Timothy J. Casey (#013492)
SCHMITT, SCHNECK, SMYTH & HERROD, P.C.
1221 East Osborn Road, Suite 105
Phoenix, AZ 85014-5540
Telephone: (602) 277-7000
Facsimile: (602) 277-8663
timcasey@azbarristers.com

Thomas P. Liddy (#019384)
MARICOPA COUNTY ATTORNEY'S OFFICE
Civil Services Division
222 N. Central, Suite 1100
Phoenix, Arizona 85004
602-506-8066
Co-counsel for Defendants Arpaio and MCSO

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 07-02513-PHX-GMS **DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT** (Oral Argument Requested)

Defendants Joseph M. Arpaio and the Maricopa County Sheriff's Office submit this Reply in support of their Motion for Summary Judgment. For the Court's convenience, the same abbreviations used in the Motion are used in this Reply.

Defendants also incorporate herein by this Reference their Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment (Dkt#452), and their Response, Objections, Controverting Statement of Facts, and Separate Statement of Additional Facts (Dkt#453).

MEMORANDUM OF POINTS AND AUTHORITIES

I. PLAINTIFFS LACK STANDING.

The undisputed evidence demonstrates that although the individual Plaintiffs have been *exposed for years* to MCSO scrutiny under its alleged "racial profiling" policy, pattern, or practice, they have nevertheless experienced no additional traffic stop encounters with the MCSO and do not have a "credible" and "genuine" threat of suffering the same harm or injury again in the future. *Ellis v. Dyson*, 421 U.S. 426, 434-435 (1975). Plaintiffs recognize

this fundamental problem and, therefore, argue that they still have standing because they have allegedly proven a *prima facie* case of "a widespread, ongoing, and officially sanctioned policy, practice, or pattern of Defendants targeting Hispanic drivers and passengers that realistically threatens future injury." (Response (Dkt#455) at p. 1, lns. 19-21). Plaintiffs are mistaken.

Even under their policy, pattern, or practice claim, the individual Plaintiffs still must affirmatively prove "the **likelihood** of substantial and **immediate** irreparable injury." *O'Shea v. Littleton*, 414 U.S. 488, 502 (1974) (emphasis added); *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983); *Armstrong v. Davis*, 275 F.3d 849, 860-61 (9th Cir. 2001); *Rodriguez v. Cal. Highway Patrol*, 89 F.Supp.2d 1131, 1142 (N.D. Cal. 2000). The likelihood of substantial and immediate irreparable injury must be "**a credible threat of recurrent injury**." *LaDuke v. Nelso*n, 762 F.2d 1318, 1323 (9th Cir. 1985) (emphasis added). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 299 (1998). Standing "must affirmatively appear in the record." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990).

On point is *Huss v. Spokane County*, 2007 U.S. Dist. LEXIS 27667 (E.D.Wash. 2007). The district court held:

> A plaintiff seeking declaratory or injunctive relief must demonstrate that he or she is under a **realistic threat of future injury**. While the fact that the plaintiff has suffered injury in the past may make the repetition of the injury more likely, it does not in itself create a threat of future harm sufficient to confer standing.
>
> A past injury is likely to recur when the harm alleged is directly traceable to a written policy. **An injury is also likely to recur when it is a part of an officially sanctioned pattern of behavior. However, a plaintiff seeking to challenge an unconstitutional policy must show a genuine threat of enforcement of the policy against the plaintiff. Moreover, standing is inappropriate where the future injury could be inflicted only in the event of future illegal conduct by the plaintiff**.
>
> The Court finds that the Plaintiff does not have standing to seek declaratory or injunctive relief. As the Plaintiff explained at oral argument, the assessment of booking fees without any prior hearing is imminently likely to recur due to the existence of both the statute and the County's written policy. **However, the Plaintiff has not demonstrated that he, personally, is likely to be arrested and assessed the booking fee**

> **again. While he could arguably be arrested and assessed the booking fee at anytime, such a speculative injury is insufficient to confer standing. In order to demonstrate standing, the Plaintiff would need to show that he is at least reasonably likely to be arrested again. The Plaintiff has not made this argument.**

2007 U.S. Dist. LEXIS 27667, * 5-7 (citations and internal quotations omitted) (emphasis added).

The record, here, shows that the individual Plaintiffs have completely failed to demonstrate a credible and likely threat of immediate irreparable injury. The undisputed evidence shows that the individual Plaintiffs have had no further encounters with the MCSO -- either in large or small scale saturation patrols or in routine MCSO traffic stops -- over a period of three to four years since their initial traffic stops. SOF (Dkt#413-1) at ¶¶ 100-06, and 146-48. The individual Plaintiffs offer no facts, law, explanation, or argument as to the reasons *why*, if they face a credible and likely immediate irreparable injury from the Defendants' alleged policy, pattern, or practice, that they have not already experienced a recurrence over the multiple years since their first and only encounter. They also offer no evidence or argument as to *when* the "immediate irreparable injury" will likely occur again in the future. Quite frankly, whether the individual Plaintiffs are ever again stopped by the MCSO are "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas*, 523 U.S. at 299.

