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**IN THE UNITED STATES DISTRICT COURT
FOR THE 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' RESPONSES AND
OBJECTIONS TO DEFENDANTS'
STATEMENTS OF FACT AND
SUPPLEMENTAL FACTS IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

(The Honorable Judge G. Murray Snow)

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PLAINTIFFS’ RESPONSE TO DEFENDANTS’ STATEMENTS OF FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule of Civil Procedure 56.1(b), Plaintiffs submit their Response to Defendants Joseph M. Arpaio and the Maricopa County Sheriff’s Office’s (“MCSO’s”) (collectively, “Defendants”) Statement of Facts in Support of their Motion for Partial Summary Judgment (“Defendants’ SOF”) and their Supplemental Statement of Facts Re: Testimony of ICE Witnesses in Support of their Motion for Summary Judgment (“Defendants’ Supplemental ICE SOF”). By not disputing a statement of fact, Plaintiffs do not waive any objections to the admissibility or authenticity of that statement of fact or any document cited therein, and Plaintiffs expressly reserve the right to make such objections at trial. Plaintiffs’ responses here are made only for the purposes of the Court’s consideration of Defendants’ Motion for Summary Judgment.

As further evidence precluding Defendants’ Motion, Plaintiffs also incorporate by reference here their Separate Statement of Facts submitted in support of Plaintiffs’ Motion for Partial Summary Judgment (“Pls.’ SOF”), Dkt. No. 422. Following their responses to Defendants’ SOF, Plaintiffs also submit supplemental statements of facts that preclude summary judgment in favor of Defendants.

Plaintiffs’ Responses to Defendants’ SOF

No.	Defendants’ Statement of Fact	Plaintiffs’ Response
1.	Plaintiffs have sued Sheriff Joseph M. Arpaio (“Arpaio”) and the Maricopa County Sheriff Office (“MCSO”) for their alleged violations of the Plaintiffs’ rights under the Fourth and Fourteenth Amendments to the United States Constitution, alleged violations of the Plaintiffs’ right under the Arizona Constitution’s Article II, Section 8, which prohibits unreasonable searches and seizures, and alleged violations of Plaintiffs’ right to be free of racial discrimination pursuant to Title VI of the Civil Rights	This statement simply provides “background about the action or the parties” and therefore does not properly belong in Defendants’ separate statement of facts. L.R. Civ. 56.1(a). Plaintiffs’ First Amended Complaint speaks for itself.

1		Act of 1964 which prohibits racial discriminatory practices by local governmental entities. <i>See</i> Dkt. #26.	
2	2.	Each of the individual Plaintiffs (Manuel de Jesus Ortega Melendres, Jessika Quitugua Rodriguez, David Rodriguez, Velia Meraz, and Manual Nieto, Jr.) has been, during motor vehicle traffic stops on public roadways, stopped, detained, questioned, and/or searched by MCSO officers, allegedly in violation of their constitutional and statutory rights. <i>See</i> Dkt. #26.	This statement simply provides “background about the action or the parties” and therefore does not properly belong in Defendants’ separate statement of facts. L.R. Civ. 56.1(a). Plaintiffs’ First Amended Complaint speaks for itself.
3	3.	The Plaintiffs’ First Amended Complaint asserts that each of the individual Plaintiffs were stopped, detained, questioned, and/or searched by MCSO officers allegedly pursuant to an officially-sanctioned policy, pattern, and practice of racially profiling, targeting, or otherwise discriminating against Latinos during motor vehicle traffic stops. <i>See</i> Dkt. #26 at p. 3, lns. 15-25, ¶ 3; p. 3, ln. 26 to p. 4, ln. 1, ¶ 4 (alleging that “Plaintiffs bring this action as representative of a class of Latino persons who as a result of racial profiling, have been or will be stopped, detained, interrogated, or searched by Arpaio and his agents <i>in moving or parked vehicles</i> in Maricopa County.”) (emphasis added).	This statement simply provides “background about the action or the parties” and therefore does not properly belong in Defendants’ separate statement of facts. L.R. Civ. 56.1(a). Plaintiffs’ First Amended Complaint speaks for itself.
4	4.	Plaintiffs allege in their First Amended Complaint that the Defendants’ purported policy, practice, pattern, and practice is manifested not only on an “day-to-day” basis during routine traffic stops conducted by MCSO deputies, but also during traffic stops made during “crime suppression sweeps” or law enforcement saturation patrols. <i>See</i> Dkt. #26 at p. 3, p. 3, lns. 15-25, ¶ 3.	This statement simply provides “background about the action or the parties” and therefore does not properly belong in Defendants’ separate statement of facts. L.R. Civ. 56.1(a). Plaintiffs’ First Amended Complaint speaks for itself.
5	5.	The gravamen of Plaintiffs’ lawsuit is the charge that MCSO deputies are racially profiling Latinos to make “pretextual and unfounded [traffic] stops,” and following those stops,	This statement simply provides “background about the action or the parties” and therefore does not properly belong in Defendants’ separate statement of facts. L.R. Civ. 56.1(a).

1	engaged in “racially motivated questioning, searches and other treatment, and often baseless arrests.”	Plaintiffs’ First Amended Complaint speaks for itself.
2	<i>See</i> Dkt. #26 at p. 3, p. 3, lns. 15-25, ¶	
3	3. The Plaintiffs, therefore, seek declaratory and injunctive relief against the Defendants. <i>See</i> Dkt.#26 at pgs 29-30, ¶¶A-F.	
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6	6. Plaintiff Manuel de Jesus Ortega Melendres is a resident of the Republic of Mexico. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 7, lns. 7-15.	Undisputed.
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8	7. Mr. Melendres legally entered the United States and visited Maricopa County as a tourist between September 6, 2007 and September 26, 2007. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 11, lns. 6-18.	Undisputed to the extent that Mr. Ortega Melendres entered the United States as a tourist on September 6, 2007. Disputed to the extent that the cited portion of the record does not establish when Mr. Ortega Melendres left the United States. Mr. Ortega Melendres was still visiting the United States as a tourist on September 27, 2007, the date of his traffic stop by MCSO.
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14	8. Under federal law, during Mr. Melendres’ visit to Maricopa County he was required to keep with him (i.e., on his person) his B-1/B-2 tourist visa and an I-94 Form (that allowed him to travel more than 25 miles north of the border with Mexico). <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 119, ln. 19 to p. 120, ln. 1.	Undisputed, except that the cited portion of the record does not mention anything about the documentation required to travel more than 25 miles from the border.
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19	9. If a visiting foreign national, such as Mr. Melendres, does not have his tourist visa or I-94 Form on his person, that person is legally “out of status” and a local law enforcement officer certified under the federal government’s 287(g) program may lawfully detain such a person to determine his status and/or in order to deliver him to federal immigration authorities for a determination of his lawful presence in the United States (i.e., the United States Immigration and Customs Enforcement, or “ICE”). <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 119, ln. 19 to p. 120, ln. 1 (“Q: If I come to you and tell you I have an I-94 but I don’t have it	Disputed. While federal law requires certain non-citizens (such as Mr. Ortega Melendres) to carry a registration document (such as the I-94 Form), the immigration law does not provide that the failure to carry the document makes the person “out of status” and subject to deportation. <i>Cf.</i> 8 C.F.R. § 214.1 (Requirements for admission, extension, and maintenance of status). Defendants do not identify any federal law or regulation to the contrary. Def’s.’ Supplemental ICE SOF 26 does not mention anything about an I-94 Form. In fact, when ICE Agent Jason Kidd testified about the ways in which a person can fall “out of status,” he
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<p>1 2 3 4 5 6 7 8 9 10 11 12 13</p>	<p>on me, am I in status? A. You're out of status.”) (Q. And why am I out of status? A. Because you need to carry the B-1/B-2 and the I-94 together.”); <i>see also</i> p. 120, lns. 6-9 (“Q. Does the fact that Mr. Melendres did not have his I-94 form on his person at the time you spoke with him allow you under 287(g) to take him into detention? A. Yes.”); <i>see also</i> Defendants’ Supplemental ICE SOF at ¶ 26.</p>	<p>mentioned nothing about an I-94 Form. Kidd Dep. 123:7-13 [Hickey Opp’n Dec.¹ Ex. 219]</p> <p>Thus, Defendants’ only support for this proposition is the self-serving testimony of Deputy Rangel. <i>Cf., United States v. Weitzenhoff</i>, 35 F.3d 1275, 1287 (9th Cir. 1993) (matters of law are for the Court’s determination, not that of a party witness).</p> <p>Further, even if Mr. Ortega Melendres was not carrying his I-94 Form (he testified he was), there was no need for him to be detained for seven to eight hours to determine his status. He was also carrying a valid visa, was not a flight risk, and if there was any doubt about his status, Deputy Rangel could have made a phone call to ICE. <i>See</i> Ortega Melendres Dep. 9:22-10:4, 22:2-6, 26:4-27:6 (describing how ICE found his visa and I-94 in his property bag) [Hickey Opp’n Dec. Ex. 240].</p>
<p>14 15 16 17 18 19 20</p>	<p>10. A person visiting the United States with the type of visa issued to Mr. Melendres, is not lawfully permitted to work for compensation or otherwise have employment. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 119, lns. 16-18 (“Q. Are you permitted on a B-1/B-2 Visa, based on your ICE training, to work for compensation? A. No.”); <i>see also</i> Defendants’ Supplemental ICE SOF at ¶ 26.</p>	<p>Undisputed, but irrelevant to the resolution of Defendants’ motion. <i>Anderson v. Liberty Lobby</i>, 477 U.S. 242, 248 (1986). Mr. Ortega Melendres had not and was not working when he was stopped by MCSO. Ortega Melendres Dep. 12:3-8; 24:4-7 [Hickey Opp’n Dec. Ex. 240].</p> <p><i>See also</i> Pls.’ Resp. to Defs.’ Supplemental ICE SOF 26.</p>
<p>21 22 23 24 25 26</p>	<p>11. If a foreign national visiting the United States on a tourist visa admits to a 287(g) certified law enforcement officer that he/she is working while as a tourist, that foreign national is “out of status” and may be detained for delivery to ICE. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 119, lns. 2-18; <i>see also</i> Defendants’ Supplemental ICE SOF at ¶ 26.</p>	<p>Undisputed that such a person would be “out of status”, but irrelevant to the resolution of Defendants’ motion. <i>Liberty Lobby</i>, 477 U.S. at 248. Mr. Ortega Melendres had not and was not working when he was stopped by MCSO. Ortega Melendres Dep. 12:3-8; 24:4-7 [Hickey Opp’n Dec. Ex. 240].</p> <p>Disputed that such a person could be detained based solely on an oral</p>

¹ Declaration of Kevin Hickey In Support of Plaintiffs’ Opposition to Defendants Motion for Summary Judgment, filed concurrently herewith.

<p>1 2 3 4 5 6 7 8 9</p>		<p>statement that he is working, without more. Regarding the allegation that Mr. Ortega Melendres stated he was working, a federal ICE official wrote that, “Unfortunately, his detention was not justified due to the lack of evidence by MCSO such as pay stubs or sworn statement where he admitted to working without a permit.” ICE BS 34758-60, attached as Ex. 57 to Kidd Dep. (introduced at Kidd Dep. 184:10-188:8)² [Hickey Opp’n Dec. Ex 220]; Kidd Dep. 82:21-83:1 (identifying Jon Gurule) [Hickey Opp’n Dec. Ex 219]</p> <p><i>See also</i> Pls.’ Resp. to Defs.’ Supplemental ICE SOF 26.</p>
<p>10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>12. On September 26, 2007, the MCSO’s Human Smuggling Unit (“HSU”) was in Cave Creek, Arizona investigating a particular church in response to citizen complaints about the church serving as a possible “drop house” for human smuggling, and because “day laborers” near the church were stepping out into the traffic on Cave Creek Road near the church and causing traffic problems. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p.27, ln. 9 to p. 28, ln. 12, (<i>see also</i> p.28, lns. 3-6) (“Q. Was there some sort of particular investigation that was going on there? A. I believe we were there because of complaints from citizens of a possible drop house in the area. Q. So was the Human Smuggling Unit on patrol in connection with investigating a possible drop house? A. Yes.”); <i>see also</i> Deposition of MCSO Deputy Manuel Madrid dated 10/27/09 at p.47, ln. 19 to p. 48, ln. 14, (“Q. And do you</p>	<p>Disputed. MCSO’s own internal correspondence confirms that an undercover investigation of the church conducted prior to the operation revealed “no information pertaining to forced labor, human smuggling[,] possible ‘drop houses,’” nor did it uncover any evidence that the day laborers congregating at the church were illegal immigrants. Melendres MCSO 014686 [Hickey Dec.³ Ex. 139].</p> <p>This statement is further disputed to the extent that neither Deputy Rangel, Sergeant Madrid nor Deputy DiPietro had personal knowledge of the complaints received from citizens about the “possible drop house” or individuals “stepping out in traffic, creating traffic hazards” and their testimony cannot be relied on for the proposition that MCSO in fact received such complaints. Indeed, the testimony of these witnesses is not even consistent—two contend that</p>

² Plaintiffs file Exhibit 57 to the October 1, 2010 Deposition of Jason Kidd publicly pursuant to paragraph 7 of the Protective Order Supplanting the Court’s Order of 3/1/10, Dkt. No. 319 (July 9, 2010), and having redacted all necessary personal information, including redaction of the names of certain ICE agents pursuant to consent of the parties. *See* Notice to Court Concerning Protective Order Regarding Depositions of Jason Kidd and Alonzo Pena, Dkt. No. 380 (Oct. 29, 2010). Counsel for ICE has indicated to counsel for Plaintiffs that ICE has no objection to the public filing of this document with these redactions.

³ Declaration of Kevin Hickey in Support of Plaintiffs Motion for Summary Judgment, filed April 29, 2011 (Dkt. No. 426).

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	<p>recall what you were doing in Cave Creek that day? A. We were doing a suppression patrol. Q. And what was the purpose of the suppression patrol? A. We were there based on complaints from citizens to city hall that they had several individuals up there stepping out in traffic, creating traffic hazards, stopping vehicles on roadways. We were up there in response to that.”); <i>see also</i> Deposition of MCSO Deputy Louis DiPietro at p. 111, lns. 13-16 and p. 113, lns. 12-16, (“Q. And based on your conversations with other officers, you knew that other officers of the MCSO were monitoring activity at or near a church suspected of being a drop house for human smuggling? * * * A. Yes, Yes.”); <i>see also</i> Deposition of MCSO Deputy Louis DiPietro at p. 46, ln. 21 to p. 47, ln. 9, (“Q. What were you doing in Cave Creek that morning? A. I was assisting other deputies that were watching, I believe it was -- they were watching, I believe it was a church parking lot that had day laborers working from it or being picked up by people. Q. Were you assisting them as a K-9 officer or as, more as a patrol officer? A. More of a patrol because I had a marked vehicle. Q. And do you know why they were watching this church? A. I believe they had information that they were, there were illegal aliens being, on the property, and that they were using that property as a point where they could be picked up as day laborers.”). As such the HSU was conducting surveillance on the church and its property and conducted a narrow traffic patrol that related exclusively to stopping for probable cause only those vehicles that were observed to have picked up people congregating at the church property and that had left the property. Id.</p>	<p>the citizen complaints were about a drop house and the other contends they were about a possible traffic hazard.</p> <p>This statement is further disputed to the extent that Deputy DiPietro waffles between (1) claiming that officers were there to investigate the church as a suspected drop house and (2) claiming that they were instead there to investigate Hispanic day laborers who were using the church to find work who MCSO suspected of being “illegal aliens”. Plaintiffs have submitted evidence confirming that MCSO was there to investigate the Hispanic day laborers because they thought they were illegal immigrants, Pls.’ SOF 172. They did so even though they had no information prior to the operation that these day laborers were undocumented, <i>see</i> Melendres MCSO 014686 [Hickey Dec. Ex. 139], and appearance as part of a Hispanic work crew does not give rise to reasonable suspicion that a person is an undocumented immigrant. <i>See United States v. Manzo-Jurado</i>, 457 F.3d 928, 937-38 (9th Cir. 2006).</p> <p>Finally, this statement is disputed to the extent that the operation that MCSO conducted in Cave Creek was on September 27, 2007, not September 26, 2007. Melendres MCSO 14861, Ex. 2 to Rangel Dep. I (introduced at Rangel Dep. 56:4-21) [Hickey Dec. Ex. 68].</p>
<p>13.</p>	<p>On September 26, 2007, Mr. Melendres testified that he wanted to go to some location in Scottsdale to take photographs and that he needed a ride to that location, and a friend named Jorge Morales from Mexico</p>	<p>Undisputed, except to the extent that this occurred on September, 27, 2007, not September 26, 2007. Melendres MCSO 14861, Ex. 2 to Rangel Dep. I (introduced at Rangel Dep. 56:4-21) [Hickey Dec. Ex. 68].</p>

1		offered to arrange to have an unknown person in a white colored pickup truck give him the ride. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 14, ln. 17 to p. 17, ln. 6.	
2	14.	Mr. Melendres sat in the right front seat of the truck, the unknown Caucasian drove the truck, and Mr. Morales and another unknown person sat in the second row in the extended cab pick-up truck and they ended up driving on Cave Creek Road. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 17, lns. 16-22.	Undisputed, except to the extent that the cited portion of the record does not establish that the vehicle Mr. Ortega Melendres was riding in "ended up driving on Cave Creek Road."
3	15.	Mr. Melendres and three other men were picked up at the church by the unknown driver of the white colored pickup truck, and the church was under HSU surveillance. <i>See</i> Deposition of MCSO Deputy Louis DiPietro at p. 48, lns. 2-20 ("Q. Was there some sort of plan that you were briefed on as to how to participate in this operation? A. There was going to be two marked units, two K-9 units; one east and one west of the location. And -- I don't remember who all was involved with Sergeant Madrid, who was all under him, but I know Sergeant Madrid was there. <i>And they had somebody that had eyes on or some type of surveillance and would call out if they had a vehicle that picked up, you know, a group of suspected illegals and drove off the property. Kind of gave a description of the vehicle. And we were advised prior to going out that if you can find PC, stop it; if not, let it go. Q. And "if you can find PC," what did you understand that to mean? A. Probable cause. Q. Probable cause to make a traffic stop of that vehicle? A. Correct.</i> "); <i>see also</i> p. 49, ln. 4 to p. 50, ln. 5 ("Q. If you were able to develop probable cause to stop the vehicle, were you then advised to investigate whether there were illegal aliens in the vehicle? A. I don't remember being briefed on that. <i>Once the vehicle was stopped, I asked the driver, you know, for his driver's license, registration and insurance.</i>	Undisputed that all Deputy DiPietro knew about the Hispanic passengers in the vehicle was that they had been picked up from the parking lot of the church. Disputed to the extent that this and the driver's statement that he had "picked them up to work" gave rise to reasonable suspicion that Mr. Ortega Melendres was in the country unlawfully. Appearance as part of a Hispanic work crew does not give rise to reasonable suspicion that a person is an undocumented immigrant. <i>See Manzo-Jurado</i> , 457 F.3d at 937-38. This statement is further disputed to the extent that the vehicle picked up Mr. Ortega Melendres and <i>two</i> other men, not three others. Ortega Melendres Dep. 15:20-16:4 [Hickey Opp'n Dec. Ex. 240].

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p><i>And I asked: Who are these guys, who's in our vehicle? And he said he had picked them up. And he was a construction worker of some sort and - - or appeared to be. And I called for the, Sergeant Madrid, and they came and took over there. Q. Why did you call Sergeant Madrid? A. The driver told me that he had picked them up to work. And I had reasonable suspicion from that that they were day laborers and here illegally. Q. Did you have any reason to believe that they were committing any sort of state crime? Violating any state criminal law? A. Well, I'm not sure what the employer sanction laws and when they came into effect or not. But I had reason to believe that they were here illegally. Q. And so it was based on your belief that they were here illegally that you called Sergeant Madrid? A. Yes.”) (emphasis added); see also p. 51, ln. 24 to p. 52, ln. 3 (“Q. And so is it your understanding that that <i>surveillance vehicle observed this particular truck pick up persons from the parking lot and start driving away from the church? A. Yes.”) (emphasis added).</i></i></p>	
<p>16 17 18 19 20 21</p>	<p>16. MCSO Deputy Louis DiPietro was assigned by an HSU surveillance member to follow the truck in which Mr. Melendres was a passenger and to look for probable cause to conduct a traffic stop of the truck. <i>See</i> Deposition of MCSO Deputy Louis DiPietro at p. 52, ln. 4 to p. 54, ln. 10.</p>	<p>Undisputed, except to the extent that the cited portion of the record does not establish that the surveillance unit was an HSU unit, or that it was the surveillance member (as opposed to Sergeant Madrid) that instructed Deputy DiPietro to follow target vehicles and look for probable cause to stop them. DiPietro Dep. 48:4-20 [Defs.’ SOF⁴ Ex. 4].</p>
<p>22 23 24 25 26</p>	<p>17. Deputy DiPietro paced the truck for 1.5 miles and determined it was speeding and that he had probable cause to make a traffic stop of the truck. <i>See</i> Deposition of MCSO Deputy Louis DiPietro at p. 53, lns. 9-18 (miles paced); p. 52, ln. 4 to p. 54, ln. 10 (probable cause); see also p. 115, lns. 2-17 (“Q. Your testimony</p>	<p>Undisputed that Deputy DiPietro <i>followed</i> the truck for approximately a mile and a half looking for any equipment or traffic violations. He was unsuccessful in finding any equipment violations. He then dropped back and started to pace the vehicle, and, according to his memory, found that the</p>

⁴ Defendants’ Statement of Facts in Support of Their Motion for Summary Judgment, filed April 29, 2011 (Dkt. No. 413).

