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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Manuel de Jesus Ortega Melendres,  
et al.,

Plaintiff(s),

v.

Joseph M. Arpaio, et al.,

Defendants(s).

CV-07-2513-PHX-GMS

**PARTIES' JOINT REPORT  
REGARDING STATUS OF  
CONSENT DECREE  
NEGOTIATIONS**

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Pursuant to the Court's Order at the June 14, 2013 hearing in the above captioned matter, Plaintiffs Manuel de Jesus Ortega Melendres, Jessica Quitugua Rodriguez, David Rodriguez, Velia Meraz, Manuel Nieto, Jr. and Somos America/We Are America ("Plaintiffs"), and Defendants Joseph Arpaio and the Maricopa County Sherriff's Office (MCSO) ("Defendants"), hereby submit this joint memorandum reporting on the status of their discussions regarding proposed terms for a final decree on remedies.

## **I. Status of Negotiations**

Since June, the parties have engaged in good faith discussions and have been able to reach agreement on a substantial number of terms. The parties continue to disagree on a number of other terms.

Attached hereto as Exhibit A is a proposed Order which sets forth the terms on which the parties have been able to agree, as well as those terms on which the parties have not yet reached agreement. The text in black is the text upon which the parties agree. The text in red is Plaintiffs' proposed language, to which Defendants do not consent. The text in blue is Defendants' proposed language, to which Plaintiffs do not consent. Where Plaintiffs and Defendants have competing proposals, the Plaintiffs' proposal is in red and Defendants' proposal is in blue.

As can be seen in Exhibit A, the parties substantially agree on some areas, though they may disagree on specific details. For other areas, however, the parties have significant differences. The parties will provide the Court with an update on or before August 28 if they are able to reach further agreement on the disputed terms. However, at this time, they believe that there is a significantly likelihood that the Court will need to provide guidance in certain areas, as set forth below.

## **II. Parties' Positions Regarding Significant Disputed Terms**

### Topic 1: Term of the Order - ¶¶ 4-5

Plaintiffs propose that if, after 5 years, the point at which it is expected that Defendants will have reached Full and Effective Compliance, the parties can agree that

1 Defendants have achieved Full and Effective Compliance and have maintained that  
2 Compliance for three continuous years, the parties may jointly seek to terminate this  
3 Order. If the parties disagree, either party may individually seek to terminate the Order  
4 with the Court. Plaintiffs are agreeable to provisions allowing Defendants to seek partial  
5 relief from the Order prior to the five year term, but only if a showing of Full and  
6 Effective Compliance for three continuous years is made.

7 Defendants propose that the term length of the Order be three (3) years in length.  
8 They also propose the Order contain an incentive provision whereby Defendants  
9 maintain the right to move the Court to terminate the Order at any time before the  
10 expiration of the three year time period if they prove to the Court Full and Effective  
11 Compliance with the terms of the Order.

12 Topic 2: Investigation and Questioning of Passengers - ¶ 25h

13 Plaintiffs propose that the Deputies be prohibited from requesting the  
14 identification of passengers, or from questioning, searching or investigating passengers,  
15 in the absence of reasonable suspicion or probable cause to believe that the passenger  
16 has committed or is committing a traffic violation or a crime, in which case questioning  
17 shall be limited to the violation being investigated.

18 Defendants oppose this proposal because it limits constitutionally permissible law  
19 enforcement activity.

20 Topic 3: Training - Section VI

21 Plaintiffs propose that the MCSO be required to provide all sworn Deputies,  
22 including Supervisors and chiefs, as well as all posse members, with 12 hours of training  
23 on bias free policing, including cultural awareness, and 8 hours of training on Fourth  
24 Amendment issues. Plaintiffs further propose that MCSO shall provide Supervisors with  
25 no less than 8 hours of training on supervision strategies and supervisory responsibilities.  
26 Finally, Plaintiffs propose that personnel conducting misconduct investigations, whether  
27  
28

1 assigned to Internal Affairs (IA) or elsewhere, receive at least 8 hours of training with  
2 respect to those duties. Training shall be at least 60% live and no more than 40% on-line.

3 Defendants do not oppose additional deputy training. They, however, do oppose  
4 plaintiffs' volume of deputy training in terms of: (1) the number of hours; and (2) the  
5 hourly percentage allocation between live versus on-line training. They do not oppose  
6 supervisory training, but oppose the number of hours and allocation between live versus  
7 on-line training. Defendants oppose IA training because it is beyond the scope of this  
8 litigation's facts and law, and the Court's Findings of Fact and Conclusions of Law.

