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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Manuel de Jesus Ortega Melendres, on
10 behalf of himself and all others similarly
situated; et al.

11 Plaintiffs,

12 v.

13 Joseph M. Arpaio, in his individual and
14 official capacity as Sheriff of Maricopa
County, AZ; et al.

15 Defendants.

No. CV-07-2513-PHX-GMS

ORDER

16
17 **IT IS HEREBY ORDERED** setting a Status Conference for **March 24, 2014 at**
18 **9:00 a.m.** in Courtroom 602, Sandra Day O'Connor U.S. Federal Courthouse, 401 W.
19 Washington St., Phoenix, Arizona 85003-2151. Counsel for all parties are required to
20 attend, as are Sheriff Arpaio and Chief Deputy Sheriff Sheridan. All counsel, Sheriff
21 Arpaio, and Chief Deputy Sheridan were previously notified last Monday of the date and
22 time of this hearing and their required attendance. At the hearing the parties will address
23 the matters set forth in some detail below.

24 The hearing arises from the Monitor's early evaluation of some materials provided
25 by the parties. These materials concern the actions of the parties taken between the entry
26 of the Court's Order on October 2, 2013 ("Injunction") (Doc. 606) and the Monitor's
27 appointment on January 17, 2014. The Monitor has considered various concerns
28 expressed by the parties and made a recommendation to the Court that it take early

1 corrective action to avoid the perpetuation of patterns of conduct that may not be in good
2 faith compliance with the Court's Injunction. These matters include: (1) some matters
3 that were the subject of training conducted prior to MCSO's Significant Operation in
4 October 2013; and, (2) MCSO's appointment of the Community Liaison Officer required
5 by the Injunction. The Court also has concerns about and wishes to discuss: (3) the
6 adequacy of the notice, times, locations, and facilities of the community meetings
7 required by the Injunction and conducted by the MCSO; (4) matters concerning Monitor
8 staff access to MCSO personnel, facilities, and information; (5) revisions of some of the
9 dates in the Order; and, (6) the parties' requests concerning the Court's publication of the
10 two orders at issue here.

11 In making the determination of the matters on which this hearing would be
12 noticed, the Court was made aware of other concerns raised by the Plaintiffs, such as the
13 timing of the MCSO's October Special Operation. The Court, however, notes that the
14 MCSO remains entitled to great deference in its reasons for, and timing of, Significant
15 Operations, so long as they do not violate the terms of this Court's Injunction in holding
16 such operations. Although the MCSO did schedule the operation between the time that
17 the Injunction was issued and a Monitor was appointed, it nevertheless took reasonable
18 steps to comply with the Injunction in contemporaneously documenting that operation. It
19 is, in fact, from that documentation that a number of the significant issues scheduled for
20 this hearing arise.

21 **BACKGROUND**

22 Some background will assist in clarifying the matters to be discussed at the
23 hearing. In May 2013, this Court issued its detailed Findings of Fact and Conclusions of
24 Law ("Findings and Conclusions") (Doc. 579) determining and setting forth in detail how
25 and why the Defendants engaged in a number of separate violations of the constitutional
26 rights of the Plaintiff class.

27 At a status conference in June, both parties indicated that, rather than having the
28 Court enter an injunction without their input, they wanted to attempt to negotiate the

1 terms of a mutually satisfactory consent decree. (Doc. 586 at 6–8, 18–21.) They were
2 granted considerable time in which to negotiate such an agreement. Although the parties
3 were unable to reach agreement on all issues, they were, by their own account, “able to
4 reach agreement on a substantial number of terms.” (Doc. 592 at 4:8–10.) They submitted
5 a Proposed Consent Order to the Court, illustrating their areas of agreement and
6 disagreement. (Doc. 592-1.) The areas of substantial agreement included, among other
7 things: establishing a MCSO Implementation Unit and performing an internal agency-
8 wide assessment (*Id.* at 11–12), the implementation of specific policies, procedures and
9 training to ensure constitutional policing and to comply with the Order (*Id.* at 13–32), the
10 documentation of traffic stops and the nature of other specifically identified data to be
11 collected to ensure that the MCSO was complying with the terms of the Court’s
12 Injunction (*Id.* at 33–40), the video-monitoring of all MCSO stops, and procedures for the
13 adequate supervision and evaluation of officer performance, including the creation,
14 implementation and supervisory use of an early identification system (*Id.* at 40–51) to
15 alert supervisors of possibly unacceptable deputy conduct together with periodic
16 evaluation sessions.