<p>1 2 3 4 5 6 7 8 9</p>	<p>earlier in this deposition was that you estimated that perhaps you had traveled one and a half miles or so from the point you first began looking for probable cause on the truck to the point you actually made the decision that you had probable cause? A. Yes. Q. Okay. You determined that this driver, based on your pacing technique, had exceeded the posted speed limit? A. Yes. Q. You told the plaintiffs' lawyer earlier that the posted speed limit was 25 miles per hour? A. Yes. Q. That based on your pacing technique, you determined the driver was going 34 miles per hour? A. Yes.⁵).</p>	<p>vehicle was going over the speed limit.</p> <p>Disputed to the extent that the cited portion of the record does not support that he paced the truck for a mile and a half.</p> <p>This statement is further disputed to the extent that whether Deputy DiPietro had “probable cause” is a legal question and matters of law are for a Court’s determination, not that of a party or its witness. <i>See, e.g., Weitzenhoff</i>, 35 F.3d at 1287.</p>
<p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>18. Deputy DiPietro interacted with the truck’s driver, and based on information provided by the driver and other indications, formed reasonable suspicion that the truck’s occupants may have been in the country unlawfully. <i>See</i> Deposition of MCSO Deputy Louis DiPietro p. 49, ln. 4 to p. 50, ln. 5; p. 54, ln. 19 to p. 55, ln. 11; <i>see also</i> Deposition of MCSO Deputy Carlos Rangel at p. 32, lns. 5-10, (another indication to Deputy DiPietro was the observation that the truck’s passengers were unable to speak the English language).</p>	<p>Disputed. All Deputy DiPietro knew about the passengers in the vehicle was that they were Hispanic and that they had been picked up from the parking lot of the church. Deputy DiPietro believes that most day laborers are Hispanic or Latino. DiPietro Dep. 51:2-6 [Defs.’ SOF Ex. 4]. But even this and the driver’s statement that he had “picked them up to work” did not give rise to reasonable suspicion that Mr. Ortega Melendres was in the country unlawfully. Appearance as part of a Hispanic work crew does not give rise to reasonable suspicion that a person is an undocumented immigrant. <i>See Manzo-Jurado</i>, 457 F.3d at 937-38. Furthermore, not speaking English and appearance as part of a Hispanic work crew is also not enough to give rise to reasonable suspicion that a person is an undocumented immigrant. <i>Id.</i> at 937.</p> <p>This statement is further disputed to the extent that whether Deputy DiPietro had “reasonable suspicion” is a legal question and matters of law are for a Court’s determination, not that of a party or its witness. <i>See, e.g., Weitzenhoff</i>, 35 F.3d at 1287.</p>
<p>26 27 28</p>	<p>19. Deputy DiPietro called on his radio for a 287(g) MCSO deputy to assist at the stop to investigate the occupants in the white truck. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 28, lns. 13-</p>	<p>Undisputed, except the extent that Deputy DiPietro also appears to have called Sergeant Madrid to the scene. DiPietro Dep. 55:9-11 [Defs.’ SOF Ex.</p>

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2	20. MCSO Deputy Carlos Rangel arrived at the traffic stop involving Mr. Melendres within a minute of receiving the call for a 287(g) deputy. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 29, lns. 2-6. Deputy Rangel was 287(g) certified at the time. <i>Id.</i> at p. 14, ln. 15 to p. 15, ln. 8.	Undisputed.
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7	21. Deputy DiPietro told Deputy Rangel that the passengers in the truck did not speak English and asked him if he would talk to the passengers. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 32, lns. 5-10.	Disputed to the extent that Defendants are contending that the reason Deputy DiPietro called Deputy Rangel to the scene was due to a language barrier. Because he stopped the vehicle for a traffic violation committed by the driver (speeding), Pls.' SOF 177, there would have been no need for anyone at MCSO to contact the passengers. Furthermore, Deputy DiPietro clearly explained that the purpose of calling the other officers to the scene was so that they could check the immigration status of the Hispanic passengers. Pls.' SOF 179; <i>see also</i> DiPietro Dep. 65:15-66:6 [Hickey Dec. Ex 44].
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16	22. Deputy Rangel, a Latino himself, and fluent Spanish speaking deputy, asked the passengers for identification. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 34, lns. 1-13; p. 113, ln. 3 to p. 114, ln. 7.	Undisputed.
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19	23. Deputy Rangel conducted his questioning of the truck's passengers while Deputy DiPietro was simultaneously questioning the driver of the truck. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 33, lns. 20-25 ("Q: I take it that Deputy DiPietro dealt with the driver and you were speaking with the passengers? A. Yes. Q. When you were speaking with the passengers, was he [Deputy DiPietro] at the same time talking to the driver? A. Yes.").	Disputed. While Deputy DiPietro may have still been speaking with the driver when Deputy Rangel arrived, Deputy DiPietro clearly testified that the officers who came to the scene to investigate the immigration status of the passengers "took over" the stop and that the driver "was free to leave the traffic stop at that time." DiPietro Dep. 59:14-25, 65:6-18, 66:22-67:10 [Hickey Dec. Ex 44].
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26	24. The February 2007 Memorandum of Agreement between the MCSO and ICE, a 287(g) deputy states:	Undisputed that these words appear in the Memorandum of Agreement between MCSO and ICE that was effective on the date of the stop.
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	<p>The power and authority to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. §287.5(a)(1))... [and] [t]he power to arrest without warrant any alien entering or attempting to unlawfully enter the United States, or any alien in the United States, if the officer has reason to believe the alien to be arrested is in the United States in violation of law and is likely to escape before a warrant can be obtained. INA §287(a)(2) and 8 C.F.R. § 287.5(c)(1).</p> <p><i>See</i> Memorandum of Agreement at p. 3, bullet point one and two.</p>	
<p>25.</p>	<p>Deputy Rangel, as a 287(g) certified officer, looks for indicators of unlawful presence in the United States such as the person providing him with a foreign identification card, not having any identification from anywhere in the United States, and the inability to speak the English language. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 21, ln. 3 to p. 22, ln 3. Based on those indicators, Deputy Rangel is permitted to question persons about their origin and whether they are lawfully present in the United States. <i>Id</i> at p. 21, ln. 13 to p. 22, ln. 3 (“Q. What sort of questions did you believe that you were able to ask to determine a person's origin? A. Where were you born? Where are your parents from? And how did you enter the United States? Q. And how would you – how would you decide whom to ask these questions of? A. There are a number of indicators that would lead me to believe a person is in the United States illegally. Based on those indicators, I would proceed on enforcing the immigration law. Q. And what were the indicators that you would consider? A. They would -- the subject would provide a foreign identification card. Subject doesn't speak English. And subject not producing a United States’ identification.”)</p>	<p>Undisputed that Deputy Rangel was a 287(g) certified officer at the time of the stop.</p> <p>Disputed that he relied on these factors to initiate questioning of Mr. Ortega Melendres. The cited portion of the record does not establish that.</p> <p>Further disputed to the extent that Defendants are asserting that any one of these indicators (or a combination of them) categorically gives rise to reasonable suspicion to believe that a person is an undocumented immigrant. That is a legal question and matters of law are for a Court’s determination, not that of a party or its witness. <i>See, e.g., Weitzenhoff</i>, 35 F.3d at 1287.</p>

1	26.	Mr. Melendres provided Deputy Rangel with his tourist visa but did not provide an I-94 form. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 34, ln 20 to p. 35, ln. 10.	Disputed. Mr. Ortega Melendres provided the I-94 Form to the MCSO officer who questioned him. Ortega Melendres Dep. 9:22-10:4, 22:2-6, 26:4-27:6 (describing how ICE found his visa and I-94 in his property bag) [Hickey Opp'n Dec. Ex. 240].
2	27.	Deputy Rangel asked the passengers in the truck whether they were going to work, and two of them responded "yes, with one of the responders being Mr. Melendres. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 34, lns. 14-16.	Disputed. Mr. Ortega Melendres never told the MCSO officer that he was working. Ortega Melendres Dep. 24:4-7 [Hickey Opp'n Dec. Ex. 240]. There were two other passengers in the vehicle with him that the driver had come to pick up at the church. Mr. Ortega Melendres was simply catching a ride to Scottsdale. Ortega Melendres Dep. 14:22-17:9 [Hickey Opp'n Dec. Ex. 240].
3	28.	Deputy Rangel instructed those persons/passengers in the truck that said they were going to work to exit or get out of the truck. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 34, lns. 14-16; see also p. 35, lns.11-13.	Disputed. The cited portion of the testimony does not establish that Deputy Rangel asked only the passengers who said they were going to work to get out of the vehicle. All of the Hispanic passengers, including Mr. Ortega Melendres, were told to get out of the vehicle. Ortega Melendres Dep. 24:8-19 [Hickey Opp'n Dec. Ex. 240].
4	29.	Based on the identification provided by Mr. Melendres and the others, Deputy Rangel began to try to determine whether these persons/passengers were in the United States illegally. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 35, lns. 14-23.	Disputed. Based on the identification provided, no additional investigation of Mr. Ortega Melendres was warranted. The identification documents that Mr. Ortega Melendres provided to Deputy Rangel (including his visa and I-94 Form) should have established that he was in the United States legally and no further investigation was necessary. Ortega Melendres Dep. 22:2-6 [Hickey Opp'n Dec. Ex. 240].
5	30.	Mr. Melendres told Deputy Rangel that he had legally entered the United States through a port of entry, had an I-94 form, but did not have the I-94 form with him at the moment. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 35, ln. 6 to p. 36, ln. 20.	Disputed. Mr. Ortega Melendres provided the I-94 Form to the MCSO officer who questioned him. Ortega Melendres Dep. 9:22-10:4, 22:2-6, 26:4-27:6 (describing how ICE found his visa and I-94 in his property bag) [Hickey Opp'n Dec. Ex. 240].
6	31.	Mr. Melendres testified that he gave his I-94 Form to the deputy (i.e., Deputy Rangel) that questioned him at the time of the stop. <i>See</i> Deposition of	Undisputed that Mr. Ortega Melendres testified that he provided the I-94 Form to the MCSO officer who questioned

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	<p>Plaintiff Manuel Melendres at p. 9, ln. 23 to p. 10, ln. 5; <i>see also</i> p. 22, ln. 6-13. Mr. Melendres, however, has never produced in this litigation a copy of the I-94 Form that he supposedly had on his person on September 27, 2007, and the one I-94 Form that he did produce during this litigation does not cover the date of his September 26, 2007 stop and detention. . <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 10, ln. 8 to p. 11, ln.5.</p>	<p>him.</p> <p>Mr. Ortega Melendres has explained that he no longer has a copy of his I-94 Form from the period of time covering his traffic stop by MCSO because he was required to surrender it to border officials upon returning to Mexico. <i>See</i> Ortega Melendres' Verified Resp. to Def. Arpaio's First Set of Interrogs. No. 1 [Hickey Opp'n Dec. Ex 238]; ORT 12-13 [Hickey Opp'n Dec. Ex 236].</p> <p>Further, an ICE official confirmed that Mr. Ortega Melendres had a valid I-94 Form that covers the date of his traffic stop by MCSO, stating that "he was here legally (in status)" and that "[h]e had his documents in order." ICE BS 34758-60, Ex. 57 to Kidd Dep. (introduced at Kidd Dep. 184:10-188:8) [Hickey Opp'n Dec. Ex 220]; Kidd Dep. 82:21-83:1 (identifying Jon Gurule) [Hickey Opp'n Dec. Ex 219].</p> <p>Finally, the operation that MCSO conducted in Cave Creek was on September 27, 2007, not September 26, 2007. Melendres MCSO 14861, Ex. 2 to Rangel Dep. I (introduced at Rangel Dep. 56:4-21) [Hickey Dec. Ex. 68].</p>
<p>32.</p>	<p>Based on Mr. Melendres not having his I-94 Form on him at the time of the traffic stop, and that he stated that he was working while on his visa, Deputy Rangel detained Mr. Melendres with handcuffs and intended to have him delivered to ICE for verification of status. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 36, ln. 10 to p. 37, ln. 2; <i>see also</i> p. 47, lns. 5-13 ("Q. Do you have any reason to believe that ICE's conclusion that there was no reason to detain him was mistaken? A. Yes. Q. And what are those -- what -- please explain. A. During the traffic stop when I made contact, Mr. Melendres did not have his I-94 in his possession. Therefore, he was out of status. That's the reason why he was detained and transported to DRO."); <i>see also</i> Deposition of MCSO Deputy Carlos Rangel at p.</p>	<p>Undisputed that Mr. Ortega Melendres was placed in handcuffs, searched, and taken away in a van. Rangel Dep. 36:21-37:10, 41:5-19 [Defs.' SOF Ex. 2].</p> <p>Disputed that Deputy Rangel took Mr. Ortega Melendres into custody in order to verify his status, or that "verification of status" can serve as lawful justification for an arrest and seven to eight hour detention.</p> <p>Disputed that Mr. Ortega Melendres did not have his I-94 Form on him. He provided the I-94 Form to the MCSO officer who questioned him. Ortega Melendres Dep. 9:22-10:4, 22:2-6, 26:4-27:6 (describing how ICE found his visa and I-94 in his property bag) [Hickey Opp'n Dec. Ex. 240]. Further, while federal law requires certain non-citizens</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17</p>	<p>119, ln. 2 to p. 120, ln. 9 (explaining out-of-status character of a person on a B-1/B-2 visa and working for compensation and such information serving as grounds for detention).</p>	<p>(such as Mr. Ortega Melendres) to carry a registration document (such as the I-94 Form), the immigration law does not provide that the failure to carry the document makes the person “out of status” and subject to deportation. <i>Cf.</i> 8 C.F.R. § 214.1 (Requirements for admission, extension, and maintenance of status). Defendants do not identify any federal law or regulation to the contrary.</p> <p>Disputed that Mr. Ortega Melendres stated that he was working. He did not so state. Ortega Melendres Dep. 24:4-7 [Hickey Opp’n Dec. Ex. 240]. Further disputed that Mr. Ortega Melendres’s detention could have been justified based solely on an oral statement that he was working. Regarding the allegation that Mr. Ortega Melendres stated he was working, a federal ICE official wrote that “Unfortunately, [Plaintiff’s] detention was not justified due to the lack of evidence by MCSO such as pay stubs or sworn statement where he admitted to working without a permit.” ICE BS 34758-60, Ex. 57 to Kidd Dep. (introduced at Kidd Dep. 184:10-188:8) [Hickey Opp’n Dec. Ex. 220]; Kidd Dep. 82:21-83:1 (identifying Jon Gurule) [Hickey Opp’n Dec. Ex. 219].</p>
<p>18 19 20 21 22 23 24 25 26 27 28</p>	<p>33. Deputy Rangel told Mr. Melendres that he was being detained because he did not have his I-94 Form with him. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 38, lns. 19-25 (“Q. Do you remember anything that was said to Mr. Ortega during the time when he was handcuffed and searched? A. That he needed his I-94 with his B-1/B-2 Visa and that’s why he was being detained. Q. Is that what you said to him? A. Yes, I did.”). Mr. Melendres described Deputy Rangel as acting politely to him at all times. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 27, ln. 25 to p. 28, ln.2 (“Q. Did the Spanish -- were you treated rudely by the Spanish speaking officer who asked you for documentation? A. No.”).</p>	<p>Disputed that Deputy Rangel made this statement to Mr. Ortega Melendres, as he in fact provided the I-94 Form to the MCSO officer who questioned him, Ortega Melendres Dep. 9:22-10:4, 22:2-6, 26:4-27:6 (describing how ICE found his visa and I-94 in his property bag).</p> <p>Disputed to the extent that the cited portion of the record does not address whether Deputy Rangel was “acting politely at all times.” Furthermore, this statement is not material to the resolution of Defendants’ motion and therefore be disregarded. <i>Liberty Lobby</i>, 477 U.S. at 248 (facts “that are irrelevant or unnecessary will not be counted”); L.R. Civ. 56.1(a).</p>

1	34.	The total length of time of Deputy Rangel's questioning of the truck's passengers was fifteen (15) minutes. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p.40, lns. 10-13; p 40, ln. 24 to p. 41, ln. 4.	Disputed. While Deputy Rangel estimated the time he spent with the passengers to be 15 minutes, he later stated, after reviewing the CAD report for the stop, that 21 minutes lapsed between the time he arrived and when the passengers were transported from the scene. Rangel Dep. 121:17-122:6 [Hickey Opp'n Dec. Ex. 26]; Melendres MCSO 1785-87, Ex. 1 to Rangel Dep. (introduced at Rangel Dep. 47:18-48:15) (MCSO CAD Incident History for MA07181873) [Hickey Opp'n Dec. Ex. 227].
2	35.	All the passengers from the truck were detained. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 42, lns. 7-23.	Undisputed, but the fact that other passengers were also detained does not weigh in favor Defendants' motion. <i>Liberty Lobby</i> , 477 U.S. at 248 (facts "that are irrelevant or unnecessary will not be counted"); L.R. Civ. 56.1(a). Deputy Rangel's testimony is disputed to the extent that there were only <i>three</i> passengers in the vehicle, and thus only three that could have been arrested, not four. Ortega Melendres Dep. 15:20-16:4 [Hickey Opp'n Dec. Ex. 240].
3	36.	The passengers/detainees were taken to an MCSO substation and then delivered to ICE's Detention and Removal Office near Central Avenue and McDowell Road. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 44, ln. 22 to p. 45, ln. 7. Mr. Melendres was in an MCSO holding cell before removal to ICE for "probably about two hours." <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 25, lns. 10-15. Mr. Melendres was held another six to seven hours at ICE. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 25, ln. 16 to p. 26, ln. 4.	Undisputed.
4	37.	ICE released Mr. Melendres from detention because ICE concluded that there was insufficient evidence that Mr. Melendres was working and that he did have an I-94 Form issued to him despite him being "out-of-status" (i.e., not having the form on him when questioned by Deputy Rangel). <i>See</i>	Undisputed that ICE released Mr. Ortega Melendres because there was no evidence that he had been working. Disputed that Mr. Ortega Melendres was "out-of-status" because he did not have his I-94 Form. Mr. Ortega Melendres had his I-94 Form and provided it to the

	Deposition of MCSO Deputy Carlos Rangel at p. 45, ln.9 to p. 46, ln. 20.	MCSO officer who questioned him. Ortega Melendres Dep. 9:22-10:4, 22:2-6, 26:4-27:6 (describing how ICE found his visa and I-94 in his property bag) [Hickey Opp'n Dec. Ex. 240]. Further, while federal law requires certain non-citizens to carry a registration document (such as the I-94 Form), the immigration law does not provide that the failure to carry the document makes the person "out of status" and subject to deportation. <i>Cf.</i> 8 C.F.R. § 214.1 (Requirements for admission, extension, and maintenance of status). Defendants do not identify any federal law or regulation to the contrary.
38.	Plaintiffs' First Amended Complaint asserts that an unknown MCSO deputy made allegedly crude and derogatory remarks to Mr. Melendres about lotion found in his pocket. See Dkt#26 at p. 18, ¶¶ 61-62. Mr. Melendres, however, does not speak or understand English well and did not personally hear such alleged comments. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 6, lns. 5-11 and p. 7, lns. 2-6 (not understanding much English and having to be deposed through an interpreter); <i>see also</i> p. 31, ln. 1 to p. 33, ln. 1 (discussing Mr. Melendres' knowledge of the alleged crude and derogatory remarks). Such report of the crude remark is hearsay and was reported to him via his friend Jorge Morales. <i>see</i> p. 33, ln. 8-11 ("Q. You heard from George that they were talking about whether your lotion was used for masturbation; is that true? A. Yes, later on."). MCSO Deputies DiPietro, Rangel, and Madrid deny making or hearing such comments. <i>See</i> Deposition of MCSO Deputy Carlos Rangel at p. 120, ln. 12 to 121, ln. 1; Deposition of MCSO Sgt. Manuel Madrid at p. 220, lns. 4-25; Deposition of MCSO Deputy Louis DiPietro at p. 120, ln. 23 to p. 121, ln. 22.	To the extent that this statement simply provides "background about the action or the parties" and therefore does not properly belong in Defendants' separate statement of facts. L.R. Civ. 56.1(a). Plaintiffs' First Amended Complaint speaks for itself. Disputed to the extent that Defendants assert that Mr. Ortega Melendres' complaint about one officer's remarks about the lotion in his pocket should be discounted simply because some of the conversation was translated for him by Jorge Morales. Mr. Ortega Melendres testified that the officer removed the lotion from his pocket, "was laughing," and "made signs" suggesting that the location was for masturbating. Ortega Melendres Dep. 28:24-29:7, 30:17-25 [Hickey Opp'n Dec. Ex. 240]. Mr. Ortega Melendres did not need to understand English to observe this.
39.	The MCSO Lake Patrol Division is responsible for policing the recreational areas within Maricopa County and the Tonto National Forest.	Undisputed.

1		<i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 9, lns. 12-15, and lns. 20-22. Lake Patrol deputies conduct traffic related patrol duties near the recreational areas, perform searches and dive missions in the lakes and rivers, and ATV patrols. <i>Id.</i>	
2	40.	On Sunday, December 2, 2007, the Maricopa County Department of Transportation, in order to try to protect the public's safety, closed the road to Bartlett Lake, Bartlett Dam Road, because of storm damage that caused heavy flooding on it and had washed away parts of the road. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 91, ln. 25 to p. 93, ln. 10; see also p. 18, lns. 19-21, p. 23, lns. 17-18; p. 92, ln. 23 to p. 93, ln. 4 (“Q. What are, based on your experiences, the concerns or the dangers of motorists driving on a damaged road? A. Well, on this particular road, anything from flash flood in that area, as well as damage to their vehicle or injuries they sustain due to a crash caused by the debris on the roadway.”).	Undisputed.
3	41.	There was a “Road Closed” sign posted by the MCDOT across Bartlett Dam Road indicating to approaching drivers that the road was closed. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 92, lns. 9-22; <i>See also</i> Photographs of Road Closed sign taken by Deputy Matthew Ratcliffe (<i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 107, ln. 8 to p. 108, ln. 10. (“A. Due to the argumentative nature of the passenger in the vehicle [Mrs. Rodriguez], [Deputy Ratcliffe] wanted to take photographs of the ‘Road Closed’ sign and the ‘Road Closed Ahead’ signs for later defense in court.”); <i>See also</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 42, lns 1-17 (laying the foundation for the photographs).	Disputed to the extent that the cited portions of the record do not establish where the sign was posted.
4	42.	Deputy Ratcliffe was on patrol on Bartlett Dam Road on December 2, 2007. <i>See</i> Deposition of MCSO	Disputed to the extent that the cited portion of the record does not establish where Deputy Ratcliffe was on lake

