For example, even if a higher rate of minority stops relative to their share of the population is found, the difference could be due not to profiling but to the fact that the minority group under study offends at a different rate. Similarly, even if the group under study is stopped at the same or lower rates, such a result could be fully consistent with racial profiling if the minority group is exposed to police less often (e.g., because its members drive less).

For this reason, Dr. Taylor's study relies on *internal* benchmarking, and compares MCSO activity on saturation patrols and saturation patrol officers to comparable MCSO activity at other times and by other officers. This eliminates the possible distorting effect of differences in minority offense or exposure rates. *See United States v. Duque-Nava*, 315 F. Supp. 2d 1144, 1163 (2004) (evidence of discriminatory intent includes "a comparison of an officer's stops with similarly situated officers in his own police department"); *see generally* Melissa Whitney, *The Statistical Evidence of Racial Profiling in Traffic Stops and Searches*, 49 B.C. L. Rev. 263, 277-78 (2008) (describing methodological advantages of internal benchmarking in racial profiling studies).

Second, examining agency-wide stop rates misses the point with respect to Plaintiffs' claims in this case. Plaintiffs' lawsuit is centrally concerned with Sheriff Arpaio's highly-publicized immigration enforcement efforts, of which saturation patrols are the most prominent example. The MCSO is a very large police agency with over three thousand deputies. In such a context, racial profiling by certain officers, or even entire units of the MCSO, can escape detection if only overall traffic stop activity across the agency as a whole is examined. More specifically, the CAD database studied by Dr. Taylor contained records of 123,831 individuals stopped by the MCSO between January 1, 2007 and October 31, 2009, Pls.' SSOF 261; on a typical saturation patrol day, in contrast, an average of 424 people are stopped by the MCSO; approximately 150 of

which are stops by officers known to be working the saturation patrol. Pls.' SSOF 262-63. Even if *every single person* stopped on a particular saturation patrol was Hispanic—which would be striking evidence of racial profiling—the MCSO's agency-wide stop rate of Hispanics would only be increased by approximately one tenth of one percent. The agency-wide rate would still "roughly" reflect "the same proportion" of Hispanics in Maricopa County's population, and blatant racial profiling during saturation patrols would go undetected under Defendants' suggested methodology. Defendants' reliance on agency-wide stop rates is therefore misplaced.

b. Dr. Taylor's Results are Reflected in and Directly Relevant to the Stops of the Named Plaintiffs

Defendants also seek to attack the connection between the statistical disparities found by Dr. Taylor and the stops of the named Plaintiffs. Specifically, Defendants assert that "four of the five Plaintiffs were not stopped as part of an MCSO saturation patrol," and therefore the disparities found by Dr. Taylor have no relevance as to whether the named Plaintiffs were victims of discrimination. *See* Defs.' MSJ at 25-26.

Contrary to Defendants' argument, the majority of named Plaintiffs were stopped during a saturation patrol. Defendants appear to acknowledge that Mr. Ortega Melendres was stopped during a saturation patrol, a fact that is difficult to deny when it was expressly labeled as an MCSO officer who oversaw the operation. Defs.' MSJ at 25; Defs.' SOF 12 (citing Madrid Dep. at 47:19-48:3). As to the stop of Ms. Meraz and Mr. Nieto, Defendants acknowledge that it occurred during a saturation patrol, but contend that is was "*unrelated* to that saturation patrol." Defs.' MSJ at 25. This assertion is baseless. Ms. Meraz and Mr. Nieto were stopped on a day in which a saturation patrol occurred, Pls.' SOF 200, in the area where the saturation patrol took place, and by officers working that saturation patrol. Pls.' SSOF 267. The disparities found by Dr. Taylor relate directly to their stop. Finally, although the stop of the Rodriguezes did not occur during a saturation patrol, the stop was made by Deputy Ratcliffe, who had worked on a number of saturation patrol operations. Pls.' Resp. to

Defs.' SOF 43. One of Dr. Taylor's findings was that officers who had ever been involved in a saturation patrol were more likely to stop Hispanics *even on non-saturation patrol days*, as compared to officers who had worked a saturation patrol. Pls.' SSOF 264. Thus Dr. Taylor's study has direct relevance to the stop of the Rodriguezes as well.

