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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
v.  
  
Maricopa County, Arizona; Maricopa  
County Sheriff's Office; and Joseph M.  
Arpaio, in his official capacity as Sheriff of  
Maricopa County, Arizona,  
  
Defendants.

No. 2:12-cv-00981-ROS

**JOINT PROPOSED PRETRIAL  
ORDER**

Pursuant to the Order Setting Bench Trial entered June 10, 2015 (Doc. 377),  
following is the Joint Proposed Pretrial Order, which the Court directed the parties to  
provide to the Court, via e-mail, on July 10, 2015.

**A. TRIAL COUNSEL FOR THE PARTIES**

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8 Defendant Maricopa County:

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1           **B.       STATEMENT OF JURISDICTION/VENUE**

2           Jurisdiction in this case is proper under 28 U.S.C. § 1331 and 1345. Venue is  
3 proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b).

4           **C.       NATURE OF ACTION**

5           This civil rights suit alleges four patterns or practices of unconstitutional conduct:  
6 (1) discriminatory policing against Hispanic persons in MCSO's saturation patrols,  
7 general traffic enforcement, and worksite operations targeting Hispanic immigrants, (2)  
8 detentions in violation of the Fourth Amendment during MCSO's worksite raids targeting  
9 Hispanic immigrants, (3) failures in the provision of language access to Hispanic limited-  
10 English-proficient (LEP) jail inmates, and (4) retaliatory police action against critics of  
11 Sheriff Arpaio and MCSO. The United States seeks declaratory and injunctive relief in  
12 connection with these patterns or practices of unconstitutional conduct.

13           **D.       JURY/NON-JURY**

14           None of the parties have demanded a jury trial of all or any of the issues before the  
15 Court.

16           **E.       CONTENTIONS OF THE PARTIES:**

- 17           1.       First Claim for Relief: Defendants' Law Enforcement Policies and  
18                   Practices Violate 42 U.S.C. § 14141 and the Fourteenth Amendment

19  
20           PLAINTIFF'S POSITION: Pursuant to its June 15, 2015 Order (Doc. 379), the  
21 Court has granted the United States' Motion for Partial Summary Judgment (Doc. 332),  
22 and thus has granted summary judgment regarding the discriminatory traffic stop claims  
23 encompassed in the United States' First Claim for Relief. The remaining issues for the  
24 United States to prove relating to this claim are the scope of the violation and, in turn, the  
25 appropriate remedy to be ordered by the Court.

26  
27           DEFENDANT ARPAIO'S POSITION: It appears that the United States does not  
28 intend to offer any testimony or other evidence on the merits of its claims for relief in

1 Count I of its Complaint beyond what has been determined by this Court in its Order  
2 granting Partial Summary Judgment on June 15, 2015. Defendant Apraio contends, then,  
3 that no trial of any other issues related to Count I is necessary. The remedy to be ordered  
4 by the Court should be based on further appropriate legal briefing by the parties. To the  
5 extent that Plaintiff continues to seek relief based on any other activities, Plaintiff's First  
6 Claim remains to be tried and adjudicated. The County's authority over the Sheriff with  
7 respect to law enforcement actions related to Count I remain to be adjudicated.

8  
9 DEFENDANT MARICOPA COUNTY'S POSITION: The Court's ruling of June  
10 15, 2015 (Doc. 379) granted Plaintiff's Motion for Partial Summary Judgment only  
11 insofar as Plaintiff's First Claim for Relief encompassed alleged racial profiling in traffic  
12 stops conducted by MCSO in the context of immigration enforcement activities. To the  
13 extent that Plaintiff continues to seek relief based on any other activities, Plaintiff's First  
14 Claim remains to be tried and adjudicated. Defendant Maricopa County also asserts that  
15 the question of whether it can be held legally liable for the actions of the Sheriff and  
16 MCSO on the facts of this case as they pertain to Plaintiff's First Claim and, if so,  
17 whether the Plaintiff would be, on that basis, entitled to any injunctive relief against the  
18 County, remain to be tried and adjudicated.

19  
20 2. Second Claim for Relief: Defendants' Searches, Arrests, and  
21 Detentions Violate 42 U.S.C. § 14141 and the Fourth Amendment  
22

23 PLAINTIFF'S POSITION: In order to prevail on this claim, the United States  
24 must prove the following: (1) the Defendants have unreasonably searched, arrested, or  
25 detained numerous persons in Maricopa County (see, e.g., Ganwich v. Knapp, 319 F. 3d  
26 1115, 1122 (9th Cir. 2003) (seizure must be "carefully tailored" to meet the underlying  
27 justification in executing the warrant; detention may violate the Fourth Amendment if the  
28 detention is unreasonable or is carried out in an unreasonable manner)); Michigan v.

1 Summers, 452 U.S. 692, 707 (1981) (the manner of the detention may be unreasonable if  
2 prolonged, painful, or degrading)); and (2) the unreasonable searches, arrests, or  
3 detentions engaged in by the Defendants constitute a pattern or practice of conduct by  
4 law enforcement officers that deprives persons of their rights under the Fourth  
5 Amendment, in violation of 42 U.S.C. § 14141(a) (see Int'l Bhd. of Teamsters v. United  
6 States, 431 U.S. 324, 336 (1977) (A “pattern or practice” is not just “sporadic” but  
7 “widespread,” “a routine and regular part” of the defendant’s work, the defendant’s  
8 “standard operating procedure,” and “the regular rather than the unusual practice.”);  
9 Cherosky v. Henderson, 330 F.3d 1243, 1247 (9th Cir. 2003) (applying same standard to  
10 interpret “pattern or practice”)).

11  
12 DEFENDANT ARPAIO’S POSITION: Defendant Arpaio generally agrees with  
13 Plaintiff’s characterization of the issues pertaining to Plaintiff’s Second Claim for Relief.  
14 Defendants note, however, that Plaintiff’s citations to case authority omit pertinent  
15 authorities. For example, in INS v. Delgado, 466 U.S. 2010, 104 S.Ct. 1758, 80 L.Ed. 2d  
16 247 (1984), the Supreme Court rejected the claim that the entire work forces of two  
17 factories were “seized” for the duration of the surveys when the INS placed agents near  
18 the exits of the factory sites. Id. at 218, 104 S.Ct. at 1763. See also Pearl Meadows  
19 Mushroom Farm, Inc. v. Nelson, 723 F. Supp. 432, 447 (N.D. Cal. 1989) (noting that  
20 “[q]uestioning employees on their immigration status, by itself, is not a violation of the  
21 Fourth Amendment.”); Contreras v. United States, 672 F.2d 307, 309 (2d Cir.1982)  
22 (recognizing that warrantless arrests are justified, “when the alien’s deportability is clear  
23 and undisputed.”). Finally, because the United States is solely seeking injunctive relief  
24 premised upon an alleged past wrong, it must demonstrate a “real and immediate threat”  
25 of repeated future harm. See City of Los Angeles v. Lyons, 461 U.S. 95, 105, 109  
26 (1983); Clark v. City of Lakewood, 259 F.3d 996, 1007 (9th Cir. 2001).

1 DEFENDANT MARICOPA COUNTY’S POSITION: Defendant generally agrees  
2 with Plaintiff’s characterization of the issues pertaining to Plaintiff’s Second Claim for  
3 Relief. Defendant notes, however, that Plaintiff’s citations to case authority omit  
4 pertinent authorities. Defendant Maricopa County also asserts that the question of  
5 whether it can be held legally liable for the actions of the Sheriff and MCSO on the facts  
6 of this case as they pertain to Plaintiff’s Second Claim and, if so, whether the Plaintiff  
7 would be, on that basis, entitled to any injunctive relief against the County, remain to be  
8 tried and adjudicated.

9 3. Third Claim for Relief: Defendants’ Treatment of Hispanics Violates  
10 Title VI

11 PLAINTIFF’S POSITION: Pursuant to its June 15, 2015 Order (Doc. 379), the  
12 Court has granted the United States’ Motion for Partial Summary Judgment (Doc. 332),  
13 and thus has granted summary judgment regarding the discriminatory traffic stop claims  
14 encompassed in the United States’ Third Claim for Relief. The remaining issues for the  
15 United States to prove relating to this claim are the scope of the violation and, in turn, the  
16 appropriate remedy to be ordered by the Court.

17  
18 DEFENDANT ARPAIO’S POSITION: It appears that the United States does not  
19 intend to offer any testimony or other evidence on the merits of its claims for relief in  
20 Count III of its Complaint beyond what has been determined by this Court in its Order  
21 granting Partial Summary Judgment on June 15, 2015. Defendant Apraio contends, then,  
22 that no trial of any other issues related to Count III is necessary. The remedy to be  
23 ordered by the Court should be based on further appropriate legal briefing by the parties.  
24 To the extent that Plaintiff continues to seek relief based on any other activities,  
25 Plaintiff’s Third Claim remains to be tried and adjudicated. The County’s authority over  
26 the Sheriff with respect to law enforcement actions related to Count III remain to be  
27 adjudicated.

28

1 DEFENDANT MARICOPA COUNTY'S POSITION: The Court's ruling of June  
2 15, 2015 (Doc. 379) granted Plaintiff's Motion for Partial Summary Judgment only  
3 insofar as Plaintiff's Third Claim for Relief encompassed alleged racial profiling in  
4 traffic stops conducted by MCSO in the context of immigration enforcement activities.  
5 To the extent that Plaintiff continues to seek relief based on any other activities,  
6 Plaintiff's Third Claim remains to be tried and adjudicated. Defendant Maricopa County  
7 also asserts that the question of whether it can be held legally liable for the actions of the  
8 Sheriff and MCSO on the facts of this case as they pertain to Plaintiff's Third Claim and,  
9 if so, whether the Plaintiff would be, on that basis, entitled to any injunctive relief against  
10 the County, remain to be tried and adjudicated.

11  
12 4. Fourth Claim for Relief: Defendants' Treatment of Hispanic LEP  
13 Jail Inmates Violates Title VI  
14

15 PLAINTIFF'S POSITION: In order to prevail on this claim, the United States  
16 must prove either that Defendants intentionally discriminated against Hispanic LEP jail  
17 inmates in MCSO jails by refusing to provide them meaningful access to jail programs or  
18 services, in violation of Title VI, 42 U.S.C. § 2000d, or alternatively, that Defendants'  
19 language access policies and practices have an unjustified disparate impact on Hispanic  
20 LEP jail inmates, in violation of Title VI, 42 U.S.C. § 2000d, and the Title VI  
21 implementing regulations, 28 C.F.R. § 42.104(b)(2).