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3	43.	No saturation patrol was conducted by the MCSO on December 2, 2007 and neither Deputy Ratcliffe nor anyone from the MCSO was conducting a saturation patrol on that date. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 89, lns. 12-25.	Disputed to the extent that the cited portion of the record establishes only that MCSO was not conducting a saturation patrol on that date “in that location” and that Deputy Ratcliffe was not a part of a saturation patrol at the time he made the stop. While Deputy Ratcliffe was not a part of a saturation patrol that day, he has participated on at least four MCSO saturation patrols. Ratcliffe Dep. 59:15-63:15 [Hickey Opp’n Dec. Ex. 228].
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10	44.	In the early afternoon of December 2, 2007, Deputy Ratcliffe observed a dark colored truck driving toward his parked position on the closed Bartlett Dam Road and then observed that it made a “u-turn” as it approached him and another officer. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 20, lns. 14-25 (type and color of vehicle and time of day); p. 22, lns. 13-20 (discussing the truck’s u-turn as it approached the officers).	Undisputed.
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16	45.	Deputy Ratcliffe determined that the driver was present on Bartlett Dam Road unlawfully and decided to make a traffic stop of the vehicle and to issue a citation to the driver. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 23, lns. 14-18; see also p.93, lns. 16-21.	Undisputed that Deputy Ratcliffe determined that the driver was present on a road that had been closed but disputed as to “unlawfully,” since Deputy Ratcliffe specifically testified that at the time he made the stop, he “didn’t know for a fact that they had driven by [the “Road Closed”] sign.” Ratcliffe Dep. 23:19-21 [Defs.’ SOF Ex. 6].
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22	46.	Before deciding to conduct the traffic stop and to issue a citation to the truck’s driver, Deputy Ratcliffe did not see the race of the truck’s driver or of any occupants of the truck. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 93, ln. 11 to p. 94, ln. 9.	Undisputed. However, Deputy Ratcliffe specifically testified that at the time he made the stop, he “didn’t know for a fact that they had driven by [the “Road Closed”] sign,” Ratcliffe Dep. 23:19-21 [Defs.’ SOF Ex. 6], and whether or not a citation would be justified was not yet known to Deputy Ratcliffe. Further, Plaintiffs’ Fourteenth Amendment claim does not depend on Deputy Ratcliffe having observed the race of the driver or occupants before he
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1		stopped them. Deputy Ratcliffe did see the race of the Rodriguezes before he made the decision to treat them differently from the other non-Hispanic motorists and prolong the stop to obtain Mr. Rodriguez's Social Security number. This statement is therefore not material to the resolution of Defendants' motion. <i>Liberty Lobby</i> , 477 U.S. at 248.	
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6	47.	When the truck was stopped, Deputy Ratcliffe asked Mr. Rodriguez for his driver's license, vehicle registration, and proof of insurance documents. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 24, ln. 25 to p. 25, ln. 2.	Undisputed, except that Deputy Ratcliffe also asked Mr. Rodriguez for his Social Security card. Pls.' SOF 188.
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10	48.	Deputy Ratcliffe asked Mr. Rodriguez for his Social Security number. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 25, lns. 3-6, ln. 2.	Undisputed, except that the Rodriguezes testified that Deputy Ratcliffe <i>first</i> asked Mr. Rodriguez for his Social Security card. Pls.' SOF 188. Later, after he returned with a citation form, he asked Mr. Rodriguez for his Social Security number. David Rodriguez Dep. 27:17-28:8 [Hickey Opp'n Dec. Ex. 229]
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14	49.	Deputy Ratcliffe did not ask for Mr. Rodriguez' Social Security card. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 24, ln. 25 to p. 25, ln. 2. Deputy Ratcliffe never asks any driver for his Social Security card. <i>Id.</i> at p. 25, lns. 15-17.	Disputed. Deputy Ratcliffe did ask Mr. Rodriguez for his Social Security card. Pls.' SOF 188.
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18	50.	After obtaining identification from Mr. Rodriguez, Deputy Ratcliffe asked him why he was driving his truck on the closed Bartlett Dam Road. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 26, lns. 7-25. Mr. Rodriguez stated to Deputy Ratcliffe that "he had driven around the [road closed] sign and was taking the kids down to the lake." <i>Id.</i> at p. 26, lns. 13-25 ("Q. What was that conversation? A. I asked them why they were driving down the roadway. Q. And what do you recall them saying? A. Mr. Rodriguez advised that he had driven around the sign and was taking the kids down to the lake. Q. When you say 'the sign,' what sign are you referring to? A. The 'Road Closed' sign. Q. You don't recall him saying	Disputed to the extent that Defendants are asserting that the Rodriguezes told Deputy Ratcliffe that they had seen the "Road Closed" sign and deliberately ignored it. Mr. Rodriguez informed Deputy Ratcliffe that they had been off-roading and did not see the "Road Closed" sign, Pls.' SOF 189, in other words, that they must have left the road before the sign and gone around it. David Rodriguez did not "drive around any barricades on the road." David Rodriguez Dep. 17:15-17 [Hickey Opp'n Dec. Ex. 229].
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	‘Road Damaged Sign’? A. No, sir. Q. Or ‘Road Closed Ahead sign? A. No, sir. He stated the ‘Road Closed.’”); <i>see also</i> p. 101, lns. 3 to p. 102, ln. 12.	
51.	Mr. Rodriguez admits that he saw a “ <i>Road Damaged</i> ” sign but drove past it. <i>See</i> Deposition of David Rodriguez at p. 11, lns. 2-11 (“A: <i>And once we were going down, I came upon -- before we hit the wash, there was a ‘Road Damaged’ sign that we came across, and we just kept going. And once we hit that, maybe about a quarter-mile to a half-mile there was a -- a turn, and then there was a long wash. And we started, you know, going through the wash a bit, but there was, you know, some – some debris and stuff that -- because it had rained recently, and over the wash, and I had noticed that there was a sheriff Expedition and another Expedition next to it.</i> ”) (emphasis added); <i>See also</i> Photographs of Road Closed sign taken by Deputy Matthew Ratcliffe (See Deposition of MCSO Deputy Matthew Ratcliffe at p. 107, ln. 8 to p. 108, ln. 10 (“A. “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>See also</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 42, lns 1-17 (laying the foundation for the photographs). Mr. Rodriguez denied ever seeing a “ <i>Road Closed</i> ” sign. <i>See</i> Deposition of David Rodriguez at p. 17.	Undisputed that Mr. Rodriguez reported seeing a “ <i>Road Damaged</i> ” sign but no “ <i>Road Closed</i> ” sign.
52.	Mr. and Mrs. Rodriguez asked Deputy Ratcliffe why he asked for David’s Social Security number. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 25, lns. 18-23. Deputy Ratcliffe explained that it was for identification purposes and to fill in the blanks on the MCSO citation form. <i>Id.</i> ; <i>see also</i> p. 96, lns. 10-24; <i>see also</i> the MCSO Standard Traffic Citation form.	Undisputed, except that the Rodriguezes testified that Deputy Ratcliffe also asked Mr. Rodriguez for his Social Security card. Pls.’ SOF 188. Deputy Ratcliffe later insisted that Mr. Rodriguez provide a Social Security number. Although Mr. Rodriguez did not feel comfortable doing so, and pointed out that he drivers’ license should have been enough, he finally provided Deputy Ratcliffe with the

		<p>number so that his family could leave. David Rodriguez Dep. 13:13-14:20 [Hickey Opp'n Dec. Ex. 229]. Mr. Rodriguez testified that Deputy Ratcliffe's requests for his Social Security Card and number prolonged the traffic stop. David Rodriguez Dep. 27:9-28:23 (requests "dragged [the stop] out" "more than a regular traffic stop") [Hickey Opp'n Dec. Ex. 229].</p> <p>Disputed to the extent that MCSO's Traffic Citation Policy does not provide that additional forms of identification be requested unless "the violator does not have a driver's license"; officer regularly leave the SSN block blank on the citation form. Pls.' SOF 195. When Deputy Ratcliffe asked Mr. Rodriguez for his Social Security number, he already had Mr. Rodriguez's drivers' license. Pls.' SOF 194.</p>
53.	<p>Deputy Ratcliffe performed via radio a records check on the Rodriguez' truck and then issued a citation to Mr. Rodriguez for failure to obey a traffic control device (i.e., the "road closed" sign). <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 27, lns. 6 to p. 28, ln. 8. He determined that a citation was appropriate in his discretion because there was a safety risk with driving on the closed road. <i>Id.</i> at p. 28, lns. 4-8.</p>	<p>Undisputed that Deputy Ratcliffe issued the Rodriguezes a citation. Disputed that issuing the citation at that point was "appropriate in his discretion." He had learned that the Rodriguezes had not seen the "Road Closed" sign and that several other non-Hispanic motorists who pulled up on the same stretch of road who were not given citations. Pls.' SOF 189, 192. Officers are trained that a citation is not in the public interest when the person was "not aware of the violation" and educating the person with a warning will have the same effect as a citation. Pls.' SOF 190. Further, MCSO policy requires that the enforcement of the traffic laws be "consistent" and "uniform." Pls.' SOF 191.</p>
54.	<p>Upon receipt of the citation, Mr. Rodriguez asked Deputy Ratcliffe the effect such a citation would have on his commercial driver's license, and either Mr. or Mrs. Rodriguez told Deputy Ratcliffe that he/she did not see any other drivers on the closed road receiving citations. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 28, lns. 9-12; <i>see also</i> p. 106, lns. 10-16. Deputy Ratcliffe responded by telling Mr. and Mrs.</p>	<p>Undisputed.</p>

1		Rodriguez that he was only dealing with them and not dealing with other drivers at that time. <i>Id.</i> at p. 28, lns. 13-15.	
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4	55.	Mrs. Rodriguez accused Deputy Ratcliffe of selective enforcement in issuing the traffic citation to her husband. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 28, ln. 21 to p. 29, ln. 5. Mrs. Rodriguez became "argumentative" with Deputy Ratcliffe. <i>Id.</i> at p. 100, lns. 1-7; <i>see also</i> Deposition of David Rodriguez at p. 29, lns. 13-17 ("Q. When was it that she [Mrs. Rodriguez] told Officer Ratcliffe that -- about selective enforcement? A. When I had asked if I can -- if I can get a warning, because the other people were getting warnings too."). Mrs. Rodriguez became "argumentative" with Deputy Ratcliffe. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 119, ln. 23 to p. 120, ln. 10.	Undisputed that Mrs. Rodriguez pointed out to Deputy Ratcliffe that the other vehicles driving on the same stretch of road were not getting cited, Pls.' SOF 192, and that she felt that was selective enforcement. Mr. Rodriguez was the only Hispanic driver. Pls.' SOF 192; David Rodriguez Dep. 41:1-8 [Hickey Opp'n Dec. Ex. 229]. Disputed to the extent that Deputy Ratcliffe's subjective feelings about Mrs. Rodriguez getting "argumentative" do not justify his actions and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248.
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14	56.	Neither Mr. nor Mrs. Rodriguez ever told Deputy Ratcliffe that they had not observed the "Road Closed" sign or that they were ever off-road driving and did not see the sign and must have missed it. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 100, lns. 8-17.	Disputed. Mr. Rodriguez informed Deputy Ratcliffe that they had been off-roading and did not see the "Road Closed" sign. Pls.' SOF 189
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19	57.	The Rodriguez' testified that they were off-road driving and must have missed observing the closed road sign. <i>See</i> Deposition of David Rodriguez at p. 10, ln. 7 to p. 12, ln. 4.	Undisputed.
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22	58.	The total time for the Rodriguez traffic stop by Deputy Ratcliffe was approximately ten (10) minutes. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 33, lns. 10-12.	Disputed. Mrs. Rodriguez estimates that the traffic stop lasted approximately 20 minutes. Jessica Rodriguez Dep. 52:6-11 [Hickey Opp'n Dec. Ex. 230]. In addition, after Deputy Ratcliffe finished issuing the citation, he followed the Rodriguezes at close range for two to three miles. Ratcliffe Dep. 36:5-25 [Defs.' SOF Ex. 6]; David Rodriguez Dep. 14:21-15:1 [Hickey Opp'n Dec. Ex. 229]. Further, the absolute length of the traffic
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		<p>stop is immaterial to the resolution of Defendants’ motion where there is evidence that the stop was unnecessarily prolonged, and should be disregarded. <i>Liberty Lobby</i>, 477 U.S. at 248.</p> <p>A CAD report for Deputy Ratcliffe’s partner, Deputy Multz, shows Deputy Multz dealing with at least three of the other motorists who had driven up to the deputies’ location. Deputy Multz dealt with them in less than 13 minutes and did not issue any citations. CAD Incident History for MA07222209⁵ [Hickey Opp’n Dec. Ex. 235]; Kikes Dep. 115:7-116:4 (establishing that disposition code 5 on a CAD Incident History means no citation issued) [Hickey Opp’n Dec. Ex. 221]; <i>see</i> David Rodriguez’s Verified Supp. Resp. to Def. Arpaio’s First Set of Interrogs. No. 3 (identifying Andrew Yahraus and Blaine Woodruff as two of the drivers) [Hickey Opp’n Dec. Ex. 237].</p>
59.	<p>Deputy Ratcliffe then drove behind the Rodriguez’ truck as it left the area for roughly two miles, not to escort them out, or to harass or intimidate them, but in order for him to take a picture of the “<i>Road Closed</i>” sign. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 107, ln. 8 to p. 108, ln. 10 “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></p>	<p>Undisputed that this was the justification Deputy Ratcliffe offered at his deposition for following the Rodriguezes out of the area. However, this is not consistent with the <i>manner</i> in which he followed them. He got on his loudspeaker and ordered them to move along, and then followed them closely the entire way back out to the main road. David Rodriguez Dep. 14:21-15:1 [Hickey Opp’n Dec. Ex. 229]; Jessika Rodriguez Dep. 15:12-19 [Hickey Opp’n Dec. Ex. 230]. This was unnecessary and humiliating to the Rodriguezes. David Rodriguez Dep. 41:14-42:16 [Hickey Opp’n Dec. Ex. 229].</p>
60.	<p>Mr. Rodriguez pled responsible to the citation issued to him by Deputy Ratcliffe. <i>See</i> Deposition of David Rodriguez at p. 34, ln. 14 to p. 35, ln. 11 (“Q. The citation, did you plead responsible for that citation? A. Yes. Q. So you admitted not obeying a</p>	<p>Undisputed.</p>

⁵ This document was produced as part of the CAD database produced by Defendants to Plaintiffs on January 7, 2009.

1	traffic control device? A. When I got	
2	the -- yes, I had to sign for it and I had	
3	to admit to it, yes. Q. In court did you	
4	end up paying a \$120 fine? A. Yes. Q.	
5	And you understood that that was	
6	admitting that you failed to obey a	
7	traffic control device? A. Yes. Q.	
8	Okay. Explain for me, if you thought	
9	that this citation was wrongly issued,	
10	why you did not contest it, why you	
11	did not challenge it in court? A. It was	
12	pretty much going to be me against the	
13	officer, and in situations like that, it's	
14	usually the officer that's going to come	
15	out on top, so that's why I just decided	
16	to get it -- to go ahead and just pay it.”)	
17	61. Deputy Ramon Armendariz is a	Undisputed that he was so certified
18	member of the MCSO HSU and is	before October 2009. However, Deputy
19	287(g) certified. <i>See</i> November 24,	Armendariz was not a member of the
20	2009 Deposition of MCSO Deputy	Human Smuggling Unit on the date he
21	Ramon C. Armendariz at p. 16, Ins.	contacted Plaintiffs (March 28, 2008).
22	17-23 (discussing when he joined the	<i>See</i> Pls.' SOF 200. He did not transfer
23	MCSO Human Smuggling Unit); p.	to that Unit until April or May of 2008.
24	18, ln. 17 to p. 20, ln. 2 (discussing his	Armendariz Dep. I at 16:17-23 [Def's.
25	decision to become 287(g) certified).	SOF Ex. 10].
26	62. Deputy Armendariz' first language is	Undisputed.
27	Spanish and he is therefore fluent in	
28	speaking that language. <i>See</i> Deposition	
	of MCSO Deputy Ramon C.	
	Armendariz at p. 20, Ins. 20-22.	
	63. Deputy Armendariz worked the	Undisputed.
	saturation patrol in the capacity of a	
	patrol officer where he was to conduct	
	traffic stops and write citations. <i>See</i>	
	Deposition of MCSO Deputy Ramon	
	C. Armendariz at p. 100, Ins. 8-17.	
	64. Around 2:00 p.m., Deputy Armendariz	Undisputed.
	made a traffic stop of a vehicle and the	
	vehicle pulled into a convenience	
	mart/gas station located at the	
	southeast corner of North Cave Creek	
	Road and East Nesbit Road. <i>See</i>	
	Deposition of MCSO Deputy Ramon	
	C. Armendariz at p. 116, Ins. 4-10	
	(time of stop); p. 123, Ins. 21-23	
	(location of stop); p. 126, ln. 19 to p.	
	127, ln. 6 (location of stop); p. 131,	
	Ins. 5-11 (southeast corner of roads).	

1	65.	Deputy Armendariz parked his vehicle behind the stopped car. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 132, lns. 11-23. The vehicle stopped by Deputy Armendariz contained two men, Benjamin Moreno and Jorge Ramirez, and he conducted a radio check on both of the men. <i>Id.</i> at p. 123, ln. 24 to p. 124, ln. 6; p. 126, ln. 19 to p. 127, ln. 6.	Undisputed.
2	66.	Following his radio check, Deputy Armendariz took both men into custody. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 129, lns. 15-19. Deputy Armendariz took the driver of the vehicle into custody for driving with a suspended license and placed him inside his patrol car. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 135, lns. 5-13.	Undisputed, except that Deputy Armendariz only took the driver into custody. Armendariz Dep. 129:15-22 [Def's. ' SOF Ex. 10].
3	67.	Deputy Armendariz placed handcuffs on the car's passenger and had the passenger sit down on the front bumper of the MCSO patrol car. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 136, lns. 12-24.	Undisputed.
4	68.	At that time, a dark colored vehicle pulled into the convenience mart/gas station and parked directly behind Deputy Armendariz' patrol car. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 136, ln. 25 to p. 137, ln. 3; p. 137, ln. 16-20. Deputy Armendariz was standing in front of his patrol car handling the detained passenger of the car he stopped. <i>Id.</i> at p. 137, ln. 23 to p. 138, ln. 1.	Disputed. The Meraz-Nieto vehicle pulled into a parking spot at the gas station that was 10 yards or more from where the deputy and the detainees were. Pls.' SOF 202, Nieto Dep. 18:8-13 [Hickey Opp'n Dec. Ex. 224].
5	69.	The dark colored vehicle was playing loud music, the passenger side windows were down, and Deputy Armendariz could see a female passenger (later known to be Plaintiff Velia Meraz) and a male driver (later known to be Plaintiff Manuel Nieto). <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 139, ln. 2 to p. 140, ln. 6.	Undisputed that Plaintiffs were playing Spanish music with their windows rolled down, and that the music could be heard by Deputy Armendariz, and that Plaintiffs could be seen by Deputy Armendariz. Disputed to the extent that Defendants are contending that the music was "loud." Ms. Meraz testified that the music "wasn't loud. It was regular." Meraz Dep. 13:22-14:6 [Hickey Opp'n

		<p>Dec. Ex. 223]. Mr. Nieto testified that it was “not too loud, but I would say on a scale of one to ten that volume was probably five.” Nieto Dep. 18:14-23 [Hickey Opp’n Dec. Ex. 224].</p>
<p>70.</p>	<p>The female passenger (i.e., Ms. Meraz) started yelling repeatedly in Spanish out her window at Deputy Armendariz’ detainee sitting on the bumper of the patrol car, “no diga nada,” ‘no diga nada,’ you know, which means don’t – ‘don’t say anything,’ ‘don’t say anything’; ‘pida un abogado,’ ‘pida un abogado,’ which means, you know, ‘ask for a lawyer,’ ‘ask for a lawyer.’” See Deposition of MCSO Deputy Ramon C. Armendariz at p. 140, ln. 19 to p. 141, ln. 11.</p>	<p>Disputed. Ms. Meraz did not have time to yell such phrases. As soon as Meraz and Nieto pulled in, Deputy Armendariz immediately approached their vehicle and told them to leave. Ms. Meraz asked him why, and he said that he could arrest them for disorderly conduct if they did not leave. Pls.’ SOF 202; Meraz Dep. 15:20-25 (the only thing that happened before they were ordered to leave was that they pulled into the parking lot with the music on), 18:20-19:1 [Hickey Opp’n Dec. Ex. 223].</p> <p>Further, this statement is not material to the resolution of Defendants’ motion. <i>Liberty Lobby</i>, 477 U.S. at 248. It is not unlawful to tell detainees their rights and doing so could not justify Plaintiffs’ traffic stop at gunpoint after they had left the gas station.</p>
<p>71.</p>	<p>At first, Deputy Armendariz tried to ignore the yelling, but the female passenger (i.e., Ms. Meraz) kept yelling and he started to fear for his safety. See Deposition of MCSO Deputy Ramon C. Armendariz at p. 141, lns. 12-17; p. 142, lns. 5-23. Deputy Armendariz, therefore, ordered the driver of the vehicle to leave deputy Armendariz’ vicinity or the location, or at least stay out of his way. <i>Id.</i> at p. 141, lns. 12-17.</p>	<p>Disputed. Ms. Meraz did not have time to yell such phrases. As soon as Plaintiffs pulled in, Deputy Armendariz immediately approached their vehicle and told them to leave. Ms. Meraz asked him why, and he said that he could arrest them for disorderly conduct if they did not leave. Pls.’ SOF 202; Meraz Dep. 15:20-25 (the only thing that happened before they were ordered to leave was that they pulled into the parking lot with the music on), 18:20-19:1 [Hickey Opp’n Dec. Ex. 223].</p> <p>Further, the cited portion of the record does not establish that Deputy Armendariz started to fear for his safety. Deputy Armendariz’s testimony simply refers to the Plaintiffs’ mere presence in his vicinity as somehow creating an “officer safety issue.” Armendariz Dep. I at 141:13-17 [Defs.’ SOF Ex. 10].</p> <p>Further, this statement is not material to the resolution of Defendants’ motion. <i>Liberty Lobby</i>, 477 U.S. at 248. It is not</p>

1		unlawful for someone to tell detainees their rights and doing so would not justify Plaintiffs' traffic stop at gunpoint after they had left the gas station.
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4	72.	In response to Deputy Armendariz, the female passenger (i.e., Ms. Meraz) yelled several times that 'we're not going anywhere.' See Deposition of MCSO Deputy Ramon C. Armendariz at p. 142, lns. 5-23.
5		Disputed. Ms. Meraz did not refuse to leave. In response to Deputy Armendariz's order to leave, Ms. Meraz only asked him why, Pls.' SOF 202, and asked Deputy Armendariz for his badge number so that they could file a complaint against him; Plaintiffs then complied with his order to leave. Meraz Dep. 10:23-11:2, 20:12-21 [Hickey Opp'n Dec. Ex. 223]; Nieto Dep. 12:17-25 [Hickey Opp'n Dec. Ex. 224].
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10	73.	Deputy Armendariz again ordered that Meraz and Nieto leave. See Deposition of MCSO Deputy Ramon C. Armendariz at p. 142, lns. 5-18.
11		Undisputed that Deputy Armendariz ordered Plaintiffs to leave more than once, threatening to arrest them for disorderly conduct. Pls.' SOF 202.
12	74.	The female passenger (i.e., Ms. Meraz) started yelling at Deputy Armendariz "fucking Sheriff Joe, fucking Nazi," and "you guys don't have a right to do this." See Deposition of MCSO Deputy Ramon C. Armendariz at p. 143, lns. 3-8.
13		Disputed. Ms. Meraz did not have time to yell such things. Plaintiffs testified that after Deputy Armendariz provided his badge number, they immediately left the gas station. Meraz Dep. 10:23-11:2, 20:12-21 [Hickey Opp'n Dec. Ex. 223]; Nieto Dep. 12:17-25 [Hickey Opp'n Dec. Ex. 224].
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17		Further, this statement is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i> , 477 U.S. at 248. It is not unlawful to heckle a police officer and doing so could not justify Plaintiffs' traffic stop at gunpoint after they had left the gas station. <i>Duran v. City of Douglas</i> , 904 F.2d 1372, 1377-78 & n.4 (9th Cir. 1990).
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22	75.	Deputy Armendariz was worried about his safety and the safety of the two men he had in custody. See Deposition of MCSO Deputy Ramon C. Armendariz at p. 143, lns. 9-17; p. 144, lns. 12-18.
23		Disputed in that Deputy Armendariz does not identify any objective or individualized basis for his fear. If Plaintiffs had been cursing and yelling, as a police officer, it would not have been the first time that Deputy Armendariz had encountered someone cursing at him. Armendariz Dep. I at 147:18-25 [Defs.' SOF Ex. 10]. Deputy Armendariz bases his fear on speculation. He hypothesizes that Plaintiffs could have had a gun because protesters at the command post for the
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		saturation patrol were, according to him, "running around with guns." <i>Id.</i> at 143:9-17.
76.	Because the vehicle with the yelling passengers would not leave, Deputy Armendariz called on his radio for back-up. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 144, lns. 12-18 ("but when they refused to leave, that's when I called for help."); <i>see also</i> p. 214, ln. 25 to p. 218, ln. 11 (explaining the reasons he called for back-up support).	Disputed. Mr. Nieto recalls seeing Deputy Armendariz speaking on his radio <i>as</i> Plaintiffs were pulling out of the gas station. Nieto Dep. 23:3-16 [Hickey Opp'n Dec. Ex. 224].
77.	MCSO Deputy Douglas Beeks heard Deputy Armendariz' radio call for backup and described Deputy Armendariz' voice as sounding "excited" and "agitated". <i>See</i> October 22, 2009 Deposition of MCSO Deputy Douglas W. Beeks at p. 148, lns. 10-15. 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> at p. 148, lns. 16-23. Accordingly, Deputy Beeks was concerned for the safety of Deputy Armendariz. <i>Id.</i> at p. 148, lns. 16-20; <i>see also</i> Deposition of MCSO Deputy Michael Kikes at p. 69, ln. 17, to p. 70, ln. 9 ("Q. So you were riding southbound on Cave Creek Road and you were listening to radio traffic. You heard Deputy Armendariz say something over the radio? A. Correct. Q. Do you recall what he said? A. Not exactly what he said -- Q. Okay. A. -- but I could tell by the pitch in his voice it wasn't just a regular call out for a license plate or something of that nature. Q. What do you mean by the pitch in his voice? A. We have a tendency as deputies to be able to when we talk on the radio to give a license plate or give an identification	Disputed. A recording of the radio traffic for the incident reveals that Deputy Armendariz said nothing further about Plaintiffs' vehicle after he made the simple request for backup, and that his voice was not "excited" or "agitated." ORT 370. ⁶ In any event, both Deputy Beeks and Deputy Kikes could have observed that Plaintiffs had left the gas station by the time they arrived, and that Deputy Armendariz was unharmed. Pls.' SOF 204-05. There was no reason to pursue them at that point.

