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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 07-02513-PHX-MHM

**DEFENDANT MARICOPA  
COUNTY'S MOTION TO  
STAY PROCEEDINGS**

**MOTION**

Defendant Maricopa County (the "County") respectfully moves for a temporary stay of proceedings in this matter pending the outcome of an investigation currently being conducted by the United States Department of Justice (the "Justice Department"). A stay is warranted in this case pursuant to the Court's inherent power to control its proceedings in the most economic and efficient manner possible, and in accordance with the deference due the Executive Branch under the separation of powers doctrine. This Motion is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

**A. The Memorandum of Agreement with ICE**

In early 2007, United States Immigration and Customs Enforcement ("ICE"), a component of the Department of Homeland Security, entered into a Memorandum of Agreement ("MOA") with the County and the Maricopa County

1 Sheriff's Office ("MCSO"). [First Amended Complaint ("Complaint"), Exhibit "A", p.  
2 1] Pursuant to the MOA, ICE authorized "up to a maximum of 160 nominated, trained,  
3 and certified personnel of the [MCSO] to perform certain immigration enforcement  
4 functions." [Id.]

5 ICE, the County, and the MCSO entered into the MOA under the authority of  
6 section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), which  
7 authorizes ICE to enter into agreements with a state or any political subdivision of a  
8 state pursuant to which qualified personnel are authorized to perform certain functions  
9 of immigration officers. 8 U.S.C. § 1357(g)(1). Selected members of the MCSO have  
10 been performing such immigration functions under the MOA since 2007.

#### 11 **B. Proceedings Before This Court**

12 The plaintiffs commenced this action in December 2007 against Defendants  
13 Joseph M. Arpaio (the "Sheriff"), the MCSO, and the County (collectively, the  
14 "Defendants"). The plaintiffs allege in their First Amended Complaint, filed July 16,  
15 2008, that the MCSO, while enforcing immigration laws under the authority of the  
16 MOA, has engaged in "racial profiling and other racially and ethnically discriminatory  
17 treatment" against a number of Latino persons in Maricopa County. [Complaint, ¶¶ 2-  
18 3] The plaintiffs' stated reason for bringing the action is "to enforce the Fourth and  
19 Fourteenth Amendments to the United States Constitution; Title VI of the Civil Rights  
20 Act of 1964; and Article II, § 8 of the Arizona Constitution." [Complaint, ¶ 1] The  
21 plaintiffs' Complaint includes claims for declaratory and injunctive relief pursuant to  
22 these constitutional and statutory provisions. [Complaint, ¶¶ 128-154]

23 Specifically, the plaintiffs ask the Court for a declaration that the defendants'  
24 alleged actions violate the United States Constitution, federal laws and regulations, and  
25 the Arizona Constitution. [Complaint, ¶¶ A-D] The plaintiffs also seek an injunction  
26 (1) "prohibiting Defendants from continuing to engage in . . . race, color and/or  
27 ethnicity based discrimination"; (2) requiring the defendants "to put into place  
28 safeguards sufficient to ensure that such discrimination does not continue in the future";

1 and (3) prohibiting “Defendants from exceeding the limits of their authority under the  
2 MOA and state and federal law.” [Complaint, ¶¶ E-F]

3 On April 29, 2009, the plaintiffs moved to certify this action as a class action,  
4 seeking to represent a class of “[a]ll Latino persons who, since January 2007, have been  
5 or will be in the future, stopped, detained, questioned or searched by MCSO agents  
6 while driving or sitting in a vehicle on a public roadway or parking area in Maricopa  
7 County, Arizona.” [Plaintiffs’ Motion for Class Certification, p. 1] Also currently  
8 pending before the Court are the Sheriff’s and the MCSO’s Motion for Judgment on the  
9 Pleadings.

### 10 **C. The Justice Department’s Investigation**

11 On February 12, 2009, four Members of the United States House of  
12 Representatives submitted a letter to the Justice Department and the Department of  
13 Homeland Security requesting that the agencies investigate allegations of misconduct on  
14 the part of the Sheriff and the MCSO. [House Letter, attached to Plaintiffs’ Motion for  
15 Class Certification as Exhibit “T”] In their letter, the Members asserted that the Sheriff  
16 has “apparently overreach[ed] his authority under [the MOA],” and they asked the  
17 Justice Department to enforce certain federal statutes against the Sheriff and the MCSO.  
18 [Id.]