22 In order to prevail on this claim under an intentional discrimination theory, the  
23 United States must prove the following: (1) the Defendants received and continue to  
24 receive federal financial assistance for their programs and activities (see, e.g., Rodriguez  
25 v. California Highway Patrol, 89 F.Supp.2d 1131, 1139 (N.D. Cal., 2000), quoting Fobbs  
26 v. Holy Cross Health Sys. Corp., 29 F.3d 1439, 1447 (9th Cir.1994) (To state a claim for  
27 damages under 42 U.S.C. § 2000d, et seq., a plaintiff must allege that (1) the entity  
28 involved is engaging in racial discrimination; and (2) the entity involved is receiving

1 federal financial assistance. Although the plaintiff must prove intent at trial, it need not be  
2 pled in the complaint.”); (2) the Defendants have engaged in a pattern or practice of  
3 failing to take reasonable steps to provide meaningful access to Spanish-language  
4 services in MCSO jails (see, e.g., Int’l Bhd. of Teamsters, 431 U.S. at 336; Cherosky, 330  
5 F.3d at 1247); (3) Defendants’ failures to provide meaningful Spanish-language services  
6 in MCSO jails have a significantly adverse impact on Hispanic LEP jail inmates (see,  
7 e.g., Silva v. St. Anne Catholic Sch., 595 F. Supp. 2d 1171, 1182-85 (D. Kan. 2009) (to  
8 establish Title VI discrimination claim plaintiffs must show they suffered adverse action);  
9 C.S. v. Couch, 843 F. Supp. 2d 894, 907 (N.D. Ind. 2011) (explaining standard for  
10 holding a federal funding recipient liable under Title VI for a racially hostile  
11 environment)); and (4) the Defendants have intentionally subjected Hispanic LEP jail  
12 inmates to discrimination on the basis of those inmates’ race, color, or national origin  
13 (see, e.g., Almendares v. Palmer, 284 F. Supp. 2d 799, 805-06 (N.D. Ohio 2003) (internal  
14 citations omitted) (“To prove intentional discrimination by a facially neutral policy, a  
15 ‘plaintiff must show that the rule was promulgated or affirmed because of, not merely in  
16 spite of, its adverse impact on persons in the plaintiff’s class . . . . Such discriminatory  
17 impact may be established through evidence of “disparate impact, history of the state  
18 action, and foreseeability and knowledge of the discriminatory onus placed upon the  
19 complainants.”); Lau v. Nichols, 414 U.S. 563 (1974) (failure to provide language access  
20 to LEP persons may constitute discrimination on the basis on national origin)).

21 In order to prevail on this claim under a disparate impact theory, the United States  
22 must prove the following: (1) the Defendants received and continue to receive federal  
23 financial assistance for their programs and activities (see, e.g., California Highway Patrol,  
24 89 F. Supp. 2d at 1139); (2) the Defendants’ language access policies and practices have a  
25 significantly adverse or disproportionate impact on Hispanic LEP jail inmates (see, e.g.,  
26 id. (“To establish a prima facie case that Defendants violated Title VI regulations,  
27 Plaintiffs must demonstrate that Defendants have a program, policy or practice that has a  
28 ‘discriminatory impact.’”); Flores v. Arizona, 48 F. Supp. 2d 937, 949 (D. Ariz. 1999)

1 (internal citations omitted) (applying the disparate impact test used in Title VII disparate  
2 impact cases to disparate impact claims under Title VI)); and (3) the Defendants'  
3 language access policies and practices lack a substantial legitimate justification (see, e.g.,  
4 Flores, 48 F. Supp. 2d at 950 (once Plaintiffs have demonstrated prima facie Title VI case  
5 of discriminatory impact, “burden shifts to the defendant to produce evidence that its  
6 disparate practices are based on legitimate business reasons”)).

7  
8 DEFENDANT ARPAIO’S POSITION: Defendant Arpaio generally agrees with  
9 Plaintiff’s characterization of the issues pertaining to Plaintiff’s Second Claim for Relief.  
10 Defendants note, however, that Plaintiff’s citations to case authority omit pertinent  
11 authorities. For example, Defendant Arpaio also notes that under this analysis, to  
12 demonstrate a Title VI claim, Plaintiff must establish “more than the mere occurrence” of  
13 isolated, accidental, or sporadic discriminatory acts by Defendant. See Int’l Bhd. of  
14 Teamsters, 431 U.S. at 336. Rather, Plaintiff must demonstrate that the failure to provide  
15 information and services in a language other than English resulted in a significant number  
16 of LEP beneficiaries being unable to fully realize the intended benefits of a federally  
17 assisted program or activity. See Lau v. Nichols, 414 U.S. 563, 568 (1974). The  
18 Department of Justice has interpreted Lau to require Title VI funding recipients to take  
19 reasonable steps to provide meaningful access to the recipient’s programs under the  
20 following four factor test: “the number or proportion of LEP persons in the eligible  
21 service population, the frequency with which LEP individuals come in contact with the  
22 program, the importance of the service provided by the program, and the resources  
23 available to the recipient.” See 65 F.R. 50123-01, 50124 (Aug. 16, 2000) (emphasis  
24 added); see also Auer v. Robbins, 519 U.S. 452, 461 (1997) (holding that an agency’s  
25 interpretation of its own regulation is “controlling” unless plainly erroneous or  
26 inconsistent with the regulation).

27 Finally, because the United States is solely seeking injunctive relief premised upon  
28 an alleged past wrong, it must demonstrate a “real and immediate threat” of repeated

1 future harm. See City of Los Angeles v. Lyons, 461 U.S. 95, 105, 109 (1983); Clark v.  
2 City of Lakewood, 259 F.3d 996, 1007 (9th Cir. 2001).

3  
4 DEFENDANT MARICOPA COUNTY’S POSITION: Defendant generally agrees  
5 with Plaintiff’s characterization of the issues pertaining to Plaintiff’s Fourth Claim for  
6 Relief. Defendant notes, however, that Plaintiff’s citations to case authority omit  
7 pertinent authorities. Defendant further notes that, pursuant to the Department of  
8 Justice’s own Policy Guidance Document, recipients of federal funds are required to  
9 “take reasonable steps to ensure ‘meaningful access’ [for LEP individuals] to the  
10 information and services they provide.” 65 Fed. Reg. 50123, 50124 (2000). Defendant  
11 Maricopa County also asserts that the question of whether it can be held legally liable for  
12 the actions of the Sheriff and MCSO on the facts of this case as they pertain to Plaintiff’s  
13 Fourth Claim and, if so, whether the Plaintiff would be, on that basis, entitled to any  
14 injunctive relief against the County, remain to be tried and adjudicated.

15 5. Fifth Claim for Relief: Defendants’ Treatment of Hispanics Violates  
16 the Title VI Assurances

17 PLAINTIFF’S POSITION: Pursuant to its June 15, 2015 Order (Doc. 379), the  
18 Court has granted the United States’ Motion for Partial Summary Judgment (Doc. 332),  
19 and thus has granted summary judgment regarding the discriminatory traffic stop claims  
20 encompassed in the United States’ Fifth Claim for Relief. The remaining issues for the  
21 United States to prove relating to this claim are the scope of the violation and, in turn, the  
22 appropriate remedy to be ordered by the Court.

23  
24 DEFENDANT ARPAIO’S POSITION: It appears that the United States does not  
25 intend to offer any testimony or other evidence on the merits of its claims for relief in  
26 Count V of its complaint beyond what has been determined by this Court in its Order  
27 granting Partial Summary Judgment on June 15, 2015. Defendant Apraio contends, then,  
28 that no trial of any other issues related to Count V is necessary. The remedy to be

1 ordered by the Court should be based on further appropriate legal briefing by the parties.  
2 To the extent that Plaintiff continues to seek relief based on any other activities,  
3 Plaintiff's Fifth Claim remains to be tried and adjudicated. The County's authority over  
4 the Sheriff with respect to law enforcement actions related to Count V remain to be  
5 adjudicated.

6  
7 DEFENDANT MARICOPA COUNTY'S POSITION: The Court's ruling of June  
8 15, 2015 (Doc. 379) granted Plaintiff's Motion for Partial Summary Judgment only  
9 insofar as Plaintiff's Fifth Claim for Relief encompassed alleged racial profiling in traffic  
10 stops conducted by MCSO in the context of immigration enforcement activities. To the  
11 extent that Plaintiff continues to seek relief based on any other activities, Plaintiff's Fifth  
12 Claim remains to be tried and adjudicated. Defendant Maricopa County also asserts that  
13 the question of whether it can be held legally liable for the actions of the Sheriff and  
14 MCSO on the facts of this case as they pertain to Plaintiff's Fifth Claim and, if so,  
15 whether the Plaintiff would be, on that basis, entitled to any injunctive relief against the  
16 County, remain to be tried and adjudicated.

17  
18 6. Sixth Claim for Relief: Defendants' Retaliation Against Their Critics  
19 Violates 42 U.S.C. § 14141 and the First Amendment

20  
21 PLAINTIFF'S POSITION: In order to prevail on this claim, the United States  
22 must prove that Defendants have engaged in a pattern or practice by law enforcement  
23 officers of retaliatory conduct that violates the First Amendment of the United States  
24 Constitution, in violation of 42 U.S.C. § 14141(a). See Int'l Bhd. of Teamsters, 431 U.S.  
25 at 336; Cherosky, 330 F.3d at 1247; Mendocino Env'tl. Center v. Mendocino Cnty., 192  
26 F.3d 1283, 1300 (9th Cir. 1999) (setting forth general elements of First Amendment  
27 retaliation claim). In order to establish retaliatory conduct in violation of the First  
28 Amendment, the United States must prove the following: (1) the victim of the alleged

1 retaliation engaged in activity protected by the First Amendment (see, e.g., McKinley v.  
2 City of Eloy, 705 F.2d 1110, 1113 (9th Cir. 1983) (protected interest in criticizing public  
3 officials regarding matters of public concern); White v. Lee, 227 F.3d 1214 (9th Cir.  
4 2000) (holding that attendance at local zoning board meetings is protected activity under  
5 the First Amendment.)); (2) Defendants subjected the victims to adverse action (see, e.g.,  
6 Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67 (1963) (“[I]n the First Amendment  
7 context, courts must ‘look through forms to the substance’ of government conduct.”);  
8 Coszalter v. City of Salem, 320 F.3d 968, 975 (9th Cir. 2003) (holding that the focus of  
9 inquiry should not depend on “any characterization of the government action” but on  
10 “whether the state had taken ‘action designed to retaliate against and chill political  
11 expression.’”); (3) there is a substantial causal relationship between the activity protected  
12 by the First Amendment and the adverse action (see, e.g., Skoog v. County of Clackamas,  
13 469 F.3d 1221, 1232 (9th Cir. 2006) (holding that a plaintiff must show that the “chilling  
14 effect was a but-for cause of the defendant’s action” in allegations of prosecutorial  
15 retaliation) (internal citation omitted)); (4) Defendants intended to inhibit future activity  
16 protected by the First Amendment (see, e.g., Mendocino Env’tl. Center, 192 F.3d at 1301  
17 (intent to inhibit speech can be demonstrated either through direct or circumstantial  
18 evidence); Alpha Energy Savers v. Hansen, 381 F.3d 917, 929 (9th Cir. 2004), cert.  
19 denied, 544 U.S. 975 (2005) (A plaintiff “must provide more than ‘mere evidence’ that  
20 the defendants were aware of [plaintiff’s] expressive conduct in order to establish a  
21 genuine material dispute as to whether retaliation was a substantial or motivating factor  
22 for their conduct.”)); and (5) the adverse action would chill a person of ordinary firmness  
23 from continuing in the protected activity (see, e.g., Coszalter, 320 F.3d at 976 (holding  
24 that it is not a requirement that the alleged retaliatory act actually chill the intended  
25 victim’s future protected expression—only that the act be reasonably likely to deter  
26 future First Amendment speech); Mendocino Env’tl. Center, 192 F.3d at 1300 (same)).