⁶ ORT 370 is an audio recording. Plaintiffs intend to file this multimedia record with the Clerk should the Court grant Plaintiffs' Motion for Leave to File Audio Recording in Non-Electronic Form.

1		of somebody in a very monotone, very easily recognizable voice that we can transmit every day. We could -- when something goes awry, you could tell the excitability, you can tell a little bit about there's more than just a regular traffic stop.”).	
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5	78.	The male in the vehicle (i.e., Mr. Nieto) then opened his door and started to get out. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 145, ln. 24 to p. 146, ln. 21. Deputy Armendariz believed that the male (i.e., Mr. Nieto) was going to get out of the car to “try to kick my ass”. <i>Id.</i> at p. 216, lns. 19-24.	Disputed. Even if Mr. Nieto had made an initial move to get out of the car, Deputy Armendariz clearly states that he ordered Mr. Nieto not to get out, and Mr. Nieto complied with his order. Armendariz 145:24-146:25. Any concern that Deputy Armendariz had that Mr. Nieto was going to “try to kick his ass” was total speculation rather than based on objective observations. Armendariz Dep. I at 216:19-24 [Defs.’ SOF Ex. 10].
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12	79.	The vehicle occupants (i.e., Ms. Meraz and Mr. Nieto) appeared very angry and were acting “very threatening.” <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 218, lns. 2-11 (acting angrily); p. 215, lns. 5-9 (acting very threatening). “[T]heir actions towards [Deputy Armendariz] were as if it was personal towards [the deputy].” <i>Id.</i> at p. 217, lns. 3-4.	Disputed. The basis for Deputy Armendariz’s conclusion that Plaintiffs appeared “angry” and were “very threatening” is that they were allegedly yelling to his detainees that they should remain silent and ask for a lawyer and criticizing the Sheriff’s policies. Armendariz Dep. I at 215:8-13 [Defs.’ SOF Ex. 10]. These alleged statements contain no threatening language towards Deputy Armendariz, nor were they unlawful. <i>Duran</i> , 904 F.2d at 1377.
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18	80.	Deputy Armendariz testified as to his state of mind when he observed the male in the vehicle (i.e., Mr. Nieto) 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 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? Am I going to have to spray -- you know, pepper spray to get him away from me? I mean, just the array	Disputed. Even if Mr. Nieto had made a move to get out of the car, Deputy Armendariz clearly states that he ordered Mr. Nieto not to get out, and Mr. Nieto complied with his order. Armendariz 145:24-146:25 [Defs.’ SOF Ex. 10]. Furthermore, both of Deputy Armendariz’s detainees were apparently secured. Defs.’ SOF 66-67. Deputy Armendariz’s testified to an “array of, you know, what-ifs” that were not supported by objective observations about Mr. Nieto. Armendariz Dep. I at 217:12-218:1 [Defs.’ SOF Ex. 10]. The Fourth Amendment requires officers to base law enforcement actions on objective threats, not subjective
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1 2 3	of, you know, what-ifs. That situation could have gone bad, really bad, really quick." <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 217, ln. 12 to p. 218, ln. 1.	speculation. Thus, Deputy Armendariz's state of mind is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i> , 477 U.S. at 248.
4 5 6 7 8 9 10 11 12 13 14 15	81. Plaintiff Manuel Nieto, Jr. is a three-time convicted felon who spent 3.5 years in prison for domestic violence. <i>See</i> October 8, 2009 Deposition of Manuel Nieto, Jr., at p. 7, ln. 22 to p. 8, ln. 21 (fact of three felony convictions for domestic abuse); <i>see also</i> p. 10, ln. 25 to p. 11, ln. 1 (length of time in prison). Mr. Nieto was only released from his most recent prison time one month before the confrontation with Deputy Armendariz. <i>Id.</i>	Disputed to the extent that the Defendants mean to suggest that Mr. Nieto served multiple sentences. Mr. Nieto served one sentence for the three convictions, and was released in 2008. This statement is immaterial to the resolution of Defendants' motion. <i>Liberty Lobby</i> , 477 U.S. at 248. Deputy Armendariz did not conduct any background checks on Mr. Nieto and this information could not have been known to Deputy Armendariz when he encountered Plaintiff. (Tellingly, Defendants do not contend that it was.) Thus, it could not served as the basis of any assessment about the threat that Mr. Nieto posed. Mr. Nieto exhibited no threatening behavior towards Deputy Armendariz that could have justified his subsequent treatment. <i>See, e.g.,</i> Pls.' SOF 203.
16 17 18 19 20 21 22 23 24 25 26 27 28	82. Seeing the male in the vehicle (i.e., Mr. Nieto) open his door and start to get out, 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>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 145, ln. 24 to p. 146, ln. 21, p. 149, lns. 4-14 ("As I was -- as I was getting more worried that they were actually going to get out of their car and actually come towards my -- my direction, I moved the passenger, which is who I was talking to on the front bumper. I walked around the other side of my patrol car and I put him and secured him in the back. And at that point, as I secured him -- as I was securing him in the back and I kept yelling at these people, "You need to leave. You need to get out of here now," that's when they decided on leaving. And I put him in the back, they took off, still cussing at me, you	Disputed. Even if Mr. Nieto had made a move to get out of the car, Deputy Armendariz clearly states that he ordered Mr. Nieto not to get out, and Mr. Nieto complied with his order. Armendariz Dep. 145:24-146:25 [Defs.' SOF Ex. 10]. Further, Deputy Armendariz's concerns are not based on any objective observations about Plaintiffs behavior, such as that they were brandishing weapons, making threats, or advancing towards him. The Fourth Amendment requires officers to base law enforcement actions on objective threats, not subjective speculation. Thus, Deputy Armendariz's state of mind is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i> , 477 U.S. at 248.

1		know.”); <i>see also</i> p. 214, ln. 25 to p. 215, ln. 4 (“Q. What was the reason you called for backup? A. Not to put it in a bad way, but I was -- I was afraid. I was afraid. I was afraid that the situation would have escalated further and my safety would have been in jeopardy.”).	
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6	83.	The occupants of the vehicle (Meraz and Nieto) made “a big scene” at the convenience mart/gas station. <i>See</i> Deposition of MCSO Deputy Ramon C. Armendariz at p. 148, ln. 25.	Disputed. Deputy Armendariz doesn’t even know if other people in the parking lot were watching. Armendariz Dep. I at 148:21-25 [Def’s. SOF Ex. 10]. Plaintiffs testified that they complied with Deputy Armendariz’s order to leave the gas station. Pls.’ SOF 202. That is inconsistent with them having made “a big scene.”
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11	84.	MCSO Deputy Michael Kikes spotted the dark colored vehicle driving on North Cave Creek Road and activated his motorcycle’s lights and siren. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 129, lns. 19-22 (discussion in context of already having his lights and siren on).	Undisputed.
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15	85.	Deputy Kikes testified that he believed that he had probable cause to stop the dark colored vehicle because he believed there was an emergency situation of some type involving Deputy Armendariz and the occupants of the vehicle Deputy Kikes was stopping. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 129, lns. 4-18.	Undisputed that these words appear in Deputy Kikes’ testimony. However, Plaintiffs dispute that Deputy Kikes’ speculation about some emergency situation, of which he admittedly knew nothing about, could constitute probable cause to stop Plaintiffs vehicle. “Probable cause” is a legal question for a Court’s determination, not that of a party or its witness, <i>see, e.g., Weitzenhoff</i> , 35 F.3d at 1287, and Defendants have not presented any authority (i.e., other than the circular testimony of its witnesses) that the stop of Plaintiffs was justified by probable cause or reasonable suspicion.
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24	86.	Due to the vehicle’s window tinting, Deputy Kikes could not see the race, sex, or other characteristics of the vehicle’s occupants. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 129, ln. 23 to p. 130, ln. 18.	This statement is immaterial to the resolution of Defendants’ motion. <i>Liberty Lobby</i> , 477 U.S. at 248. Deputy Armendariz states that he provided a description of the vehicle and its occupants to Deputy Kikes. Pls.’ SOF 204. Further, Plaintiffs’ Fourteenth Amendment claim is not contingent on
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		Deputy Kikes having observed their race before he stopped them. He could clearly see their race by the time he forcefully removed Mr. Nieto from the vehicle.
87.	The driver of the vehicle (i.e., Mr. Nieto) would not stop and drove another 300 feet until it turned into an auto shop instead of pulling over on the right side of the public roadway as required by law. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 130, ln. 19 to p. 132, ln. 2; <i>see also</i> p. 131, lns. 10-13 (“A. Well, first of all, the driver didn't acknowledge that I was there and that he didn't use a turn signal and he didn't pull to the right as what law states you need to pull to the right for an emergency vehicle.”).	<p>Disputed. Deputy Kikes claims that he first saw the Plaintiffs truck on Cave Creek Road when he was 75 feet south of the intersection with Nisbet Road, and that after he signaled, the truck did not pull over for another 300 feet. Kikes Dep. 74:9-76:19 [Hickey Opp'n Dec. Ex. 221]. However, Plaintiffs pulled over into their father's auto shop where they were working, at 14849 North Cave Creek Road. Nieto Dep. 13:7-14:1 [Hickey Opp'n Dec. Ex. 224]; Meraz Dep. 12:19-13:19 [Hickey Opp'n Dec. Ex. 223]. The shop is only 50 to 60 yards from the gas station. <i>Id.</i> Thus, there could have been no way that they waited 300 feet to turn.</p> <p>Further, Mr. Nieto testified that he <i>did</i> signal, and that he pulled over to the left because he was already in the left hand turn lane and already approaching the auto shop. Nieto Dep. 13:7-14:1 [Hickey Opp'n Dec. Ex. 224]. Defendants cite no authority that his doing so was illegal or unusual. It certainly did not indicate that Mr. Nieto was dangerous.</p>
88.	Deputy Kikes was concerned about the driver's (i.e., Mr. Nieto) behavior and where he parked, and what that parking location meant. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 131, ln. 3 to p. 132, ln. 4 (“Q. Was there anything about that distance of 300 feet from the point you activated your lights and siren until the point it - the dark vehicle stopped that caused you any concern? A. Yes. Q. And would you explain for me, what was that concern? A. Well, first of all, the driver didn't acknowledge that I was there and that he didn't use a turn signal and he didn't pull to the right as what law states you need to pull to the right for an emergency vehicle. He kept driving and he kept going and	Disputed to the extent that Defendants are suggesting that Mr. Nieto's pulling into to his father's auto shop justified being surrounded at gunpoint. Deputy Kikes alludes to the fact that Mr. Nieto pulled into a semi-private/commercial driveway, but mentions nothing unique to such driveways that would be particularly dangerous. He then claims that the surroundings, how Mr. Nieto pulled in, and the direction where Mr. Nieto was facing created a concern for officer safety, but again identifies nothing about those things that was dangerous. Finally, Deputy Kikes states that Mr. Nieto could have driven backwards and hit the officers, or fled from the vehicle, but that could be true on any traffic stop. In short, Deputy

1		then he finally pulled into a private -- somewhat private driveway. Obviously, it's not a private driveway. It's a commercial driveway, but instead he remained in the vehicle which, to us, is a very safety-oriented issue alarming to an officer. Q. Explain for us of those who do not have law enforcement training, why is pulling into even a commercial property of concern for officer safety? A. The surroundings, the nature of where he pulled, how he pulled in, the direction of where he was facing, heading. He could have drove backwards, hit us, anything. There is an escape route to the right. I look for escape routes. I look for a place where somebody can flee from the vehicle, get lost in a commercial area, get lost in the buildings and things like that.”).	Kikes could not articulate any specific facts about where Mr. Nieto pulled over or how he pulled over that made it dangerous. Further, Mr. Nieto testified that he <i>did</i> signal, and that he pulled over to the left because he was already in the left hand turn lane and already approaching the auto shop. Nieto Dep. 13:7-14:1 [Hickey Opp’n Dec. Ex. 224]. Defendants cite no authority that his doing so was illegal or unusual.
2	89.	Once the vehicle pulled into the auto repair shop, the driver (Mr. Nieto) refused to exit his vehicle. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 131, lns 17-19 (“instead he [Mr. Nieto] remained in the vehicle which, to us, is a very safety-oriented issue alarming to an officer.”)	Undisputed that Mr. Nieto remained in the vehicle talking with the 9-1-1 dispatcher on his phone. Nieto Dep. 25:6-22 [Hickey Opp’n Dec. Ex. 224]. Deputy Kikes does not articulate why remaining in the vehicle in this case posed an officer safety issue.
3	90.	Manuel Nieto refused to roll down his window to speak with MCSO Deputy Michael Kikes. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 78, lns. 8-25.	Undisputed that Mr. Nieto did not roll down his window, as he was speaking on his cell phone (he had called 9-1-1 because he was afraid of being harassed by MCSO). Nieto Dep. 25:15-26:3 [Hickey Opp’n Dec. Ex. 224]; Meraz Dep. 11:15-18 [Hickey Opp’n Dec. Ex. 223].
4	91.	Two unknown men in mechanic’s clothing immediately came out from the auto repair shop and were “angry”, “yelling” and “cursing” at MCSO Deputy Michael Kikes. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 132, lns. 5-23.	Undisputed that Plaintiffs’ father and brothers came out of the auto shop, and upon seeing Mr. Nieto and Ms. Meraz being held up at gunpoint by multiple MCSO units and Mr. Nieto being pulled from the truck, were asking what was going on. Meraz Dep. 11:12-12:6 [Hickey Opp’n Dec. Ex 223]. Plaintiffs’ father told the deputies that Plaintiffs were his children “and they are U.S. citizens.” Pls.’ SOF 211. Plaintiffs’ family members did not pose any danger to the deputies or threaten the deputies.

1		Thus, Defendants' statement is not material to the resolution of their motion. <i>Liberty Lobby</i> , 477 U.S. at 248.
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3	92.	Deputy Beeks, now at the scene, saw the driver (Mr. Nieto) acting very "belligerent", "non-compliant", and "almost hostile in nature" with and toward Deputy Kikes, and he thought that the driver (Mr. Nieto) might drive his vehicle forward or backward and, therefore, Deputy Beeks pulled his handgun for safety purposes. <i>See</i> October 22, 2009 Deposition of MCSO Deputy Douglas W. Beeks at p. 150, lns. 3-23; <i>see also</i> p. 151, lns. 12-18.
4		Disputed. Mr. Nieto simply informed officers that he was on the phone with 9-1-1. Nieto Dep. 25:23-26:3 [Hickey Opp'n Dec. Ex. 224]. Deputy Beeks does not articulate any basis for his claim that Mr. Nieto was acting belligerent or hostile. And his only basis for asserting that Mr. Nieto looked like he was attempting to drive off was that Mr. Nieto had "both hands on the steering wheel," Beeks Dep. 150:3-25 [Defs.' SOF Ex. 11], something that would have been impossible according to Plaintiffs' account, because Mr. Nieto was still on the phone. Nieto Dep. 25:23-26:3 [Hickey Opp'n Dec. Ex. 224].
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12		The Fourth Amendment requires officers to base law enforcement actions on objective threats, not subjective hunches. Thus, Deputy Kikes' characterizations about how Mr. Nieto was acting do not justify his holding Mr. Nieto at gunpoint and are not material to the resolution of Defendants' motion. <i>Liberty Lobby</i> , 477 U.S. at 248.
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17	93.	Deputy Kikes opened the vehicle's door, grabbed the driver (Mr. Nieto), and removed Mr. Nieto from the vehicle where he then handcuffed Mr. Nieto. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 80, lns. 2-10; p. 80, ln. 23 to p. 82, ln. 2; <i>see also</i> p. 133, ln. 19 to p. 134, ln. 1 ("Q. Eventually I understand your testimony is that you ended up taking the driver from the vehicle to the back of his SUV? A. Correct. Q. And the reason for that was to create some distance or separation from the two men that were yelling curses at you? A. Correct.").
18		Undisputed that Deputy Kikes forcefully removed Mr. Nieto from the vehicle and handcuffed him. By this point, deputies already had Ms. Meraz at gunpoint, out of the vehicle with her hands up. Ms. Meraz testified that officers removed her brother from the vehicle with such force that he hit the ground and the phone he was talking on went "flying to the pavement." Meraz Dep. 11:9-21 [Hickey Opp'n Dec. Ex. 223]. They picked Mr. Nieto up and threw him against the truck before handcuffing him. <i>Id.</i> at 11:24-12:3.
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26	94.	Deputy Kikes was able to move the driver (Mr. Nieto) to rear of the vehicle away from the angry mechanics and obtain the driver's license. <i>See</i> Deposition of MCSO
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	Deputy Michael Kikes at p. 80, lns. 2-10.	
95.	Deputy Kikes conducted a radio check on the driver's status (Mr. Nieto's) and it came back clear. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 85, ln. 23 to p. 86, ln. 24.	Undisputed.
96.	Deputy Beeks then contacted Deputy Armendariz to determine what had occurred between Deputy Armendariz and Ms. Meraz and Mr. Nieto. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 85, ln. 23 to p. 86, ln. 24; see also p. 134, ln. 3 to p. 135, ln. 15 ("Q. You testified that eventually Deputy Beeks made some sort of contact with Deputy Armendariz? A. Correct, by telephone, cell phone, he called back. Q. And your understanding is that cleared up any confusion of exactly what had occurred with this dark SUV and its occupants? A. Right. Q. There was a question as to why there was no citation issued. That was because there was no moving violation? A. No crime had been committed. Q. Okay. And that was confirmed after the stop had been made and communication with Mr. -- Deputy Armendariz had been made? A. Right. After Deputy Beeks advised me that nothing had taken place, that was just a gentleman of interest from the traffic stop earlier, that nothing had been violated, that we could go ahead and let him go. Q. Why in law enforcement -- strike that. Was there a concern that had you stopped to speak with Armendariz first about what had occurred that the black SUV may not be able to be found? A. Correct. Q. And I guess that is my next question is, before making that traffic stop on the black SUV, why -- why couldn't you or another officer determine precisely why you folks were not going to be following the black SUV and making the traffic stop? A. Well, that all goes into exigent circumstances. We need to find out and stop right at that point. We need to make a stop of that vehicle	Undisputed that Deputy Armendariz confirmed that "[n]o crime had been committed" by Plaintiffs and that "nothing had been violated." Kikes Dep. 134:11-21 [Defs.' SOF Ex. 13]; <i>see also</i> Pls.' SOF 206. Disputed that there were any exigent circumstances, such as a concern about drugs, weapons or other contraband being destroyed, that justified the traffic stop of Plaintiffs even though they had committed no crime. Neither Deputy Armendariz nor anyone else with the MCSO had any reason to believe that Plaintiffs were carrying drugs, weapons or contraband. There was simply <i>no reason</i> why Plaintiffs should have been treated as persons of interest, especially after they had left the gas station.