19 Shortly thereafter, in March 2009, the Justice Department advised the Sheriff and  
20 the County that it was commencing an investigation of the MCSO pursuant to (1) the  
21 pattern or practice provisions of the Violent Crime Control and Law Enforcement Act  
22 of 1994, 42 U.S.C. § 14141 (“Section 14141”) and the Omnibus Crime Control and Safe  
23 Streets Act of 1968, 42 U.S.C. § 3789d (“Safe Streets Act”); and (2) the prohibitions  
24 against national origin discrimination in Title VI of the Civil Rights Act of 1964, 42  
25 U.S.C. §§ 2000d-2000d7, and the Safe Streets Act, 42 U.S.C. § 3789d(c). [Exhibit  
26  
27  
28

1 “A”]<sup>1</sup>

2 The Justice Department’s investigation is focused upon issues that are nearly  
3 identical to those for which the plaintiffs are seeking relief in this case, specifically,  
4 “alleged patterns or practices of discriminatory police practices and unconstitutional  
5 searches and seizures conducted by the MCSO, and on allegations of national origin  
6 discrimination.” [Exhibit “A”] And just as the plaintiffs are seeking declaratory and  
7 injunctive relief, if the Justice Department’s investigation concludes that the MCSO has  
8 committed “systematic violations of constitutional or other federal rights,” the  
9 Department has indicated that it will “work with the MCSO to remedy any such  
10 violations.” [Id.]

## 11 **II. THIS ACTION SHOULD BE STAYED IN THE INTEREST OF** 12 **JUDICIAL ECONOMY**

13 This Court has the inherent power and discretion to stay its proceedings as a  
14 means of promoting judicial economy and efficiency. *See Landis v. N. Am. Co.*, 299  
15 U.S. 248, 254-55 (1936) (“[T]he power to stay proceedings is incidental to the power  
16 inherent in every court to control the disposition of the causes on its docket with  
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18 <sup>1</sup> The Justice Department’s March 2009 letter can be accessed at  
19 <http://www.azcentral.com/arizonarepublic/news/articles/2009/03/11/20090311investigation0311.html>  
20 (last visited May 28, 2009). The Justice Department’s ongoing  
21 investigation has also been reported in several recent newspaper articles. [See, e.g.,  
22 Exhibit “B.”] The Court can take judicial notice of the investigation under Rule 201 of  
23 the Federal Rules of Evidence, and the County respectfully requests that it do so. *See,*  
24 *e.g., Wible v. Aetna Life. Ins. Co. v. Aetna*, 375 F. Supp. 2d 956, 965-66 (C.D. Cal.  
25 2005) (taking judicial notice of a letter from an agency and information posted on the  
26 internet). Taking judicial notice of the investigation is particularly appropriate in this  
27 case because the plaintiffs referred to the investigation in paragraph 45 of their First  
28 Amended Complaint. *See, e.g., In re Am. Funds Sec. Litig.*, 556 F. Supp. 2d 1100, 1103  
(C.D. Cal. 2008) (noting that a court may take judicial notice of a matter that “is not  
contested and upon which the plaintiff’s complaint necessarily relies,” including  
specifically “the existence of published reports regarding investigations”) (internal  
quotation and citation omitted); *see also Heliotrope Gen., Inc. v. Ford Motor Co.*, 189  
F.3d 971, 981 n.18 (9th Cir. 1999) (taking judicial notice of “information contained in  
news articles submitted by the defendants”).

economy of time and effort for itself, for counsel, and for litigants.”); *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803, 817 (9th Cir. 2003) (“District courts have inherent authority to stay proceedings before them . . .”).

When deciding whether to stay a civil action pending the resolution of a related proceeding, courts generally consider three factors: (1) the conservation of judicial resources; (2) prejudice to the non-moving party if the stay is granted; and (3) hardship and inequity to the moving party if the stay is not granted. *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997); *see also Wojtunik v. Carolina Cas. Ins. Co.*, No. CV-07-515-PHX-SMM, 2008 WL 123796, at \*1 (D. Ariz. Jan. 9, 2008) (“[i]n determining whether to issue a stay, the Ninth Circuit instructs a district court to weigh competing interests,” including “the possible damage which may result from the granting of the stay, the hardship or inequity . . . a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay”).<sup>2</sup> As set forth below, these factors weigh in favor of staying this case pending the outcome of the Justice Department’s investigation.