27

28

1 DEFENDANT ARPAIO’S POSITION: Defendant Arpaio generally agrees with  
2 Plaintiff’s characterization of the issues pertaining to Plaintiff’s Sixth Claim for Relief.  
3 Defendant notes, however, that Plaintiff’s citations to case authority omit pertinent  
4 authorities. For example, “once the plaintiff shows that their protected conduct was a  
5 motivating factor, the burden shifts to the defendant to show that he would have taken the  
6 same action in the absence of the protected conduct, in which case the defendant cannot  
7 be held liable.” Castle v. Appalachian Technical Coll., 631 F.3d 1194, 1197 (11th Cir.  
8 2011); see also Hartman v. Moore, 547 U.S. 250, 260, 126 S. Ct. 1695, 1704, 164 L. Ed.  
9 2d 441 (2006) (“[i]t may be dishonorable to act with an unconstitutional motive and  
10 perhaps in some instances be unlawful, but action colored by some degree of bad motive  
11 does not amount to a constitutional tort if that action would have been taken anyway.”).

12 Finally, because the United States is solely seeking injunctive relief premised upon  
13 an alleged past wrong, it must demonstrate a “real and immediate threat” of repeated  
14 future harm. See City of Los Angeles v. Lyons, 461 U.S. 95, 105, 109 (1983); Clark v.  
15 City of Lakewood, 259 F.3d 996, 1007 (9th Cir. 2001).

16  
17 DEFENDANT MARICOPA COUNTY’S POSITION: Defendant generally  
18 agrees with Plaintiff’s characterization of the issues pertaining to its Sixth Claim for  
19 Relief. Defendant notes, however, that Plaintiff’s citations to authority omit pertinent  
20 authorities. Defendant Maricopa County also asserts that the question of whether it can  
21 be held legally liable for the actions of the Sheriff and MCSO on the facts of this case as  
22 they pertain to Plaintiff’s Sixth Claim and, if so, whether the Plaintiff would be, on that  
23 basis, entitled to any injunctive relief against the County, remain to be tried and  
24 adjudicated.

25 **F. STIPULATIONS AND UNDISPUTED FACTS**

26 The parties have conferred as to the stipulations and undisputed facts involved in  
27 this litigation, and have agreed that they are as follows:  
28

1           1.     The Maricopa County Sheriff’s Office (MCSO) is a law enforcement  
2 agency in Maricopa County that provides law enforcement throughout the County and  
3 operates the County jail system.

4  
5           2.     Defendant Joseph M. Arpaio (Arpaio) is the Sheriff of Maricopa County  
6 and is responsible for the operation of MCSO, both in its policing and jail operations.

7           3.     Defendants Maricopa County and Sheriff Arpaio received and continue to  
8 receive federal financial assistance for their programs and activities, including grants  
9 from the DOJ Office of Justice Programs from 2010 until the present.

10  
11           4.     Representatives of Maricopa County signed contractual assurances, in  
12 effect from 2008 through the present, providing that the County “will comply (and will  
13 require any subgrantees or contractors to comply) with any applicable statutorily-imposed  
14 nondiscrimination requirements,” including Title VI.

15           5.     Sheriff Arpaio is the final decision-maker at MCSO..

16           6.     Sheriff Arpaio has the final say on policy decisions at MCSO.

17  
18           7.     In early 2007, MCSO entered into an agreement with the United States  
19 Immigration and Customs Enforcement (ICE) under § 287(g) of the Immigration and  
20 Nationality Act (INA) to enforce federal immigration laws in certain circumstances. The  
21 agreement permitted up to 160 certified MCSO officers to enforce administrative aspects  
22 of federal immigration law under the 287(g) program. Both detention officers working in  
23 MCSO jails and MCSO deputies operating in the field obtained 287(g) certification. The  
24 agreement authorized certified MCSO officers to arrest individuals suspected of being in  
25 the United States in violation of the law.  
26

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

3 9. Sheriff Arpaio believes that most illegal immigrants in Maricopa County  
4 come from Mexico and Central America.

5 10. On December 23, 2011, the United States District Court for the District of  
6 Arizona issued an order in the action of *Melendres v. Arpaio* providing: "MCSO and all  
7 of its officers are hereby enjoined from detaining any person based only on knowledge or  
8 reasonable belief, without more, that the person is unlawfully present within the United  
9 States, because as a matter of law such knowledge does not amount to a  
10 reasonable belief that the person either violated or conspired to violate the Arizona  
11 human smuggling statute, or any other state or federal criminal law." Ortega-Melendres  
12 v. Arpaio, 836 F. Supp. 2d 959, 994 (D. Ariz. 2011), aff'd sub nom. Melendres v. Arpaio,  
13 695 F.3d 990 (9th Cir. 2012).

14 11. The worksite raids were carried out by a unit within MCSO initially called  
15 the Employer Sanctions Unit, then known as the Criminal Employment Squad and later  
16 as the Criminal Employment Unit (CEU).

17 12. MCSO disbanded this unit in early 2015.

18 13. In its original incarnation as the Employer Sanctions Unit, the unit operated  
19 under a grant from the Maricopa County Attorney's Office to investigate employers who  
20 hired undocumented immigrants. Later, this unit was funded through state grants  
21 designed to sanction employers who hired undocumented workers.

22 14. The following MCSO personnel were assigned to the CEU during part of  
23 the unit's existence: Cesar Brockman, Dimitri Whelan, Gabriel Almanza, Douglas Beeks,  
24 Darrin Frei, Jesus Jerez, Hector Martinez, Susan Monroe, and Wade Voeltz.

1           15. Joseph Sousa and Brian Jakowinicz each served as Lieutenant over the  
2 Criminal Employment Squad or Unit.

3           16. MCSO operates the following seven jail facilities: the Fourth Avenue Jail;  
4 the Central Intake Division; the Durango Jail; the Estrella Jail; the Lower Buckeye Jail;  
5 the Tent City Jail; and the Towers Jail.

6           17. The Estrella Jail houses approximately 1,000, predominantly female,  
7 inmates.

8           18. The Durango Jail is a minimum and medium security facility which houses  
9 approximately 1,500 male inmates.

10           19. The Maricopa County Jail system accepts arrestees from law enforcement  
11 agencies throughout Maricopa County.

12           20. The MCSO jail facilities have an inmate population of over 10,000 people,  
13 making it the largest jail system in the state and the third largest jail system in the United  
14 States.

15           21. In June 2010, MCSO estimated that, of the over 10,000 people composing  
16 the MCSO jail inmate population, 41 percent were Hispanic, 39 percent were Caucasian,  
17 15 percent were African American, four percent were Native American, and one percent  
18 was other or mixed ethnicities.

19           22. According to data in MCSO documents, for the time period between  
20 December 2013 through May 2014, approximately 31.2 percent of the total inmate  
21 population in all MCSO jail facilities was Hispanic.

22           23. Grievance forms a means by which inmates can report misconduct by a  
23 detention officer.

24

1           24. By a letter dated November 30, 2009, Chief Deputy David Hendershott  
2 lodged a complaint against Judge Kenneth Fields with the State of Arizona Commission  
3 on Judicial Conduct. Ex. 320.

4           25. The Commission on Judicial Conduct dismissed the complaint against  
5 Judge Fields on June 18, 2010 without taking any action against Judge Fields. Ex. 318

6           26. By a letter dated November 30, 2009, Chief Deputy Hendershott lodged a  
7 complaint against Judge Gary Donahoe with the State of Arizona Commission on Judicial  
8 Conduct. Ex. 310.

9           27. The Commission on Judicial Conduct dismissed the complaint against  
10 Judge Donahoe on June 18, 2010 without taking any action against Judge Donahoe. Ex.  
11 309.

12           28. By a letter dated November 30, 2009, Chief Deputy Hendershott lodged a  
13 complaint against Judge Barbara Mundell with the State of Arizona Commission on  
14 Judicial Conduct. Ex. 321.

15           29. The Commission on Judicial Conduct dismissed the complaint against  
16 Judge Mundell on June 18, 2010 without taking any action against Judge Mundell. Ex.  
17 319.

18           30. By a letter dated November 30, 2009, Chief Deputy Hendershott lodged a  
19 complaint against Judge Anna Baca with the State of Arizona Commission on Judicial  
20 Conduct. Ex. 322.

21           31. The Commission on Judicial Conduct dismissed the complaint against  
22 Judge Baca on June 18, 2010 without taking any action against Judge Baca. Ex. 317.

23           32. By a letter dated October 31, 2007, Chief Deputy Hendershott lodged a bar  
24 complaint against Richard M. Romley. Ex. 296.

25           33. The State Bar of Arizona closed its consideration of the complaint against  
26 Mr. Romley on December 27, 2007 without taking any action against Mr. Romley. Ex.  
27 295.

28

1           34. By a letter dated November 16, 2009, Chief Deputy Hendershott lodged a  
2 bar complaint against Julie Pace and David Selden. Ex. 298.

3           35. The State Bar of Arizona closed its consideration of the complaint against  
4 Ms. Pace and Mr. Selden on December 16, 2009 without taking any action against Ms.  
5 Pace or Mr. Selden. Ex. 294.

6           36. By a letter dated July 22, 2009, Chief Deputy Hendershott lodged a bar  
7 complaint against County Manager David Smith with the State Bar of Arizona. Ex. 299.

8           37. The State Bar of Arizona closed its consideration of the complaint against  
9 Mr. Smith on November 23, 2009, without taking any action against Mr. Smith. Ex. 299.

10           38. MCSO deputies arrested Michael Lacey and Jim Larkin on October 18,  
11 2007 for publishing information relating to purported grand jury subpoenas in their  
12 newspaper, The Phoenix New Times. Lacey v. Maricopa Cnty., 693 F.3d. 896, 910 (9th  
13 Cir. 2012).

14           39. The subpoenas issued to Michael Lacey and Jim Larkin were not validly  
15 issued by a grand jury.

16           40. The charges against Michael Lacey and Jim Larkin for disclosing grand  
17 jury information were dropped within days of their arrest.

18           41. Salvador Reza was released from custody with the condition that he would  
19 be prohibited from initiating contact with his arresting officers.

20           42. Sheriff Arpaio tweeted on July 30, 2010 at 3:56 p.m., “Looks like Raeza  
21 and his gang are out of my jail and just showed up to protest my operation.” Ex. 323.

22           43. At 4:01 p.m. on July 30, 2010, Sheriff Arpaio tweeted, “And now they are  
23 blocking my deputies from pulling out, looks like they enjoy being in my jail.” Ex. 323.

24           44. At 4:24 p.m. on July 30, 2010, Sheriff Arpaio tweeted, “And now Mr Raeza  
25 is under arrest again.” Ex. 323.

26           45. On July 30, 2010, MCSO deputies arrested Salvador Reza for violating a  
27 court order and charged him with “interfering with judicial proc  
28

1           46. In a sworn, notarized letter dated September 26, 2008, then-Chairman of  
2 the Maricopa County Board of Supervisors, Andrew Kunasek, requested Chief Deputy  
3 David Hendershott of the Maricopa County Sheriff’s Office to “provide sufficient  
4 Sheriff’s personnel at all public meetings of the Board of Supervisors to oversee the  
5 conduct of the public in attendance.” Ex. 302.

6           47. Chairman Kunasek requested that MCSO deputies “take the necessary steps  
7 to remove anyone who is being disruptive or anyone who is directing or inciting others to  
8 be disruptive from the meeting. Disruptive behavior includes such things as making  
9 statements or addressing the Board without first being recognized and obtaining  
10 permission to speak, or shouting, singing, chanting, or engaging in other behavior that  
11 disrupts the meeting or prevents the Board from carrying out its business.” Ex. 302.