In addition, Dr. Taylor found that MCSO traffic stops that involved an Hispanic individual lasted 21% to 25% longer than stops of non-Hispanics. Pls.' SOF 248-49. This finding includes *all* MCSO stops—those occurring on a saturation patrol as well as those that did not. It is also consistent with the experiences of the Plaintiffs, whose stops were extended by the MCSO to conduct immigration and identity checks.

Moreover, Dr. Taylor's study of the impact of MCSO saturation patrol operations has implications that extend to the MCSO's immigration enforcement generally. The MCSO's large-scale saturation patrols, because they involve a large number of identifiable officers on a specific day, are a useful way to examine the patterns and practices of the MCSO in its immigration enforcement operation, but are not the whole story. For example, the stop of Mr. Ortega Melendres, because it occurred during a small-scale saturation patrol, was not among the specific large-scale saturation patrol days that Dr. Taylor studied. Nonetheless, certainly the disparities found in large-scale saturation patrol operations are highly relevant and probative of the MCSO's activities on smaller scale operations. More generally, the disparities found in saturation patrol operations—which have an overt focus on apprehending illegal immigrants—have great relevance to the MCSO's other immigration enforcement operations, including routine traffic stops that appear to be motivated by a desire to investigate Hispanic motorists' immigration status (like that of the Rodriguezes). Defendants' attempt to dissociate the disparities found by Dr. Taylor from the stops of the named Plaintiffs' fails.[14]

[14] Defendants' remaining criticisms of Dr. Taylor's study can be quickly dismissed. Defendants first attempt to diminish Dr. Taylor's study by using technical statistical language out of context, noting that Dr. Taylor's analysis is "quasi-experimental" in design and relies on "inferences." *See* Defs.' MSJ at 26. Dr. Taylor's report indeed relies on "inference"—specifically the method of *statistical inference*

2. Abundant Evidence Demonstrates that MCSO Personnel Had Racially Discriminatory Intent in Stopping, Questioning, or Detaining the Plaintiffs

Defendants' final argument asserts that Plaintiffs have not shown that "any MCSO personnel" acted with discriminatory intent. *See* Defs. MSJ at 27-33. Defendants' argument incorrectly focuses on the self-professed motives of the individual deputies in performing the traffic stops of the named Plaintiffs. The actions of the individual officers speak more loudly as to their intent. An additional reason to deny Defendants' motion is the significant, and largely undisputed, evidence of discriminatory intent behind the MCSO's practice of enforcing the immigration laws through saturation patrols and pretextual stops, which the individual officers were implementing.

a. Because the Deputies Acted Pursuant to a Discriminatory Policy and Practice, the Stops of the Plaintiffs Violated the Fourteenth Amendment

The individual Plaintiffs were each stopped pursuant to a policy, instituted and ordered by Sheriff Arpaio and his command staff, of racially profiling Hispanics in the MCSO's immigration enforcement operations. The stops of the named Plaintiffs occurred as a direct result of this policy and practice, which was motivated by discriminatory intent. Pls.' MSJ at 14-34. Because Sheriff Arpaio and the command staff were the decisionmakers who put in place the MCSO's policy and practice of targeting Hispanic individuals—e.g., by designing the saturation patrols and choosing

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based on analysis of data patterns. Pls.' Resp. to Defs.' SOF 124. The "quasi-experimental" design of Dr. Taylor's study simply refers to the fact that his study compares MCSO officers working on saturation patrols to other MCSO officers, as opposed to a random assignment to saturation patrols by the researcher. Dr. Taylor testified that this design was superior to a study with randomly assigned control groups and of the best scientific quality given the purposes of the study and the existing circumstances. *See* Pls.' Resp. to Defs.' SOF 124.