17 The principal areas of disagreement included whether a monitor should be
18 appointed to implement the terms of the Order to which the parties had otherwise agreed,
19 whether or not the Court would require the MCSO to establish and implement more
20 effective internal complaint intake processing, and whether a community advisory board
21 should be appointed, and, if so, the extent of that Board’s authority. (Doc. 592 at 4–10.)
22 There was also some disagreement as to the operational details and requirements the
23 Court would impose even as to those topics on which the parties had reached conceptual
24 agreement. For the most part, this Court adopted the “substantial number of terms” to
25 which the parties had both agreed. The Court found that the parties had engaged in a
26 good faith effort to come up with the proposed order, and thus the parties’ Proposed
27 Consent Order (Doc. 592-1) formed the basis and provided the exact language for the
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1 great majority of this Court's Order, though at times the proposed order's provisions were
2 re-arranged for organizational clarity.

3 As to the areas of disagreement, the Court accepted briefs from the parties and
4 held a Status Conference on those topics. (Docs. 593, 603.) One of those areas arose from
5 the Court's determination that the MCSO used pre-textual stops of vehicles whose
6 occupants were persons of Hispanic ancestry and then prolonged those stops to
7 investigate the identity of such persons, including vehicle passengers, based merely on
8 the deputy's belief, without more, that such persons were in the country without
9 authorization. In light of those findings, Plaintiffs urged the Court to prohibit MCSO
10 personnel during the effective term of the Injunction from making any inquiries of
11 passengers of the vehicles it stopped. The Plaintiffs further requested the Court to require
12 MCSO personnel to record their perception of the ethnicity of a vehicle's occupants for
13 each stop.

14 While the Court recognized the need to effectively monitor the MCSO to prevent
15 its selection of a vehicle for pre-textual stop based on the ethnicity of its occupants, it
16 declined to prohibit the MCSO from questioning the occupants of a vehicle once stopped.
17 Rather, the Court required the MCSO in the initial radio call that preceded a traffic stop
18 to briefly state the original purpose of the stop, or to otherwise record the original
19 purpose of the stop, before the stop was executed. It further required that the officers
20 participating in the stop record their perception of the ethnicity of the occupants in a
21 vehicle. Together this information would provide sufficient information to monitor
22 MCSO's compliance with the Order, and determine whether it continued to
23 disproportionately stop vehicles with Hispanic occupants, without preventing MCSO
24 officers from questioning the occupants of any vehicle.

25 The Court decided the other remaining issues on which there was disagreement
26 based on the Court's previous rulings, the parties' briefings, and the information
27 presented at the status conference on August 30, 2013. Specifically, the Court did decide
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1 to appoint a Monitor but it did not require everything the Plaintiffs proposed in terms of
2 changes in discipline and the responsibilities and scope of the Community Advisory
3 Board.

4 Two weeks after the Injunction, Defendants chose to conduct a Significant
5 Operation. Defendants filed a protocol with the Court after part of the operation had
6 already begun and only one day before the major portion started. (Docs. 609, 615 at 5.)
7 As part of this operation, the Defendants held a training session and the Court has
8 received a video recording of that training. This, and a number of the other events and
9 actions by Defendant, occurred after the entry of the Injunction but before the
10 appointment of the Monitor.

11 **A. The Training Held Before the Significant Operation in October 2013**

12 In the training given by Chief Deputy Sheridan and Sheriff Arpaio to the deputies
13 that were participating in the Significant Operation on October 18, 2013: (1) Chief
14 Deputy Sheridan summarized the Court's Findings of Fact and Conclusions of Law in
15 *Melendres* and indicated that the Injunction is "absurd" and "ludicrous." (2) He provided
16 specific instruction to those participating in the Significant Operation as to how to
17 approach the obligation to record their impression of the race of the person stopped
18 during traffic stops. To the extent that the content of Chief Deputy Sheridan's training is
19 at issue, it will be available for reference at the hearing (in total the training that concerns
20 the Court takes about fifteen minutes).