12           48. Chairman Kunasek’s letter did not specifically mention clapping or  
13 applauding as disruptive behavior during Board of Supervisors meetings.

14           49. At the Board of Supervisors meeting on December 17, 2008, Raquel Teran  
15 spoke during the public comment portion of the meeting.

16           50. Maricopa County Sheriff’s Office (“MCSO”) operates the Maricopa  
17 County Jail system which consists of six jails: 4<sup>th</sup> Avenue Jail, Durango Jail, Estrella Jail,  
18 Towers Jail, Lower Buckeye Jail and the In-Tents Jail facilities.

19           51. Given the geographical location of Maricopa County and its  
20 Hispanic/Latino demographic, MCSO has had and will continue have the need to  
21 communicate with, assist and care for Limited English Proficient (“LEP”) Spanish  
22 speaking inmates.

23           52. In 2013, MCSO adopted a formal policy which sets forth MCSO’s LEP  
24 program and its mandatory LEP policies, procedures and training.

25           53. Religious services are also offered in English and Spanish.

26           54. MCSO also has multiple forms available in the Spanish language which  
27 Spanish LEP inmates can use to access available programs and services, including legal,  
28

1 religious, self-help, educational, canteen, medical, psychological, library, legal and  
2 grievance services.

3 55. During this courts hearing on October 6, 2014, counsel for the United  
4 States admitted that none of the allegations in this case regarding retaliation have  
5 occurred since 2010:

6 MR. MASTERSON: Well -- and this is a big assumption.  
7 Let's assume that they could prove that the Sheriff's Office  
8 retaliated against someone in the Maricopa County area  
9 because of their opinions or criticisms of Sheriff Arpaio. Let's  
10 assume that to be the case. What we don't have is that  
11 occurring or even an allegation of that occurring since 2010.  
12 Not a one.

13 THE COURT: Okay. Let me stop you. Mr. Caspar, is that  
14 correct?

15 MR. CASPAR: None of the allegations in this case have  
16 occurred since the Sheriff stopped this conduct in 2010.

17 56. Pursuant to a Memorandum of Agreement ("MOA") entered into in early  
18 2007 (US\_675639-675654), MCSO agreed to provide officers to assist ICE in the  
19 enforcement of federal immigration laws in the 287(g) program entered into by  
20 representatives of ICE, Sheriff Arpaio, and the BOS. MCSO officers who were to  
21 participate in the program were to be trained by ICE and were to perform functions of an  
22 immigration officer. The MCSO officers who were to participate in the 287(g) program  
23 were to include officers involved in law enforcement.

24 57. In October of 2009, the 287(g) authority for MCSO officers involved in law  
25 enforcement activities was withdrawn by the federal government. Subsequently, in late  
26 2011, the 287(g) authority for MCSO officers involved in jail administration activities  
27 was also withdrawn by the federal government.

#### 28 **G. PLAINTIFF'S CONTENTIONS OF DISPUTED FACTS**

The United States anticipates that the disputed facts relating to each of its claims  
will include the following:

##### 1. First Claim for Relief

1 The disputed facts relating to this claim will concern the scope of the violation  
2 outside of the discriminatory traffic stops claims resolved on summary judgment.

3 2. Second Claim for Relief

4 The disputed facts relating to this claim will include: the manner in which MCSO  
5 conducted its worksite operations, the manner in which MCSO deputies searched, seized,  
6 arrested, and questioned individuals detained or arrested during MCSO worksite  
7 operations, and the manner in which MCSO deputies treated Hispanic individuals during  
8 MCSO worksite operations.

9 3. Third Claim for Relief

10 The disputed facts relating to this claim will concern the scope of the violation  
11 outside of the discriminatory traffic stops claims resolved on summary judgment.

12 4. Fourth Claim for Relief

13 The disputed facts relating to this claim will include: the nature and extent of the  
14 Defendants' failures to provide meaningful Spanish-language services in MCSO jails,  
15 including the extent to which programs and services are available to LEP Hispanic jail  
16 inmates, the extent to which MCSO accurately and regularly identifies LEP inmates, and  
17 the extent to which MCSO provides translation and interpretation services to LEP jail  
18 inmates; the extent to which MCSO's jail language access policies and practices have an  
19 adverse impact on Hispanic and LEP Hispanic jail inmates in MCSO jails; the manner in  
20 which MCSO detention officers and jail staff treat Hispanic and LEP Hispanic jail  
21 inmates; and the size and proportion of the Hispanic and LEP Hispanic inmate  
22 populations in MCSO jails.

23 5. Fifth Claim for Relief

24 The disputed facts relating to this claim will concern the scope of the violation  
25 outside of the discriminatory traffic stops claims resolved on summary judgment.

26 6. Sixth Claim for Relief

27 The disputed facts relating to this claim will include: the nature and circumstances  
28 of the First Amendment protected activity engaged in by the targets of MCSO's alleged

1 retaliatory conduct, the nature and timing of the adverse actions taken against the  
2 individuals targeted for alleged retaliation by MCSO, the impact of MCSO's retaliatory  
3 conduct on the individuals targeted for alleged retaliation by MCSO, and direct and  
4 circumstantial evidence of MCSO's intent in taking adverse actions against individuals  
5 targeted for alleged retaliation by MCSO.

6 **H. DEFENDANTS' CONTENTIONS OF DISPUTED FACTS**

7 **1. DEFENDANT ARPAIO'S CONTENTIONS OF DISPUTED**  
8 **FACTS**

9  
10 1. First Claim for Relief:

11 Defendant Arpaio contends that they are no remaining contentions of  
12 disputed fact involving Count I of Plaintiff's complaint. It does not appear that Plaintiff  
13 intends to offer any testimony or other evidence on the merits of Count I of Plaintiff's  
14 complaint beyond what has already been determined by this Court in its Order granting  
15 Summary Judgment on June 15, 2015.

16 2. Second Claim for Relief:

17 The disputed facts relating to this claim will include: the basis for MCSO's  
18 decision to enforce Arizona Criminal Laws, the impact of identity theft, forgery and other  
19 serious violations of Arizona Criminal Law on the community, and the manner in which  
20 MCSO enforced Arizona Criminal Law during worksite operations.

21  
22 3. Third Claim for Relief:

23 Defendant Arpaio contends that they are no remaining contentions of  
24 disputed fact involving Count III of Plaintiff's complaint. It does not appear that Plaintiff  
25 intends to offer any testimony or other evidence on the merits of Count III of Plaintiff's  
26 complaint beyond what has already been determined by this Court in its Order granting  
27 Summary Judgment on June 15, 2015.

28 4. Fourth Claim for Relief:

1 This disputed facts relating to this claim will include: Defendants complete  
2 compliance with Federal and Arizona law including Department of Justice guidelines and  
3 the implementation of its LEP policy; its reasonable measures to provide meaningful  
4 Spanish language services in MCSO jails; the vast number of programs and services  
5 available to LEP inmates; the reasonable manner in which MCSO identifies LEP inmates;  
6 the reasonable provision of translation and interpretation services to LEP inmates; the  
7 successful implementation of all jail language access policies and practices on LEP  
8 inmates; the overall reasonable and fair treatment of LEP inmates by MCSO; emphasize  
9 and proportion of LEP inmate populations in MCSO jails.

10 5. Fifth Claim for Relief:

11 Defendant Arpaio contends that they are no remaining contentions of  
12 disputed fact involving Count V of Plaintiff's complaint. It does not appear that Plaintiff  
13 intends to offer any testimony or other evidence on the merits of Count V of Plaintiff's  
14 complaint beyond what has already been determined by this Court in its Order granting  
15 Summary Judgment on June 15, 2015.

16 6. Sixth Claim for Relief:

17 The disputed claims facts related to this claim will include: the nature and  
18 circumstances of any MCSO investigation, complaint or charge based on unethical and/or  
19 illegal conduct of persons investigated or charged, or behaviors otherwise questioned by  
20 MCSO and the existence of reasonable suspicion and/or probable cause for such  
21 complaints, investigations, or charges, and whether such complaints, investigations,  
22 and/or charges, or entitled to any immunity under Federal or State law.

23  
24 1. The following identity theft operations were conducted without a warrant  
because there was full cooperation by the business owner and/or manager:

- 25 ● Native New Yorker
- 26 ● Yogi's Grill
- 27 ● Sienna Park Apartments
- 28 ● La Fonda
- Operations involving the use of the name Maria Flores

1           2.       The following identity theft operations were conducted pursuant to a Grand  
2 Jury Subpoena:

- 3                   •       Alliance Refuse Trucks
- 4                   •       Desert Star Plastics
- 5                   •       Integrity Cleaners
- 6                   •       Operations involving the use of the name Ivan Lopez
- 7                   •       3 Palms Resort

8           3.       With the exception of identity theft operations listed in Paragraphs 1 and 2,  
9 all other identity theft operations subject to this litigation (and identified in Plaintiff's  
10 trial exhibit 264) were performed pursuant to a search warrant.

11           4.       The Maricopa County Jails are designed to hold, in the aggregate and at full  
12 capacity, 10,872 inmates. On average, approximately over the past two years, 32% of all  
13 inmates in the jails have been Hispanic with 6.3% of those inmates being documented as  
14 LEP.

15           5.       At all steps during inmate intake, Defendants have put into place  
16 redundancies to ensure that LEP inmates are properly identified and cared for.

17           6.       The first step during inmate intake at either Central Intake at the 4th  
18 Avenue Jail or Lower Buckeye Jail is for inmates to go through a medical assessment to  
19 determine if they are medically stable to be in the jail system.

20           7.       During the medical assessment, an information officer meets and greets all  
21 incoming inmates and answers any questions about the intake process. This officer also  
22 determines if an inmate should be designated as LEP.

23           8.       Additionally, the information officer gives each inmate a bilingual  
24 information sheet which explains the intake procedure.

25           9.       Finally, the information officer is one step in the LEP identification process  
26 as every officer that comes into contact with the inmate during the intake procedure  
27 gathers information on whether the inmate is LEP (based on their interactions with the  
28 inmate and his or her ability to communicate with MCSO officers).

          10.       Once an inmate has been identified as LEP, that LEP designation appears in  
the inmate's records and on the inmate roster for the particular jail in which they are  
housed.

          11.       MCSO has taken reasonable steps to ensure that the needs of LEP inmates  
were addressed, including Spanish speaking LEP inmates, to ensure that they have access  
to programs and services offered in the jails, and that they receive necessary care while  
they are in MCSO custody.

          12.       Although MCSO has always attended to the needs of LEP inmates, in 2010,  
MCSO embarked on a mission to adopt a formal LEP program that consists of policy,  
training and procedures which address the needs of LEP inmates, starting with the release  
of its LEP Position Statement in June 2010.

          13.       MCSO LEP policy DI-6 reflects the MCSO's approach to LEP inmate  
assistance which is beyond what is reasonably required under DOJ guidelines.

14. MCSO's DI-6 Policy States as follows:

(1) **Inmate Access to Programs:** Inmates, including hearing-impaired inmates, shall not be denied access to any programs or services based solely on their limited ability to speak, read, or understand the English language.

(2) **Rights and Protections:** LEP inmates shall be afforded the same rights and protections mandated by the Prison Rape Elimination Act (PREA) and all other associated and applicable federal, state, and local laws and ordinances.