Defendants also cite several data-processing and inclusion issues regarding Dr. Taylor's study. *See* Defs.' MSJ at 26. These issues were specifically addressed in great detail in Dr. Taylor's rebuttal report and found to have no impact on the results and conclusions. *See* Pls.' Resp. to Defs.' SOF 124. In any event, these considerations would at most go to the weight to be given Dr. Taylor's report at trial. They are not reasons to grant Defendants summary judgment.

the locations for them based on racially charged citizen complaints—it is *their* intent that is operative with respect to that policy and practice. *See Wayte*, 470 U.S. at 610 (discriminatory intent of "decisionmaker" is the key inquiry); *Doe v. Vill. of Mamaroneck*, 462 F. Supp. 2d 520, 554-55 (S.D.N.Y. 2006) (examining intent of Mayor who instituted policing activities targeting day laborers in discriminatory intent inquiry). While the evidence suggests that individual officers who performed the stops of the Plaintiffs also were motivated by race in either making or prolonging those stops, Plaintiffs need not separately establish such motivation for each individual officer in order to prevail. *See White v. Williams*, 179 F. Supp. 2d 405, 419 (D.N.J. 2002) (allegation that police superintendent "advocated the use of racial profiling" stated Fourteenth Amendment violation). Defendants' exclusive focus on the self-serving denials of racial motivation by the individual officers therefore misses the point.

Indeed, as laid out in great detail in Plaintiffs' Motion for Partial Summary Judgment, the record is replete with evidence of discriminatory intent, both at the level of MCSO command staff and at the level of individual MCSO officers. Pls.' MSJ at 14-34. The result of these racially-motivated decisions was a pervasive pattern of targeting Hispanic individuals during saturation patrols and other traffic stops. The record reveals a number of instances where Sheriff Arpaio personally circulated within the MCSO, "for our operation[s]" or with written instructions for follow-up, materials expressing explicit anti-Hispanic or anti-Mexican sentiments, advocating racial profiling, and/or requesting action against individuals based on the color of their skin, the language they speak, or other characteristics associated with Hispanic ethnicity. *See* Pls.' SOF 26-46, 76-83, 85, 87, 93, 96-97; *see also* 47-49. Immigration enforcement efforts, including saturation patrols, were planned and executed on the basis of these materials. *See* Pls.' MSJ at 14-24. In short, Plaintiffs have demonstrated that the leadership of the MCSO, and the organization as a whole, had a pervasive policy or practice of targeting Hispanic individuals during traffic stops.

Plaintiffs' evidence of discriminatory intent at the department-wide level is also

highly probative of the specific discriminatory intent of individual MCSO officers. *See, e.g., Polanco v. City of Austin*, 78 F.3d 968, 980 (5th Cir. 1996) ("Evidence of the [Austin Police Department's] hostile treatment of and attitude toward Hispanics is probative . . . of whether the same discriminatory motive affected decisions concerning [employee's termination.]"). Evidence of discriminatory intent by Arpaio, MCSO command staff, and individuals throughout the organization thus has significant bearing on the issue of whether the same discriminatory motive was shared by the individual deputies implementing their policies on the traffic stops of each individual Plaintiff. *See id.* After all, the MCSO is a hierarchical organization: deputies, including those involved in the individual stops, took their directives from the MCSO leadership, including Sheriff Arpaio. Pls.' SSOF 266. Plaintiffs have shown that many of these directives were motivated by discriminatory intent and encouraged targeting of Hispanic individuals.

The record also contains evidence of the discriminatory intent of a number of MCSO officers, including officers involved in Plaintiffs' stops, who distributed racially-charged materials—emails containing offensive images of "Mexicans" or making exaggerated claims about undocumented immigrants or Mexicans—using their county email accounts. Pls.' SOF 145-151. The circulation of these emails is evidence that their individual actions are motivated by the same discriminatory attitudes as those in the leadership. *See Mamaroneck*, 462 F. Supp. 2d at 549; *Polanco*, 78 F.3d at 980.

b. The MCSO Deputies who Stopped the Named Plaintiffs Acted with Discriminatory Intent

Finally, the circumstances surrounding each individual stop also show that Deputies DiPietro, Ratcliffe, Armendariz, Kikes and Beeks each had racially discriminatory intent or motive during the stops of the Plaintiffs:

Deputy DiPietro treated Mr. Ortega Melendres and other Hispanic passengers differently from the white driver based on ethnicity. The record contains evidence that MCSO officers who were involved in the stop of Mr. Ortega Melendres

had a discriminatory intent. Deputies in the undercover unit had no specific information about the vehicle that picked up Mr. Ortega Melendres; while the stop was made for an alleged speeding violation, it was clearly motivated by the observation that several Hispanic men got into a truck at a supposed day laborer site. Deputy DiPietro released the white driver with a warning, yet detained the Hispanic passengers and called for Deputy Rangel to "come check the[ir] status," even through there was no reason to believe that the passengers had committed any violation of the law. Pls.' SOF 177-179; *Manzo-Jurado*, 457 F.3d at 937-38; *see also Grier v. Galinac,* 740 F. Supp. 338, 342 (M.D. Pa. 1990) (lack of probable cause for questioning raised an inference of racial animus). The differential treatment of Hispanics, without cause, is evidence of Deputies DiPietro and Rangel's discriminatory intent.

Defendants point to the self-serving testimony of Deputies DiPietro and Rangel and to the testimony of their expert Mr. Click to show a lack of discriminatory intent, but none of those accounts is particularly illuminating on the question. Courts acknowledge that it is the rare case where a defendant will admit to having acted with racial animus. *See, e.g.*, *Zeigler v. Town of Kent*, 258 F. Supp. 2d 49, 56 (D. Conn. 2003) (giving little weight to affidavits denying racial motivation). Further, the Court should not consider the testimony of Mr. Click here. Mr. Click's opinion provides no special insight as to the question of the officers' state of mind at the time of the traffic stop. Mr. Click simply hypothesized about a factual matter which this Court is fully capable of understanding and evaluating without an expert's help. His testimony on this issue is therefore inappropriate under Federal Rule of Evidence 702. *See In re Rezulin Prods. Liab. Litig.*, 309 F. Supp. 2d 531, 545-47 (S.D.N.Y. 2004) (questions of knowledge, motive, intent, and state of mind describe factual matters which a jury is capable of understanding and deciding without the expert's help).[15] Even if the court

[15] Similarly, Defendants' attempt to rely on statements by Plaintiffs' expert, Mr. Stewart, to show that Defendants did not have discriminatory intent fails. First, Defendants fail to take into account the full record, including instances where Mr. Stewart testified that he did believe there was evidence of discriminatory intent with respect to the actions of the individual officers, as well as instances where Mr. Stewart

were to consider Defendants' self-serving testimony, summary judgment that the officers lacked discriminatory intent would be improper.

While Deputy DiPietro testified that he did not know the race of the individuals in the vehicle before commencing the stop, it is undisputed that the purpose of that day's saturation patrol was to target suspected day laborers, that being a day laborer is not a crime (and does not create suspicion of a crime), and that the MCSO equated day laborers with Hispanics. Pls.' SOF 88-89, 113, 172. Whether or not Deputy DiPietro had specifically *seen* the passengers in the Ortega Melendres vehicle prior to making the stop, Deputy DiPietro would have suspected that the occupants were Hispanic because he believed most day laborers are Hispanic. *See* Pls.' SOF 112-118, 171-180; Pls.' Resp. to Defs.' SOF 15, 18. He further demonstrated discriminatory intent during the stop by treating the Hispanic passengers differently from the Caucasian driver. Pls.' SOF 178-79. As Plaintiffs' expert Mr. Stewart explained, the conduct directed toward Mr. Ortega Melendres seemed to be racially motivated in light of the differing treatment of the white driver and fact that the deputies believed that "if you are Mexican and you're a day laborer, then you must be here illegally," and because the MCSO designs and carries out its operations based upon that assumption. Resp. to Defs.' SOF 130.