21 In his training Chief Deputy Sheridan summarizes this Court's Findings of Fact
22 and Conclusions of Law which lead to the Injunction as follows.

23 With the *Melendres* case, Judge Snow did not say that we
24 were racist. He did not find that the Maricopa County
25 Sheriff's Office was racist. What Judge Snow found was that
26 three deputy sheriffs used the ICE training that they received
27 by the federal government in determining the alienage of
28 some individuals; to determine whether they were here
legally or not. He found that that was unconstitutional. He
found that we detained Hispanic drivers fourteen seconds

1 longer than non-Hispanic drivers. So, therefore, he found that
2 we violated the Fourth and Fourteenth Amendment with those
3 two things. That's why we're here today. And we have the
4 same--this judge put the same constraints on us that a federal
5 judge did with the City of New Orleans Police Department.
6 And their police officers were murdering people. That tells
7 you how ludicrous this crap is.

8 Chief Deputy Sheridan then briefly observed that the Injunction was nevertheless
9 the law, which the MCSO was obliged to implement, but that the MCSO was appealing
10 the ruling. He offered his prediction, based on his apparently unfavorable view of the
11 Ninth Circuit, that the Ninth Circuit would not only uphold the ruling but commend the
12 District Court. He then stated that Defendants would be appealing to the Supreme Court

13 because it is not just my opinion, and the Sherriff's opinion,
14 but every lawyer that I've talked to that it is Judge Snow that
15 violated the United States Constitution. It's Judge Snow that
16 violated the Tenth Amendment. The Federal Government
17 does not have the authority to do what he did.

18 Also, at the same training, Chief Deputy Sheridan presented a new form that had
19 been created to comply with the data collection requirements of the Injunction.
20 According to the form, deputies are required to record their perception of the race and
21 ethnicity of all of the vehicles occupants both before and after every stop they make.¹
22 During the training on how to complete this form Chief Deputy Sheridan indicated that
23 determining ethnicity would be hard to do without asking and he said that he felt it was
24 "absurd" for the deputies to be asked to guess. He then asked for the door to be closed

25 ¹ Plaintiffs have correctly objected that this double recording is not required by the
26 Injunction. Defendants' explanation to the Monitor that the Injunction obliges them to
27 record their subjective impressions of the vehicle occupants ethnicity both before and
28 after any stop is simply incorrect. The Injunction does require that Deputies record their
subjective perception of the "race, ethnicity and gender of the driver and any passengers"
but does not require them to do so both before and after a stop. The Court recognizes that
the Sheriff may, on his own authority, require his deputies to collect such additional
information as he may deem useful, even if it is not required by the Injunction. He has
apparently done so. Any attempt to characterize this additional and supplemental
information as required by the Injunction, however, is simply incorrect.

1 because did not want the media to hear what he had to say. After the door closed he said
2 they were “safe,” but he then noted the camera in the room. He then emphasized that
3 perceiving the ethnicity before the stop would be particularly hard to do. He emphasized
4 that there might be reasons that someone might not be able to ascertain the racial identity
5 of occupants of a stopped vehicle and he offered several reasons why they might find it
6 impractical. In doing so, it appears to the Court that he was suggesting to the deputies that
7 they were not obliged to use their best reasonable efforts to comply with the Court’s
8 order.

9 Immediately after Chief Deputy Sheridan’s remarks, Sheriff Arpaio spoke. He
10 apparently ratified Chief Deputy Sheridan’s comments by saying, “What the Chief
11 Deputy said is what I’ve been saying.” Sheriff Arpaio went on to say, “We don’t racially
12 profile. I don’t care what everybody says. We’re just doing our job. We had the authority
13 to arrest illegal aliens under the federal programs.” As noted, these comments were given
14 as part of a formal training meeting.