(3) **Identification and Records:** LEP inmates are identified, and recorded as such, during the intake and classification process at Central Intake or the Self-Surrender Center located at the Lower Buckeye Jail (LBJ). Once identified as a LEP inmate, a comment shall be placed in the Jail Management System (JMS). The comment will then print on the housing unit rosters.

A. If, at any time during an inmate's incarceration, an officer discovers a LEP inmate that has not been previously identified as such, the officer shall notify a Classification Section supervisor.

B. The Classification Section supervisor shall ensure the JMS is updated to reflect the LEP status of the inmate.

C. If the officer is unable to contact a Classification Section supervisor, the officer shall notify his supervisor who shall ensure the Classification Section is notified so the necessary change can be made to the JMS.

D. The officer shall document the notifications made to the Classification Section or to his supervisor, in the Operations Journal (OJ), at his assigned duty post. The entry shall include the inmate's name, primary language, who was notified, and the time and date of the notification.

(4) **Language Identification Signs:** Language identification signs shall be posted in Central Intake, the Self-Surrender Center at LBJ, and all inmate housing units to assist staff members in identifying the language of a LEP inmate.

(5) **Inmate Informational Postings:** All inmate informational postings in the jail housing units shall be in English and Spanish, at a minimum.

(6) **Booklets and Forms:** Booklets and forms issued for inmate use, including, but not limited to, the Rules and

1 Regulations for Inmates booklet; the Inmate Request Form  
2 (Tank Orders); the Inmate Grievance Form, including all  
3 levels of appeals; the Inmate Legal Services Request (ILS)  
4 form; and Health Needs Request Form (HNR) shall be  
5 available in English and Spanish. Additional forms shall be  
6 made available, as needed.

7 A. LEP inmates shall be permitted to complete and  
8 submit all inmate forms in their primary language.  
9 Officers shall accept these forms and forward them to  
10 the appropriate areas for processing.

11 B. HNR forms shall only be accepted by appropriate  
12 Correctional Health Services (CHS) personnel.

13 (7) **Training:** The Training Division shall provide a LEP  
14 training course during the Basic Academy, as well as  
15 continuing training for detention staff. This course shall  
16 include information regarding available resources to assist  
17 staff members in communicating with LEP inmates.

18 (8) **Detention Language Roster:** The Training Division shall  
19 be responsible for maintaining a Detention Language Roster.

20 A. The Detention Language Roster shall contain the  
21 names and current assignments of all bilingual and  
22 multilingual officers, including the languages they can  
23 speak, read, write, or understand. The roster shall be  
24 available to all staff members on the U:\Drive at  
25 U:\Training\Detention Language Roster. A direct link  
26 to this folder is also located on the LANDesk Desktop  
27 Manager.

28 B. An officer's use of their bilingual or multilingual  
skills shall be voluntary. Officers shall not receive  
additional salary based on foreign language knowledge  
or use.

(9) **LEP Manager:** The Custody Business Operations/Special  
Projects Division shall be responsible for assigning a LEP  
Manager to each jail facility.

A. The LEP Manager shall be an active Field Training  
Officer (FTO).

B. The LEP Manager for a specialty unit, such as the  
Special Response Team (SRT), or a civilian division  
which provides detention-related services, shall be  
assigned at the discretion of the appropriate  
commander or supervisor, and shall not be required to be an  
active detention FTO.

C. The duties of the LEP Manager include, but are not

limited to:

1  
2 1. Maintaining a LEP Manager Manual which  
3 includes, but is not limited to, current resources  
4 available to all detention staff that shall assist  
5 them in communicating with LEP inmates.

6 2. Maintaining and updating all LEP or inmate  
7 informational postings in the intake areas and  
8 housing units.

9 3. Ensuring the jail facility maintains text  
10 telephone (TTY) machines in good working  
11 order and all detention personnel are aware of  
12 how to properly operate the machines.

13 4. Ensuring all detention personnel are kept up  
14 to date on all LEP-related information.

15 5. Detention LEP Managers assigned to jail  
16 facilities will conduct random  
17 monthly interviews with two LEP inmates and  
18 one officer regarding their LEP-related  
19 experiences and concerns. The LEP Manager  
20 shall conduct any appropriate follow-up to  
21 address issues or deficiencies discovered during  
22 the interviews. Follow-up may include, but is  
23 not limited to:

24 a. Conducting a follow-up interview with  
25 the officer or inmate.

26 b. Notifying a supervisor of alleged  
27 issues or deficiencies.

28 c. Notifying the Custody Business  
Operations/Special Projects Division  
Commander of alleged issues or  
deficiencies.

6. Compiling weekly statistics regarding the  
number of LEP inmates housed at the facility  
and the languages they speak. This information  
shall be captured in a JMS report, "Language  
Code by Facility" each Monday, and made  
available on the Sheriff's Office Intranet.

7. If, due to exigent circumstances, the assigned  
LEP Manager is unable to complete these duties  
in a given month, the duties may be delegated to  
other personnel by a member of the affected  
division's command staff; or the command staff  
of the Custody Business Operations/Special

Projects Division.

1  
2 (10) **Available Resources:** Resources available to  
3 communicate with LEP inmates include, but are not limited  
4 to, the following:

5 A. Voiance Language Services (1-866-533-4998,  
6 Access Code 985692). Detention Officers in  
7 assignments with regular inmate contact shall be  
8 required to carry a "wallet card" listing the contact  
9 information for Voiance Language Services.

10 B. Detention Language Roster.

11 C. During an emergency situation when the security of  
12 a facility or the safety or health of an officer, staff  
13 member, or inmate may be at risk, an officer may  
14 request another inmate to provide interpretation for a  
15 LEP inmate. Officers shall use discretion when  
16 considering this option.

17 (11) **Reasonable Accommodations:** Accommodations shall  
18 be considered if a LEP inmate requires special attention.  
19 Every reasonable effort shall be made to provide a LEP  
20 inmate with meaningful access to information, programs, and  
21 services.

22 (12) **Assisting the Public:** The Sheriff's Information  
23 Management Services (SIMS) shall request bilingual and  
24 multilingual personnel, as well as Voiance Language  
25 Services, to assist members of the public who are LEP  
26 individuals when providing non-confidential information on  
27 the public jail information telephone line or, in the Bonds and  
28 Fines lobby at the 4th Avenue Jail.

(13) **Visitation:** Detention personnel assigned to the  
Visitation area of each jail facility shall take all reasonable  
steps to assist LEP members of the public when requesting to  
visit an inmate or requesting jail-related information,  
including utilizing bilingual and multilingual detention  
personnel and Voiance Language Services.

(14) **Language Services:** All Office language services, as  
required or applicable when conducting detention-related  
Office business, shall be provided free of charge to inmates,  
their family members, or members of the general public.

15. MCSO Policy DI-6, Limited English Proficiency (LEP) Inmates is  
calculated to serve the LEP inmate, as well as LEP individuals associated with an inmate  
to access available programs and services, and to be in compliance with Title VI of the  
Civil Rights Act of 1964 as Amended, and all other applicable laws.

1 16. To begin with, MCSO's jails offer bilingual classes for LEP inmates  
2 including Anger Management, 12-Steps, Parenting, Cognitive, and AA. [November 7,  
2013 Deposition of Mary Brazel at 23:14-23]

3 17. Furthermore, an inmate requesting to take an English only class would  
4 never be refused entry due to their LEP designation. [Id. at 46:14-22]

5 18. DI-6, MCSO outlines its commitment to enhancing overall communications  
6 and building language competencies with inmates and the public who have a limited  
7 ability to read, write, speak, or understand the English language. Under Policy DI-6,  
8 MCSO's policy is to provide for effective communication with inmates and the public  
9 with a limited English Language Proficiency, regarding detention-related office business,  
10 and to be in compliance with Title VI of the Civil Rights Act of 1964, as amended and all  
11 other applicable laws.

12 19. In accordance with this policy, the following bilingual forms of  
13 communication are provided in MCSO's jails: (1) language identification signs, (2)  
14 inmate informational postings, (3) booklets and forms issued for inmate use including  
15 Rules And Regulations For Inmates, (4) inmate request form (tank orders), (5) the inmate  
16 grievance form (including all levels of appeals), (6) the inmate legal services request  
17 (ILS) form, (7) health needs request form (HNR) and (8) that additional forms shall be  
18 made available, as needed.

19 20. Since 2007, MCSO has posted extensive bilingual (English and Spanish)  
20 signage throughout the Maricopa County jails. These signs inform Spanish LEP inmates  
21 of their rights, as well as the protections, services and programs available to them. There  
22 are currently over 1850 signs and number and types of bilingual signage continues to  
23 increase.

24 21. In addition, under Policy DI-6, MCSO requires that each facility have an  
25 LEP manager. The LEP managers' duties include maintaining an LEP Manager Manual  
26 which includes resources available to all detention staff to assist staff in communicating  
27 with LEP inmates. The LEP manager is also responsible for maintaining and updating all  
28 LEP or inmate informational postings in the intake areas and housing units. In addition,  
the LEP manager ensures that the jail facility maintains text telephone machines, and that  
all detention personnel are kept up to date on LEP related information.

21 22. LEP managers also conduct random monthly interviews with two LEP  
22 inmates and one detention officer regarding the LEP/related experiences and concerns.  
23 The LEP manager is also tasked with conducting any appropriate follow up to address  
24 any issue or deficiency revealed during those interviews. As a result, the LEP manager  
25 may conduct follow up interviews with the officer or inmates, notify his or her supervisor  
26 or the Custody Business Operations/Special Project Division Commander of alleged  
27 deficiencies or issues. The LEP manager also compiles weekly statistics regarding the  
28 number of LEP inmates housed at the facility and the languages they speak, and provides  
this information in a jail management systems report each Monday.

23 23. MCSO mandates under DI-6 that reasonable accommodations shall be  
24 made to provide a LEP inmate with meaningful access to information, programs and  
25 services.

26 24. For the past two decades, MCSO has also had 24 hour, 7 day a week  
27 telephonic language interpretation services.

1 25. This telephonic language interpretation service provides interpretation  
2 services for a great number of languages, including but not limited to Mandarin,  
3 Romanian, and Vietnamese and, of course, Spanish, as well as a whole host of other  
4 languages.

5 26. As a reflection of Maricopa County's demographics and, thus, Maricopa  
6 County jail population, MCSO personnel and inmates in the Maricopa County Jails use  
7 Spanish language interpretative services, including telephonic interpretative services,  
8 above all other languages.

9 27. Under MCSO's current language interpretation services, Voiance, Spanish  
10 continues to be the language most accessed to assist LEP inmates in the Maricopa County  
11 jails.

12 28. Spanish interpretation is consistently at approximately 90% or more of all  
13 access telephonic, language services.

14 29. As a result, telephonic Spanish language interpretation can and does exceed  
15 over 4,300 minutes each month. The cost of Voiance can easily approach \$2199.48  
16 monthly.

17 30. In addition, MCSO's Policy DI-6 also requires language assistance from  
18 their bilingual and multilingual personnel to assist members of the public to communicate  
19 with jail personnel in the provision of non-confidential information, as well as ensuring  
20 that detention personnel take reasonable steps to assist LEP members of the public when  
21 requesting to visit an inmate or requesting jail related information, including utilizing  
22 bilingual and multilingual detention personnel and Voiance language services.