9 Defendants propose eight hours of deputy training and four hours of supervisory  
10 training as follows: (1) four (4) hours of bias-free/Fourteenth Amendment policing  
11 training for deputies with elements of Plaintiffs' proposed "cultural awareness" training  
12 being included in this training; (2) four (4) hours of Fourth Amendment policing training  
13 for deputies; (3) four (4) hours of supervision training in addition to the aforementioned  
14 additional eight hours of Fourth and Fourteenth Amendment training; and (4) training  
15 that is 40% live training and 60% on-line training.

16 Topic 4: Traffic Stop Data Collection: ¶ 58

17 Plaintiffs propose that data collection include, among other items that the Parties  
18 have agreed upon, (1) a general and subjective description of the vehicle's overall  
19 appearance as to its condition; (2) a deputy's subjective perceived race, ethnicity and  
20 gender of the driver and any passengers, based on the officer's subjective impression (no  
21 inquiry is required or permitted); (3) instances in which an individual in a vehicle makes  
22 incriminating statements regarding immigration status or an immigration-related crime  
23 in response to questioning by a deputy; and (4) the rate at which contraband or evidence  
24 is found after a search or pat-down frisk is conducted on a traffic stop.

25 Defendants oppose: (1) documenting a vehicle's subjective overall appearance or  
26 condition; (2) requiring deputies to consciously and subjectively guess as to the race of a  
27 driver or passenger and instead propose a surname analysis; (3) documenting  
28

1 incriminating statements and found contraband as beyond the scope of this litigation's  
2 facts and law, and the Court's Findings of Fact and Conclusions of Law.

3 Topic 5: Patrol Car Video Recording Systems: ¶ 64

4 Plaintiffs propose that MCSO be required to make good-faith and steady efforts to  
5 install functional video and audio recording equipment in all traffic patrol vehicles that  
6 make traffic stops. In the event that the MCSO encounters significant budgetary  
7 constraints such that it is not feasible for the MCSO to meet the two-year deadline for  
8 installation of video and audio recording equipment, the MCSO may move the Court for  
9 relief.

10 Defendants agree with the desire to have patrol car video recording systems.  
11 They, however, need protection under the Order based on budgetary constraints are  
12 beyond their control. The Maricopa County Board of Supervisors sets the budget for the  
13 MCSO and makes funding decisions for the MCSO.

14 Topic 6: Supervisors' Close Supervision of Deputies: ¶¶ 77-78

15 Plaintiffs propose that first-line field supervisors shall be required to discuss the  
16 stops made by deputies they supervise no less than once a week in order to ensure  
17 compliance with the Court's orders and MCSO policy. Plaintiffs propose that  
18 supervisors not be assigned to supervise more than eight deputies at a time.

19 Defendants oppose Plaintiffs' effort to set the frequency of supervisor-deputy  
20 discussions, and submit that the frequency of such communications should be left to the  
21 field supervisors. Defendants propose that each supervisor be allowed to supervise no  
22 more than twelve (12) deputies given manpower and budgetary issues.

23 Topic 7: Data in the Early Identification System: ¶86

24 The parties agree that there shall be an Early Identification System (EIS) and that  
25 the EIS shall include a computerized relational database, which shall be used to collect,  
26 maintain, integrate, and retrieve certain data.

1 Plaintiffs propose that the data collected, maintained, integrated, and retrieved by  
2 EIS cover all types of officer conduct that may help to flag problematic behavior. In  
3 addition to the agreed upon areas, Plaintiffs propose that EIS capture (1) arrests in which  
4 the individual was released from custody without formal charges being sought; (2) uses  
5 of force, including firearm discharges, both on duty and off duty; (3) vehicle pursuits and  
6 traffic collisions involving MCSO equipment; (4) contacts that result in a citation,  
7 charges, or arrest for obstructing or resisting an officer, interfering with a law  
8 enforcement investigation, or similar charges; (5) interviews or questioning determined  
9 by a supervisor to have been conducted in violation of MCSO policy; (6) instances in  
10 which MCSO is informed by a prosecuting authority or a court of a decision to decline  
11 prosecution or to dismiss charges; (7) Training history for each employee; and (8) any  
12 other variables that the Monitor, in consultation with the Parties, determines would assist  
13 in the identification of and response to potentially problematic behaviors.

14 Defendants oppose the collection of the additional data because it is beyond the  
15 scope of this litigation's facts and law, and the Court's Findings of Fact and Conclusions  
16 of Law.

17 Topic 8: Hiring, Promotion, Assignment and Performance Assessment: ¶¶ 104-  
18 105

19 Plaintiffs propose that the MCSO incorporate concrete requirements regarding the  
20 areas covered by the Court's orders in its hiring, promotion, and performance assessment  
21 policies and processes and that MCSO develop and implement eligibility criteria for  
22 assignment to any specialized units enforcing immigration-related laws.

23 Defendants oppose the propose terms for this section because it is beyond the  
24 scope of this litigation's facts and law, and the Court's Findings of Fact and Conclusions  
25 of Law.