1		to not let it further -- either get away, either hide whatever weapons may be -	
2		- or drugs or whatever the case may be inside that vehicle. So we need to	
3		pursue that vehicle, have a stop and then go ahead and do our detective	
4		work and find out exactly investigative of what is actually with that vehicle	
5		and why it needs to be stopped.”).	
6	97.	Following the communication between Deputies Beeks and Armendariz, Mr. Nieto was released without being charged with either a traffic violation (i.e., a failure to stop when directed) or for obstructing Deputy Armendariz. See Deposition of MCSO Deputy Michael Kikes at p. 85, ln. 23 to p. 86, ln. 24.	Undisputed; Mr. Nieto was released without any citation or charge.
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11	98.	Plaintiff Velia Meraz’ truthfulness is at issue for several reasons, including the fact she has a prior felony conviction for fraudulent schemes and artifices for writing money orders to herself while she was employed at Catholic Social Services as an immigration case worker. See Deposition of Plaintiff Velia Meraz at p. 7, ln. 22 to p. 9, ln. 19.	This statement is not material to the resolution of Defendants’ motion and should therefore be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248 (facts “that are irrelevant or unnecessary will not be counted”); L.R. Civ. 56.1(a). Even Defendants’ concede that a party’s credibility has no place in a motion for summary judgment. Defs. MSJ at 13-14 n.9.
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17	99.	Plaintiffs allege in the First Amended Complaint that since year 2007 they have been subjected to the MCSO’s alleged official policy, pattern, and practice of stopping, questioning, searching, and sometime arresting Latino persons without probable cause or reasonable suspicion simply on the basis of their race. See Dkt. #26 at p. 3, lns. 15-25, ¶ 3; p. 3, ln. 26 to p. 4, ln. 1, ¶ 4. Plaintiffs further allege in their First Amended Complaint that the MCSO’s challenged conduct occurs not only as a general practice of making traffic stops, but also through making traffic stops during saturation patrols or so call “crime suppression sweeps.” See Dkt. #26 at p. 3, p. 3, lns. 15-25, ¶ 3.	This statement simply provides “background about the action or the parties” and therefore does not properly belong in Defendants’ separate statement of facts. L.R. Civ. 56.1(a). Plaintiffs’ First Amended Complaint speaks for itself.
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27	100.	Mr. Melendres is a Mexican national and lives in Ciudad Obregon, Sonora, Mexico, about a seven (7) hour bus	Undisputed.
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1		trip from the border at Nogales, Mexico. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 7, lns. 7-15.	
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3	101.	Mr. Melendres has returned to Maricopa County “once or twice” since his September 2007 traffic stop. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 33, lns. 20-23.	Undisputed that as of Mr. Melendres’ deposition on October 10, 2009, he had returned to Maricopa County once or twice since his September 2007 traffic stop by MCSO, not including the trip he made to attend the deposition itself.
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7	102.	When Mr. Melendres has visited Maricopa County on those occasions, Mr. Melendres stays only for “some days or maybe a week.” <i>See</i> Deposition of Plaintiff Manuel Madrid at p. 37, lns. 3-8. During his one or two visits to Maricopa County after the 2007 traffic stop, Mr. Melendres has not again been stopped, questioned, detained, arrested, searched, or investigated by the MCSO since the traffic stop in September 2007. <i>Id.</i> at p. 34, ln. 8 to p. 35, ln. 5.	Undisputed.
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14	103.	As to Mr. and Mrs. Rodriguez, they each testified that since their December 2007 traffic stop on Bartlett Dam Road by Deputy DiPietro, and although they live and work in Maricopa County, they each have had no other traffic stop encounters with the MCSO. <i>See</i> Deposition of Jessika Rodriguez at p. 58, ln. 16 to p. 59, ln. 6; Deposition of David Rodriguez at p. 37, lns. 17-22.	Undisputed that this is what Mr. and Mrs. Rodriguez testified to on October 2, 2009.
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20	104.	Indeed, Mrs. Rodriguez drives 20 miles roundtrip to work every day and estimates that she put roughly 20,000 miles on her personal car every year in Maricopa County but has never again been stopped by the MCSO. <i>See</i> Deposition of Jessika Rodriguez at p. 60, lns. 14-20; p. 61, lns. 11-21.	Undisputed that this is what Mrs. Rodriguez testified to on October 2, 2009, except that Mrs. Rodriguez testified she would drive 20 miles a day to go to work <i>and</i> to drop off her children. <i>See</i> Deposition of Jessika Rodriguez at 60:14-61:10 [Defs.’ SOF Ex. 15].
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24	105.	Ms. Meraz testified that since her March 2008 traffic stop by the MCSO she has had no other personal experience with the MCSO stopping her in any vehicle at any time for any reason. <i>See</i> Deposition of Velia Meraz at p. 32, lns. 15-20.	Undisputed that this is what Ms. Meraz testified to on October 8, 2009.
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1 2 3	106. Mr. Nieto testified that he also has had no traffic stop encounters with the MCSO since the March 2008 traffic stop. <i>See</i> Deposition of Manuel Nieto, Jr., at p. 36, lns. 14-16.	Undisputed that this is what Mr. Nieto testified to on October 8, 2009.
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	107. Although Mr. Melendres speculates that the truck was not speeding, he has no facts that would allow him to dispute the probable cause determination of Deputy DiPietro. <i>See</i> Deposition of Plaintiff Manuel Melendres at p. 18, lns. 1-5, (speculative conclusion that the truck was not speeding); at p. 18, ln. 9 to p.19, ln. 17 (Q. But do you know what the speed was of the truck shortly before it was stopped? A. No. Q. Do you know whether the driver of the vehicle was driving at a speed in excess of the posted speed limit? A. No. Q. If it's the sheriff's deputy's position that the driver was going too fast, do you have any facts to dispute that position? A. Could you repeat the question? Q. Sure. My clients say they stopped the vehicle because it was speeding. Do you have any facts that would allow you to dispute that? A. No. *** Q. Do you contend, sir, that the stop was improper or illegal in anyway? A. Well, if I showed him my documents -- well, I don't know the rules here. So actually, I don't know if they have the right to stop the driver. I can't say, because it's not my -- within my knowledge to say. Q. It is not within your knowledge to say whether the stop was proper or not proper; true? A. Well, no, because the officers who pulled the car over, they are the ones who know about that. I cannot say anything about that.”).	Undisputed that Mr. Ortega Melendres does not think that the truck was speeding. Ortega Melendres Dep. 18:1-5 [Def’s. SOF Ex. 1]. Disputed to the extent that Defendants contend Plaintiff’s own recollection is irrelevant to Deputy DiPietro’s claim that the truck was speeding. Mr. Ortega Melendres was a witness to the incident.
23 24 25 26 27 28	108. Defendants’ law enforcement practices expert, Bennie R. Click, opines that that “Deputy DiPietro had probable cause to stop the vehicle in which Mr. Melendres was a passenger. Deputy DiPietro’s actions in stopping the vehicle conformed with standard police training and law enforcement practice, met the requirements set for in [A.R.S. section] 13-3883 and were	Disputed. Mr. Ortega Melendres stated that the truck “wasn’t going very fast” and that he does not believe the truck was speeding. Ortega Melendres Dep. 17:20-24 [Hickey Opp’n Dec. Ex. 240], 18:1-5 [Def’s.’ SOF Ex. 1]. Further, whether or not there was “probable cause” to stop the truck is a conclusion of law that is for the Court to

1 2 3 4 5 6	reasonable.” See Report of Ben Click dated January 21, 2011, at p. 13; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14 (wherein he testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).	make, not an expert witness <i>Elsayed Mukhtar v. Cal. State Univ., Hayward</i> , 299 F.3d 1053, 1063 (9th Cir. 2002).
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<p>109. Plaintiffs’ law enforcement practices/racial profiling expert witness, Robert L. Stewart, has no factual basis to disagree with Deputy DiPietro’s probable cause determination:</p> <p>Q. Based on all the evidence that you have reviewed, did Deputy Louis DiPietro have probable cause to stop the truck in which Mr. Melendres was a passenger?</p> <p>A. According to him.</p> <p>Q. Is that a yes or a no?</p> <p>A. His record reflects that he did.</p> <p>Q. Do you have any direct evidence rebutting Deputy DiPietro’s testimony that he had probable cause to stop the truck?</p> <p>A. No, sir.</p> <p>Q. Do you have any circumstantial evidence rebutting Deputy DiPietro’s testimony that he had probable cause to stop the truck?</p> <p>A. No, sir.</p> <p>See February 28, 2011 Deposition of Plaintiffs’ Expert Robert L. Stewart at p. 60, ln. 12 to p. 61, ln. 2.</p>	<p>Disputed. Mr. Stewart has no firsthand knowledge of what occurred because he was not there. Mr. Ortega Melendres, however, stated that the truck “wasn’t going very fast” and that he does not believe the truck was speeding. Ortega Melendres Dep. 17:20-24 [Hickey Opp’n Dec. Ex. 240], 18:1-5 [Defs.’ SOF Ex. 1].</p> <p>In addition, Mr. Stewart pointed out that “a belief that all of the occupants in the vehicle were somehow associated with day labor and there was the issue of both workers and employers being in violation of the law,” and “that the driver was never cited, never questioned about his activities in terms of employer sanction laws.” Stewart Dep. 111:24-112:10 [Hickey Opp’n Dec. Ex. 233]. Mr. Stewart also explained that the conduct directed toward Mr. Ortega Melendres seemed to be racially motivated because deputies believed that “if you are Mexican and you’re a day laborer, then you must be here illegally,” and the MCSO operates and designs activities and carries out functions on that basis. Stewart Dep. 159:25-161:12 [Hickey Opp’n Dec. Ex. 233].</p>
25 26 27 28	110. Mr. Melendres was in an MCSO holding cell before removal to ICE for “probably about two hours.” See Deposition of Plaintiff Manuel Melendres at p. 25, lns. 10- 15. Mr. Melendres was held another six to	Undisputed.

	seven hours by ICE at the ICR DRO facility. <i>Id.</i> at p. 25, ln. 23 to p. 26, ln. 4.	
111.	Mr. Melendres was properly detained pursuant to Deputy Rangel's 287(g) authority. <i>See</i> Report of Ben Click dated January 21, 2011, at p. 14-15; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14 (wherein he testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise); <i>cf.</i> Defendants' Supplemental ICE SOF at ¶ 26.	<p>Disputed. While federal law requires certain non-citizens (such as Mr. Ortega Melendres) to carry a registration document (such as the I-94 Form), the immigration law does not provide that the failure to carry the document makes the person "out of status" and subject to deportation. <i>Cf.</i> 8 C.F.R. § 214.1 (Requirements for admission, extension, and maintenance of status). Defendants do not identify any federal law or regulation to the contrary.</p> <p>Even if Mr. Ortega Melendres was not carrying his I-94 Form (he testified he was), there was no need for him to be detained for seven to eight hours to determine his status. He was also carrying a valid visa, was not a flight risk, and if there was any doubt about his status, Deputy Rangel could have made a phone call to ICE. <i>See</i> Ortega Melendres Dep. 9:22-10:4, 22:2-6, 26:4-27:6 (describing how ICE found his visa and I-94 in his property bag) [Hickey Opp'n Dec. Ex. 240].</p> <p>Also, Mr. Ortega Melendres was not working when he was stopped by MCSO. Ortega Melendres Dep. 24:4-7 [Hickey Opp'n Dec. Ex. 240].</p> <p>Further, this statement is a conclusion of law for the Court to make and not Defendants' expert. <i>Elsayed Mukhtar</i>, 299 F.3d at 1063.</p>
112.	Mrs. Rodriguez admits there was probable cause to stop her vehicle. <i>See</i> Deposition of Jessika Rodriguez at p. 30, lns. 7-21 ("Q. Do you believe now, in hindsight, that [Deputy Ratcliffe] did have a good reason to pull you over? A. Yes. Q. And what is that based on? A. On the citation issued to us, which was failure to obey a traffic device. Q. All right. And so in hindsight, even though you weren't aware of it at the time of the stop, you did realize that there was a "Road	Undisputed that Mrs. Rodriguez does not disagree with Deputy Ratcliffe's decision to initially pull them over.

1		Closed" sign, right? A. Yes. Q. And that it was illegal to travel on that road, wasn't it? A. Yes.”).	
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3	113.	Mrs. Rodriguez is not even critical of the traffic stop made by MCSO Deputy Matthew Ratcliffe. <i>See</i> Deposition of Jessika Rodriguez at p. 31, 9-20) (“Q. All right. So you're not critical of the initial stop, are you? A. No. Q. Okay. He was -- the initial stop, the officer, you understand, was legally -- in your mind's eye, what he did was proper, wasn't it? A. Yes.”).	Undisputed that Mrs. Rodriguez does not disagree with Deputy Ratcliffe’s decision to initially pull them over.
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9	114.	Defense expert Mr. Click testified that Deputy Ratcliffe had PC to stop the Rodriguez truck. <i>See</i> Report of Ben Click dated January 21, 2011, at p. 23; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14 (wherein he testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).	Undisputed. However, this statement is a conclusion of law for the Court to make and not Defendants’ expert. <i>Elsayed Mukhtar</i> , 299 F.3d at 1063.
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15	115.	Plaintiffs’ liability expert Mr. Stewart testified: 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. <i>See</i> February 28, 2011 Deposition of Plaintiffs’ Expert Robert L. Stewart at p. 79, lns. 14-17; <i>see also</i> p. 77, ln. 18 to p. 78, ln. 2.	Undisputed as to the initial stop. However, this statement is a conclusion of law for the Court to make and not Defendants’ expert. <i>Elsayed Mukhtar</i> , 299 F.3d at 1063.
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23	116.	Plaintiffs’ liability expert Mr. Stewart opined that Deputy Ratcliffe had probable cause to stop the Rodriguez truck even if Mr. Rodriguez did not see the “Road Closed” sign. <i>See</i> February 28, 2011 Deposition of Plaintiffs’ Expert Robert L. Stewart at p. 77, ln. 18 to p. 78, ln. 2.	Undisputed that Mr. Stewart so testified. However, this stat a conclusion of law for the Court to make and not an expert. <i>Elsayed Mukhtar</i> , 299 F.3d at 1063. Also, prior to the stop, Deputy Ratcliffe did not know that Mr. Rodriguez had not seen the “Road Closed” sign. Ratcliffe Dep. 23:19-21 [Hickey Opp’n Dec. Ex. 228]; D. Rodriguez Dep. 13:5-17 [Hickey Opp’n Dec. Ex. 229].
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1 2 3 4 5 6 7 8 9 10 11 12 13 14	117. MCSO Deputy Michael Kikes testified that he had probable cause to stop the vehicle driven by Mr. Nieto and occupied by Ms. Meraz. <i>See</i> Deposition of MCSO Deputy Michael Kikes at p. 129, lns. 4-18 (“Q. Now, let’s turn to the incident that the plaintiffs’ lawyer asked you questions about, the one involving Ms. Meraz and Mr. Nieto. Tell us what was, in your judgment, the probable cause that allowed you to activate your lights and siren to pull over what you described as the black SUV? A. I believed that some emergency and some situation had taken part with Ramon Armendariz, Deputy Armendariz. There was an emergency and that is why I pulled them over because – not knowing exactly what had happened, but there was some sort of emergency that took place at that moment. Q. Did you believe that that emergency situation existed in what you believed to be your good faith? A. Absolutely.”).	Disputed. A recording of the radio traffic for the incident reveals that Deputy Armendariz said nothing further about Plaintiffs’ vehicle after he made the simple request for backup, and that his voice was not “excited” or “agitated.” ORT 370. ⁷ In any event, both Deputy Beeks and Deputy Kikes could have observed that Plaintiffs had left the gas station by the time they arrived, and that Deputy Armendariz was unharmed. Pls.’ SOF 204-05. There was no reason to pursue them at that point. Further, whether or not Deputy Kikes had “probable cause” to stop the vehicle is a matter of law for the Court’s determination, not that of a party or its witness. <i>See, e.g., Weitzenhoff</i> , 35 F.3d at 1287 (“Resolving doubtful questions of law is the distinct and exclusive province of the trial judge.” (internal quotation omitted)).
15 16 17 18 19 20 21 22 23 24 25 26	118. Defense expert Mr. Click opines that Ms. Meraz and Mr. Nieto obstructed Deputy Armendariz in his investigation and arrest of the two stopped men and that they could have been arrested by law enforcement for such obstructions. <i>See</i> Report of Ben Click dated January 21, 2011, at p. 37; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14 (wherein he testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise). Defense expert Bennie R. Click, therefore, testified that Deputy Kikes had reasonable suspicion to stop the Nieto-Meraz vehicle. <i>See</i> Report of Ben Click dated January 21, 2011, at p. 35; <i>see also</i> March 18, 2011 Deposition of Defense Expert Ben	Disputed. Plaintiffs did not obstruct Deputy Armendariz’s investigation and arrest. The Meraz-Nieto vehicle pulled into a parking spot at the gas station that was 10 yards or more from where the deputy and the detainees were. Pls.’ SOF 202, Nieto Dep. 18:8-13 [Hickey Opp’n Dec. Ex. 224]. As soon as Meraz and Nieto pulled in, Deputy Armendariz immediately approached their vehicle and told them to leave. Ms. Meraz asked him why, and he said that he could arrest them for disorderly conduct if they did not leave. Pls.’ SOF 202; Meraz Dep. 15:20-25 (the only thing that happened before they were ordered to leave was that they pulled into the parking lot with the music on), 18:20-19:1 [Hickey Opp’n Dec. Ex. 223]. In response to Deputy Armendariz’s order to leave, Ms. Meraz only asked him why, Pls.’ SOF 202, and asked

⁷ ORT 370 is an audio recording. Plaintiffs intend to file this multimedia record with the Clerk should the Court grant Plaintiffs’ Motion for Leave to File Audio Recording in Non-Electronic Form.

<p>1 2 3 4 5 6 7 8 9 10 11 12</p>	<p>Click at p. 341, ln. 24 to p. 342, ln. 14 (wherein he testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>	<p>Deputy Armendariz for his badge number so that they could file a complaint against him; Plaintiffs then complied with his order to leave. Meraz Dep. 10:23-11:2, 20:12-21 [Hickey Opp'n Dec. Ex. 223]; Nieto Dep. 12:17-25 [Hickey Opp'n Dec. Ex. 224].</p> <p>Plaintiffs testified that after Deputy Armendariz provided his badge number, they immediately left the gas station. Meraz Dep. 10:23-11:2, 20:12-21 [Hickey Opp'n Dec. Ex. 223]; Nieto Dep. 12:17-25 [Hickey Opp'n Dec. Ex. 224].</p> <p>Furthermore, whether or not Deputy Kikes had "reasonable suspicion" to stop the vehicle for a violation of Arizona law is a conclusion of law for the Court to make and not Defendants' expert. <i>Elsayed Mukhtar</i>, 299 F.3d at 1063.</p>
<p>13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>119. Plaintiffs' liability expert Stewart agrees with Defense expert Click that MCSO Deputy Michael Kikes had reasonable suspicion that allowed him to properly stop the Meraz-Nieto vehicle. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 103, lns. 4-17.</p>	<p>Disputed. Defendants misconstrue Mr. Stewart testimony criticizing Deputy Armendariz's conduct relative to Deputy Kikes' conduct to conclude that he believes that the stop of Plaintiffs was lawful. Mr. Stewart testified that there was no lawful basis for the stop of Mr. Nieto and Ms. Meraz. Stewart Dep. 162:17-22 [Hickey Opp'n Dec. Ex. 233]. Mr. Stewart also explained that Deputy Armendariz characterized Meraz and Nieto as playing loud Spanish music, that he obviously had an opportunity to see them, and that he sent Officer Kikes to stop them based on the fact that he suspected that it might lead to an arrest of illegal aliens. Stewart Dep. 163:1-15 [Hickey Opp'n Dec. Ex. 233].</p> <p>Furthermore, whether or not Deputy Kikes had "reasonable suspicion" to stop Plaintiffs is a matter of law for the Court's determination, not that of a party or its witness. <i>See, e.g., Weitzenhoff</i>, 35 F.3d at 1287.</p> <p>Plaintiffs have presented evidence that Deputy Kikes did not have reasonable suspicion to stop Plaintiffs. A recording of the radio traffic for the incident reveals that Deputy Armendariz said</p>

		<p>nothing further about Plaintiffs' vehicle after he made the simple request for backup, and that his voice was not "excited" or "agitated." ORT 370.⁸</p> <p>In any event, both Deputy Beeks and Deputy Kikes could have observed that Plaintiffs had left the gas station by the time they arrived, and that Deputy Armendariz was unharmed. Pls.' SOF 204-05. There was no reason to pursue them at that point.</p>
120.	<p>To the extent the Plaintiffs claim that Deputy Kikes' treatment of Mr. Nieto during the traffic stop violated his rights, such claim lacks merit. Even Plaintiffs' liability expert Mr. Stewart opines that Deputy Kikes acted reasonably in his post-stop conduct and treatment of Mr. Nieto. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 105, lns. 3-6 ("Q. Do you have any opinion whether Deputy Kikes acted reasonable or unreasonable? A. I think for the circumstances that he had, he acted reasonable.").</p>	<p>Disputed. Defendants mischaracterize Mr. Stewart's testimony pertaining to the moment before Plaintiffs were stopped to apply to their post-stop treatment. Mr. Stewart specifically testified that there was no reason for officers to draw their weapons and he did not agree with the handcuffing of Mr. Nieto. Stewart Dep. 90:22-91:5 [Hickey Opp'n Dec. Ex. 233].</p> <p>Furthermore, whether or not Plaintiffs' claim has merit is for the Court's determination, not that of a party or its witness. <i>See, e.g., Weitzenhoff</i>, 35 F.3d at 1287.</p>
121.	<p>The essence of Plaintiffs' Fourteenth Amendment and Title VI racial discrimination claims is summarized in their First Amended Complaint:</p> <p>Caucasian drivers and passengers involved in the same or similar acts or alleged violations are treated differently and their vehicles stopped at much lower rates than similarly situated Latino drivers and passengers pursuant to MCSO policy and practice. Further Caucasian drivers and passengers are treated differently and less intrusively and detained for shorter periods of time after their vehicles are stopped by MCSO personnel than Latino drivers and passengers after being stopped. Latino</p>	<p>Disputed that this quote Plaintiffs' First Amended Complaint is the "essence" of Plaintiffs' discrimination claims. The First Amended Complaint contains many claims and allegations of discrimination and speaks for itself. This statement, at most, provides "background about the action" and therefore does not properly belong in Defendants' separate statement of fact. L.R. Civ. P. 56.1(a).</p>

⁸ ORT 370 is an audio recording. Plaintiffs intend to file this multimedia record with the Clerk should the Court grant Plaintiffs' Motion for Leave to File Audio Recording in Non-Electronic Form.

	<p>occupants are also treated differently and more intrusively by MCSO than Caucasian occupants of the same vehicle.</p> <p><i>See</i> Dkt. #26 at p. 11, lns. 3-10, ¶ 32.</p>	
122.	<p>Plaintiffs' own statistical expert, Ralph Taylor, Ph.D., conducted a statistical analysis of all the MCSO traffic stops conducted from January 1, 2007 to October 31, 2009 and concluded that Latinos in Maricopa County are stopped by MCSO personnel in roughly the same proportion to their share of Maricopa County's population. <i>See</i> March 21, 2010 Deposition of Ralph Taylor, Ph.D. at 129, ln. 19 to p. 130, ln. 14 ("Q. What about for non-saturation patrol days? Would it be fair to categorize the percentage of traffic stops as what you would expect given the population of Hispanics in Maricopa County? A. I am looking at names checked, not traffic stops per se. And I—and you've asked ---there's something incomplete in your question. Q. [Question re-read to the witness].... A. Oh. <i>If you're asking does the percentage of—for names checked on nonsaturation patrol days, does the percentage of names checked Hispanic appear to align with generally the Hispanic proportion of Maricopa County, my answer to that would be generally yes, but that is non-informative.</i>") (emphasis added); <i>see also</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 154, lns. 20-24 ("Q. Did Mr. Taylor's overall traffic stop analysis show that Hispanics in Maricopa County are stopped in rough proportion to their share of Maricopa County's population? A. Yes, sir.").</p>	<p>Disputed. Dr. Taylor's study explicitly focused on a comparing MCSO activity on saturation patrols days and by officers involved in saturation patrol operations. He did not set out to make a comparison between Hispanics' share of the general population to MCSO's agency-wide stop rate and made no "conclusions" about the same. Dr. Taylor explicitly stated that such an "unqualified comparison" was "non-informative" and not generally accepted in the field. <i>See</i> Taylor Rebuttal Report, Ex. C to Dec. of Dr. Ralph Taylor in Support of Pls.' Motion for Partial Summ. J., Dkt. No. 424, at 38-40 (hereinafter "Taylor Rebuttal Report"); Taylor Dep. 130:9-14 (comparison with Census population data is "non-informative") [Defs.' SOF Ex. 21]. Dr. Taylor's study makes the more meaningful comparison between MCSO activity on saturation patrol and non-saturation patrol days to find that saturation patrols have the effect of increasing the rate of stops of Hispanic individuals. <i>See</i> Taylor Rebuttal Report at 29-35; 38-40 (Dkt. No. 424).</p>
123.	<p>Defense expert statistician Steve Camarota, Ph.D, wrote a written report containing his opinions and the "Summary of Findings" in his report provided the following:</p> <p>[My] findings show that the Hispanic</p>	<p>Undisputed that the quoted passage appears in Dr. Camarota's report.</p> <p>Disputed to the extent that Defendants' attempt to rely on Dr. Camarota's finding as evidence tending to show the MCSO is or is not engaging in racial</p>

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

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

profiling. Dr. Camarota made no conclusion as to whether the MCSO was not was targeting Hispanics or not; his only conclusion was that, on an agency-wide basis, Hispanic are stopped by the MCSO roughly in proportion to their share of the population. *See* Camarota Dep. 105:2-113:11 [Hickey Opp'n Dec. Ex. 217]. This fact is not informative as to the ultimate issue of whether profiling is in fact occurring. *See* Resp. to Defs.' SOF 122, *supra*.