23 31. MCSO through Policy DI-6, LEP Inmates ensures that all office language  
24 services required when conducting detention related office business, shall be provided  
25 free of charge to inmates, their family members or members of the general public.

26 32. In addition to the telephonic language interpretation services, MCSO also  
27 has a diverse detention staff which speaks approximately 52 languages, including but not  
28 limited to Spanish, French, Tagalog, Vietnamese, Polish, German, Swahili, Twi, Navajo,  
Mandarin and Pigeon English, to name a few.

33. The majority of bilingual detention officers, however, speak Spanish. In  
fact, as of August 8, 2014, the Detention Language Roster contains over 240 names of  
voluntary bilingual or multilingual officers; those detention officers who have formally  
disclosed that they speak Spanish numbered approximately 172. This number does not  
reflect all Spanish speaking detention employees, however. Rather, it reflects the number  
of Spanish speaking employees have voluntarily placed their names on the Detention  
Language Roster. Nevertheless, officers not listed on the roster still provide language  
services to inmates including Spanish speaking inmates.

34. The language skills roster referenced above, lists 241 officers who are  
available to provide language services to Maricopa County jail inmates. This roster is  
intended to ensure that LEP inmates can communicate effectively with MCSO staff and  
have access to available programs and services in the Maricopa County jails.

35. The detention language roster mentioned above, also referred to as a  
language skills roster, is also a part of MCSO LEP Policy DI-6.

1 36. MCSO has on staff an American Council on the Teaching of Foreign  
Languages (“ACTFL”) certified interpreter/translator, Lourdes Hernandez.

2 37. In addition to the MCSO’s LEP policy, training and procedures, MCSO has  
3 embarked on a multi-million dollar project to make bilingual (English and Spanish) jail  
4 announcements automatically with a mere selection and touch of computer monitors in  
all jails – the Sierra Detention Systems complete overhaul of the MCSO’s Jail Security  
5 System.

6 38. This Sierra intercom and recording system is already up and running in the  
7 4th Avenue Jail. Installation of the Sierra System is underway in the Lower Buckeye,  
8 Durango and Tents facilities, and will commence in the Towers jail and Estrella Jail in  
9 the near future. It is projected that in approximately 11 months, the entire Maricopa  
County Jail System will be up and running with a state of the art, expandable, automatic  
10 announcement system which will ensure uniformity of announcements for such things as  
11 medical, medication, lock down, opposite gender presence in housing unit, meal service,  
12 and more. Bilingual announcements will sound not only in the day rooms of each jail,  
13 but throughout the jails and within cells where available.

14 39. This two year Sierra project to overhaul the camera’s and recording  
15 devices, along with the announcement system in the Maricopa County jails was originally  
16 expected to cost \$26 million to create and install. However, the cost of the Sierra  
17 System is now approaching approximately \$30 million. Sierra has also informed MCSO  
18 that this project is the largest project of its kind ever attempted in the detention industry.

19 40. There has not been a single inmate grievance or complaint from a former  
20 inmates’ family or friends produced by Plaintiff complaining of LEP issues in the  
21 Maricopa County jails. [See August 28, 2014 Deposition of Walter L. Kautzky at pp.  
22 110-112, 124-26.]

23 41. The Department of Justice condones the use of family members, friends,  
24 other inmates, or other detainees as interpreters. [Department of Justice’s 2002 LEP  
25 Guidance Report at p. 41462].

26 42. Reasonable suspicion and/or probable cause existed for investigation and/or  
27 arrest in all instances of retaliation alleged by the United States.

28 43. MCSO requires an arresting MCSO deputy to fill out a “Form 4” on which  
the deputy summarizes the factual basis which establishes probable cause for a suspect’s  
29 arrest. Of course, for warrant arrests a deputy presents to a neutral Judge or Magistrate,  
30 the probable cause basis for a prospective arrest, upon which the Judge or Magistrate  
31 decides whether probable cause exists to issue the arrest warrant.

32 44. None of the allegations in this case regarding retaliation have occurred  
33 since 2010.

34 **2. DEFENDANTS MARICOPA COUNTY’S CONTENTIONS OF**  
35 **DISPUTED FACTS**  
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1 Defendants anticipate that additional disputed facts relating to each of Plaintiff's  
2 claims will include the following:

3 1. First Claim for Relief  
4

5 Whether Plaintiff can show, by a preponderance of the evidence, that Defendants Arpaio  
6 and MCSO have engaged in any conduct, other than the traffic stops conducted in the  
7 context of immigration enforcement found to have been unlawful in Melendres, that is  
8 unlawful as alleged in Plaintiff's First Claim for Relief. If Plaintiff can make such a  
9 showing, whether the facts warrant a conclusion that Defendant Maricopa County has  
10 any culpability for such conduct sufficient to support a finding that it has any legal  
11 liability for any portion or all of the conduct. If Plaintiff succeeds in demonstrating  
12 unlawful conduct beyond that found to have been unlawful in Melendres, whether the  
13 origins and nature of such conduct, seen in the light of current circumstances, warrant the  
14 imposition of extraordinary relief in the form of an injunction against either or both  
15 Defendants.  
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19 2. Second Claim for Relief  
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21 If Plaintiff can demonstrate by a preponderance of the evidence that any aspect of  
22 worksite operations was conducted in an unlawful manner as alleged in its Second Claim  
23 for Relief, whether the facts warrant a conclusion that Defendant Maricopa County has  
24 any culpability for such conduct sufficient to support a finding that it has any legal  
25 liability for any portion or all of the conduct. If Plaintiff succeeds in demonstrating any  
26 unlawful conduct as alleged in its Second Claim for Relief, whether the origins and  
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1 nature of such conduct, seen in the light of current circumstances, warrant the imposition  
2 of extraordinary relief in the form of an injunction against either or both Defendants.

3           3.       Third Claim for Relief

4 Whether Plaintiff can show, by a preponderance of the evidence, that Defendants Arpaio  
5 and MCSO have engaged in any conduct, other than the traffic stops conducted in the  
6 context of immigration enforcement found to have been unlawful in Melendres, that is  
7 unlawful as alleged in Plaintiff's Third Claim for Relief. If Plaintiff can make such a  
8 showing, whether the facts warrant a conclusion that Defendant Maricopa County has  
9 any culpability for such conduct sufficient to support a finding that it has any legal  
10 liability for any portion or all of the conduct. If Plaintiff succeeds in demonstrating  
11 unlawful conduct beyond that found to have been unlawful in Melendres, whether the  
12 origins and nature of such conduct, seen in the light of current circumstances, warrant the  
13 imposition of extraordinary relief in the form of an injunction against either or both  
14 Defendants.  
15 Defendants.

16           4.       Fourth Claim for Relief

17 Whether the measures taken by Defendant Arpaio and MCSO to provide Spanish-  
18 speaking LEP inmates in the Maricopa County jails constitute "reasonable steps to  
19 provide meaningful access to information and services" available to other inmates. If  
20 Plaintiff can demonstrate by a preponderance of the evidence that such measures were  
21 not reasonable under the circumstances and that MCSO's treatment of Spanish-speaking  
22 LEP inmates was unlawful as alleged in its Fourth Claim for Relief, whether the facts  
23 warrant a conclusion that Defendant Maricopa County has any culpability for such

1 conduct sufficient to support a finding that it has any legal liability for any portion or all  
2 of the conduct. If Plaintiff succeeds in demonstrating any unlawful conduct as alleged in  
3 its Fourth Claim for Relief, whether the origins and nature of such conduct, seen in the  
4 light of current circumstances, warrant the imposition of extraordinary relief in the form  
5 of an injunction against either or both Defendants.  
6

7           5.     Fifth Claim for Relief

8 Whether Plaintiff can show, by a preponderance of the evidence, that Defendants Arpaio  
9 and MCSO have engaged in any conduct, other than the traffic stops conducted in the  
10 context of immigration enforcement found to have been unlawful in Melendres, that is  
11 unlawful as alleged in Plaintiff's Fifth Claim for Relief. If Plaintiff can make such a  
12 showing, whether the facts warrant a conclusion that Defendant Maricopa County has  
13 any culpability for such conduct sufficient to support a finding that it has any legal  
14 liability for any portion or all of the conduct. If Plaintiff succeeds in demonstrating  
15 unlawful conduct beyond that found to have been unlawful in Melendres, whether the  
16 origins and nature of such conduct, seen in the light of current circumstances, warrant the  
17 imposition of extraordinary relief in the form of an injunction against either or both  
18 Defendants.  
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23           6.     Sixth Claim for Relief

24                       Whether Plaintiff can show by a preponderance of the evidence that the  
25 actions alleged in its Sixth Claim for Relief in fact sprang from retaliatory motives and,  
26 if so, were not nevertheless legally justified by other factors. If Plaintiff can make such  
27 a demonstration, whether the facts warrant a conclusion that Defendant Maricopa  
28

1 County has any culpability for such conduct sufficient to support a finding that it has any  
2 legal liability for any portion or all of the conduct. If Plaintiff succeeds in demonstrating  
3 any unlawful conduct as alleged in its Sixth Claim for Relief, whether the nature of such  
4 conduct, seen in the light of current circumstances, warrant the imposition of  
5 extraordinary relief in the form of an injunction against either or both Defendants.

6 1. Prior to Arizona's admission to the union, it was required to submit its  
7 Constitution to the President of the United States and the U.S. Congress for approval.  
8 *See* Enabling Act of June 20, 1910, c. 310, 36 U.S. Stat. 557, 568-579 (§ 22), 1 A.R.S. 67  
9 (2010); Joint Resolution No. 8, August 21, 1911, 37 Stat. 39, 1 A.R.S. 95-96 (2010);  
10 Proclamation of Admission, February 14, 1912, 37 Stat. 1728, 1 A.R.S. 97-98 (2010); *see*  
11 *also* JOHN D. LESHY, THE ARIZONA STATE CONSTITUTION 6, 22-23 (2d ed. 2013)  
12 (“LESHY”).

13 2. During the debates at Arizona's Constitutional Convention in 1910  
14 regarding the structure of government at the county level, a proposal to have the county  
15 assessor appointed by the board of supervisors, rather than elected directly by those  
16 exercising the franchise, was rejected out of concern that an assessor appointed by the  
17 board would be subject to board control and, accordingly, less able to perform the duties  
18 of the position independently and free from political influence. *See* John S. Goff, The  
19 Records of the Arizona Constitutional Convention of 1910, 503-505.

20 3. As adopted and approved by the United States, the Arizona Constitution  
21 provided for certain county-level officers “who shall be elected by the qualified electors”  
22 of the county, and among these specified “Constitutional Officers” were a sheriff, an  
23 assessor, and members of the board of supervisors. *See id.* at 1426; *see also* Az. Const.  
24 art. XII, § 3 (current provision reflects some interim amendments, but continues to  
25 specify Constitutional Officers including sheriff, assessor, and supervisors).

26 4. In practice during the period pertinent to this action, Sheriff Arpaio, the  
27 Maricopa County Sheriff's Office (“MCSO”), and the Maricopa County Board of  
28 Supervisors (“BOS”) have conducted themselves in a manner reflecting their  
understanding that the BOS has no authority or control over the Sheriff in the  
performance of his duties related to law enforcement and jail administration, other than  
with respect to matters of fiscal management.

5. Under applicable provisions of the Arizona Constitution and statutes, the  
BOS is not a body with adjudicatory or judicial powers.