Plaintiffs' reliance on their policy, pattern, or practice claim is misplaced for another reason. The evidence conclusively establishes that Defendants did **not** act with racially-ethnically discriminatory intent against Latinos, or anyone, and that no policy, pattern, or practice of the Defendants violated the Plaintiffs' Fourteenth Amendment Rights. *See* Dkt# Nos. 452 and 453. Plaintiffs' expert Ralph Taylor, Ph.D. offers no more than the factually unsupported opinion that the individual Plaintiffs travel on roads in Maricopa County and, therefore, will have a greater statistical chance of being again stopped "during a major saturation patrol" than a non-Hispanic (Response at p. 8, lns. 19-23). Dr. Taylor, however, does not address whether the individual Plaintiffs face "likely **immediate** irreparable injury" given the undisputed facts that large scale saturation patrols are infrequent events and do not occur on a daily, weekly, or even monthly basis, and that for the 34-month time period

covered by Plaintiffs' lawsuit there were only thirteen (13) large scale saturation patrols conducted by the MCSO. *See* Dkt# 452 at ¶¶ 104 and 106. Dr. Taylor's opinion, therefore, is not the type of evidence that proves "a credible threat of recurrent injury." *LaDuke*, 762 F.2d at 1323. Moreover, Dr. Taylor's opinion is, at its core, "conjectural" and addresses a "hypothetical" statistical "chance" of the named Plaintiffs being stopped again. Speculation and conjecture is not evidence sufficient to establish standing to obtain equitable relief, even where a plaintiff has asserted a policy, pattern, or practice claim. *Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles*, 246 F.R.D. 621, 628 (C.D. Cal. 2007); *Lyons,* 461 U.S. at 105-08 (threat of future injury not sufficiently real and immediate to establish existing controversy where the claim of future injury rested on assumption that plaintiffs would engage in conduct leading to an encounter with police involving the use of a chokehold).

Finally, Plaintiffs' arguments regarding the standing of the Somos organization are not persuasive. The Supreme Court has repeatedly refused to recognize a generalized grievance against allegedly unconstitutional government conduct as sufficient to confer standing. *United States v. Hays*, 515 U.S. 737, 743 (1995). If a government acts unconstitutionally, such as in discriminating based on race or ethnicity, the resulting injury "accords a basis for standing only to those persons who are **personally** denied equal treatment." *Allen v. Wright*, 468 U.S. 737, 755 (1984) (emphasis added). Moreover, the Supreme Court holds that even when a plaintiff has alleged a redressable injury sufficient to satisfy the standing requirements of Article III, federal courts should refrain from "adjudicating abstract questions of wide public significance which amount to generalized grievances." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-75 (1982).

Somos' grievance is precisely the type of generalized grievance that is prohibited. Somos disagrees with the Defendants' law enforcement policy in enforcing the law, including those laws related to illegal immigration, and *chooses* to spend its time or money to help those persons it believes are directly affected by that policy. Any tangible effect of the Defendants' policy on Somos is too "remote, fluctuating, and uncertain" to confer

standing on it. *Frothingham v. Mellon*, 262 U.S. 447, 487 (1923).[1]

For the reasons stated above and in Defendants' Motion, the named Plaintiffs lack the standing required to obtain their requested equitable relief.

II. THERE IS NO FOURTH AMENDMENT VIOLATION.

A. Stop One: Mr. Melendres

Plaintiffs concede that Deputy DiPietro had probable cause to stop the truck in which Mr. Melendres was a passenger. (Response at p. 14, lns. 26-28). They, therefore, argue that the alleged Fourth Amendment violation for Mr. Melendres was actually "the unreasonable extension of that pre-textual traffic stop beyond the time necessary to investigate the driver's traffic violation." (*Id*. at p. 14, ln. 28 to p. 15, ln. 1). This argument lacks merit.