Moreover, Plaintiffs object to Dr. Camarota's expert report in its entirety as deficient under the Federal Rules of Evidence 702 and Federal Rule of Civil Procedure 26. Dr. Camarota's analysis relies on methodology not generally accepted in the field and uses data "processed" by MCSO employee Mr. Scott Jefferys without any independent verification of the same by Dr. Camarota. Plaintiffs also intend to object to Scott Jefferys' testimony and opinions, to the extent Defendants attempt to rely on the same, as themselves deficient under the Federal Rules of Evidence 702 and improperly disclosed under Federal Rule of Civil Procedure 26. For these and other reasons, Plaintiffs expressly reserve the right to seek to strike Dr. Camarota's (and Mr. Jefferys') opinions at a later stage.

	<i>Surname Analysis of Maricopa County Sheriff's Office Patrol Activity 2005 to 2009</i> " at p. 1.	
124.	<p>Dr. Taylor's saturation patrol opinions are based on a study that he characterized as "quasi-experimental" in nature. <i>See</i> March 21, 2010 Deposition of Ralph Taylor, Ph.D. at 46, lns. 6-10 ("Because that was not required by the quasi experimental design used in my analysis."); p. 46, lns. 11-18 ("The quasi- experimental design that I used had two types, of, if you will, non-treatment days."); p. 48, ln. 12-17 (discussion of what is a quasi-experimental study). Dr. Taylor's "quasi-experimental" study does not result in definitive findings or conclusion, only "inferences." <i>See</i> March 21, 2010 Deposition of Ralph Taylor, Ph.D. at 47, ln. 13 to p. 48, ln. 11. Dr. Taylor's alternative opinions that there are disproportionate percentages of Latino's stopped during MCSO saturation patrols and that their traffic stop detentions are supposedly longer than non-Latinos is factually suspect. Dr. Taylor's saturation patrol analysis mistaken fails: (1) to exclude those patrols that included a human smuggling interdiction component or exclude load vehicles found with illegal immigrant; (2) to exclude duplicate records in the Computer Aided Dispatch ("CAD") database; (3) improperly excluded thousands of other cases that should have been included in the analysis; and (4) failed to account for any socioeconomic variables in his statistical model. <i>See</i> January 20, 2011 Report of Steven Camarota, Ph.D., entitled "<i>Report 1 Hispanic Surname Analysis of Maricopa County Sheriff's Office Patrol Activity 2005 to 2009</i>" at p. 1, 3-4. 20-33 (underlining added for key sections of the report for the convenience of the Court); <i>see also</i> March 22, 2011 Deposition of Defense Expert Steve Camarota, Ph.D. at p. 122, lns. 13-16 (foundation for his report; <i>See</i> March 21, 2010 Deposition of Ralph Taylor, Ph.D. at 47, ln. 13 to</p>	<p>Disputed. Dr. Taylor's study reaches definitive findings and conclusions by relying on the widely-accepted method of <i>statistical inference</i> based on analysis of data patterns (such as significance testing). <i>See</i> Taylor Dep. Tr. at 48:2-21 [Hickey Opp'n Dec. Ex. 234] ("I'd like to distinguish between the use of statistical inference and conclusions. The conclusions are about the data patterns, and those rely on a set of mediating statistical inferences. . . . The data patterns are subjected to statistical inference testing. The results of the statistical inference testing support a conclusion about the data pattern."); Taylor Initial Report, Ex. B to Dec. of Dr. Ralph Taylor in Support of Pls.' Motion for Partial Summ. J., Dkt. No. 424, at 7-11 (hereinafter "Taylor Rebuttal Report") ("My major <i>conclusions</i> with regard to MCSO's traffic stops of Hispanic persons in Maricopa County from January 1, 2007 through October 31, 2009 are) (emphasis added).</p> <p>Undisputed that Dr. Taylor's study is "quasi-experimental" in design. This 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 of officers to saturation patrols by the researcher. <i>See</i> Taylor Dep. 48:12-21 [Hickey Opp'n Dec. Ex. 234]. 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. <i>See</i> Taylor Dep. 49:24-50:24 ("Unless those conditions [such a cooperative agency] are satisfied, it's quite possible that the costs in the adverse consequences of random assignment might outweigh the benefits and, thereby, produce a study of inferior quality to the study produced here. . . . My testimony today is that a randomized</p>

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	<p>p. 48, ln. 11 (wherein Dr. Taylor testified that his study leads only to “inferences” that might be drawn from the data); p. 56, lns. 5-7 (wherein Dr. Taylor testified that he excluded 18% of all MCSO traffic stops); p. 52, lns. 8-19 (wherein Dr. Taylor testified that he excluded 18% of all MCSO traffic stops because they did not “align” well with the Plaintiffs’ case theory or the Plaintiffs’ “concerns” about MCSO operations).</p>	<p>control trial in this context would have produced a superior study only if it was the case that several conditions were true, and those conditions are not true in this case. Therefore, my current study is of the best scientific quality in the available -- given the available circumstances.”) [Hickey Opp’n Dec. Ex 234].</p> <p>Disputed that the issues listed as (1)-(4) are “failures” or in any way affect the validity of Dr. Taylor’s conclusions. These issues were specifically addressed in great detail in Dr. Taylor’s rebuttal report and were found to have no impact on his results and conclusions. <i>See</i> Taylor Rebuttal Report at 4-15, 36-37 [Dkt. No. 424]. More specifically: Regarding (1), Defendants cite no reason why immigration or human smuggling stops should be excluded from the analysis, nor do Defendants’ establish that human smuggling stops were a significant component of large-scale saturation patrols (<i>see</i> Pls.’ SOF 61-73 (most saturation patrols had no human smuggling arrests). Regarding (2), Dr. Taylor re-ran his analysis excluding additional duplicate records and confirmed all of his findings using this re-processed data. <i>See</i> Taylor Rebuttal Report at 4-5. Regarding (3), the exclusion of these other cases was not “improper” but based on sound methodology that excluded incidents described as non-discretionary police action (e.g., “vehicle accident w/ injuries” “patrol/vacation watch”) rather than as “traffic stops” or “traffic violations.” <i>See</i> Taylor Rebuttal Report at 10-11 [Dkt. No. 424]. Regarding (4), the CAD database does not include socioeconomic data and Dr. Camarota’s argument for why socioeconomics <i>might</i> affect Dr. Taylor’s findings is not borne out by the data. <i>See</i> Taylor Rebuttal Report at 36-37 [Dkt. No. 424].</p>
<p>125.</p>	<p>Before MCSO Deputy Louis DiPietro had ever found probable cause to stop the truck in which Mr. Melendres was a passenger, Deputy DiPietro did not know or see the race of the truck’s</p>	<p>Disputed. Deputy DiPietro suspected that the vehicle contained day laborers and that the occupants were thus Hispanic. <i>See</i> Pls.’ SOF at 112-118,</p>

<p>1 2 3 4 5 6 7 8 9</p>	<p>driver or the passengers in the truck. See Deposition of MCSO Deputy Louis DiPietro at p. 115, ln. 18 to p. 116, ln. 5.</p>	<p>171-180. Further, this statement is immaterial to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248. The undercover unit that called out the description of the truck so that Deputy DiPietro could follow it clearly observed the appearance of the passengers who got in the truck, DiPietro Dep. 51:9-52:16 [Hickey Dec Ex. 44], and Deputy DiPietro had observed their race by the time he called for others to come investigate their immigration status. <i>Id.</i> at 54:24-55:11 [Hickey Dec Ex. 44]. Thus, the traffic stop was still a result of unlawful racial profiling.</p>
<p>10 11 12 13 14 15 16 17 18 19 20 21</p>	<p>126. Race was not a factor in Deputy Louis DiPietro's finding that he had probable cause to stop the truck: Q. Did race of either the driver or the passengers of the truck play any role in your decision to find probable cause to stop this truck? A. No. Q. Do you ever use race to stop vehicles? A. No, I don't. Q. Do you ever use race to find probable cause for traffic stops? A. No. See Deposition of MCSO Deputy Louis DiPietro at p. 116, lns. 7-16.</p>	<p>Disputed. Deputy DiPietro suspected that the vehicle contained day laborers and that the occupants were thus Hispanic. See DiPietro Dep. 51:9-52:16 [Hickey Dec Ex. 44], Pls.' SOF at 112-118, 171-180.</p>
<p>22 23 24 25 26</p>	<p>127. Deputy Carlos Rangel does not racially profile because it is morally wrong and illegal. See Deposition of MCSO Deputy Carlos Rangel at p. 128, lns. 11-18.</p>	<p>Disputed. Deputy Rangel participated in immigration enforcement operations that were planned with racially discriminatory intent and adopted racial profiling as a primary tactic. See Pls.' SOF at 25-56, 74-104, 110-122, 145-154, 171-184.</p>
<p>27 28</p>	<p>128. Plaintiff Manuel Melendres does not have an opinion or position on whether he was racially profiled by any MCSO</p>	<p>Disputed. The question asked of Mr. Ortega Melendres was about the "intentional" deprivation of</p>

1 2 3 4 5 6 7 8 9 10	<p>deputy:</p> <p>Q. You also claim in your lawsuit that you have suffered unlawful discrimination. Do you believe that the deputies that you encountered on September 26, 2007, were intentionally trying to deprive you of your constitutional rights?</p> <p>A. I cannot say that. I can't be -- tell you for sure.</p> <p>See Deposition of Plaintiff Manuel Melendres at p, 38. Ins. 18-25.</p>	<p>“constitutional rights”, not “racial profiling.” The witness’ uncertainty says nothing about whether he was racially profiled. This testimony is thus immaterial to the resolution of Defendants’ motion and therefore should be disregarded. <i>Liberty Lobby</i>, 477 U.S. at 248.</p> <p>Plaintiffs have presented evidence that Mr. Ortega Melendres was discriminated against, including that there was no lawful reason for Deputy DiPietro to call other officers to the scene to investigate the Hispanic passengers’ immigration status, and the fact that the Caucasian driver was not cited or questioned. Pls.’ SOF 178, 181, 184..</p>
11 12 13 14 15 16 17 18 19 20 21 22	<p>129. Defense expert Bennie R. Click testified that “[t]here is no evidence that Deputy [DiPietro] knew the race or ethnicity of the vehicle’s occupants prior to the truck stopping or that race or ethnicity played any role in Deputy [DiPietro’s] actions. See Report of Ben Click dated January 21, 2011, at p. 14; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14 (wherein he testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>	<p>Disputed. Plaintiffs have presented evidence that the undercover unit that called out the description of the truck to Deputy DiPietro observed the passengers getting in the truck (and thus their appearance), DiPietro Dep. II 51:9-52:16 [Hickey Dec. Ex. 44], that Deputy DiPietro suspected that the vehicle contained day laborers and that the occupants were thus Hispanic, see Pls.’ SOF at 112-118, 171-180, and that Deputy DiPietro could observe their race by the time he called for others to come investigate their immigration status. DiPietro Dep. II 54:24-55:11 [Hickey Dec. Ex. 44]. Plaintiffs have also presented evidence that there was no lawful reason for Deputy DiPietro to call other officers to the scene to investigate the Hispanic passengers’ immigration status, Pls.’ SOF 181, 184, and the fact that the Caucasian driver was not cited or questioned. Pls.’ SOF 178.</p>
23 24 25 26 27 28	<p>130. Plaintiffs’ liability expert Robert L. Stewart testified that he believes Deputy DiPietro must have had discriminatory intent or motive in stopping the truck in which Mr. Melendres was a passenger. Mr. Stewart reaches this conclusion based on his “reasoning” that: (a) Deputy DiPietro testified that, in his law enforcement experience in Maricopa County, most day laborers were illegal</p>	<p>Disputed. Defendants’ characterization of Mr. Stewart’s testimony is not accurate. Mr. Stewart testified that Deputy DiPietro had discriminatory intent when he stopped the truck because he was working with undercover units to look for illegal immigrants, and that he had already drawn the conclusion that day laborers picked up from the church (whom Deputy DiPietro believes are usually Latino) were illegal immigrants.</p>

<p>1 2 3 4 5 6 7 8 9 10 11</p>	<p>aliens from Mexico; (b) the MCSO operation that date was targeting a church suspected of being a drop house for smuggled illegal aliens and a location for such persons to be picked-up for day laborer jobs; and (c) Deputy DiPietro was instructed to find probable cause for vehicles that picked-up passengers at the church and before finding such probable cause he already drawn the conclusion that anyone picked up at the church would be an illegal alien; and (d) because people from Mexico are Latinos by definition, Deputy DiPietro must have been intending to discriminate against Latinos. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 61, ln. 10 to p. 65, ln. 1.</p>	<p>Stewart Dep. 61:10-65:9. Mr. Stewart's testimony contains no discussion of the church being a drop house.</p> <p>Mr. Stewart also explained that the conduct directed toward Mr. Ortega Melendres seemed to be racially motivated because deputies believed that "if you are Mexican and you're a day laborer, then you must be here illegally," and the MCSO operates and designs activities and carries out functions on that basis. Stewart Dep. 61:14-17, 159:25-161:12 [Hickey Opp'n Dec. Ex. 233].</p> <p>Finally, Mr. Stewart compared the treatment of Mr. Melendres with that of the Caucasian driver, who was not cited or questioned. Stewart Dep. 110:24-112:10 [Hickey Opp'n Dec. Ex. 233].</p>
<p>12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>131. Plaintiffs' liability expert Robert L. Stewart testified at deposition to the following:</p> <p>Q. Do you believe that Louis DiPietro had discriminatory intent or motivation as to race in stopping the truck in which Mr. Melendres was a passenger?</p> <p>A. I don't know.</p> <p>Q. Is it your opinion that Deputy DiPietro had a racially discriminatory intent or motivation in stopping the truck in which Mr. Melendres was a passenger?</p> <p>A. I don't know.</p> <p>Q. Is there any evidence that Deputy DiPietro knew the race of the driver of the truck before stopping it?</p> <p>A. I don't know whether that information was given to him by the observer.</p> <p>Q. Is there any evidence that Deputy DiPietro knew the race of any occupants in the truck before stopping</p>	<p>Undisputed that Mr. Stewart so testified. However, this statement is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248. Determining what motivations were present in Deputy DiPietro's mind at the time of the stop is not a matter for expert opinion testimony. F.R.E. 702; <i>In re Rezulin Prods. Liab. Litig.</i>, 309 F. Supp. 2d 531, 545-47 (S.D.N.Y. 2004) (questions of knowledge, motive, intent, and state of mind describe matters which a jury is capable of understanding and deciding without the expert's help, and are inadmissible under Rule 702).</p> <p>Plaintiffs have offered evidence that Deputy DiPietro suspected the vehicle contained day laborers and that the occupants were thus Hispanic. <i>See</i> Pls.' SOF at 112-118, 171-180.</p> <p>Mr. Stewart also explained that the conduct directed toward Mr. Ortega Melendres seemed to be racially motivated because deputies believed that "if you are Mexican and you're a day laborer, then you must be here illegally," and the MCSO operates and designs activities and carries out functions on that basis. Stewart Dep. 159:25-161:12</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>16</p>	<p>it?</p> <p>A. I don't recall whether that information was given by the observer either.</p> <p>Q. Is there any evidence that Deputy DiPietro used race as a factor in any form to decide to stop the truck?</p> <p>A. No, sir.</p> <p>Q. Is there any evidence that Deputy DiPietro knowingly harbored explicit bias towards specific groups of people?</p> <p>A. Not that I know of.</p> <p>Q. Is there any evidence that Deputy DiPietro had unconscious bias toward certain group of people?</p> <p>A. We don't know.</p> <p>See February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 66, ln. 1 to p. 67, ln. 6; see also Defendants' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>	<p>[Hickey Opp'n Dec. Ex. 233].</p> <p>Mr. Stewart also compared the treatment of Mr. Melendres with that of the Caucasian driver, who was not cited or questioned. Stewart Dep. 110:24-112:10 [Hickey Opp'n Dec. Ex. 233].</p>
<p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>132. Before deciding to conduct the traffic stop of the Rodriguez truck, and to issue a citation to the truck's driver, Deputy Ratcliffe did not see the race of the truck's driver or of any occupants of the truck. See Deposition of MCSO Deputy Matthew Ratcliffe at p. 93, ln. 11 to p. 94, ln. 9.</p>	<p>Undisputed, but immaterial to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248. Plaintiffs' Fourteenth Amendment claim does not depend on Deputy Ratcliffe having observed the race of the driver or occupants before he stopped them. Deputy Ratcliffe did see the race of the Rodriguezes before he made the decision to treat them differently from the other non-Hispanic motorists and prolong the stop to obtain Mr. Rodriguez's Security number. See Pls.' SOF 186-198.</p>
<p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>133. Mrs. Rodriguez testified that Deputy Ratcliffe was not acting with racially discriminatory intent or motive.</p> <p>Q. Do you believe that Deputy Ratcliffe was intentionally trying to deprive you of your constitutional</p>	<p>Disputed. The question asked of Mrs. Rodriguez was about the "intentional" deprivation of constitutional rights, not "racial profiling." Her answer says nothing about whether the Rodriguezes were racially profiled. It is therefore immaterial to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477</p>

<p>1 2 3 4</p>	<p>rights? A. No. See Deposition of Jessika Rodriguez at p. 55, ln. 25 to p. 56, ln. 4.</p>	<p>U.S. at 248. Mrs. Rodriguez does believe that she and Mr. Rodriguez were treated differently based on their race. J. Rodriguez Dep. 63:11-16, 66:4-16 [Hickey Opp'n Dec. Ex.230].</p>
<p>5 6 7 8 9 10 11 12 13 14 15 16 17 18</p>	<p>134. Defense expert Mr. Bennie R. Click opines that there is no direct or circumstantial evidence that Deputy Ratcliffe racially profiled or otherwise acted toward Mr. and Mrs. Rodriguez with racially discriminatory intent or motive. See Report of Ben Click dated January 21, 2011, at pgs. 23-24; see also March 18, 2011 Deposition of Defense Expert Ben Click at p. 341, ln. 24 to p. 342, ln. 14 (wherein he testified to the foundation for his opinions and that his opinions in the report were the same he would provide at trial to a reasonable degree of probability in his field of expertise).</p>	<p>Disputed. Plaintiffs have presented evidence that other non-Hispanic motorists on the same stretch of road did not get cited or asked for their Social Security Numbers. See Pls.' SOF 190-198; J. Rodriguez Dep. 15:23-16:3 [Hickey Opp'n Dec. Ex. 230].</p> <p>Further, Deputy Ratcliffe is a 287(g) deputy and has participated on at least four saturation patrols. Ratcliffe Dep. 12:18-25, 60:20-62:23 [Hickey Opp'n Dec. Ex. 228]. According to Plaintiffs' expert Dr. Taylor, MCSO officers such as Deputy Ratcliffe were more likely to check Hispanic surnames (or to pull over and question Hispanic individuals) on saturation patrol days than non-saturation patrol days. Pls.' SOF 239-41.</p> <p>Finally, Plaintiffs have presented evidence that the MCSO, of which Deputy Ratcliffe is a part, had a policy or practice of targeting Hispanic individuals. See Pls.' SOF 25-51, 74-104, 110-122, and 145-154.</p>
<p>19 20 21 22 23 24 25 26 27 28</p>	<p>135. Plaintiffs' liability expert Mr. Robert L. Stewart testified: Q. Is it your opinion that Deputy Ratcliffe had discriminatory intent or motive in stopping the Rodriguez vehicle? A. Don't know. See February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 84, lns. 16-19; see also Defendants' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>	<p>Undisputed that Mr. Stewart so testified. However, this statement is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248. Determining what motivations were present in Deputy Ratcliffe's mind at the time of the stop is not a matter for expert opinion testimony. F.R.E. 702; <i>In re Rezulin Prods. Liab. Litig.</i>, 309 F. Supp. 2d at 545-47 (questions of knowledge, motive, intent, and state of mind describe matters which a jury is capable of understanding and deciding without the expert's help, and are inadmissible under Rule 702).</p> <p>Mr. Stewart did testify that the events that transpired after the stop appeared to be racially motivated because the</p>

		<p>Rodriguezes were treated differently than other non-Hispanic motorists that he and the other MCSO officer dealt with and because it was not reasonable for Deputy Ratcliffe to have demanded Mr. Rodriguez's Social Security number. <i>See</i> Stewart Dep. 85:4-86:21, 163:22-165:19 [Hickey Opp'n Dec. Ex. 233].</p>
<p>136.</p>	<p>Plaintiffs' liability expert Mr. Robert L. Stewart testified that that MCSO Deputy Matthew Ratcliffe "maybe" had racially discriminatory intent or motive in issuing a citation to Mr. Rodriguez. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 84, Ins. 20-23. Mr. Stewart, however, testified that he had no direct or circumstantial evidence that Deputy Ratcliffe used race as a factor in any form to decide to give a citation to Mr. Rodriguez. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 87, Ins. 19-22; <i>see also</i> Defendants' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>	<p>Undisputed that Mr. Stewart so testified. However, this statement is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248. Determining what motivations were present in Deputy Ratcliffe's mind at the time of the stop is not a matter for expert opinion testimony. F.R.E. 702; <i>In re Rezulin Prods. Liab. Litig.</i>, 309 F. Supp. 2d at 545-47 (questions of knowledge, motive, intent, and state of mind describe matters which a jury is capable of understanding and deciding without the expert's help, and are inadmissible under Rule 702).</p> <p>Mr. Stewart did testify that the events that transpired after the stop appeared to be racially motivated because the Rodriguezes were treated differently than other non-Hispanic motorists that he and the other MCSO officer dealt with (who were not issued citations by MCSO) and because it was not reasonable for Deputy Ratcliffe to have demanded Mr. Rodriguez's Social Security number. <i>See</i> Stewart Dep. 82:23-84:11, 85:4-86:21, 163:22-165:19 [Hickey Opp'n Dec. Ex. 233].</p> <p><i>See also</i> Pls.' Resp. to Defs.' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>
<p>137.</p>	<p>Mr. Stewart basis his "maybe" opinion on the reasoning that Deputy Ratcliffe stopped several non-Latino motorists on Bartlett Dam Road the same day he stopped Mr. and Mrs. Rodriguez, did not give them citations, referred the non-Latino drivers to the Tonto National Forest Ranger (who issued citations to the non-Latino drivers), and the only citation Deputy Ratcliffe</p>	<p>Undisputed.</p> <p>Mr. Stewart also testified that the events that transpired after the stop appeared to be racially motivated because the Rodriguezes were treated differently than other non-Hispanic motorists who were on the road at the same time and not cited <i>at all</i>, and because it was not reasonable for Deputy Ratcliffe to have</p>