1  
2 6. In 1992, the Arizona Constitution was amended to make it possible for  
3 counties with a population greater than 500,000 to adopt the charter form of government  
4 and, thereby, acquire the right to operate under “home rule,” in the sense that they would  
5 be less dependent upon the Arizona Legislature as the source of their authority. See  
6 *Leshy* at 324-329. One of the provisions of this amendment directed that a county charter  
7 created pursuant to it create an “elective governing body,” that would have the power to,  
8 inter alia, define the “powers, duties and responsibilities” of all other county officers.  
9 See Az. Const. art. XII, § 8; *LESHY* at 329.

10  
11 7. In 1996, the electorate of Maricopa County rejected a proposal to  
12 implement the charter form of government in the County. *LESHY* at 328.

13  
14 8. There is no provision, in either the Arizona Constitution or the Arizona  
15 statutes, allocating to county boards of supervisors any authority over law enforcement or  
16 jail administration matters.

17  
18 9. There is a history of litigation brought against Arizona boards of  
19 supervisors by other Constitutional Officers when the latter believe that the BOS, through  
20 exercising authority over the County-wide budget or otherwise, has exceeded its powers  
21 and infringed upon authority allocated to such Constitutional Officers under the Arizona  
22 Constitution and statutes. See, e.g., *Romley v. Daughton*, 225 Ariz. 521, 241 P.3d 518  
23 (App. 2010); *Hounshell v. White*, 220 Ariz. 1, 202 P.3d 466 (App. 2009); *Arpaio v.*  
24 *Board of Supervisors*, 225 Ariz. 358, 238 P.3d 589 (App. 2010).

25  
26 10. The BOS was informed, in 2006, that representatives of U.S. Immigration  
27 and Customs Enforcement (“ICE”) had approached Sheriff Arpaio and asked that MCSO  
28 join ICE and assist in the enforcement of federal immigration laws in Maricopa County  
through the program authorized under Section 287(g) of the Immigration and Nationality  
Act, 8 U.S.C. § 1387(g).

11. Another MOA was entered into by representatives of ICE, Sheriff Arpaio,  
and the BOS in the Fall of 2009 (MC-BOS/CM00003643-00003662), with terms  
essentially identical terms to those in the 2007 MOA, except that it was to cover officers  
involved in administration of the Maricopa County jails, who were to be trained by ICE  
and perform functions as an immigration officer.

12. MCSO officers who participated in the 287(g) program were, in fact, given  
five weeks of training by ICE in, inter alia, federal constitutional and statutory law

1 applicable to their execution of duties pursuant to the program. Once they had  
2 successfully completed the training provided by ICE, they were certified and performed  
3 functions of an immigration officer in the program under the supervision and direction of  
4 ICE officers.

5 13. At no time has any representative of ICE or U.S. Customs and Border  
6 Patrol (“CBP”) ever reported to the BOS or to the Maricopa County Manager that ICE or  
7 CBP believed Sheriff Arpaio or MCSO employees, in carrying out their duties as 287(g)  
8 certified officers, had done anything in violation of the U.S. Constitution or federal law.

9 14. Shortly after 287(g) authority was withdrawn from MCSO officers  
10 performing law enforcement duties, Sheriff Arpaio announced publicly that MCSO was  
11 implementing a training program that would provide all MCSO sworn deputies with  
12 training similar that received by those MCSO officers who had participated in the ICE  
13 training in the 287(g) training.

14 15. There is no evidence that the BOS, the County Manager, or any employee  
15 working under their direction and control instigated, affirmatively encouraged, or  
16 expressed approval of any conduct by Sheriff Arpaio and/or MCSO employees alleged by  
17 the United States in this action to have violated the United States Constitution or federal  
18 law.

19 **I. ISSUES OF LAW IN CONTROVERSY**

20 **PLAINTIFF’S POSITION:** In addition to the legal issues described in Section R  
21 (“Miscellaneous”), infra, which will be in controversy to the extent these are contested by  
22 the Defendants, the United States anticipates that the issues of law in controversy relating  
23 to each of its claims will include the following:

24 1. **First Claim for Relief**

25 The issues of law in controversy relating to this claim will concern the appropriate  
26 remedy to be ordered by the Court.

27 2. **Second Claim for Relief**

28 The issues of law in controversy relating to this claim will include: whether the  
searches, arrests, or detentions of individuals involved in MCSO worksite operations

1 were unreasonable, whether the questioning by MCSO deputies of individuals detained or  
2 arrested during MCSO worksite operations was compulsory, whether Hispanic  
3 individuals were subject to discriminatory treatment by MCSO deputies during MCSO  
4 worksite operations, and whether the MCSO worksite operations were part of a pattern or  
5 practice of discriminatory law enforcement conduct by MCSO.

6 3. Third Claim for Relief

7 The issues of law in controversy relating to this claim will concern the appropriate  
8 remedy to be ordered by the Court.

9 4. Fourth Claim for Relief

10 The issues of law in controversy relating to this claim will include: whether the  
11 MCSO jail language access policies and practices have a significantly adverse or  
12 disproportionate impact on LEP Hispanic jail inmates, whether MCSO has intentionally  
13 discriminated against LEP Hispanic jail inmates on the basis of their race, color, or  
14 national origin, whether the MCSO jail language access policies and practices have a  
15 substantial legitimate justification, and whether the MCSO jail language access policies  
16 and practices were part of a pattern or practice of discriminatory law enforcement  
17 conduct by MCSO.

18 5. Fifth Claim for Relief

19 The issues of law in controversy relating to this claim will concern the appropriate  
20 remedy to be ordered by the Court.

21 6. Sixth Claim for Relief

22 The issues of law in controversy relating to this claim will include: whether the  
23 incidents of alleged retaliation presented by the United States constitute a pattern or  
24 practice by law enforcement officers of retaliatory conduct, whether the victims of the  
25 alleged retaliation engaged in activity protected by the First Amendment, whether  
26 Defendants intended to inhibit future activity protected by the First Amendment, and  
27 whether the alleged retaliatory actions would chill a person of ordinary firmness from  
28 continuing in the protected activity.

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**DEFENDANT ARPAIO'S POSITION:**

**1. First Claim for Relief**

Any issues of law and controversy relating to Count I of Plaintiff's complaint will solely be the relief to be afforded to Plaintiff based upon the Court's ruling on the Motion for Summary Judgment of June 15, 2015.

**2. Second Claim for Relief**

Issues of law and controversy relating to this claim will include: the reasonable and appropriate basis for MCSO executions of search warrants, arrests or detentions based upon reasonable suspicion and/or probable cause be reasonable and appropriate under Federal law and whether Plaintiff can prove any such action or a pattern and practice of discriminatory law enforcement conduct.

**3. Third Claim for Relief**

Any issues of law and controversy relating to Count III of Plaintiff's complaint will solely be the relief to be afforded to Plaintiff based upon the Court's ruling on the Motion for Summary Judgment of June 15, 2015

**4. Fourth Claim for Relief**

Issues of law and controversy relating to this claim will include: whether MCSO jail language access policies and practices comply with Arizona law, Federal law, The Department of Justice guidelines, and are a reasonable effort to provide access to LEP inmates in MCSO jails, and whether Plaintiff can prove MCSO LEP policies exhibit a pattern or practice of discriminatory law enforcement conduct in MCSO jail operations.

**5. Fifth Claim for Relief**

Any issues of law and controversy relating to Count V of Plaintiff's complaint will solely be the relief to be afforded to Plaintiff based upon the Court's ruling on the Motion for Summary Judgment of June 15, 2015

**6. Sixth Claim for Relief**

1           The issues of law and controversy relating to this claim will include: the  
2 reasonable and appropriate basis for MCSO executions of search warrants, arrests or  
3 detentions based upon reasonable suspicion and/or probable cause be reasonable and  
4 appropriate under Federal law and whether Plaintiff can prove any such action or a  
5 pattern and practice of discriminatory law enforcement conduct.

6  
7           DEFENDANT MARICOPA COUNTY’S POSITION: Additional legal issues that  
8 Defendant Maricopa County understands to be in controversy relating to each of  
9 Plaintiff’s claims will include the following:

10  
11           1.       First Claim for Relief

12 Whether any conduct on the part of Sheriff Arpaio and/or MCSO, other than the traffic  
13 stops conducted in the context of immigration enforcement found to have been unlawful  
14 in *Melendres*, constitutes conduct unlawful under any legal theory asserted in Plaintiff’s  
15 First Claim for Relief. If Plaintiff can succeed in showing by a preponderance of the  
16 evidence that any such further conduct was unlawful, whether there is any legal basis,  
17 given the applicable facts, for assigning any legal liability for such conduct, or for the  
18 conduct found to have been unlawful in *Melendres*, to the County. Whether under the  
19 law governing the circumstances under which a court can exercise its equitable powers to  
20 grant extraordinary relief in the form of an injunction, any such injunctive relief against  
21 either or both Defendants can be justified in the circumstances of this case.

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25           2.       Second Claim for Relief

26           If Plaintiff can succeed in showing by a preponderance of the evidence that  
27 any aspect of worksite operations conducted by MCSO was unlawful as alleged in  
28

1 Plaintiff's Second Claim for Relief, whether there is any legal basis, given the applicable  
2 facts, for assigning any legal liability for such conduct to the County. Whether under the  
3 law governing the circumstances under which a court can exercise its equitable powers to  
4 grant extraordinary relief in the form of an injunction, any such injunctive relief against  
5 either or both Defendants can be justified in the circumstances of this case.  
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7 3. Third Claim for Relief  
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9 Whether any conduct on the part of Sheriff Arpaio and/or MCSO, other  
10 than the traffic stops conducted in the context of immigration enforcement found to have  
11 been unlawful in *Melendres*, constitutes conduct unlawful under any legal theory asserted  
12 in Plaintiff's Third Claim for Relief. If Plaintiff can succeed in showing by a  
13 preponderance of the evidence that any such further conduct was unlawful, whether there  
14 is any legal basis, given the applicable facts, for assigning any legal liability for such  
15 conduct, or for the conduct found to have been unlawful in *Melendres*, to the County.  
16 Whether under the law governing the circumstances under which a court can exercise its  
17 equitable powers to grant extraordinary relief in the form of an injunction, any such  
18 injunctive relief against either or both Defendants can be justified in the circumstances of  
19 this case.  
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23 4. Fourth Claim for Relief  
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25 If Plaintiff can succeed in showing by a preponderance of the evidence that  
26 any aspect of MCSO's treatment of Spanish-speaking LEP inmates was unlawful as  
27 alleged in Plaintiff's Fourth Claim for Relief, whether there is any legal basis, given the  
28 applicable facts, for assigning any legal liability for such conduct to the County. Whether

1 under the law governing the circumstances under which a court can exercise its equitable  
2 powers to grant extraordinary relief in the form of an injunction, any such injunctive  
3 relief against either or both Defendants can be justified in the circumstances of this case.  
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5 5. Fifth Claim for Relief

6 Whether any conduct on the part of Sheriff Arpaio and/or MCSO, other  
7 than the traffic stops conducted in the context of immigration enforcement found to have  
8 been unlawful in *Melendres*, constitutes conduct unlawful under any legal theory asserted  
9 in Plaintiff's Fifth Claim for Relief. If Plaintiff can succeed in showing by a  
10 preponderance of the evidence that any such further conduct was unlawful, whether there  
11 is any legal basis, given the applicable facts, for assigning any legal liability for such  
12 conduct, or for the conduct found to have been unlawful in *Melendres*, to the County.  
13

14 Whether under the law governing the circumstances under which a court can exercise its  
15 equitable powers to grant extraordinary relief in the form of an injunction, any such  
16 injunctive relief against either or both Defendants can be justified in the circumstances of  
17 this case.  
18

19  
20 6. Sixth Claim for Relief

21 If Plaintiff can succeed in showing by a preponderance of the evidence that  
22 any unlawful retaliatory conduct occurred as alleged in Plaintiff's Sixth Claim for Relief,  
23 whether there is any legal basis, given the applicable facts, for assigning any legal  
24 liability for such conduct to the County. Whether under the law governing the  
25 circumstances under which a court can exercise its equitable powers to grant  
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1 extraordinary relief in the form of an injunction, any such injunctive relief against either  
2 or both Defendants can be justified in the circumstances of this case.