15 **1. Chief Deputy Sheridan’s Incorrect and Misleading Description of The**
16 **Court’s Findings, Conclusions and Injunction.**

17 It is imperative that the personnel of the MCSO obtain an accurate understanding
18 as to why their past policies, practices, and procedures are unconstitutional. As the Court
19 observed in its findings, at least some of the MCSO’s unconstitutional conduct either
20 occurred as a result of, or was exacerbated by, faulty training or communication failures
21 within the MCSO. To be corrected, the unlawful policies, patterns and practices of the
22 MCSO must be clearly, accurately and completely communicated to, and understood by,
23 MCSO personnel.

24 Both parties, in submitting the terms of the proposed injunction to the Court,
25 agreed that the MCSO should provide complete and accurate training to its personnel
26 concerning “background information on the *Melendres v. Arpaio* litigation, as well as a
27 summary and explanation of the Court’s May 24, 2013 Findings of Fact and Conclusions
28 of Law in *Melendres v. Arpaio*, the parameters of the Court’s permanent Injunction, and

1 the requirements of this Order.” (Doc. 606 at ¶ 49(q).) The parties also agreed, and the
2 Injunction specified, that the Training shall correct “any misconceptions about the law or
3 MCSO policies” “to the extent past instructions to personnel on [the topics covered in
4 *Melendres*] were incorrect.” (*Id.* at ¶ 49(f).)²

5 It appears that Chief Deputy Sheridan’s summary of the Court’s Findings and
6 Conclusions and the resulting Injunction at the October 18 training meeting is in violation
7 of these provisions of the Court’s Injunction. In his statement, Chief Deputy Sheridan
8 said that the Court’s factual basis for its conclusion that the MCSO violated the
9 Fourteenth Amendment arose solely from conduct of three officers who were mistreated
10 by ICE. He further stated that this Court’s finding that MCSO deputies illegally detained
11 Plaintiff class members arose from its finding that the MCSO detained Hispanic drivers
12 fourteen seconds longer than it detained non-Hispanics. Instead of summarizing this
13 Court’s actual conclusions, the summarization made by Chief Deputy Sheridan
14 mischaracterizes and trivializes the significant period and the significant extent to which
15 the Court found that the MCSO’s operations violated the Constitution.

16 While it is true that the Court never found that the MCSO was racist, it did find,
17 among other things not enumerated at length here, that MCSO deputies received incorrect
18 training that they could consider Hispanic ethnicity as one factor among others in
19 forming reasonable suspicion in the context of immigration enforcement. MCSO
20 apparently does not dispute this fact, at least as far as it extends to ICE materials. The
21 extent to which MCSO was, or may have been independently involved in such training is
22 not clear except as is set forth below.

23 The Court further found that MCSO inappropriately used race as a factor in
24 selecting at least some of the locations for its day labor operations and small and large-

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26 ² With the exception of some added punctuation, this language specifying the
27 content and format of the required training exactly tracks the language that Defendants
28 submitted to the Court in the jointly filed Proposed Consent Order. (Doc. 592-1 at 25–
28.)

1 scale saturation patrols. The Court made this determination after examining complaints
2 received by the MCSO about Hispanics and/or day laborers which lead to MCSO's
3 location of day labor operation locations in those locales, which then subsequently lead to
4 small and large scale saturation patrols centered on those same locations.

5 The Court further found that, in conducting its immigration enforcement
6 operations, the MCSO systematically and as a matter of routine practice, used race in
7 deciding which vehicles to pre-textually stop for traffic violations in order to investigate
8 whether the occupants of the vehicle were authorized to be in the country. The Court
9 made such findings of fact after considering all of the extensive testimony of both
10 deputies and command staff and the extensive exhibits admitted at trial. The arrest reports
11 for all such operations demonstrated that vehicles were frequently, if not always, selected
12 for pre-textual enforcement of traffic laws based on the presence of Hispanic occupants
13 in those vehicles. Those reports demonstrated a very high number of immigration-related
14 arrests of Hispanics per stops made during such operations, and otherwise made clear that
15 a principal purpose of such operations was immigration enforcement. Further, the
16 purpose for those operations was frequently stated in contemporaneous MCSO press
17 releases—one of which included quotes from the Sheriff indicating that race was a
18 criterion, but not the only criterion, for stopping vehicles during such patrols. The Court
19 further found that the “zero tolerance policy” that MCSO claimed was in place to
20 mitigate any inappropriate racial profiling in such MCSO operations either never existed
21 or was never communicated to MCSO personnel. The Court further credited some of the
22 testimony of Plaintiff's expert over Defendant's expert in part because Defendants told
23 their expert that their stops were governed by the zero tolerance policy which the Court
24 found either did not exist or was not communicated to those participating on patrols.