There was no unreasonably long traffic stop or questioning of the passengers in the truck. Deputy DiPietro made the traffic stop and promptly called on his radio for a 287(g) MCSO deputy to assist at the stop to investigate the truck's occupants. SOF (Dkt#413-1) at ¶ 19. Deputy Rangel arrived at the traffic stop within *one minute* of receiving the call for a 287(g) deputy. *Id.* at ¶ 20. Deputy Rangel asked the passengers in the Spanish language for identification. *Id.* at ¶ 22; *see also INS v. Delgado*, 466 U.S. 210, 212 (1984) (immigration officers could question an individual although they lacked reasonable suspicion that the individual was an illegal alien). **Deputy Rangel questioned the truck's several passengers *while* Deputy DiPietro was *simultaneously questioning* the driver of the truck.** SOF (Dkt#413-1) at ¶ 23; *see also Muehler v. Mena*, 544 U.S. 93, 101 (2005) ("mere police questioning [regarding identification] does not constitute a seizure unless it prolongs the detention of the individual…").

The total amount of time Deputy Rangel spent questioning all of the truck's several passengers was, according to the deputy, *fifteen (15) minutes*. *Id*. at ¶ 34. Regardless of whether the time was 15 minutes per Deputy Rangel, or 21 minutes per Plaintiffs (i.e., Plaintiffs assert the call log shows a 21-minute time period when Deputy Rangel called out

[1] In an effort to avoid Somos' dismissal, Plaintiffs have gone to the extraordinary step of producing for the first time with their Response, and long past the discovery cutoff date, a declaration of Adolfo Maldonado dated June 3, 2011, a purported member of Somos. (Dkt.457-2). Plaintiffs did not disclose Mr. Maldonado as a witness during discovery, never disclosed Mr. Maldonado's expected testimony, and obviously did not produce his newly-formulated affidavit during discovery. Defendants did not know of Mr. Maldonado and have had no opportunity to cross examine him on the

of the stop, but the log does not reflect when the deputy finished the questioning of the suspects), the reasonableness of a detention is evaluated "from the perspective of a reasonable officer on the scene." *Graham v. Connor,* 490 U.S. 386, 387 (1989). "[T]he reasonableness of a detention may be determined in part by whether the police are diligently pursuing a means of investigation which is likely to resolve the matter one way or another very soon…." *Michigan v. Summers*, 452 U.S. 692, 703, fn. 14 (1981).

The evidence shows that Deputy Rangel was "diligently pursuing a means of investigation which [was] likely to resolve the matter one way or another very soon" while Deputy DiPietro was simultaneously dealing with the truck's driver. SOF (Dkt#413-1) at ¶ 20; *Summers*, 452 U.S. at 703 fn. 14. Deputy Rangel questioned several passengers, pursuant to his 287(g) authority, as to their lawful presence in the United States. SOF (Dkt#413-1) at ¶¶ 25-28. He arrested Mr. Melendres for probable cause that the federal immigration laws have been violated. *Id*. at ¶¶ 30-33. Plaintiffs simply have put forward no evidence of prolonged questioning or of a prolonged traffic stop. Their time calculation of a 21-minute traffic stop and questioning unfairly and incorrectly includes an unknown amount of time *after* Deputy Rangel decided at the scene to arrest the passengers and until they had been transported from the scene. *See* Plaintiffs' Responses and Objections to Defendants' Statement of Facts in Opposition to Defendants' Motion for Summary Judgment (Dkt#456) at ¶ 34, p. 17, lns. 1-5).

To survive summary judgment, the Plaintiffs "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Ind. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986). The Plaintiffs must set out "specific fact showing there is a *genuine* issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis added). Mere speculation by the Plaintiffs that "warning the driver is unlikely to have required another 15 to 20 minutes" does not suffice. *Id*. at 252 (the "existence of a scintilla of evidence" is insufficient; rather, "there must be evidence on which a jury could reasonable find for the [non-moving party]"). Defendants, therefore, are entitled to judgment in their favor on Mr. Melendres' Fourth Amendment claim.

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contents of his affidavit. The Court should strike the Maldonado Declaration as untimely disclosed.

B. Stop Two: Mr. and Mrs. Rodriguez

Plaintiffs argue two points to support their claim that Mr. and Mrs. Rodriguez's Fourth Amendment rights were violated. First, they argue that, because Mr. and Mrs. Rodriguez informed Deputy Ratcliffe that they did not see the "*Road Closed*" sign and because other motorists driving on the closed road were not cited, Deputy Ratcliffe somehow "no longer had probable cause to believe that they had committed a traffic citation *worthy* of citation." (Response at p. 18, lns. 2-6) (emphasis added). Second, they also argue that their traffic stop was unreasonably extended after any initial suspicion of a traffic violation was dispelled. These arguments lack merit.

