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

13 Manuel de Jesus Ortega Melendres, on
 14 behalf of himself and all others similarly
 15 situated; et al.

15 Plaintiffs,

16 v.

17 Joseph M. Arpaio, in his individual and
 18 official capacity as Sheriff of Maricopa
 19 County, AZ; and Maricopa County, AZ
 20 Defendants.

No. 2:07-cv-02513-GMS

COMPLAINT IN INTERVENTION

21 **INTRODUCTION**

22 1. Since at least 2007, Defendants Sheriff Joseph M. Arpaio (Arpaio) and
 23 Maricopa County, through the Maricopa County Sheriff’s Office (MCSO) have engaged,
 24 and continue to engage, in a pattern or practice of unlawful discriminatory police conduct
 25 directed at Hispanic persons in Maricopa County, in violation of the United States
 26 Constitution and Federal law. For example, as this Court found in May 2013, following a
 27 full evidentiary trial, Defendant Arpaio and MCSO have had a practice of unlawfully
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1 against Sheriff Arpaio, MCSO, and Maricopa County, alleging, *inter alia*, a pattern or
2 practice of discriminatory and otherwise unconstitutional law enforcement actions against
3 Hispanic persons in Maricopa County, in violation of the Fourth Amendment and
4 Fourteenth Amendment of the United States Constitution, Title VI of the Civil Rights Act
5 of 1964, 42 U.S.C. § 2000d to 2000d-7, and the Title VI implementing regulations issued
6 by the DOJ, 28 C.F.R. §§ 42.101 to 42.112.

7 16. The United States' discriminatory policing claims in its ongoing litigation
8 against Sheriff Arpaio and Maricopa County arise from much of the same unlawful
9 discriminatory conduct found by this Court, although the United States alleges that the
10 pattern or practice of unlawful discriminatory conduct is broader than that found by the
11 Court here. The United States' suit further concerns three broad categories of unlawful
12 conduct beyond those at issue in this case: discriminatory jail practices against Hispanic
13 inmates with limited English proficiency, retaliatory actions against perceived critics of
14 MCSO policies or activities in violation of the First Amendment, and unlawful detentions
15 during law enforcement actions targeting Hispanic immigrants working in area
16 businesses in violation of the Fourth and Fourteenth Amendments.

17 17. In June 2013, the United States submitted a statement of interest in this
18 case, articulating its broad interest in ensuring that the unconstitutional conduct identified
19 by the Court was adequately remedied, and providing recommendations as to appropriate
20 and effective injunctive relief to be ordered by the Court. *See* Statement of Interest by
21 the United States, *Melendres v. Arpaio*, No. 07-cv-2513 (D. Ariz. June 13, 2013), ECF
22 No. 580.

23 18. Recent proceedings in *Melendres* have revealed and confirmed the
24 Defendants' intransigence in this case and various and significant acts in contempt of the
25 court's orders.

26 19. The Court's November 20, 2014 Order unsealed a report of the Monitor in
27 this case concerning the Defendants' non-compliance with the Court's orders. *See* Order,
28 *Melendres v. Arpaio*, No. 07-cv-2513 (D. Ariz. Nov. 20, 2014), ECF No. 795.

1 20. On February 12, 2015, the Court entered an Order to Show Cause setting a
2 hearing on the Defendants’ contempt of court for April 21 to 24, 2015. *See* Order to
3 Show Cause, *Melendres v. Arpaio*, No. 07-cv-2513 (D. Ariz. Feb. 12, 2015), ECF No.
4 880.

5 21. Defendant Arpaio admitted his contempt of court on March 17, 2015, and
6 acknowledged the need for further remedial orders. *See* Expedited Motion to Vacate
7 Hearing and Request for Entry of Judgment, *Melendres v. Arpaio*, No. 07-cv-2513 (D.
8 Ariz. March 17, 2015), ECF No. 948.

9 22. On June 15, 2015, the Court granted the United States’ motion for summary
10 judgment in the United States’ related lawsuit against Sheriff Arpaio and Maricopa
11 County, finding that the United States had proven its discriminatory policing claims to
12 the extent those claims dealt with “the pattern of discriminatory conduct found in
13 *Melendres*,” namely, MCSO’s “discriminatory enforcement of immigration laws through
14 vehicle stops.” Order at 39, 41, *United States v. Maricopa County* , No. 2:12-cv-981 (D.
15 Ariz. June 15, 2015), ECF No. 379.