25 The Court further found that in determining whom to interview within a vehicle
26 once pre-textual traffic stops were made, MCSO deputies considered race as one such
27 factor. It was not seriously disputed, even by MCSO command staff personnel, that
28 deputies determined who to question once a stop was made using race as one factor. In

1 making this finding, the Court also relied on the explicit text of the operations plans that
2 specified the criteria which should be used to determine whether someone should be
3 investigated for immigration compliance during such stops. The plans incorporated race
4 as one factor among others in making that determination.

5 The use of race as one factor among others not only violated the Plaintiff Class's
6 Fourteenth Amendment rights, but to the extent it was used as a factor supporting
7 reasonable suspicion that a crime was being committed, it also violated the Class's Fourth
8 Amendment rights. As it pertained to the MCSO's violation of the Plaintiff Class's
9 Fourth Amendment rights, the Court never made any determination, despite Deputy
10 Chief Sheridan's assertions to the contrary, that the MCSO detains vehicles with
11 Hispanic stops fourteen seconds longer than vehicles without Hispanic occupants. The
12 Court did find, however, based on ample MCSO press releases that all MCSO deputies
13 were improperly trained that they had the inherent authority to enforce civil and/or
14 administrative aspects of federal immigration law with or without valid 287(g)
15 certification. This fundamental misunderstanding, together with MCSO's LEAR policy
16 and routine MCSO practices, and the way it staffed its patrols with non-287(g) officers
17 even when such certification was in force, resulted in routine and systematic detentions of
18 persons absent sufficient reasonable suspicion that a crime had been or was being
19 committed. These practices violated the Fourth Amendment. These findings were
20 confirmed not only by the testimony of a number of officers concerning their practice in
21 interrogating and detaining persons they suspected of being in the country without
22 authorization during pre-textual traffic stops, but by the MCSO's operations plans that set
23 forth its LEAR policy, and by the testimony of command staff personnel concerning
24 those policies, as well by the Court's finding that the MCSO had failed to comply by the
25 terms of its preliminary injunction set forth in December 2011 by routinely continuing to
26 enforce its LEAR policy or something like it by detaining persons on the belief, without
27 more, that such persons were in the country without authorization.

1 Although these are not the only factors on which the Court concluded that the
2 MCSO had department policies that violated the Plaintiff Class's Fourth and Fourteenth
3 Amendment rights, the above recitation is sufficient to demonstrate the misleading nature
4 of Deputy Chief Sheridan's description of the Court's Findings and Conclusions. In short,
5 the Courts findings that the MCSO committed multiple violations of the Plaintiff Class's
6 constitutional rights were in no way based on the trivialized and invented findings that
7 Chief Deputy Sheridan presented.

8 The summary appears to be in direct violation of the Injunction's requirement that
9 training include accurate summaries of the Court's findings. (Injunction ¶ 49(q)). In
10 addition, having the Chief Deputy of the MCSO use training sessions and other
11 opportunities at the outset of the monitoring period prior to the appointment of a Monitor
12 to mischaracterize the specific findings of the Court will prevent such problems from
13 being understood and cured. It also poses the danger of greatly impairing the value of any
14 subsequent training concerning the Court's findings, no matter how accurate that
15 subsequent training may be.