Deputy Ratcliffe did not cite or demand Social Security information from non-Hispanic motorists similarly-situated to the Rodriguezes. During the stop of the Rodriguezes, Deputy Ratcliffe asked Mr. Rodriguez for his Social Security card, and insisted that Mr. Rodriguez provide his Social Security number even though Mr. Rodriguez provided a valid drivers' license and was clearly uncomfortable providing the

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explained his reasoning and evidence. Second, even if Mr. Stewart had testified that he did not believe the officers were engaged in racial profiling (which is not his testimony), that testimony would not preclude finding a genuine issue of material fact because significant other evidence presented by Plaintiffs demonstrates that the MCSO's deputies actions were motivated by race. *Beaulah v. Muscogee County Sheriff's Deputies*, 447 F. Supp. 2d 1342, 1369 n.32 (M.D. Ga. 2006) (opinion by Plaintiffs' expert that racial profiling was not occurring would not preclude summary judgment when other evidence shows racial profiling) (vacated on other grounds by *Walker v. Johnson*, 2008 WL 442328, No. 4:04-CV-161 (M.D. Ga. Feb 14, 2008)).

Social Security information. Pls.' SOF 188; Pls.' Resp. to Defs.' SOF 52. MCSO policy calls for an officer to request an additional form of identification only "if the violator does not have a driver's license." Pls.' SOF 195.

Even if Deputy Ratcliffe did not know the race of the Rodriguezes when he stopped the vehicle, he did know it when he requested, and insisted upon, Mr. Rodriguez's Social Security information. Deputy Ratcliffe was also aware of the Rodriguezes' race when he wrote Mr. Rodriguez a citation, followed the Rodriguezes back to the main road, and cited them (unlike the similarly-situated non-Hispanic drivers). Pls.' SOF 193, 197-198; *see United States v. Ortiz-Hernandez*, 276 F. Supp. 2d 1113, 1117 (D. Or. 2003) (finding "stop, arrest and search . . . were based at least in part on [] race," despite absence of discriminatory remarks, because "police showed no interest in Lewis, a non-Hispanic, who failed to signal a turn"). The Rodriguezes testified that they spoke to several other, Caucasian drivers that day who had not received citations, and those Caucasian drivers were not asked for their Social Security numbers, even though they were driving the same stretch of closed road as the Rodriguezes. Pls.' SOF 197-198; Pls.' Resp. to Defs.' SOF 139-140. The difference in treatment between the Rodriguezes and non-Hispanic drivers supports an inference of racial motivation. Further, contrary to Defendants' contention, Mr. Stewart testified that the interactions between Deputy Ratcliffe and the Rodriguezes after the stop was initiated were racially motivated. *See* Pls.' Resp. to Defs.' SOF 136. [16]

The actions of Deputies Armendariz, Kikes, and Beeks during the stop of Mr. Nieto and Ms. Meraz indicate discriminatory intent to target Hispanics during an ongoing saturation patrol. Finally, the actions of the officers involved in the stop of Mr. Nieto and Ms. Meraz also indicate discriminatory intent. Mr. Nieto and Ms. Meraz were pulled over during a saturation patrol and Mr. Nieto was forcefully removed

[16] Whether or not Mrs. Rodriguez can be sure that Deputy Ratcliffe was "intentionally trying to deprive [her] of [her] constitutional rights" is irrelevant to the question of Deputy Ratcliffe's discriminatory intent. *See* Pls.' Resp. to Defs.' SOF 133.

from the vehicle at gunpoint after Deputy Armendariz heard them listening to Spanish music and could observe their race. Pls.' SOF 202, 205-210 *see also Grier,* 740 F. Supp. at 342 (detention of suspect at gunpoint where Plaintiff did not fit the description along with the fact that others nearby were not questioned raised an inference of racial animus). Deputy Kikes then handcuffed Mr. Nieto for no apparent reason. Pls.' SOF 212. Mr. Nieto and Ms. Meraz were released only after the deputies were able to run a check Mr. Nieto's identification and were told that they were United States citizens. Pls.' SOF at 211-213. Plaintiffs were then released without charge. Pls.' SOF 213. This sequence of events is additional circumstantial evidence of discriminatory intent. *See Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977). And as Defendants acknowledge, Mr. Stewart testified that he believed that the stop of Mr. Nieto and Ms. Meraz was racially motivated. Pls.' Resp. to Defs.' SOF 141, 143.

III. CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment should be denied.

RESPECTFULLY SUBMITTED this 3rd day of June, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2011 I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

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