16 23. On July 17, 2015, the United States, Sheriff Arpaio, and Maricopa County
17 entered into a settlement agreement to resolve all of the claims in the United States’
18 related lawsuit relating to worksite identity theft operations and alleged retaliation. The
19 parties reached a separate agreement to resolve all the United States’ claims alleging
20 discrimination in MCSO jails. That same day, July 17, 2015, the parties jointly moved
21 the Court to approve and enter the settlement agreement relating to worksite identity theft
22 operations and alleged retaliation.

23 24. On July 20, 2015, the United States further moved the Court for a stay of
24 proceedings relating to the remaining claims in the case, pending this Court’s resolution
25 of the United States’ motion to intervene in this case.

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FACTS

Defendants' Discriminatory Conduct

25. This Court concluded, in its May 2013 Findings of Fact and Conclusions of Law, that, "MCSO's use of Hispanic ancestry or race as a factor in forming reasonable suspicion that persons have violated state laws relating to immigration status violates the Equal Protection Clause of the Fourteenth Amendment." *Melendres*, 989 F. Supp. 2d at 899.

26. In support of that conclusion, the Court found that Sheriff Arpaio, and other MCSO employees under his control, engaged in intentional discrimination against Hispanic persons during traffic stops conducted in connection with immigration-related law enforcement actions. *Melendres*, 989 F. Supp. 2d at 899.

27. The Court also found that "the most relevant facts" indicated "an institutionalized consideration of race in MCSO operations," particularly in its law enforcement operations aimed at enforcing state laws relating to immigration. *Id.*

28. For example, MCSO law enforcement practices included traffic stops conducted in connection with purported immigration and human smuggling law enforcement activities, including "saturation patrols," during which MCSO officers unlawfully relied on race, color, or national origin.

29. In conducting its "saturation patrols," MCSO officers "would conduct traffic enforcement operations with the purpose of detecting unauthorized aliens during the course of normal traffic stops." *Melendres*, 989 F. Supp. 2d at 831.

30. In furtherance of that purpose, MCSO officers emphasized the enforcement of traffic and vehicle infractions against vehicles occupied by Hispanic persons.

31. In so doing, MCSO considered Hispanic ancestry as one factor among others in choosing the location for its saturation patrols.

32. Similarly, MCSO considered race or Mexican ancestry as one factor among others in deciding whether or not to stop vehicles during large-scale saturation patrols.

1 33. Defendant Arpaio, as well as many MCSO officers, believe that most
2 unauthorized immigrants in Maricopa County are originally from Mexico or from Central
3 or South America.

4 34. Indeed, as this Court found, MCSO officers specifically equated being a
5 Hispanic or Mexican day laborer with being an unauthorized alien.

6 35. In 2006, Defendant Arpaio decided to make immigration enforcement a
7 priority for MCSO.

8 36. That same year, Defendant Arpaio created a specialized unit, known as the
9 Human Smuggling Unit (HSU), to enforce a 2005 Arizona state human smuggling law.

10 37. In early 2007, the MCSO entered into a Memorandum of Understanding
11 (MOU) with the United States Immigration and Customs Enforcement (ICE) under
12 §287(g) of the Immigration and Nationality Act (INA), pursuant to which MCSO could
13 enforce immigration law in certain circumstances.

14 38. After MCSO signed this MOU with ICE, it expanded the HSU. Within a
15 year, the HSU had grown from two deputies to a unit of two sergeants, 12 deputies, and
16 four detention officers, all under the leadership of a lieutenant.

17 39. Both the MOU between MCSO and ICE, and the protocols for the HSU,
18 required that officers have a legitimate basis, under state law, to stop an individual or
19 vehicle before investigating the individual's immigration status.

20 40. However, in MCSO news releases and public statements, Defendant Arpaio
21 described MCSO's immigration enforcement authority as unconstrained by a requirement
22 that MCSO officers first have a basis to pursue state law violations against stopped
23 individuals.