The undisputed evidence shows that Deputy Ratcliffe had probable cause to stop the Rodriguez vehicle. Knowingly or unknowingly disobeying a traffic control sign is a violation of Arizona law. A.R.S. § 28-644. Therefore, the factual testimony from Mr. and Mrs. Rodriquez as to whether they ever saw the "*Road Closed*" sign is immaterial. It was within Deputy Ratcliffe's discretion whether to issue a citation to Mr. Rodriguez, and he did so because Mr. Rodriguez was unquestionably driving on a closed road. SOF (Dkt#413-1) at ¶¶ 44-45, and 51-52. **Both** parties' police practices experts examined the undisputed facts about the Rodriguez traffic stop and concluded that Deputy Ratcliffe **had cause** to stop the Rodriguez vehicle based on those facts. *Id*. at ¶¶ 114-116. Even Mrs. Rodriguez is not critical of the actual traffic stop. *Id*. at ¶¶ 112-113. Finally, Plaintiffs offer no legal authority for their novel argument that probable cause to make a traffic stop or to issue a citation is "dispelled" when a violation is subjectively classified by the violator as not "worthy of citation." (Response at p. 18, lns. 1-6).

The evidence shows that there was no prolonged traffic stop. The total time for the Rodriguez traffic stop was, according to Deputy Ratcliffe, roughly ten (10) minutes. *Id*. at ¶ 58. Plaintiffs' own police practice expert, Mr. Stewart, did **not** testify that the evidence supports the conclusion that the Rodriguez stop was prolonged. Mr. Stewart provided no opinion testimony that Deputy Ratcliffe's supposed request for a Social Security card, or supposed insistence on Mr. Rodriguez's Social Security number to complete the citation in any manner prolonged the traffic stop. Mrs. Rodriguez also did **not** testify that the traffic

stop was prolonged.

The fact that Mrs. Rodriguez "*estimates*" that the stop lasted "*approximately 20 minutes*" is immaterial. Plaintiffs admit that "the absolute length of the traffic stop is immaterial to the resolution of Defendants' motion…." *See* Dkt#456 at ¶ 58, p.24, ln. 28 to p. 25, ln. 1. This is particularly true given the irony that Plaintiffs now, in order to avoid summary judgment, complain about the alleged prolonged length of the stop when ***they*** took additional time at the scene during the traffic stop, and arguably prolonged the stop, to do the following: (a) ask questions of Deputy Ratcliffe about the possible affect that the citation would have on Mr. Rodriguez's commercial driver's license (SOF (Dkt#413-1) at ¶¶ 54-55); (b) argue with Deputy Ratcliffe that they did not see any other drivers on the closed road receiving citations by another deputy, and then accusing Deputy Ratcliffe of selective enforcement (*Id.*); and (c) repeatedly asking Deputy Ratcliffe for a warning instead of a citation, which Mr. Rodriguez admitted prolonged his stop. (*See* Dkt#456 at ¶ 52 at David Rodriguez Deposition at p. 27, lns. 9-15 ("[***W]hen I asked [Deputy Ratcliffe] if I could get a warning too, that's – that's what—that's what also prolonged it***.") (emphasis added). On the record before the Court, therefore, Defendants are entitled to judgment in their favor on the Rodriguez's Fourth Amendment claims.

C. <u>Stop Three Ms. Meraz and Mr. Nieto</u>

Plaintiffs claim that Ms. Meraz and Mr. Nieto were stopped without cause (Motion at p. 21, lns. 5-7), and then were unreasonably seized after the stop in violation of their Fourth Amendment rights. (*Id*. at p. 21, lns. 10-13). These arguments lack merit.