16 Further, Deputy Chief Sheridan and Sheriff Arpaio's use of the training to assert
17 that "we had the authority to arrest illegal aliens under the federal programs," and to
18 apparently assert that the MCSO never used race as a factor in its immigration
19 enforcement operations, also defies other requirements in the Injunction. Those include
20 MCSO's obligation that "[t]he Training shall . . . address or include, at a minimum . . . a
21 correction of any misconceptions about the law or MCSO policies," to the extent that past
22 erroneous instructions were given to its personnel. (*Id.* ¶ 49(f).) As Chief Deputy
23 Sheridan himself indicates at one point in his training, the Court's order is the existing
24 law. It will so remain unless and until all or any part of it is vacated by a higher court. To
25 the extent therefore that in training the Sheriff or others make legal assertions that have
26 been directly rejected by this Court, they may not, consistent with the terms of the
27 Injunction, teach that the law dictates to the contrary.

1 The Court would not interpret its Injunction so strictly as to prevent the Chief
2 Deputy, the Sheriff, or any other MCSO command staffer from professionally and
3 accurately stating in training that the MCSO disagrees with this Court's Findings of Fact
4 and Conclusions of Law and the resulting Injunction and has thus taken appropriate
5 action to appeal those orders. Nevertheless, when they present such arguments as legal
6 realities, as opposed to their legal assertions on appeal, they are misrepresenting the law
7 as it has already been determined to apply to the actual facts of their own past operations.
8 Rather than correcting past instructions or practices, such statements continue to mis-train
9 deputies that they had the authority to engage in their unconstitutional actions of the past,
10 or that any mistakes made were only trivial infractions by less than a handful of deputies.

11 Further, when such training misstates and trivializes the Court's findings and then
12 states after such misstatement and trivialization that the Court's orders are "crap"
13 "ludicrous," and unconstitutional, it causes the Court concern that MCSO leadership may
14 be choosing to present a paper appearance of compliance while at the same time fostering
15 an attitude of contempt and subversion of the Court's orders among MCSO personnel.³ It
16 is not unreasonable to suppose that MCSO personnel might be inclined to follow the
17 directions of their Sheriff and Chief Deputy. The direction that the MCSO leaders have
18 demonstrated in this training only reconfirms to the Court the very great need for an
19 independent Monitor who engages in close observation of those areas required by the
20 Injunction. It further raises the possibility that the MCSO may choose not to be compliant
21 with some or all aspects of this order, or only facially compliant, resulting in an extended

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23 ³ Further, the Injunction requires that "[t]hose presenting Training on legal matters
24 shall also hold a law degree from an accredited law school and be admitted to a Bar of
25 any state and/or the District of Columbia." (*Id.* ¶ 42.) Although again, the Court would
26 not interpret its Injunction to prevent Deputy Sheridan or Sheriff Arpaio from responsibly
27 expressing their own views about the Constitution, to the extent that Chief Deputy
28 Sheridan used the training to make legal arguments that this Court's order is
unconstitutional, the Court is not aware that either Chief Deputy Sheridan or Sheriff
Arpaio meet the Injunction's requirements for the presenters of such training, which at
any rate seems more appropriately made to the Court of Appeals.

1 period in which the MCSO is subject to this Court's direct supervision caused by non-
2 compliance. The Court, by this hearing, seeks to minimize any such periods.

3 **2. Chief Deputy Sheridan's Instructions About Approximating Ethnicity**

4 Unfortunately Chief Deputy Sheridan's instructions to officers on how they might
5 find it inconvenient to provide an estimate of the probable ethnicity of the occupants of a
6 vehicle without asking them to identify their own ethnicity only further illustrates this
7 point. The Injunction requires the Defendants to document "the Deputy's subjective
8 perceived race, ethnicity and gender of the driver and any passengers." As is explained
9 above, this does not require a deputy to make such an estimation both before and after the
10 stop, but only after the stop. Further, it would be inappropriate, and foster the wrong
11 impression, for the reasons already reviewed by the parties in hearings before the Court,
12 for the MCSO to directly ask all of the occupants of a vehicle that they stop to identify
13 their ethnicity. Nevertheless, as is further stated above, the Court needs the deputies to
14 make such good faith estimates as a tool by which this Court, its Monitor, and the
15 community may measure whether the MCSO is continuing to use ethnicity as one factor
16 among others in making traffic stops. Admittedly, it is imperfect, and further relies, to
17 some extent, on the good faith of each deputy making the estimate. But, it is a measure
18 which prevents this Court from having to resort to more extreme measures such as were
19 suggested by Plaintiffs to ensure MCSO's compliance, including barring deputies from
20 asking any questions whatsoever to vehicle occupants during the term of the Injunction.