	<p>actually issued was to Mr. Rodriguez, who is Latino. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 85, ln. 4 to p. 87, ln. 18. As such, Mr. Stewart concludes that Deputy Ratcliffe intentionally treated the Rodriguez differently than the non-Latinos drivers he pulled over by issuing a citation to the Rodriguez but referring the non-Latinos to the Tonto National Forest Ranger. <i>Id.</i></p>	<p>demanded Mr. Rodriguez's Social Security number. <i>See</i> Stewart Dep. 85:4-86:21, 163:22-165:19 [Hickey Opp'n Dec. Ex. 233].</p>
138.	<p>Deputy Ratcliffe did not recall the race of the other drivers he referred to the Tonto National Forest Ranger, and he observed the ranger issue citations to those other drivers. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 39, ln. 4 to p. 40, ln. 11.</p>	<p>Undisputed, but immaterial to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248. Plaintiffs have also presented evidence that other non-Hispanic motorists who were on the road at the same time were not cited <i>at all</i> and that others were not asked for their Social Security numbers. Pls.' SOF 189, 192, 198; J. Rodriguez Dep. 15:23-16:3 [Hickey Opp'n Dec. Ex. 230].</p>
139.	<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>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 28, ln. 21 to p. 31, ln. 4 (p. 31, lns. 1-4; Deputy Maltz has stopped all the other vehicles); <i>see also</i> p. 32, ln. 22 to p. 33, ln. 9 ("Q. What else did you say to the Rodriguez' at that time? A. As far as what, sir? Q. As far as the discussion that you were having with them about selective enforcement. A. Just advising them that basically some people were allowed to try to make repairs to their boats or RVs at that time. Q. Do you recall the race or ethnicity of those other people? A. No, sir. Q. Were any of them Hispanic? A. I don't recall, sir."); <i>see also</i> p. 113, ln. 9 to p. 114, ln. 13 (other drivers allowed to use road to repair property</p>	<p>Undisputed that at least one other motorist was allowed to drive on the closed road in order to go to the lake. Deputy Maltz stopped the other motorists, but did not issue them citations. Ratcliffe Dep. 113:9-13 [Defs.' SOF Ex. 6].</p> <p>Disputed that the other motorists were of "unknown race." Both of the Rodriguezes observed the race of most of the motorists (during the stop and after they returned to the main road) and testified that they were not Hispanic. Pls.' SOF 192, 198; David Rodriguez Dep. 41:1-8 [Hickey Opp'n Dec. Ex. 229].</p>

1		at the lake).	
2	140.	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 was based in any way on racial considerations. <i>See</i> Deposition of MCSO Deputy Matthew Ratcliffe at p. 114, lns. 17-24.	Disputed. Plaintiffs have also presented evidence that other non-Hispanic motorists who were on the road at the same time were not cited and that others were not asked for their Social Security numbers. Pls.' SOF 189, 192, 198; David Rodriguez Dep. 41:1-8 [Hickey Opp'n Dec. Ex. 229]; J. Rodriguez Dep. 15:23-16:3 [Hickey Opp'n Dec. Ex. 230]. Furthermore, this statement (which is inadmissible hearsay) is not material to the resolution of Defendants' motion and therefore be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248. Whether or not Deputy Ratcliffe's decision to issue a citation to the Rodriguezes was racially motivated does not depend on Deputy Maltz's state of mind.
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13	141.	Plaintiffs' liability expert, Mr. Robert L. Stewart, has no evidence of racially discriminatory intent or motive by Deputy Armendariz. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 99, ln. 3-6; <i>see also</i> p. 97, ln. 18 to p. 98, ln. 5; <i>see also</i> Defendants' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.	Disputed. Defendants mischaracterize Mr. Stewart's testimony. Mr. Stewart testified that one indication that Deputy Armendariz had discriminatory intent was that he did not have a lawful basis to send the backup officers to stop Meraz and Nieto. Stewart Dep. 98:15-99:15 [Hickey Opp'n Dec. Ex. 233]. Mr. Stewart also noted that Deputy Armendariz could hear that Meraz and Nieto were playing Spanish music, that he had an opportunity to observe their race, that the officers were on a saturation patrol, and that it appeared that Deputy Armendariz sent Deputy Kikes to stop Plaintiffs because he wanted them to be investigated as possible illegal immigrants. <i>See</i> Stewart Dep. 162:17-163:15 [Hickey Opp'n Dec. Ex. 233]. <i>See also</i> Pls.' Resp. to Defs.' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.
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26	142.	Plaintiffs' liability expert, Mr. Robert L. Stewart, testified that there is no evidence of racially discriminatory intent or motive by MCSO Deputy Douglas Beeks in withdrawing his	Disputed. Mr. Stewart's statement about what motivations were present in Deputy Beeks' mind at the time of the stop is not a matter for expert opinion testimony, F.R.E. 702; <i>In re Rezulin</i>
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	<p>1 weapon. <i>See</i> February 28, 2011 2 Deposition of Plaintiffs' Expert Robert 3 L. Stewart at p. 101, Ins. 5-6, Ins. 17- 4 19; <i>see also</i> Defendants' Supplemental 5 ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>	<p><i>Prods. Liab. Litig.</i>, 309 F. Supp. 2d at 6 545-47 (questions of knowledge, motive, 7 intent, and state of mind describe 8 matters which a jury is capable of 9 understanding and deciding without the 10 expert's help, and are inadmissible under 11 Rule 702), and is not material to the 12 resolution of Defendants' motion. 13 <i>Liberty Lobby</i>, 477 U.S. at 248.</p> <p>14 Furthermore, Mr. Stewart testified that 15 Deputy Beeks did not have a lawful 16 reason to draw his firearm. <i>See</i> Stewart 17 Dep. 90:22-25, 100:15-23 [Hickey 18 Opp'n Dec. Ex. 233].</p> <p>19 <i>See also</i> Pls.' Resp. to Defs.' 20 Supplemental ICE SOF at ¶¶ 6-13, 20- 21 21, and 23-24.</p>
143.	<p>22 Plaintiffs' liability expert, Mr. Robert 23 L. Stewart, testified that there is no 24 evidence that MCSO Deputy Michael 25 Kikes had racially discriminatory 26 intent or motive in making the traffic 27 stop of the Meraz-Nieto vehicle. <i>See</i> 28 February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 103, ln. 18 to p. 104, ln. 1; p. 104, lns. 12-4; lns. 19-21; <i>see also</i> Defendants' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>	<p>Disputed. Mr. Stewart's statement about what motivations were present in Deputy Kikes' mind at the time of the stop is not a matter for expert opinion testimony, F.R.E. 702; <i>In re Rezulin</i> <i>Prods. Liab. Litig.</i>, 309 F. Supp. 2d at 545-47 (questions of knowledge, motive, intent, and state of mind describe matters which a jury is capable of understanding and deciding without the expert's help, and are inadmissible under Rule 702), and is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248.</p> <p>Furthermore, Mr. Stewart testified that there was no lawful basis to stop Meraz and Nieto. Stewart Dep. 98:15-99:15. Mr. Stewart also noted that it appeared that Deputy Armendariz sent Deputy Kikes to stop Plaintiffs because he wanted them to be investigated as possible illegal immigrants. <i>See</i> Stewart Dep. 162:17-163:15 [Hickey Opp'n Dec. Ex. 233].</p> <p><i>See also</i> Pls.' Resp. to Defs.' Supplemental ICE SOF at ¶¶ 6-13, 20- 21, and 23-24.</p>
144.	<p>Plaintiffs' liability expert, Mr. Robert L. Stewart, testified that there is no evidence that Ms. Meraz and Mr. Nieto were racially profiled in either</p>	<p>Disputed. Plaintiffs have presented evidence (and Mr. Stewart testified that) there was no lawful basis to stop Meraz and Nieto. <i>See supra</i> Plaintiffs' Resp. to</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13</p>	<p>the traffic stop or during their treatment by the MCSO deputies. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 108, lns. 10-13; <i>see also</i> Defendants' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>	<p>Defendants' SOF 68-77; Stewart Dep. 98:15-99:15 [Hickey Opp'n Dec. Ex. 233].</p> <p>Mr. Stewart also noted that Deputy Armendariz could hear that Meraz and Nieto were playing Spanish music, that he had an opportunity to observe their race, that the officers were on a saturation patrol, and that it appeared that Deputy Armendariz sent Deputy Kikes to stop Plaintiffs because he wanted them to be investigated as possible illegal immigrants. <i>See</i> Stewart Dep. 162:17-163:15 [Hickey Opp'n Dec. Ex. 233]. Finally, Mr. Stewart testified that Deputy Beeks did not have a lawful reason to draw his firearm. <i>See</i> Stewart Dep. 90:22-25, 100:15-23 [Hickey Opp'n Dec. Ex. 233]</p> <p><i>See also</i> Pls.' Resp. to Defs.' Supplemental ICE SOF at ¶¶ 6-13, 20-21, and 23-24.</p>
<p>14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>145. Plaintiffs' liability expert, Mr. Robert L. Stewart, testified that he only has his "suspicions" that MCSO Deputy Michael Kikes may have been racially motivated to stop Meraz and Nieto. <i>See</i> February 28, 2011 Deposition of Plaintiffs' Expert Robert L. Stewart at p. 107, ln. 25 to p. 108, ln. 2 (Q. What evidence do you have that anyone was racially motivated to stop these people [Meraz and Nieto]? A. <i>Only my suspicions.</i>") (emphasis added); <i>see also</i> p. 106, lns. 8-11 (Q: My question to you is, is it Robert Stewart's opinion that Meraz and Nieto were racially profiled during the traffic stop? A. There is a <i>strong hint</i> that they <i>may</i> have been.") (emphasis added).</p>	<p>Disputed. Mr. Stewart's statement about what motivations were present in Deputy Kikes' mind at the time of the stop is not a matter for expert opinion testimony, F.R.E. 702; <i>In re Rezulin Prods. Liab. Litig.</i>, 309 F. Supp. 2d at 545-47 (questions of knowledge, motive, intent, and state of mind describe matters which a jury is capable of understanding and deciding without the expert's help, and are inadmissible under Rule 702), and is not material to the resolution of Defendants' motion. <i>Liberty Lobby</i>, 477 U.S. at 248..</p> <p>Plaintiffs have presented evidence (and Mr. Stewart testified that) there was no lawful basis to stop Meraz and Nieto. <i>See supra</i> Plaintiffs' Resp. to Defendants' SOF 68-77; Stewart Dep. 98:15-99:15 [Hickey Opp'n Dec. Ex. 233]. Mr. Stewart also noted that Deputy Armendariz could hear that Meraz and Nieto were playing Spanish music, that he had an opportunity to observe their race, that the officers were on a saturation patrol, and that it appeared that Deputy Armendariz sent Deputy Kikes to stop Plaintiffs because</p>

		he wanted them to be investigated as possible illegal immigrants. <i>See</i> Stewart Dep. 162:17-163:15 [Hickey Opp'n Dec. Ex. 233].
146.	The Plaintiffs' own statistics expert, Ralph Taylor, Ph.D., has no opinion as to whether Plaintiff Mr. Melendres is likely to again face a future traffic stop by the MCSO. <i>See</i> March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 163, ln. 20 to p. 164, ln. 13 (As to Mr. Melendres, Dr. Taylor opines that he estimates that Mr. Melendres would have "a higher chances of being stopped all else equal compared to that other hypothetical non-Hispanic driver"); p. 164, lns. 14-20 (As to the probability that Mr. Melendres will be stopped in a future saturation patrol, "I am not sure, because I – I don't know his driving patterns or what the future pattern of saturation patrol activities will be; its frequency, its location and how that would link to where and how he drives."); p. 165, lns. 1 to p. 166, ln. 24 (Dr. Taylor cannot opine on the probability that Mr. Melendres will be pulled over because his data deals with a group and not individuals.).	Disputed. Dr. Taylor specifically opined that Mr. Ortega Melendres would have "a higher chances of being stopped all else equal compared to that other hypothetical non-Hispanic driver" with the same characteristics. Taylor Dep. 163:20-164:13 [Defs.' SOF Ex. 21]. Further, Mr. Ortega Melendres is Hispanic, and Dr. Taylor's study found that Hispanics were significantly more likely to be stopped than non-Hispanics during saturation patrols and by saturation patrol-involved officers, and that stops involving Hispanics lasted longer on average than stops of non-Hispanics. Pls.' SOF 236-49.
147.	The Plaintiffs' own statistics expert, Ralph Taylor, Ph.D., has no opinion as to whether Plaintiffs Mr. and Mrs. Rodriguez are likely to again face a future traffic stop by the MCSO. <i>See</i> March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 166, ln. 25 to p. 167, ln. 7 ("Q. Do you know the probability of Rodriguez getting pulled over again by Maricopa County sheriff's deputies in a saturation patrol? A. No, I don't. But what I do estimate, and 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."); <i>see also</i> p. 170, lns. 11-19 (discussing chances of the Rodriguez having an MCSO conducted traffic during a non-saturation patrol: "no, I cannot give	Disputed. Dr. Taylor testified that "it's my opinion, that [Mr. Rodriguez's] 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." Taylor Dep. 166:25-167:7 [Defs.' SOF Ex. 21]. Further, Mr. and Mrs. Rodriguez are Hispanic, and Dr. Taylor's study found that Hispanics were significantly more likely to be stopped than non-Hispanics during saturation patrols and by saturation patrol-involved officers, and that stops involving Hispanics lasted longer on average than stops of non-Hispanics. Pls.' SOF 236-49.

1	you those specific probabilities.”).	
2 3 4 5 6 7 8 9 10 11 12 13 14	148. The Plaintiffs’ own statistics expert, Ralph Taylor, Ph.D., has no opinion as to whether Plaintiffs Velia Meraz and Manuel Nieto, Jr., are likely to again face a future traffic stop by the MCSO. See March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 170, ln. 22 to p. 171, ln. 5.	Disputed. Dr. Taylor stated that “[Ms. Meraz’s] chances of being pulled over relative to the chances of a person also being pulled over who has a non-Hispanic name, is driving the same way, in the same location . . . <i>chances are going to be higher.</i> ” Taylor Dep. 170:22-171:5 (emphasis added) [Defs.’ SOF Ex. 21]. Regarding Mr. Nieto, Dr. Taylor testified “I do not know the specific probability, but . . . his or his probability [of being pulled over] is going to be higher compared to a hypothetical completely equivalent person with a non-Hispanic name.” Taylor Dep. 172:4-12 [Defs.’ SOF Ex. 21]. Further, Ms. Meraz and Mr. Nieto are Hispanic, and Dr. Taylor’s study found that Hispanics were significantly more likely to be stopped than non-Hispanics during saturation patrols and by saturation patrol-involved officers, and that stops involving Hispanics lasted longer on average than stops of non-Hispanics. Pls.’ SOF 236-49.
15 16 17 18 19 20 21 22 23 24	149. The Plaintiffs’ own statistics expert, Ralph Taylor, Ph.D., testified that if the Plaintiffs in this case have not again been subject to MCSO initiated traffic stops during “major saturation patrols” over a time span over several years – which are the undisputed facts -- he would want to learn more information about the Plaintiffs’ driving, if the Plaintiffs were exposed to law enforcement, where the Plaintiffs were driving on those saturation patrol days, and where the Plaintiffs were not driving on those saturation patrol days. See March 21, 2010 Deposition of Ralph Taylor, Ph.D., at p. 172, ln. 23 to p. 173, ln. 16.	Undisputed that Dr. Taylor testified he would want to know more information. This statement is not material to the resolution of Defendants’ motion, however, and should therefore be disregarded. See <i>Liberty Lobby</i> , 477 U.S. at 248. The conclusions that Dr. Taylor came to based upon what he does know show that Defendants’ saturation patrols have a disparate impact on Hispanics. See Pls.’ SOF 236-49.
25 26 27 28	150. Somos America’s representative, Ms. Lydia Guzman, has never experienced a traffic stop by the MCSO. See Deposition of Lydia Guzman, at p. 29, lns. 19-21; p. 93, lns.1-9.	Undisputed that Ms. Guzman testified that she had not been stopped by the MCSO while driving her vehicle. However, Ms. Guzman has had encounters with MCSO officers in which she believed she was racially profiled, such as her car being followed

		<p>closely by an MCSO unit during a saturation patrol because she spoke Spanish, and being intimidated and harassed by MCSO officers. <i>See</i> Guzman Dep. 54:4-55:7; 89:6-95:25 [Hickey Opp'n Dec. Ex. 218].</p>
<p>151.</p>	<p>Somos America is a non-profit advocacy organization, with no paid staff, no membership dues, and any person or entity that attends its monthly meetings may consider itself a member of Somos American. <i>See</i> Deposition of Lydia Guzman, at p. 8, lns. 11-25 (Somos is a 501(c)(3) non profit organization); p. 11, ln. 16 to p. 12, ln. 4 (no paid employees, only volunteers); p. 9, lns. 23-25 (anybody that attends a Somos meeting may consider itself a member).</p>	<p>Undisputed that Somos America is a non-profit organization. Undisputed that Somos America had no paid staff and no membership dues at the time of Ms. Guzman's deposition.</p> <p>Disputed that Somos America's meeting are monthly; Ms. Guzman stated that Somos America's meetings were <i>weekly</i>. Guzman Dep. 18:8-11 [Hickey Opp'n Dec. Ex. 218].</p> <p>This statement is not material to the resolution of Defendants' motion, and should therefore be disregarded. <i>Liberty Lobby</i>, 477 U.S. at 248. The law does not require an organization to require dues, paid staff, or particular membership requirements to have standing.</p>
<p>152.</p>	<p>Somos America has only 35 members such as Latino American Citizens, No More Deaths, MECHHA, and various labor 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. <i>See</i> Deposition of Lydia Guzman, at p. 22, lns. 22-25 (35 members); p. 24-26 (listing of member organizations or entities); p. 29, lns. 19-21 and p. 93, lns. 1-9 (no traffic stops personally witnessed by Lydia Guzman).</p>	<p>Disputed. Ms. Guzman testified that many Somos America members have been subject to MCSO traffic stops. Specifically:</p> <p>(1) Alfredo Gutierrez is an individual member of Somos America and has been stopped by the MCSO. <i>See</i> Guzman Dep. 27:2-21; 29:22-30:4 [Hickey Opp'n Dec. Ex. 218].</p> <p>(2) Several members of Somos America affiliated with the League of United Latin American Citizens have been stopped by the MCSO. Guzman Dep. 24:6-11; 30:25-31:11 [Hickey Opp'n Dec. Ex. 218]. One member has been stopped by the MCSO several times. Guzman Dep. 31:20-33:13 [Hickey Opp'n Dec. Ex. 218].</p> <p>(3) Adolfo Maldonado, a member who is affiliated with Cop Watch, was stopped by the MCSO during a saturation patrol in Mesa; both he and the passenger, Lydia Navarro, in his car were asked for</p>

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		<p>their Social Security numbers. <i>See</i> Guzman Dep. 37:7-38:5 [Hickey Opp'n Dec. Ex. 218]; Pls.' SSOF 269, <i>infra</i>. Mr. Maldonado was also stopped by the MCSO during a saturation patrol in Phoenix, and has submitted a declaration regarding these stops. Pls.' SSOF 269, <i>infra</i> (citing to Declaration of Adolfo Maldonado, filed concurrently herewith).</p> <p>(4) Several day laborer member affiliated with Tonatierra were stopped during MCSO saturation patrols. <i>See</i> Guzman Dep. 38:12-39:2 [Hickey Opp'n Dec. Ex. 218].</p> <p>(5) Joseph Larios, a member who is affiliated with of the AFL-CIO, was the subject of an MCSO traffic stop. <i>See</i> Guzman Dep. 40:1-24 [Hickey Opp'n Dec. Ex. 218].</p> <p>(6) A staff member of an immigration attorney affiliated the Association of Immigration Lawyers, a member of Somos America, was stopped by the MCSO. <i>See</i> Guzman Dep. 40:25-42:25 [Hickey Opp'n Dec. Ex. 218].</p> <p>(7) Andrew Sanchez is a member affiliated with Citizens Camera Crew, and was stopped by the MCSO during the Guadalupe sweep on April 3, 2008. <i>See</i> Declaration of Andrew Sanchez at ¶¶ 1-13 (describing the stops); Guzman Dep. 47:1-48:5 (Mr. Sanchez is a member) [Hickey Opp'n Dec. Ex. 218]. Mr. Sanchez has submitted a declaration describing his stop. Maria Osuna is another member affiliated with Citizens Camera Crew who was stopped by the MCSO during the Guadalupe sweep. Guzman Dep. 48:22-49:2 [Hickey Opp'n Dec. Ex. 218].</p> <p>The cited portion of the record does not establish that that "no traffic stops [were] personally witnessed by Lydia Guzman." Ms. Guzman personally attended and observed MCSO activity during many saturation patrols, and has personally witnessed racial profiling. <i>See</i> Guzman Dep. 59:6-10; 64:3-20</p>
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		[Hickey Opp'n Dec. Ex. 218]. Disputed that Somos America has "only 35 members." Many of the members of Somos are organizations, which are in turn composed of a number of individual members. <i>See</i> Pl. Somos America's Resp. and Objections to Def. Arpaio's First Set of Reqs. for Admis., Interrogs., and Reqs. for Produc. at 21-22 [Hickey Opp'n Dec. Ex. 239].
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Plaintiffs' Responses to Defendants' Supplemental ICE Statements of Fact⁹

No.	Defendants' Statement of Fact	Plaintiffs' Response
1.	Mr. Alonzo Rafael Pena is an employee of the United States Department of Homeland Security Immigration and Customs Enforcement ("ICE"). <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 9, Ins. 16-22.	Undisputed that Mr. Pena was employed by ICE at the time of his deposition (September 30, 2010).
2.	Mr. Pena served at the Special Agent in Charge ("SAC") of ICE in Phoenix, Arizona from October 2006 to the end of March 2008. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 12, ln. 15 top. 13, ln. 6.	Undisputed.
3.	Mr. Pena testified that the 287(g) program allows local law enforcement officers certified by ICE to enforce federal immigration law. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 15, Ins. 8-23.	Undisputed that the 287(g) program allows certified local law enforcement officers to assist in certain specified enforcement of federal immigration law. Disputed in that local law enforcement authority under 287(g) is subject to limitations and specified conditions, including but not limited to those set forth in the applicable Memorandum of Agreement (MOA). <i>See, e.g.,</i> Ex. A to Pls.' First Am. Compl., Dkt. No. 26 (MOA in effect before 2009).
4.	Mr. Pena testified that ICE trained the MCSO deputies that became certified under the 287(g) program. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 18, ln. 20 to p. 20, ln. 13.	Disputed. Mr. Pena testified that the 287(g) certification training was conducted at an "independent training center" and that he did not know which agency the trainers worked for. Pena Dep. 19:25-21:15 [Hickey Opp'n Dec. Ex. 225].
5.	While Mr. Pena was ICE SAC in Phoenix, he never had an occasion to	Disputed. The cited portion of the record indicates only that Mr. Pena never

⁹ Plaintiffs file these responses to Defendants' Supplemental ICE Statements of Fact publicly because counsel for ICE has indicated that the deposition transcripts of Mr. Kidd and Mr. Pena are not confidential save certain redactions that have been made to the transcripts by consent of the parties. *See* Notice to Court concerning Protective Order Regarding Depositions of Jason Kidd and Alonzo Pena, Oct. 29, 2010, Dkt. No. 380. Counsel for Defendants have indicated that Defendants have no objection to Plaintiffs public filing of these responses, and that Defendants intend to re-file publicly their Supplemental ICE Statements of Fact.