24 41. Under Defendant Arpaio's leadership, MCSO command staff also believed
25 that MCSO had inherent authority to enforce federal immigration laws, including the
26 ability to make immigration arrests absent specific authorization from ICE.

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1 42. MCSO news releases about the agency's large-scale saturation patrols
2 emphasized that the purpose of such operations was immigration enforcement, or
3 highlighted the number of unauthorized aliens arrested during such operations.

4 43. MCSO policy, training, and instruction for MCSO officers conducting
5 saturation patrols stated that officers could consider race as one of multiple factors in
6 making determinations as to whether there was reasonable suspicion that an individual
7 was in the country unlawfully.

8 44. MCSO deputies also considered an individual's immigration status relevant
9 to their determination as to whether an individual had violated state criminal laws.

10 45. Defendant Arpaio, MCSO command staff, and MCSO supervisors
11 incorrectly believed, and MCSO command staff instructed MCSO deputies, that unlawful
12 presence in the United States was a federal crime, and thus was an independent,
13 legitimate basis for an arrest.

14 46. ICE revoked MCSO's 287(g) authority in October 2009. At the time of the
15 revocation, MCSO had approximately 100 field deputies certified under 287(g).

16 47. After the revocation of MCSO's 287(g) authority, Arpaio had all MCSO
17 sworn deputies, approximately 900 individuals, trained to enforce federal immigration
18 law. According to MCSO, that training enabled all MCSO deputies to make immigration
19 arrests; and routine patrol deputies did, in practice, make arrests resulting from that
20 training.

21 48. According to MCSO policy and training, even after MCSO lost its 287(g)
22 authority, and until at least December 2011, all MCSO deputies had the authority to
23 enforce immigration laws and to detain individuals suspected of being in the United
24 States unlawfully.

25 49. MCSO continued to engage in immigration enforcement, and to use race as
26 an indicator of unauthorized presence in the United States, even after losing its 287(g)
27 authority in October 2009.

28

1 50. Defendant Arpaio, and the command staff under his leadership, believed
2 that MCSO's authority to engage in saturation patrols or other HSU operations was
3 unaffected by the revocation of MCSO's 287(g) authority.

4 51. Defendant Arpaio, and the command staff under his leadership, have not
5 made reasonable efforts to guard against violations of Hispanic persons' rights.
6 Defendant Arpaio, and the command staff under his leadership, failed to make such
7 efforts despite their awareness of public criticism and complaints that MCSO deputies
8 were engaged in racial profiling, and even after this Court found that MCSO engaged in
9 discrimination against Hispanic persons and ordered specific injunctive relief to remedy
10 such discriminatory conduct.

11 52. For example, Defendant Arpaio, and other MCSO command staff, never
12 made an evaluation to determine whether MCSO's saturation patrols were being
13 implemented with racial bias. Neither Defendant Arpaio, nor the MCSO command staff
14 under his leadership, collected data on the people stopped or detained to determine
15 whether officers were engaging in racial profiling, or reviewed citations, statistics, or
16 other documents to determine whether HSU officers were engaging in racial profiling.

17 53. Neither Defendant Arpaio, nor the command staff under his leadership,
18 disciplined MCSO deputies for racial profiling.

19 54. Sheriff Arpaio has acknowledged that he did not believe that MCSO
20 needed a training program to prevent racial profiling, because he did not believe that
21 MCSO engaged in racial profiling.

22 55. Until June 2013, MCSO had no general written policy banning racial
23 profiling.

24 56. In the immigration enforcement context, Defendant Arpaio, and the MCSO
25 command staff under his leadership, did not believe that it constituted racial profiling to
26 consider race as a factor in making law enforcement decisions. MCSO's written
27 operations plans, policy descriptions, news releases, and training for its officers all
28 inaccurately reflected that same belief.

1 57. Neither Defendant Arpaio, nor the command staff under his leadership,
2 made any competent efforts to ensure that their interpretation of the extent of MCSO's
3 authority to enforce federal immigration law was correct, and thus made no meaningful
4 effort to ensure that MCSO deputies were following the law pertaining to the rights of
5 Hispanic persons during its law enforcement operations.