21 Despite that reality, in this same training discussed above, Deputy Chief Sheridan
22 characterized this aspect of the Court's Injunction as "absurd" and suggested several
23 reasons why deputies would find that they would be unable to make a good faith
24 estimation of the ethnicities of occupants of vehicles that they stop. In light of this
25 training the Court makes two observations. First, there is a difference between the MCSO
26 being in non-compliance with an order, and its leadership providing training that
27 encourages MCSO officers to circumvent this Court's order. To the extent that willful
28 circumvention of the Court's order is separate from non-compliance with it, it would give

1 rise to additional concerns and would require separate remedies. Second, to the extent
2 that Chief Deputy Sheridan or any other member of MCSO training staff or leadership
3 gives training that frustrates the Court's ability to monitor MCSO's compliance with the
4 terms of its Injunction, and to the extent such training succeeds, the Court will have no
5 choice but to consider more restrictive measures to ensure that the MCSO is not
6 continuing its past discriminatory practices.

7 If the MCSO believes, upon review, that Chief Deputy Sheridan's summary of the
8 Court's findings, as apparently ratified by Sheriff Arpaio, was in compliance with the
9 MCSO's obligations under the Injunction, it shall at the hearing, explain to the Court all
10 of the reasons it believes that summary to be in compliance with this Court's Injunction.
11 In doing so, it will address all of the Court's observations and concerns expressed above.
12 To the extent, however, that upon review the MCSO believes that Chief Deputy
13 Sheridan's summary was not in compliance with its obligations under the Injunction, it
14 shall, at the hearing, present to the Court a proposal for corrective action. That proposal
15 shall include a complete accounting of any and all disseminations by the MCSO of
16 inaccurate summaries of this Court's holding in *Melendres* to MCSO personnel and
17 necessary corrective action.

18 Further, if the MCSO believes, upon review, that Chief Deputy Sheridan's
19 instructions to the deputies concerning recording their appraisal of the ethnicity of those
20 they stop does not serve to undermine good faith effort in complying with this Court's
21 Injunction, it shall at the hearing, explain to the Court all of the reasons it believes that
22 Chief Deputy Sheridan's instruction does not serve to undermine compliance with this
23 Court's Injunction. In doing so, it will address all of the Court's observations and
24 concerns expressed above. To the extent, however, that upon review the MCSO believes
25 that Chief Deputy Sheridan's instruction may have been capable of being misperceived
26 by those receiving the instruction, it shall, at the hearing, present to the Court a proposal
27 for corrective action.

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B. The Community Outreach Program and Community Liaison Officer

The Injunction requires the Defendants to create a Community Outreach Program and appoint a Community Liaison Officer (“CLO”). The purpose of this program is “[t]o rebuild public confidence and trust” by requiring MCSO to “work to improve community relationships and engage constructively with the community.” (Injunction ¶ 107.) Plaintiffs have expressed concerns about the deputy that Defendants chose as the Community Liaison Officer. Apparently he was a member of the Human Smuggling Unit (“HSU”) that was central to this case. One of the issues that occupied some time at the trial concerned offensive cartoons that were circulated among the deputies of the HSU concerning persons of Hispanic ethnicity. The deputy chosen as the CLO apparently received an offensive email that was being forwarded around the HSU and, as a result, was deposed in this action. In his deposition testimony he apparently testified the he considered the cartoon funny. Without commenting on his merit as an employee or as a deputy, the Court can understand how such testimony in the course of the current litigation would lead the Plaintiffs to believe that the designated CLO would not be sensitive to their concerns in this matter and that the MCSO was insensitive to that realistic concern. Accordingly, the parties are asked to submit the relevant portions of the transcript of that deputy’s deposition prior to the Monday hearing.