The undisputed evidence shows that Deputy Kikes had probable cause or reasonable suspicion to stop the Meraz-Nieto vehicle. For a law enforcement officer "to initiate an investigatory stop of a motorist, there must at least exist reasonable suspicion that the motorist is engaging in illegal activity." *Liberal v. Estrada*, 632 F.3d 1064, 1077 (9th Cir. 2011). Deputy Kikes heard Deputy Armendariz's request for backup over the radio and, given what he heard, believed that Deputy Armendariz was in trouble of an unknown nature. SOF (Dkt#413-1) at ¶ 77. Deputy Kikes, more specifically, believed in good-faith that he had probable cause to stop the Meraz-Nieto vehicle because he believed there was an

emergency situation involving Deputy Armendariz and some type of crime. *Id*. at ¶¶ 85 and 117. **Both parties' police practices experts examined all of the facts regarding the Meraz-Nieto traffic stop and concluded in their professional opinions that Deputy Kikes had reasonable suspicion under the circumstances that allowed him to properly stop the Meraz-Nieto vehicle.** *Id*. at ¶¶ 118-119. The fact that Plaintiffs, to avoid summary judgment, now disagree with their own expert's analysis of the facts is indicative of the tenuous nature of their claims and insufficient to create a genuine fact issue. *Liberty Lobby*, 477 U.S. at 252. Deputy Kikes had reasonable suspicion, if not probable cause, to stop the Meraz-Nieto vehicle.

As for the post-stop conduct of Deputy Kikes, Plaintiffs' own police practices expert testified that Deputy Kikes acted "reasonably" in his post-stop conduct and treatment of Mr. Nieto. *Id*. at ¶ 111. There is no testimony that Ms. Meraz was treated unreasonably in any manner. Finally, as to Deputy Beeks, he saw Mr. Nieto acting very "belligerent", "non-compliant", and "almost hostile in nature" toward Deputy Kikes, and Deputy Beeks thought that Mr. Nieto might use his vehicle as a weapon. *Id*. at ¶ 92. As such, Deputy Beeks pulled his handgun **to his side** for safety purposes. *Id*. There is no evidence that these Plaintiffs were actually stopped "at gun point." Plaintiffs Meraz and Nieto offer nothing more than "some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. Meraz and Nieto's Fourth Amendment claims are ripe for summary dismissal.

III. DEFENDANTS HAVE CONCLUSIVELY ESTABLISHED THAT PLAINTIFFS' POLICY, PATTERN, OR PRACTICE CLAIM FAILS AS A MATTER OF LAW.

The parties have dueling motions on the Plaintiffs' Fourteenth Amendment claim. Plaintiffs, however, have presented no direct evidence and insufficient circumstantial evidence on which to base a finding, as a matter of law, that Defendants' employ a policy, pattern, or practice that has a racially discriminatory effect on Plaintiffs and was based on racially discriminatory intent or motive as to Plaintiffs. The Court, therefore, should grant the Defendants' Motion and deny Plaintiffs' Motion for Partial Summary Judgment.

Before Deputy DiPietro found probable cause to stop the truck in which Mr.

Melendres was a passenger, **he did *not* know or see** the race of the truck's driver or the race of the passengers in the truck. *See* Defendants' Response to Plaintiffs' Statement of Facts in Support of their Motion for Partial Summary Judgment ("SSOF") (Dkt#453) at ¶ 3. Before making the decision to conduct the traffic stop of the Rodriguez' truck and to issue a citation to the truck's driver (Mr. Rodriguez), Deputy Ratcliffe **did *not* see the race or ethnicity** of the truck's driver or its occupants. *Id*. at ¶ 10. Due to the Meraz-Nieto vehicle's window tinting, Deputy Kikes **could *not* see the race, ethnicity**, or other characteristics of the vehicle's occupants. *Id*. at ¶ 16. The evidence further shows that the MCSO **does not use race or ethnicity** as an indicator or factor to make vehicle stops. *Id*. at ¶ 82; *see also Longmire v. Starr*, 2005 U.S. Dist. LEXIS 18388 *7 (N.D. Tex. 2005) (in light of the facts showing the traffic stop of the plaintiff was based on race-neutral probable cause, "Plaintiff cannot establish that the allegedly discriminatory purpose was a motivating factor in the officer's decision to stop his vehicle."); *United States v. Montero-Camargo*, 208 F.3d 1122, 1139-40 (9th Cir. 2000) (no constitutional violation when officers did not know the race of the driver or vehicle occupants before actually stopping the vehicle.); *United States v. Eliseo-Gonzalez*, 2009 U.S. LEXIS 91831 *4 (M.D. Fla. 2009) ("[N]o racial profiling took place in this case. The officer testified that he could not see inside the vehicle when it passed his position and could not observe race or gender because of the dark tint."); *United States v. Hernandez-Bustos*, 2005 U.S. LEXIS 16311, *4 ¶ 3 (D. Kan. 2005) (no racial profiling when the officer made the traffic stop without knowing or seeing the driver's race or ethnicity). Because the named Plaintiffs' Fourteenth Amendment claim fails, Plaintiffs' policy, pattern, or practice claim based upon their traffic stops also must fail. *Lewis v. Casey*, 518 U.S. 343, 357 (1996); *Missouri v. Jenkins*, 515 U.S. 70, 88-89 (1995).