**A. A Stay Pending the Outcome of the Justice Department Investigation Will Conserve Judicial Resources**

The Ninth Circuit and other courts have determined that in order to conserve judicial resources and promote judicial economy and efficiency, it is appropriate to stay proceedings pending the outcome of a related parallel investigation or other proceeding. *See, e.g., Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979) (concluding it would “waste judicial resources” if the court allowed the civil action to continue while a “substantial parallel process” went forward); *Chronicle Publ’g Co. v.*

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<sup>2</sup> This Court may review and rely upon electronically published district court decisions for persuasive authority. *See Pestube Sys., Inc. v. HomeTeam Pest Defense, LLC*, No. CIV-05-2832-PHX-MHM, 2006 WL 1441014, at \*7 n.1 (D. Ariz. May 24, 2006).

1 *Nat'l Broad. Co.*, 294 F.2d 744, 747 (9th Cir. 1961) (staying civil action pending the  
 2 outcome of a related agency action in order to avoid “wasteful duplication of effort”);  
 3 *Cheyney State College Faculty v. Hufstedler*, 703 F.2d 732, 738 (3d Cir. 1983) (granting  
 4 defendant’s motion to stay civil action in the interest of “the proper allocation of [the]  
 5 state’s resources”); *Russian Standard Vodka (USA) v. Allied Domecq Spirits & Wine*  
 6 *USA, Inc.*, 523 F. Supp. 2d 376, 384 (S.D.N.Y. 2007) (granting a stay pending the  
 7 outcome of a related parallel investigation because the stay would help “limit the waste  
 8 of judicial resources”).<sup>3</sup>

9 *Chronicle Publishing* involved an antitrust lawsuit in which the plaintiff  
 10 challenged the defendant’s acquisition of a television station. *Chronicle Publishing*,  
 11 294 F.2d at 745. The defendant requested a stay of proceedings pending a  
 12 determination by the Federal Communications Commission regarding the propriety of  
 13 the acquisition. *Id.* The Ninth Circuit affirmed the district court’s grant of a stay,  
 14 stating:

15 We note that while . . . the acquisition of [the television  
 16 station] is to be examined by the district court and by the  
 17 Federal Communications Commission from two distinct  
 18 points of view, the facts material to each examination may  
 in large part be the same. We are then confronted with the  
 prospect of two tremendously complex proceedings

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 20 <sup>3</sup> See also *Grubbs v. Irely*, No. Civ. S-06-1714 RRB GGH, 2008 WL 906246, at \*1  
 21 (E.D. Cal. March 31, 2008) (granting defendant’s motion to stay civil action pending  
 22 the outcome of a related parallel investigation and concluding the stay would “serve the  
 23 interests of judicial economy” because the resolution of the parallel investigation would  
 24 “likely serve to narrow the issues and streamline the discovery process in the civil  
 25 action”); *Bennett v. Int’l Paper Co.*, No. Civ. 05-38 RHKRLE, 2005 WL 1459656, at \*6  
 26 (D. Minn. June 21, 2005) (concluding that granting stay of civil action and awaiting  
 27 agency’s assessment “is consistent with the interest of all of the parties . . . in arriving at  
 28 a sound and just solution with efficiency”); *Knight v. James*, 514 F. Supp. 567, 571  
 (M.D. Ala. 1981) (recognizing that a stay would avoid “duplication of proceedings”);  
*Pac. Bell v. Superior Court*, 187 Cal. App. 3d 137, 140-141 (App. 1986) (holding trial  
 court abused its discretion in not staying civil action pending resolution of an agency  
 investigation where the stay would “conserve judicial and other resources which would  
 otherwise be consumed in litigation of some issues which [would] likely be resolved by  
 administrative action”).

1 simultaneously assembling the same factual data in  
2 painstaking detail for the purpose of considering these facts  
3 from different points of view.