The Community Outreach Program further requires that public meetings be held to engage with the community. The order requires that “[t]he meetings shall be held in locations convenient and accessible to the public” and that “[a]t least one MCSO Supervisor with extensive knowledge of the agency’s implementation of the Order, as well as the Community Liaison Officer . . . shall participate in the meetings.” (Injunction ¶ 111–12.) There are concerns that such of these meetings as have been held under the order, were not held at a time or place that was convenient to the community. The meetings were apparently held outside on the Saturday morning before Christmas and all of the meetings in the various districts across the county were scheduled at the same time.

1 The Defendants should provide the Court with a description of all such meetings that
2 have occurred, including the locations chosen and available seating. Defendants should
3 also provide a list of the supervisors with extensive knowledge of the case that were in
4 attendance at each of these meetings. Finally, Defendants will be asked to explain how
5 the Community Liaison Officer was able to participate in all of the meetings across the
6 county when Defendants chose to schedule them all simultaneously.

7 **C. The Monitor's Access to Defendant's Personnel and Records**

8 The Injunction clearly provides that "[a]t all times, the Defendants shall bear the
9 burden of demonstrating Full and Effective Compliance with this Order." (Injunction ¶
10 6.) In order to meet that burden, the Injunction describes in detail that the Defendants
11 must provide the Monitor with "timely, full and direct access" including allowing "On-
12 Site Observations, visits and assessments without prior notice." (Injunction ¶ 145.) It also
13 specifies the timely and confidential handling of all document requests. (Injunction ¶¶
14 146–50.) Defendants have raised with the Monitor some hesitations and additional
15 conditions that they feel are appropriate. The Court will address these concerns and
16 ensure that all parties understand the requirements of the Injunction.

17 **D. Whether the Court Should Publish Its Previous Orders**

18 The Court has received a request that it publish two orders, the Findings of Fact
19 and Conclusions of Law from May 2013 and the Supplemental Permanent
20 Injunction/Judgment Order from October 2013, in the West F. Supp. 2d reporter.
21 Plaintiff's request notes that the Court previously published its December 2011 Order
22 from this case, and they argue that publication would have a beneficial effect for courts
23 and litigants in similar cases. Defendants oppose publication, or at least believe that it is
24 unnecessary. The Court will address this request and the parties' positions on this matter.

25 **E. Deadline Dates**

26 The Injunction set a deadline for the parties to agree on a Monitor and the Court
27 granted the parties' stipulated request for more time to agree or submit their candidates.
28

1 (Docs. 619–20.) The parties did not agree on a Monitor by the extended deadline of
2 December 9, and continued to file motions even after that deadline. (Doc. 630–32.) On
3 December 17, this Court gave the parties one final opportunity to make any Monitor-
4 related filings. (Doc. 635.) The parties made multiple final filings on December 20. (Doc.
5 636–42.) After reviewing all filings and interviewing candidates, the Court selected the
6 Monitor on January 17, 2014.

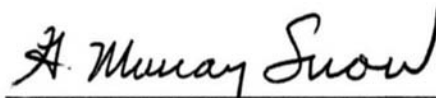
7 Over the two months since that announcement, the Monitor has begun work but
8 has also been working with the Defendants to establish the funding contract and office
9 space required. The Injunction provides various compliance deadlines. These deadlines
10 are defined based on a prescribed number of days after the Effective Date, but many of
11 them require communications with the Monitor. The Injunction was issued on October 2,
12 2013 (Doc. 606) but the Monitor was not appointed until January 17, 2014.

13 The Monitor has asked whether any of the deadlines require adjustment because
14 his selection and implementation has taken longer than anticipated. The Court will hear
15 from the parties on that issue and determine what adjustments, if any, need to be made.

16 CONCLUSION

17 The Court has selected the Monitor to resolve concerns in virtually all cases. Thus,
18 it will not be the Court's routine practice to notice a hearing on such issues; it will be its
19 routine practice to act upon reports from the Monitor, and/or requests to do so from the
20 parties that it may grant. Nevertheless, because it is necessary at the inception of the
21 injunctive period for all parties to have a clear idea of expectations, and because some of
22 the above matters present some particular concerns to the Court, the Court has ordered
23 the hearing and requires the parties to come prepared to discuss the above issues.

24 Dated this 17th day of March, 2014.

25 

26 _____
27 G. Murray Snow
28 United States District Judge