6 58. The United States incorporates by reference the Court's findings of fact and
7 conclusions of law as set forth in its May 2013 Order.

8 59. Defendant's violations of the Constitution and federal law are ongoing, as
9 evidenced by defendants' acts in contempt of this Court's orders.

10 **VIOLATIONS**

11 60. The United States is authorized under 42 U.S.C. § 14141(b) to seek
12 declaratory and injunctive relief to eliminate a pattern or practice of law enforcement
13 officer conduct that deprives persons of rights, privileges, or immunities secured or
14 protected by the Constitution or laws of the United States.

15 61. The United States is authorized under Title VI to seek declaratory and
16 equitable relief and/or the termination of federal funds to ensure that no person shall be
17 excluded from participation in, be denied the benefits of, or be subjected to
18 discrimination under any program or activity receiving federal funding on the basis of
19 race, color, or national origin.

20 **FIRST CLAIM FOR RELIEF:**

21 **DEFENDANTS' LAW ENFORCEMENT POLICIES AND PRACTICES**
22 **VIOLATE 42 U.S.C. § 14141 AND THE FOURTEENTH AMENDMENT**

23 62. The United States re-alleges and incorporates by reference the allegations
24 set forth in paragraphs 1-61, above.

25 63. Defendants, their agents, and persons acting on their behalf, including
26 MCSO officers, have engaged in law enforcement practices, including traffic stops and
27 the enforcement of federal and state immigration laws, with the intent to discriminate
28 against Hispanic persons in Maricopa County on the basis of their race, color, or national

1 origin, and these enforcement actions have had a discriminatory effect on Hispanic
2 persons.

3 64. Defendants' discriminatory law enforcement policies and practices
4 constitute a pattern or practice of conduct by law enforcement officers that deprives
5 persons of rights protected by the Due Process and Equal Protection Clauses of the
6 Fourteenth Amendment of the United States Constitution, in violation of 42 U.S.C. §
7 14141(a).

8 **SECOND CLAIM FOR RELIEF:**

9 **DEFENDANTS' TREATMENT OF HISPANIC INDIVIDUALS VIOLATES**
10 **TITLE VI**

11 65. The United States re-alleges and incorporates by reference the allegations
12 set forth in paragraphs 1-61, above.

13 66. Defendants, their agents, and persons acting on their behalf, including
14 MCSO officers, have engaged in law enforcement practices with the intent to
15 discriminate against Hispanic persons on the basis of their race, color, or national origin.

16 67. Defendants' law enforcement practices are unjustified and have had an
17 adverse disparate impact on Hispanic persons.

18 68. Defendants' discriminatory law enforcement practices, and intentional
19 discrimination, independently violate Title VI and the Title VI implementing regulations.

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21 **PRAYER FOR RELIEF**

22 69. WHEREFORE, the United States prays that the Court:

23 70. Order such equitable and injunctive relief as is appropriate to remedy the
24 Defendants' constitutional violations found by the Court in this case;

25 71. Order such equitable and injunctive relief as is appropriate to remedy the
26 Defendants' contempt of the Court's orders in this case; and

27 72. Order such other relief as the interests of justice may require.
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Respectfully submitted,

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ATTORNEYS FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I certify that on or about August 31, 2015, I used the Court's CM/ECF system to serve a true and correct copy of the foregoing filing on counsel of record.

/s/ Edward G. Caspar
EDWARD G. CASPAR

Exhibit A

1 Mark Kappelhoff
 2 Deputy Assistant Attorney General
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No. 2:07-cv-02513-GMS

CERTIFICATE OF THE
 ATTORNEY GENERAL

21 CERTIFICATE OF THE ATTORNEY GENERAL

22 I, Loretta E. Lynch, Attorney General of the United States, pursuant to Section
 23 902 of the Civil Rights Act of 1964, hereby certify that in my judgment, the case of
 24 *Melendres v. Arpaio*, No. 2:07-cv-02513 (D. Ariz.), is a case of general public
 25 importance, and I am personally signing this Certificate in support of the United States'
 26 intervention as a plaintiff in the case.

27 Signed this 16th day of June, 2015, at Washington, D.C.

28 
 LORETTA E. LYNCH
 Attorney General of the United States