4 *Id.* at 747. The Court concluded that the situation was one that “crie[d] out for the  
5 elimination of wasteful duplication of effort.” *Id.*

6 In a civil rights case much like this one, the Third Circuit stayed an action  
7 pending the completion of a related agency action in order to conserve judicial  
8 resources. *Cheyney*, 703 F.2d at 738. *Cheyney* involved a class action in which the  
9 plaintiffs alleged that the defendants violated Title VI of the Civil Rights Act and other  
10 federal statutes by operating a segregated system of higher education. *Id.* at 733-34.  
11 Like the plaintiffs in this case, the plaintiffs in *Cheyney* sought declaratory and  
12 injunctive relief. The district court stayed the lawsuit, concluding that enforcement  
13 actions being taken by the United States Department of Education “might obviate at  
14 least part of the controversy.” *Id.* at 734. The court emphasized that “an appropriate  
15 solution for at least some of the difficult problems may be obtained more readily  
16 through the flexibility of the administrative process . . . in active progress.” *Id.* at 738.

17 In *Russian Standard*, the court stayed a civil action pending the outcome of a  
18 related investigation being conducted by a *private* organization. *Russian Standard*, 523  
19 F. Supp. 2d at 378. In reaching its decision, the court observed that allowing “a highly  
20 reputable institution[] to provide its expert view . . . would be extremely useful in  
21 resolving remaining claims in the complaint” and “would promote judicial economy and  
22 be informative to the court in its own decision regarding the remaining claims.” *Id.* at  
23 384.

24 As the foregoing cases demonstrate, granting a stay in this case will conserve  
25 judicial resources and avoid duplicative efforts because the Department of Justice is  
26 currently investigating issues central to the plaintiffs’ claims—allegations that the  
27 Sheriff and the MCSO have engaged in national origin discrimination, discriminatory  
28



1 police practices, and unconstitutional searches and seizures.<sup>4</sup> The results of the Justice  
 2 Department’s investigation will inevitably assist the parties and the Court in structuring  
 3 their litigation activities in this case, and could even obviate the need for further  
 4 litigation in the event the Justice Department effectively provides the plaintiffs the relief  
 5 they are seeking here. *See* Exhibit “A” (“If . . . we conclude there are such violations,  
 6 we will inform you of the findings and attempt to work with the MCSO to remedy any  
 7 such violations. . . . In nearly 15 years of enforcing this statute, the good faith efforts of  
 8 state and local jurisdictions working with us have enabled us routinely to resolve our  
 9 claims without resorting to contested litigation.”).

10 The Justice Department may even institute its own civil action seeking the same  
 11 relief sought in this case—a declaratory judgment and injunction,<sup>5</sup> or recommend that  
 12 the MOA be terminated by ICE.<sup>6</sup> Judicial resources, and those of the parties, will  
 13 therefore be conserved by staying this civil action pending the resolution of the Justice  
 14 Department’s investigation.

15 **B. The Plaintiffs Will Not Be Prejudiced by a Stay**

16 For many of the same reasons judicial economy would be promoted by a stay, so  
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18 <sup>4</sup> The Justice Department’s actions may have been prompted by a letter sent to the  
 19 Department by City of Phoenix Mayor Phil Gordon on April 4, 2008. In his letter,  
 20 Mayor Gordon requested that the Justice Department direct the Civil Rights Division  
 21 and the Federal Bureau of Investigation to initiate an investigation of the Sheriff for  
 22 “potential civil rights investigations.” [Complaint, Exhibit D] The letter was sent after  
 Mayor Gordon’s assistant (and a named plaintiff in this case), Jessica Rodriquez,  
 allegedly was stopped and questioned by a MCSO deputy. [Id.]

23 <sup>5</sup> If the Justice Department determines that the Sheriff and the MCSO have engaged “in  
 24 a pattern or practice of conduct . . . that deprives persons of rights, privileges, or  
 25 immunities secured or protected by the Constitution or laws of the United States,” it  
 may institute a civil action to “obtain appropriate equitable and declaratory relief to  
 eliminate the pattern or practice.” 42 U.S.C. § 14141 (a)-(b).

26 <sup>6</sup> *See* MOA, § XX. The Members of the House of Representatives who requested  
 27 investigations by the Justice Department and Homeland Security specifically requested  
 28 that the MOA be canceled if the agencies find that the defendants have engaged in  
 racially discriminatory conduct that cannot otherwise be remedied.



