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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
28

1 stopping, detaining, and investigating persons of Hispanic ancestry based on their race,
2 and of doing so in the furtherance of its aim to enforce federal and state immigration laws
3 against Hispanic persons, even without a lawful basis for the enforcement of such laws.
4 See *Melendres v. Arpaio*, 989 F. Supp. 2d 822 (D. Ariz. 2013).

5 2. This pattern or practice of unlawful discrimination has resulted, and
6 continues to result, in the systematic denial of the constitutional rights of Hispanic
7 individuals in Maricopa County. Further, this pattern or practice of unlawful
8 discrimination erodes the relationship between MCSO and key segments of the
9 community, thereby threatening public safety by hampering MCSO's ability to fight
10 crime.

11 3. The United States brings this action, as a Plaintiff-Intervenor, in order to
12 ensure the Defendants' compliance with appropriate remedial orders in this case and to
13 secure relief from the Defendants' equal protection violations against Hispanic persons in
14 Maricopa County.

15 4. The United States alleges the following, based on information and belief.

16 **JURISDICTION AND VENUE**

17 5. The district court has jurisdiction over this action pursuant to 28 U.S.C. §§
18 1331 and 1345.

19 6. The United States is authorized to initiate this action under the Violent
20 Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, and Title VI of the
21 Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and its implementing
22 regulations, 28 C.F.R. §§ 42.01 to 42.112.

23 7. Injunctive relief is sought as authorized by 42 U.S.C. § 14141(b) and 28
24 U.S.C. § 2202.

25 8. The Attorney General has certified that the instant case is a case of general
26 public importance, pursuant to Section 902 of the Civil Rights Act of 1964. 42 U.S.C. §
27 2000h-2. The Certificate of the Attorney General is attached hereto as Exhibit A and is
28 incorporated herein.

9. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b). Defendants are located in Arizona, and all events, actions, or omissions giving rise to these claims occurred in Arizona.

PARTIES

10. Plaintiff-Intervenor is the United States of America.

11. Defendant Joseph M. Arpaio (Arpaio) is the Sheriff of Maricopa County and is responsible for the operation of the Maricopa County Sheriff's Office (MCSO). Defendant Arpaio serves as the head of MCSO, and as such, has final authority over the agency's decisions and sets the overall direction and policy for the agency.

12. Defendant Maricopa County was recently ordered to be substituted as a party defendant for MCSO, which is a law enforcement agency in Maricopa County, Arizona. MCSO is a Maricopa County agency and provides law enforcement throughout the County and operates the county jail system.

BACKGROUND

13. MCSO employs approximately 900 sworn deputies and 1,800 sworn detention officers. It is a program that receives federal financial assistance, both directly and as a subrecipient through Maricopa County, from the United States Department of Justice (DOJ). In connection with the grant of such federal financial assistance, Arpaio has signed contractual assurances that MCSO will comply with federal law, including all requirements imposed by Title VI and its implementing regulations.

14. Maricopa County, Arizona has close to four million residents, and is the fourth largest county in the United States by population. Approximately 30 percent of the population of Maricopa County is Hispanic. Maricopa County is also a recipient of federal financial assistance from the United States Department of Justice.

15. On May 10, 2012, following a three-year investigation into allegations of discrimination against Hispanic persons by MCSO, the release of a letter documenting the findings of that investigation, and good faith attempts to reach a cooperative resolution of the concerns described in its findings letter, the United States filed a lawsuit

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.

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.

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 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.

20
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.
28

1 Respectfully submitted,

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3 Deputy Assistant Attorney General
4 Civil Rights Division

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6 Acting Chief, Special Litigation Section

7 Timothy D. Mygatt
8 Special Counsel

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22 ATTORNEYS FOR THE UNITED STATES

23 CERTIFICATE OF SERVICE

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

26 /s/ Edward G. Caspar
27 EDWARD G. CASPAR
28