<p>1 2 3 4 5 6 7 8 9 10 11</p>	<p>report an MCSO 287(g) certified deputy for racial profiling. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 60, Ins. 7-10.</p>	<p>reported an MCSO deputy, not that that he “never had an occasion to.” Mr. Pena would have had no reason to report an MCSO officer because he testified that it was “not [his] job” to determine whether race motivated MCSO stops. Pena Dep. 206:18-207:3 [Hickey Opp’n Dec. Ex. 225]. Mr. Pena testified that he “did not know one way or the other” the motivation of any MCSO officers during traffic stops. Pena Dep. 186:11-14 [Hickey Opp’n Dec. Ex. 225]. Indeed, Mr. Pena “never went into the field” to observe MCSO officers’ actions. Pena Dep. 137:9-20 [Hickey Opp’n Dec. Ex. 225]. This statement is therefore irrelevant to the resolution of Defendants’ motions and should be disregarded. <i>Liberty Lobby</i>, 477 U.S. at 248; L.R. Civ. 56.1(a).</p>
<p>12 13 14 15 16 17 18 19 20 21</p>	<p>6. 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>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 60, Ins. 11-13.</p>	<p>Disputed. Mr. Pena testified only that he did not confront MCSO regarding racial profiling, not that “never had to.” Furthermore, Mr. Pena testified that it was “not [his] job” to determine whether race motivated MCSO stops. Pena Dep. 206:18-207:3 [Hickey Opp’n Dec. Ex. 225]. Mr. Pena testified that he “did not know one way or the other” the motivation of any MCSO officers during traffic stops. Pena Dep. 186:11-14 [Hickey Opp’n Dec. Ex. 225]. Indeed, Mr. Pena “never went into the field” to observe MCSO officers’ actions. Pena Dep. 137:9-20 [Hickey Opp’n Dec. Ex. 225]. This statement is therefore irrelevant to the resolution of Defendants’ motions and should be disregarded. <i>Liberty Lobby</i>, 477 U.S. at 248; L.R. Civ. 56.1(a).</p>
<p>22 23 24 25 26 27 28</p>	<p>7. 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>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 60, Ins. 14-18.</p>	<p>Undisputed that Mr. Pena never reported racial profiling by the MCSO to Washington.</p> <p>Disputed that this fact has any relevance to whether racial profiling by MCSO occurred. Mr. Pena testified that it was “not [his] job” to determine whether race motivated MCSO stops. Pena Dep. 206:18-207:3 [Hickey Opp’n Dec. Ex. 225]. Mr. Pena testified that he “did not know one way or the other” the</p>

1		motivation of any MCSO officers during traffic stops. Pena Dep. 186:11-14 [Hickey Opp'n Dec. Ex. 225]. Indeed, Mr. Pena "never went into the field" to observe MCSO officers' actions. Pena Dep. 137:9-20 [Hickey Opp'n Dec. Ex. 225]. This statement is therefore irrelevant to the resolution of Defendants' motions and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).	
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7	8.	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>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 93, ln. 21 top. 94, ln. 21.	Disputed. Mr. Pena testified only that he "probably" would have reported MCSO's non-compliance with the MOA in writing if he had a concern, but that his action would "depend[] on that noncompliance and th[e] circumstances." Pena Dep. 93:21-94:21 [Hickey Opp'n Dec. Ex. 225]. The cited portion of the record thus does not establish that Mr. Pena did not have such a concern or, if so, whether there would be a written record of that concern. This statement is therefore irrelevant to the resolution of Defendants' motions and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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16	9.	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 MCSO 287(g) certified officers. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 96, ln. 23 to p. 98, ln. 20.	Undisputed, though Mr. Pena further testified that he was aware of such actions only when the MCSO officer "is not exceeding the amount of . . . time that he could have that person detained." Pena Dep. 97:6-16 [Hickey Opp'n Dec. Ex. 225], and when the MCSO officer has "the legal basis to detain that person on his own state charges." Pena Dep. 98:7-11 [Hickey Opp'n Dec. Ex. 225]. In any event, this statement has no relevance as to whether racial profiling by MCSO occurred; it is therefore immaterial to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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25	10.	During the 2008 ICE audit of the 287(g) field program between ICE and the MCSO, the United States Attorney's Office responsible for immigration issues had no complaint about the MCSO's 287(g) program or the MCSO's compliance with the	Disputed. The view of the USAO was contradicted by other supervisors at ICE, such as ICE Executive Associate Director John Morton who stated that "the sweeps [Sheriff Arpaio] conducts in Maricopa County aren't consistent with [ICE's] priorities as an agency" and are
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1		Memorandum of Agreement between ICE and the MCSO. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 122, ln. 11 top. 123, ln. 10; <i>see also</i> Exhibit 11 to the Deposition of Alonzo Rafael Pena.	“overbroad.” Kidd Dep. 155:24-157:3 [Hickey Opp’n Dec. Ex. 219]. Moreover, Mr. Pena confirmed that ICE did not believe it was “[ICE’s] job” to determine whether race motivated MCSO stops. Pena Dep. 206:18-207:3 [Hickey Opp’n Dec. Ex. 225]. ICE viewed saturation patrols as based upon state, and not federal, law. Kidd Dep. 34:18-24 [Hickey Opp’n Dec. Ex. 219]. This statement is therefore immaterial to the resolution of Defendants’ motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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9	11.	ICE terminated the MCSO’s 287(g) field authority in 2009 because of a change in ICE priorities directed by the new executive administration. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 153, ln. 5 top. 155 ln. 4; <i>see also</i> p. 155 ln. 12 top. 156, ln. 3.	Undisputed.
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13	12.	Mr. Pena testified that the MCSO did not violate the Memorandum of Agreement in any manner except on one occasion in regards to providing the public with information and/or publicity. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 156, ln. 25, top. 157, ln. 10.	Undisputed that Mr. Pena testified that, “to [his] knowledge,” the only violations of the MOA by the MCSO related to the press and/or publicity. Disputed that Mr. Pena testified of only “one occasion” that MCSO violated the MOA. Mr. Pena testified that he had personal knowledge of “one or two” or “a couple” violations of the MOA by MCSO. Pena Dep. 136:4-13 [Hickey Opp’n Dec. Ex. 225]. Furthermore, Mr. Pena testified that ICE did not believe it was “[ICE’s] job” to determine whether race motivated MCSO stops. Pena Dep. 206:18-207:3 [Hickey Opp’n Dec. Ex. 225]. This statement is therefore immaterial to the resolution of Defendants’ motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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25	13.	At no time did Mr. Pena ever write to Sheriff Arpaio or the MCSO any letter or email providing them with a warning or admonition about the MCSO’s use of 287(g) authority. <i>See</i> September 30, 2010 Deposition of Alonzo Rafael Pena at p. 157, lns. 12-	Undisputed that Mr. Pena testified that he did not write any such letter or email; Mr. Pena also testified that “most of my . . . discussion and correspondence with the [MCSO] were verbal.” Pena Dep. 157:12-19 [Hickey Opp’n Dec. Ex. 225].
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1	19.	Furthermore, Mr. Pena testified that ICE did not believe it was “[ICE’s] job” to determine whether race motivated MCSO stops. Pena Dep. 206:18-207:3 [Hickey Opp’n Dec. Ex. 225]. This statement is therefore immaterial to the resolution of Defendants’ motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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6	14. Mr. Jason Douglas Kidd is an ICE employee and served in 2006-09 in Phoenix, Arizona either as an ICE Group Supervisor, or an ICE Assistant Special Agent in Charge, or as an ICE Acting Deputy Special Agent in Charge for the Phoenix ICE office. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 11, Ins. 10 top, 12, ln. 2.	Undisputed that Mr. Kidd was so employed from July 2006-2009, and that Mr. Kidd was employed by ICE at the time of his deposition (October 1, 2010).
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12	15. Mr. Kidd worked closely with MCSO personnel in the 287(g) program and the implementation of it under the ICE-MCSO Memorandum of Agreement. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 19, Ins. 4-9.	Undisputed that Mr. Kidd worked with MCSO personnel on the implementation of the 287(g) program. Disputed to the extent Defendants imply that Mr. Kidd supervised the MCSO during its saturation patrols or other immigration enforcement operations. <i>See</i> Kidd Dep. 27:7-15 (role during saturation patrols was <i>not</i> “supervisory”) [Hickey Opp’n Dec. Ex. 219]. This statement is therefore immaterial to the resolution of Defendants’ motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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20	16. The MCSO advised Mr. Kidd when it was planning on conducting a saturation patrol that might encompass the MCSO’s 287(g) authority. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd 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. <i>Id.</i> at p. 34, ln. 18 to p. 35, ln. 11. Mr. Kidd also received from the MCSO post-saturation patrol Shift Summaries. <i>Id.</i> at p. 36, ln. 7 to p. 37, ln. 11.	Undisputed. However, Mr. Kidd explicitly denied supervising MCSO saturation patrols. Kidd Dep. 27:7-15 [Hickey Opp’n Dec. Ex. 219]. Mr. Kidd testified that he believed that MCSO saturation patrols were based on “state crime, not 287(g).” Kidd Dep. 34:18-24 [Hickey Opp’n Dec. Ex. 219]. Thus, Mr. Kidd stated that it “was not ICE’s job” to ensure that racial motivations did not cause MCSO saturation patrol stops. Kidd Dep. 153:4-18 [Hickey Opp’n Dec. Ex. 219]. This statement is therefore immaterial to the resolution of Defendants’ motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at
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1		248; L.R. Civ. 56.1(a).
2	17.	Mr. Kidd was also involved in training MCSO deputies regarding 287(g) authority. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 21, lns. 15 to p. 22, ln. 11.
3		Undisputed.
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5	18.	Mr. Kidd testified that ICE provided MCSO 287(g) deputies with training regarding racial profiling. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 23, ln. 1 to p. 24, ln. 17.
6		Undisputed that ICE training of 287(g) certified deputies contained a brief segment on racial profiling.
7		Disputed to the extent that Defendants imply that this training was adequate. <i>See</i> Pls.' SOF 138-144.
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9	19.	Mr. Kidd is familiar with the MCSO's use of saturation patrols. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 25, lns. 6-12. Mr. Kidd attended some MCSO saturation patrols and stationed himself at the MCSO command center. <i>Id.</i> at p. 26, lns. 3-14. Mr. Kidd attended some of the saturation patrols as an ICE observer. <i>Id.</i> At p. 27, lns. 13-15.
10		Undisputed that Mr. Kidd was familiar with and observed a few MCSO saturation patrols.
11		Disputed to the extent that Defendants imply that Mr. Kidd's role was more than observational. Kidd Dep. 27:7-15 [Hickey Opp'n Dec. Ex. 219]. This statement is therefore immaterial to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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16	20.	Mr. Kidd never expressed to the MCSO any criticism of its use of saturation patrols. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 31, lns. 2-8.
17		Disputed. Mr. Kidd testified that he spoke with MCSO's Lt. Joseph Sousa about whether MCSO saturation patrol operations were "within the scope of the MOA." Kidd Dep. 33:16-34:24 [Hickey Opp'n Dec. Ex. 219]. Mr. Kidd also testified that there "some questions" about the arrest of Mr. Ortega Melendres. <i>See</i> Kidd Dep. 121:16-122:15 [Hickey Opp'n Dec. Ex. 219]. Moreover, the record reveals that ICE Executive Associate Director John Morton stated that "the sweeps [Sheriff Arpaio] conducts in Maricopa County aren't consistent with [ICE's] priorities as an agency." Kidd Dep. 155:24-157:3.
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25		Furthermore, Mr. Kidd testified that it "was not ICE's job" to ensure that racial motivations did not cause MCSO saturation patrol stops. Kidd Dep. 153:4-18 [Hickey Opp'n Dec. Ex. 219]. This statement is therefore immaterial to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> ,
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1		477 U.S. at 248; L.R. Civ. 56.1(a).	
2	21.	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. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd 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. <i>Id.</i> 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. <i>Id.</i> at p. 33, ln. 16 to p. 34, ln. 17.	Disputed that Mr. Kidd never expressed any concerns about MCSO's use of traffic stops. Mr. Kidd testified that he spoke with MCSO's Lt. Joseph Sousa about whether MCSO saturation patrol operations were "within the scope of the MOA." Kidd Dep. 33:16-34:24 [Hickey Opp'n Dec. Ex. 219]. Mr. Kidd also testified that he recalled "some questions" about the arrest of Mr. Ortega Melendres. <i>See</i> Kidd Dep. 121:16-122:15 [Hickey Opp'n Dec. Ex. 219]. Furthermore, Mr. Kidd testified that it "was not ICE's job" to ensure that racial motivations did not cause MCSO stops. Kidd Dep. 153:4-18 [Hickey Opp'n Dec. Ex. 219]. This statement is therefore immaterial to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
3	22.	ICE was responsible for supervising MCSO 287(g) deputies when they exercised their 287(g) authority. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 38, lns. 16-19.	Disputed. While Mr. Kidd testified that ICE supervised MCSO's exercise of 287(g) authority to some extent, his testimony indicates that much of MCSO's immigration enforcement activity, including saturation patrols, was in fact not supervised by ICE. Kidd Dep. 27:7-15; 34:18-24; 153:4-18 [Hickey Opp'n Dec. Ex. 219]. Furthermore, Mr. Kidd testified that it "was not ICE's job" to ensure that racial motivations did not cause MCSO saturation patrol stops. Kidd Dep. 153:4-18 [Hickey Opp'n Dec. Ex. 219]. This statement is therefore immaterial to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
4	23.	Mr. Kidd never expressed any concern to the MCSO that MCSO 287(g) certified officers were racially profiling Latinos. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 42, 15-21.	Disputed. Mr. Kidd only testified that he could not "recall" ever reporting <i>in writing</i> any concerns of racial profiling by the MCSO. Mr. Kidd further testified that he and ICE had "no basis" to conclude "one way or the other" whether the MCSO was engaging in racial profiling. Kidd. Dep. 153:4-18 [Hickey Opp'n Dec. Ex. 219]. This

1		statement is therefore immaterial to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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4	24. 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. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 43, lns. 6-18.	Undisputed. Mr. Kidd had no such knowledge because it "was not ICE's job" to ensure that racial profiling did not take place in MCSO traffic stops; ICE had no way to know "one way or the other" whether the MCSO was engaging in racial profiling. Kidd. Dep. 153:4-18 [Hickey Opp'n Dec. Ex. 219]. Mr. Kidd's lack of knowledge is therefore irrelevant. This statement is therefore immaterial to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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11	25. 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. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 46, ln. 20 to p. 47, ln. 10.	This statement is irrelevant to the resolution of Defendants' motion and should be disregarded. <i>Liberty Lobby</i> , 477 U.S. at 248; L.R. Civ. 56.1(a).
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16	26. Mr. Kidd testified that a foreign national working for compensation while visiting the United States on a tourist visa is in violation of federal law and out-of-status. <i>See</i> October 1, 2010 Deposition of Jason Douglas Kidd at p. 121, ln. 1 top. 125, ln. 9.	Undisputed, but irrelevant to the resolution of Defendants' motion. Mr. Ortega Melendres had not and was not working when he was stopped by MCSO. Ortega Melendres Dep. 12:3-8; 24:4-7 [Hickey Opp'n Dec. Ex. 240].
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**Plaintiffs' Supplemental Statements of Facts
Precluding Summary Judgment in Favor of Defendants**

As further evidence precluding Defendants' motion, Plaintiffs also incorporate by reference here their Statements of Facts Nos. 1-256 submitted in support of Plaintiffs' Motion for Partial Summary Judgment. *See* Dkt. No. 422. Plaintiffs also submit the following additional facts precluding summary judgment in favor of Defendants.

No.	Statement of Fact	Supporting Evidence
P257	Anabel Avitia (who is Hispanic) and her husband were stopped twice in the month of October 2009. On the first occasion, the couple was followed by an MCSO deputy from the parking lot of a Walgreens to their home. The deputy made a comment about their temporary license plate, but Ms. Avitia informed him (and he confirmed) that there was nothing wrong with the plates. On October 16, 2009, when MCSO was conducting a saturation patrol, Ms. Avitia and her husband were again pulled over for failing to stop at a stop sign, even though they made a complete stop.	Declaration of Anabel Avitia at ¶¶ 2-10 (filed concurrently herewith).
P258	Andrew Sanchez is a member of Citizens Camera Crew, a member of Somos America. Mr. Sanchez was stopped by the MCSO during the Guadalupe sweep on April 3, 2008, and cited for improper use of his horn. Mr. Sanchez challenged the citation in Kyrene Justice Court, and one of the two MCSO deputies who appeared testified that he was trained to enforce the immigration laws. Mr. Sanchez's citation he received was dismissed.	Guzman Dep. 47:1-48:5 [Hickey Opp'n Dec. Ex. 218]; Declaration of Andrew Sanchez at ¶¶ 7-10, 12 (filed concurrently herewith).
P259	Some Somos America members who were stopped did not file their own civil rights lawsuit because they are afraid of retaliation. Some members of Somos America believe they have	Guzman Dep. 42:18-43:13; 45:20-46:12, 49:25-55:17, 89:6-90:19 [Hickey Opp'n Dec. Ex. 218]

1		suffered retaliation for speaking out.	
2	P260	Somos America has experienced a frustration of its mission and a diversion of its resources as a result of MCSO's saturation patrols. Somos America's volunteers have had to monitor and observe saturation patrols and assist persons affected by Defendants' saturation patrols, rather than conduct citizen and voters' drives and educational forums.	Guzman Dep. 18-21; 73-77; 81-88 [Hickey Opp'n Dec. Ex. 218].
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8	P261	Dr. Taylor study of the CAD database examined 123,831 individuals whose names were checked during MCSO traffic stops from January 1, 2007 through October 31, 2009.	Taylor Rebuttal Report at 17 [Dkt. No. 424].
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12	P262	Dr. Taylor found that 5,086 individuals' names were checked by MCSO officers during days on which a large-scale saturation patrol operation was conducted by the MCSO. Between 1,312 and 1,988 of those individuals had surnames associated with Hispanic ethnicity. There were 12 large-scale saturation patrols in the period between January 1, 2007 through October 31, 2009.	Taylor Rebuttal Report at 53 tbl. 6 (number of stops on saturation patrol days) [Dkt. No. 424]; Taylor Initial Report at 16-17, 86 (12 large-scale saturation patrols between January 1, 2007 and October 31, 2009) [Dkt. No. 424].
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18	P263	Dr. Taylor found that 1,623 individuals' names were checked by MCSO officers who were known to have participated in that saturation patrol, during days on which a large-scale saturation patrol operation was conducted by the MCSO. Between 498 and 742 of those individuals had surnames associated with Hispanic ethnicity. There were 12 large-scale saturation patrols in the period between January 1, 2007 through October 31, 2009, 11 of which had associated information concerning which officers participated in the saturation patrol.	Taylor Rebuttal Report at 54 tbl. 6 (number of stops on saturation patrol days by saturation patrol active officers); Taylor Initial Report at 16-17, 86 (12 large-scale saturation patrols between January 1, 2007 and October 31, 2009, no officer data for January 2008 patrol) [Dkt. No. 424]
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27	P264	Saturation patrol involved officers, meaning an MCSO officer who had ever participated in a large-scale	Taylor Rebuttal Report at 31 [Dkt. No. 424].
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1		saturation patrol, were 13.6% to 15% more likely to check Hispanic names, even on non-saturation patrol days, as compared to MCSO officers who had never participated in a saturation patrol.	
2	P265	Dr. Camarota testified that a higher rate of Hispanics stopped during saturation patrols would be expected if the operations are “successful”.	Camarota Dep. 237:14-238:3 (“Q. You think that because saturation patrols are aimed at illegal immigration that it would be expected that the rate of Hispanics being stopped during the saturation patrols would be higher? A. If they're successful.”) [Hickey Opp’n Dec. Ex. 217].
3	P266	MCSO is a hierarchical organization. Deputies follow directives and the orders of MCSO leadership, including Sheriff Arpaio.	Sousa Dep. I at 17:2-18:2 (follows directives and polices of Sheriff Arpaio and “chain of command”) [Hickey Opp’n Dec. Ex. 232]; Kikes Dep. 15:14-16:4 (obeys Sheriff Arpaio’s orders and directives) [Hickey Opp’n Dec. Ex. 221]; Sands Dep. I at 17:18-22 (Sheriff Arpaio is final “decisionmaker” and he follows his directives) [Hickey Opp’n Dec. Ex. 231]; Madrid Dep. 21:16-24 (as Deputy and Sergeant, follows Arpaio’s law enforcement directives) [Hickey Opp’n Dec. Ex. 222].
4	P267	Ms. Meraz and Mr. Nieto were stopped in the area where a saturation patrol took place, and by officers working that saturation patrol.	Nieto Dep. 13:7-14:1 (describing where Plaintiffs were stopped) [Hickey Opp’n Dec. Ex. 224]; Armendariz Dep. I at 97:25-98:3 (location of command post) [Hickey Opp’n Dec. Ex. 214]; Kikes Dep. 52:22-53:16 [Hickey Opp’n Dec. Ex. 221]; Beeks Dep. 147:20-148:9 [Hickey Opp’n Dec. Ex. 215]; Melendres MCSO 1851-52, Ex. 6 to Beeks Dep. (introduced at Beeks Dep. 80:11-81:10) (Arrest List for MCSO saturation patrol on March 28, 2008 listing Deputies Armendariz, Beeks, and Kikes) [Hickey Opp’n Dec. Ex. 216].
5	P268	Plaintiffs David Rodriguez, Jessika Rodriguez, Manuel Nieto and Velia Meraz all live and drive in Maricopa County.	Jessika Rodriguez Dep. 6:8-14, 60:5-10 [Hickey Opp’n Dec. Ex. 230]; David Rodriguez Dep. 6:14-19, 37:3-6 [Hickey Opp’n Dec. Ex. 229]; Nieto Dep. 6:7-10, 35:6-10 [Hickey Opp’n Dec. Ex. 224]; Meraz Dep. 5:12-15; 34:4-16 [Hickey Opp’n Dec. Ex. 223].
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P269	Adolfo Maldonado is a member of Somos America and an Hispanic resident of Maricopa County. Mr. Maldonado has been stopped twice by the MCSO, both times during MCSO saturation patrols. On March 22, 2008, Mr. Maldonado was stopped by MCSO officers during a saturation patrol in Phoenix. On July 14, 2008, Mr. Maldonado was stopped again by MCSO officers during a saturation patrol in Mesa. The MCSO deputy asked for his Social Security number, even though Mr. Maldonado had provided his drivers' license.	Declaration of Adolfo Maldonado at ¶¶ 1-12 (filed concurrently herewith); <i>see also</i> Guzman Dep. 37:7-38:5 [Hickey Opp'n Dec. Ex. 218].
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RESPECTFULLY SUBMITTED this 3rd day of June, 2011.

By /s/ Stanley Young

Attorneys for Plaintiffs

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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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