1 too would the interests of the parties—including the plaintiffs. The Justice Department  
 2 is investigating the very issues the plaintiffs seek to address by this lawsuit. The Justice  
 3 Department’s factual findings will undoubtedly be useful to the Court and the parties in  
 4 the resolution of the plaintiffs’ claims. Indeed, rather than prejudice the plaintiffs, a  
 5 stay will benefit them. *See SanDisk Corp. v. Phison Elecs. Corp.*, 538 F. Supp. 2d  
 6 1060, 1067 (W.D. Wis. 2008) (staying patent infringement lawsuit pending resolution  
 7 of related investigation by International Trade Commission because “waiting for the  
 8 commission to complete its investigation may help simplify” the case, and the record  
 9 developed “before the commission may be used to expedite proceedings and provide  
 10 useful information to the court” even though any decision reached by the commission  
 11 would “have no preclusive effect on the district court”) (internal quotations omitted);  
 12 *Russian Standard*, 523 F. Supp. 2d at 384 (finding no prejudice because the outcome of  
 13 a parallel investigation “may be illuminative for further resolution [of the] case, and  
 14 thus be beneficial to plaintiffs”).<sup>7</sup>

15 In any event, considerations of judicial economy and efficiency outweigh any  
 16 prejudice to the plaintiffs. *Cf. Rivers*, 980 F. Supp. at 1362 n.5 (“[E]ven if a temporary  
 17 stay could be characterized as a delay that could be prejudicial to Defendant, there are  
 18 still considerations of judicial economy that outweigh any prejudice to Defendant.”).

### 19 **C. The Defendants Will Suffer a Hardship If the Stay Is Not Granted**

20 The plaintiffs’ allegations are fact intensive and involve numerous individuals.  
 21 Their claims are not likely to be resolved without extensive discovery and other  
 22 protracted investigative processes. As discussed above, the results of the Justice  
 23 Department’s investigation will, at a minimum, assist the parties and the Court in  
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25 <sup>7</sup> Moreover, to avoid any unnecessary delay and minimize any potential prejudice,  
 26 the Court obviously can order the parties to report intermittently on the status of the  
 27 Justice Department’s investigation. *See Cheyney*, 703 F.2d at 738 (court’s order that the  
 28 defendants “report at 90-day intervals on the progress of the administrative  
 proceedings” will “enable the court to gauge whether the stay has produced fruitful  
 results or mere delay”).

1 structuring discovery and other litigation activities in this case, and the results of the  
 2 investigation may even obviate the need for further litigation. Thus, the defendants will  
 3 suffer a hardship if they are forced to proceed with this litigation without the benefit of  
 4 the results of the Department's investigation.

5 Indeed, parallel proceedings, by their very nature, are burdensome to the parties.  
 6 *See SanDisk*, 538 F. Supp. 2d at 1067 (observing that "parallel proceedings [would] be  
 7 burdensome"); *Johnson v. KFC Corp.*, No. 07-0416-CV-W-HFS, 2007 WL 3376750,  
 8 \*3 (W.D. Mo. Nov. 7, 2007) (granting a stay pending a parallel proceeding so that the  
 9 defendant would not be "forced to simultaneously litigate the same issues"). Thus, a  
 10 stay is warranted because if one is not granted, the defendants will suffer a hardship by  
 11 being forced to proceed without the benefit of the results of the Justice Department's  
 12 investigation and they may be forced to participate in parallel proceedings  
 13 simultaneously.

### 14 **III. THIS ACTION SHOULD BE STAYED IN DEFERENCE TO THE** 15 **PRINCIPLE OF SEPARATION OF POWERS**

16 The Sheriff and the MCSO have previously argued that the Court should defer to  
 17 the Executive Branch's interest in retaining independent oversight over the  
 18 accomplishment of its law enforcement and immigration duties. [Sheriff's and MCSO's  
 19 Response to Plaintiffs' Motion for Class Certification, p. 11-12]<sup>8</sup> At a minimum, a  
 20 temporary stay of the proceedings in this case pending the outcome of the Justice  
 21 Department's investigation is warranted pursuant to the separation of powers doctrine.<sup>9</sup>

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23 <sup>8</sup> Congress has delegated the enforcement of federal immigration laws to the  
 24 Executive Branch. *See* 8 U.S.C. § 1103 (assigning immigration enforcement functions  
 25 to the Executive Branch); *LaDuke v. Nelson*, 762 F.2d 1318, 1325 (9th Cir. 1985)  
 26 ("Enforcement of the nation's immigration laws has been delegated by Congress to the  
 Executive Branch.").