1                   Topic 9: Misconduct Investigation and Discipline - Section VIII

2                   Plaintiffs propose that Court's remedy address misconduct investigations,  
3 including public outreach about how to file a complaint against an officer, as well as  
4 officer discipline, as set forth in section VII of the attached Exhibit A.

5                   Defendants oppose the propose terms for this section because it is beyond the  
6 scope of this litigation's facts and law, and the Court's Findings of Fact and Conclusions  
7 of Law.

8                   Topic 10: Community Engagement - ¶¶ 29, 40, 171 and Section IX

9                   Plaintiffs propose that the Court's remedy address MCSO's relationship with the  
10 community, including the Latino community, and seek to improve that relationship by  
11 requiring the establishment of a community advisory board, creation of a community  
12 liaison officer and holding of community outreach meetings in Districts affected by  
13 MCSO activities such as saturation patrols, as set forth in Paragraph 29 and Section VIII  
14 of the attached Exhibit A. Plaintiffs also propose that the MCSO develop a plan to  
15 ensure that essential police services are provided to all residents of Maricopa County,  
16 including members of the Plaintiff class, as set forth in Paragraph 17 of the attached  
17 Exhibit A. Finally, Plaintiffs propose that part of the Monitor's responsibilities include  
18 conducting a community survey to include all major demographic categories represented  
19 in Maricopa County, as set forth in Paragraph 160 of the attached Exhibit A

20                   Defendants oppose the propose terms for this section because it is beyond the  
21 scope of this litigation's facts and law, and the Court's Findings of Fact and Conclusions  
22 of Law.

23                   Topic 11: Role of the Monitor - Section X; *in passim*

24                   Plaintiffs propose that the Court appoint an Independent Monitor to facilitate  
25 implementation and accountability. Plaintiffs detailed proposal with respect to the  
26 Monitor is set forth in section X of Exhibit A. Plaintiffs have laid out the proposed  
27 responsibilities and authority conferred by the Court and the Order at Paragraph 159.  
28

1 Defendants oppose the appointment of a monitor. If the Court were to appoint a  
2 monitor, the role and authority of such monitor must be reconciled so that the monitor's  
3 role does not supplant the elected Sheriff's authority under the Arizona Constitution and  
4 Arizona statute. Therefore, if the Court were to appoint a monitor, the role and authority  
5 of such monitor should be based on the terms proposed by the Defendants. Defendants  
6 also oppose certain terms of the monitor's role as beyond the scope of this litigation's  
7 facts and law, and the Court's Findings of Fact and Conclusions of Law.

8 Topic 12: Monitoring and Enforcement Fees for Plaintiffs' Counsel: ¶180

9 Plaintiffs propose that Defendants pay Plaintiffs' counsel reasonable fees and  
10 costs incurred in connection with monitoring or enforcement of the Court's orders,  
11 including for any litigation Plaintiffs must initiate to secure enforcement, if Plaintiffs  
12 should prevail.

13 Defendants oppose such an effort. In addition, Plaintiffs should bear their own  
14 expense in whatever enforcement action it decides to bring in the future during the life of  
15 this Order, if any. Whether an award of fees and costs for bringing such enforcement  
16 action should be determined following a Court ruling on any potential enforcement  
17 action.

18 **III. Supplemental Briefing**

19 The parties believe that supplemental briefing on the issues that remain in dispute  
20 would be of assistance to the Court. To that end, the parties propose to submit  
21 simultaneous briefing on August 23, 2013. Such briefing will include a discussion of the  
22 basis for the parties' positions and any additional factual information that the parties are  
23 prepared to provide the Court through witness declarations or in-person testimony. The  
24 parties propose that the submissions should be no longer than 25 pages, not including  
25 exhibits.

1 **IV. Evidentiary Hearing**

2 At the June 14, 2013 hearing, the Court also asked the parties to address the need  
 3 for an evidentiary hearing to address any areas in which the parties have not been able to  
 4 reach agreement. As outlined above, the parties propose to submit briefing, which will  
 5 include a discussion of the additional factual information that the parties are prepared to  
 6 provide the court through witness declaration or in-person testimony. The parties agree  
 7 they should have the right to cross-examine any witness offering additional evidence.  
 8 However, they defer to the Court as to whether further testimony is necessary. Should  
 9 the Court find an evidentiary hearing would be useful after reviewing the written  
 10 submissions, the parties are prepared to proceed with such a hearing.  
 11

12 DATED this 16th day of August, 2013

13  
 14  
 15 COVINGTON & BURLING, LLP

16 /s/ Lesli Gallagher

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CERTIFICATE OF SERVICE

I hereby certify that, on August 16, 2013, a copy of the foregoing Joint Report was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Lesli Gallagher