The evidence also demonstrates that the Defendants' policy of enforcing the laws related to illegal immigration is race-neutral, Defendants' use of saturation patrols is a reasonable and common law enforcement technique, and the discovery of illegal immigrants in Maricopa County, who are predominately Latinos from Mexico, during saturation patrols is not evidence of Defendants' alleged racial animus or intent against Latinos. SSOF (Dkt#453) at ¶¶ 22-34, and 109-110. The MCSO's saturation patrols are initiated, planned,

and executed based on race-neutral considerations. *Id*. at ¶¶ 23, 27-30, 35-43, 60-80, 107-108. Additionally, there is no evidence that Arpaio adopted, approved of, agreed with citizen letters that expressed racially offensive or insensitive remarks about Latinos or that asked the MCSO to engage in the racial profiling of Latinos, let alone advocated the use of racial profiling. *Id*. at ¶¶ 44-61; *see also* Response to Plaintiffs' MPSJ (Dktt#452 and 453).

The evidence also shows that Plaintiffs' saturation patrol statistics do not establish that the named Plaintiffs' Fourteenth Amendment rights were violated. *Id*. at ¶¶ 96-100. Assuming, *arguendo*, that Plaintiffs' saturation patrol statistics are somehow relevant to the named Plaintiffs' claims, the statistics, at best, show only that Defendants' policy, pattern, or practice had a disproportionate *impact* on Latinos in general during saturation patrols, not the *disparate treatment* of Latinos during saturation patrols. An official policy, pattern, or practice is **not** unconstitutional solely because it has a racially disproportionate impact. *Castaneda v. Partida*, 430 U.S. 482, 493 (1971); *see also Vill. Of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264-65 (1977) ("[O]fficial action will not be held unconstitutional solely because it results in a racially disproportionate impact.").

IV. CONCLUSION

The Plaintiffs lack standing and their policy, pattern, and practice claim does not save their lawsuit from dismissal. The undisputed evidentiary record demonstrates that each of the Plaintiffs' traffic stops were properly predicated upon probable cause or reasonable suspicion, and no stop was unreasonably prolonged. Finally, the evidentiary record demonstrates that Plaintiffs have failed to prove that the Defendants' conduct toward Plaintiffs had a racially discriminatory effect or that Defendants' conduct resulted from a racially discriminatory intent. Accordingly, summary judgment is appropriate in Defendants' favor.

DATED this 16th day of June, 2011.

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

*s/Timothy J. Casey*_____
Timothy J. Casey
Schmitt, Schneck, Smyth & Herrod, P.C.
1221 E. Osborn Rd., Suite 105
Phoenix, Arizona 85014

Telephone: (602) 277-7000
Facsimile:(602) 277-8663

MARICOPA COUNTY ATTORNEY'S OFFICE
Thomas P. Liddy
Civil Services Division
222 N. Central, Suite 1100
Phoenix, Arizona 85004
602-506-8066
Co-counsel for Defendants Arpaio and MCSO

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2011, I electronically transmitted the attached document 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:

The Honorable G. Murray Snow
United States District Court
401 West Washington Street,
Phoenix, Arizona 85003-2158

Stanley Young, Esq.
Andrew Carl Byrnes, Esq.
COVINGTON & BURLING, LLP
333 Twin Dolphin Road
Redwood Shores, California 94065
Counsel for Plaintiffs

Daniel Pochoda, Esq.
Annie Lai, Esq.
ACLU FOUNDATION OF ARIZONA
3707 N. 7th Street, Suite 235
Phoenix, Arizona 85014
Counsel for Plaintiffs

Monica M. Ramirez, Esq.
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, California 94111
Counsel for Plaintiffs

Nancy Ramirez, Esq.
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND
634 S. Spring Street, 11th Floor
Los Angeles, California 90014
Counsel for Plaintiffs

Thomas P. Liddy
Deputy County Attorneys, Civil Services Division
Maricopa County Attorney's Office
222 N. Central, Suite 1100
Phoenix, Arizona 85004
Co-counsel for Defendants Arpaio and MCSO

s/Eileen Henry
Eileen Henry, Paralegal
SCHMITT, SCHNECK, SMYTH & HERROD, P.C.