27 <sup>9</sup> *See Pacemaker Diagnostic Clinic of Am., Inc. v. Instromedix, Inc.*, 725 F.2d 537,  
 544 (9th Cir. 1984) ("the separation of powers doctrine protects the whole constitutional  
 28 structure by requiring that each branch retain its essential powers and independence");  
*cf. N. Cal. Dist. Council of Hod Carriers, Bldg. & Constr. Laborers, AFL-CIO v.*

1        *Kurtz v. Kennickell*, 622 F. Supp. 1414 (D.D.C. 1985) demonstrates that in  
 2 circumstances such as those present here, a court should defer to a co-equal branch of  
 3 the government even if the court has jurisdiction to decide the matter. The plaintiff in  
 4 *Kurtz* sued the Public Printer, the Secretary of the Treasury, and the Treasurer of the  
 5 United States, seeking a declaration that their use of appropriated funds to print and  
 6 publish prayer compilations for use by the Chaplains of the Senate and House of  
 7 Representatives violated the Establishment Clause of the First Amendment. *Id.* at 1415.

8        The court determined that it had jurisdiction to decide the case. *Id.* at 1416.  
 9 Senate counsel, however, contended that plaintiff could “obtain the relief he sought by a  
 10 petition to the Senate for the redress of his grievances.” *Id.* at 1418. Senate counsel  
 11 therefore urged the court to, “in deference to the separation of powers principle, . . .  
 12 defer consideration of the matter” until a Senate committee could explore the issue. *Id.*  
 13 at 1418-19. Observing that “facts on the record . . . confirm that the Senate may well be  
 14 prepared to address [the] issue on the merits,” the court concluded that “the availability  
 15 of a forum in the Senate for . . . consideration of [the matter] makes it appropriate, in the  
 16 unusual circumstances of this case, to defer to this coordinate forum.” *Id.*

17        The court reached its decision on the basis of the separation of powers doctrine,  
 18 emphasizing the deference due to co-equal branches of government. *Id.* (“[h]ead on  
 19 confrontations” between co-equal branches of the government “will not, in the long run,  
 20 be beneficial” (quoting *United States v. Richardson*, 418 U.S. 166, 188 (1974) (Powell,  
 21 J., concurring))). Thus, the court decided to “withhold declaratory relief for prudential  
 22 reasons,” and it dismissed the complaint without prejudice. *Id.*

23        *Kurtz* demonstrates that, at the very least, a stay is warranted under the  
 24 circumstances of this case. The Justice Department is in a position to address the merits  
 25 of the plaintiffs’ grievances, and currently is investigating the very allegations the  
 26 plaintiffs have made in their Complaint. The Justice Department may pursue essentially

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27  
 28 *Opinski*, 673 F.2d 1074, 1075 (9th Cir. 1982) (“appropriate deference” to an agency’s  
 expertise “often will require a stay of judicial proceedings”).

1 the same remedial action the plaintiffs are seeking if it concludes that the Sheriff and the  
2 MCSO have engaged in discriminatory conduct. Because the issues in this case—  
3 enforcement of immigration laws—fall uniquely within the realm of the Executive  
4 Branch, and action by that branch is currently in progress, this Court should defer to the  
5 branch's fundamental interest in resolving those issues. Therefore, the separation of  
6 powers doctrine independently warrants granting a temporary stay pending the outcome  
7 of the Justice Department investigation.

8  
9 **CONCLUSION**

10 If the Court is not inclined to grant the Sheriff's and the MCSO's Motion for  
11 Judgment on the Pleadings, the County respectfully submits that the Court nevertheless  
12 should stay its proceedings pending the outcome of the Justice Department's  
13 investigation. The County therefore respectfully requests that its motion for a stay be  
14 granted.

15 RESPECTFULLY SUBMITTED this 28th day of May, 2009.

16 RYLEY CARLOCK & APPLEWHITE

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2009, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmitted a Notice of Electronic Filing to the following attorneys who are CM/ECF registrants:

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