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5 **J. SEPARATE TRIAL OF ISSUES**

6 **PLAINTIFF'S POSITION**

7 The United States submits that it is advisable and feasible to hold a separate trial,  
8 following the trial on the merits, to determine the appropriate scope of injunctive relief or  
9 other court-ordered remedial measures.

10 **DEFENDANT ARPAIO'S POSITION**

11 Defendant Arpaio contends that no separate trial or evidentiary hearing is  
12 necessary for the Court to determine any injunctive relief after trial. The Court should  
13 base injunctive relief on appropriate legal briefing by the parties after trial.

14 **K. WITNESSES**

15 A list of all witnesses that Plaintiff the United States will call or may call in person  
16 or through deposition is attached hereto as Appendix A.

17 A complete list of all witnesses that Defendants Maricopa County Sheriff's Office  
18 and Joseph M. Arpaio will call or may call in person or through deposition is attached  
19 hereto as Appendix C.

20 A complete list of all witnesses that Defendant Maricopa County will call or may  
21 call in person or through deposition is attached hereto as Appendix E

22 **L. EXPERTS**

23 Expert Witnesses for Plaintiff the United States:

24 1. Frank Fernandez

25 Frank Fernandez's testimony will address his expert opinion as to MCSO's  
26 policies, practices, and procedures relating to training, policies, and lesson plans,  
27 immigration-related law enforcement, accountability, and racial profiling and biased  
28 policing. Mr. Fernandez is a law enforcement expert. His qualifications as an expert

1 witness include his 25 years of experience as a law enforcement officer with the City of  
2 Miami Police Department, including serving as the Deputy Chief of Police and Chief of  
3 Operations between 2003 and 2010; his experience conducting reviews and bench-  
4 marking assessments of law enforcement agencies throughout the United States and  
5 abroad; and his experience as a consulting expert in pattern and practice investigations in  
6 both large and small police departments.

7           2.     Margo Frasier

8           Margo Frasier's testimony will address her expert opinion as to the language  
9 access policies, practices, and procedures relating to LEP inmates in the MCSO jail  
10 facilities. Ms. Frasier is a criminal justice expert, with specific expertise in the areas of  
11 law enforcement and jail operations. Her qualifications as an expert witness in this  
12 litigation include her past experience as the Sheriff of Travis County, Texas, where she  
13 oversaw a law enforcement agency with over 1300 employees and a jail system housing  
14 over 3000 inmates; her experience as the Police Monitor for the City of Austin, Texas;  
15 and her significant experience working as a criminal justice consultant for law  
16 enforcement agencies, corrections agencies, local governments, and private parties.

17           3.     Paul Ong

18           Paul Ong's testimony will address his expert assessment as to the proportion of  
19 Hispanic and LEP inmates in the MCSO jail facilities. Mr. Ong is an expert in  
20 economics and statistical analysis. His qualifications as an expert witness in this  
21 litigation include his academic credentials and experience as a university professor in  
22 economics and statistical analysis; his extensive experience applying statistical analysis  
23 to measure problems of discrimination affecting ethnic minorities; and his extensive  
24 familiarity using publicly available information and information available from the U.S.  
25 Census Bureau to measure and assess the size and proportion of ethnic minorities in  
26 specific jurisdictions, including within the jail and prison populations of specific  
27 jurisdictions.

28           4.     Manuel Romero

1 Manuel Romero's testimony will address his expert opinion as to the language  
2 access policies, practices, and procedures relating to LEP inmates in the MCSO jail  
3 facilities. Mr. Romero is a criminal justice expert, with specific expertise in the area of  
4 corrections. His qualifications as an expert witness in this litigation include his over 30  
5 years of experience working in the criminal justice field, including substantial hands-on  
6 experience as a correctional administrator, jail and prison auditor, court-appointed  
7 monitor in large-scale cases involving conditions of confinement, and a corrections  
8 consultant in large-scale cases involving conditions of confinement, language access  
9 policies, practices, and procedures, and protection from harm in jails and prisons.

10 Expert Witnesses for Defendants:

11 1. Walter Kautzky

12 Mr. Kautzky is an expert witness previously disclosed in this action and  
13 deposed on August 28 2014. Mr. Kautzky is expected to testify consistent with his  
14 deposition testimony and to provide expert witness testimony on the subject matter of his  
15 opinions at trial consistent with his initial and supplemental report(s), as well as on the  
16 opinions and testimony of Plaintiff's opposing experts.

17  
18 2. Randy Means

19 Randy Means is a law enforcement training instructor whom the  
20 MCSO retained to insure appropriate and effective implementation of the initiatives set  
21 forth in the document entitled "Integrity, Accountability, Community." Mr. Means will  
22 testify regarding the training he provided MCSO personnel, including his meetings with  
23 various Chiefs and command staff, the three-day leadership seminars he provided to  
24 MCSO command staff (Lieutenants and above) to ensure all command staff were  
25 consistent in their supervision and monitoring of MCSO line staff, as well as training  
26 provided to front-line supervisors (Sergeants and below) with regard to the same. In  
27 addition, he is expected to testify regarding his work with MCSO, the ACLU and the  
28 Monitor appointed by Judge Snow regarding revisions and updates to MCSO training

1 policies and procedures pursuant to Judge Snow's order in the Melendres matter. Mr.  
2 Means is an expert witness previously disclosed in this action and deposed on August 21  
3 2014. Mr. Means is expected to testify consistent with his deposition testimony and to  
4 provide expert witness testimony on the subject matter of his opinions at trial consistent  
5 with his initial and supplemental report(s) if applicable, as well as on the opinions and  
6 testimony of Plaintiff's opposing experts.

7  
8 3. Dr. Anthony Hayter

9 Mr. Hayter is an expert witness previously disclosed in this action and  
10 deposed on August 26 2014. Mr. Hayter is expected to testify consistent with his  
11 deposition testimony and to provide expert witness testimony on the subject matter of his  
12 opinions at trial consistent with his initial and supplemental report(s), as well as on the  
13 opinions and testimony of Plaintiff's opposing experts.

14  
15 4. Frank Fernandez

16 Frank Fernandez is an expert witness. He was deposed on 8/12/2014 and is  
17  
18 expected to testify about, and consistently with, the questions, topics, etc. addressed in his  
19 deposition.

20  
21 M. **EXHIBITS**

22 A list of the United States' exhibits, including the information required by the  
23 Order Setting Bench Trial entered June 10, 2015, is attached hereto as Appendix B.

24 A complete list of all exhibits, including the information required by the Order  
25 Setting Bench Trial entered June 10, 2015, that Defendants Maricopa County Sheriff's  
26 Office and Joseph M. Arpaio will present or may present at trial is attached hereto as  
27 Appendix D.

28

1 A complete list of all exhibits, including the information required by the Order  
2 Setting Bench Trial entered June 10, 2015, that Defendant Maricopa County will present  
3 or may present at trial is attached hereto as Appendix F.

4 N. **MOTIONS IN LIMINE AND REQUESTED EVIDENTIARY**  
5 **RULINGS**

6 The United States intends to separately file, on the Court-ordered due date of July  
7 10, 2015, motions in limine as to the following requests:

8 1. Motion in limine to exclude any exhibit not adequately identified  
9 pursuant to the Court's Fourth Amended Rule 16 Scheduling Order, dated May 27, 2014,  
10 directing each party to make its FRCP 26(a)(3) pretrial disclosures of exhibits and  
11 witnesses on or before September 15, 2014; and

12 2. Motion in limine to exclude from evidence certain video recordings  
13 of MCSO worksite operations not produced to Plaintiff by Defendants either in their  
14 entirety or in a sufficiently timely manner.

15 Defendants Maricopa County Sheriff's Office and Joseph M. Arpaio intend to  
16 separately file, on the Court-ordered due date of July 10, 2015, motions in limine as to  
17 the following requests:

18 1. Defendant Joseph M. Arpaio intends to file a Motion in Limine to  
19 preclude the United States from calling witnesses to testify beyond those topics it has  
20 timely disclosed to Defendant Arpaio. Moreover, Defendant Arpaio also requests this  
21 Court to preclude the United States from presenting testimony from late disclosed  
22 witnesses pursuant to this Court's Fourth Amended Scheduling Order:

23  
24 Defendant Maricopa County intends to separately file, on the Court-ordered due  
25 date of July 10, 2015, a motion in limine as to the following requests:

26 1. Motion in Limine to preclude Plaintiff from calling as witnesses in  
27 its case-in-chief certain individuals as to whom Plaintiff failed make disclosure, made  
28

1 untimely disclosure, and/or made inadequate disclosure and, therefore, failed to comply  
2 with its obligations under Rule 26(a)(1)(A)(i) and (iii)(A)(i).

3  
4 **O. PROBABLE LENGTH OF TRIAL**

5 **PLAINTIFF'S CONTENTION:**

6 The Court has set trial for 15 days, to be held Monday (1-5 PM) and Tuesday  
7 through Friday (9-5 PM), between Monday, August 10, and Friday, August 27, 2015.

8 The United States submits that a just determination of the issues involved in this  
9 multiple pattern-or-practice case likely will require more than 15 days. Among other  
10 issues, trial will be held on the United States' claims that defendants engaged in a pattern  
11 or practice of carrying out workplace raids in violation of the Fourth and Fourteenth  
12 Amendments. In a similar case involving allegations that the "Immigration and  
13 Naturalization Service (INS) has engaged in a pattern and practice of carrying out  
14 workplace raids in violation of the Fourth Amendment," the court noted that trial took  
15 "four calendar months." Pearl Meadows Mushroom Farm, Inc. v. Nelson, 723 F. Supp.  
16 432, 435 (N.D. Cal. 1989). The United States estimates that approximately six weeks  
17 will be required to complete the testimony of witnesses in the United States' case in  
18 chief.

19 [

20 **DEFENDANTS' CONTENTION:**

21 Defendant Arpaio and Defendant Maricopa County concur with Plaintiff's  
22 statement that the issues involved in this case will definitely require more than 15 trial  
23 days. Defendant Arpaio estimates that approximately 10 weeks will be required to  
24 complete the testimony of witnesses and introduction of all relevant exhibits in both  
25 United States' and Defendant Arpaio's cases in chief.

26 **P. TRIAL DATE**

27 The Court has set trial for 15 days, to be held Monday (1-5 PM) and Tuesday  
28 through Friday (9-5 PM), between Monday, August 10, and Friday, August 27, 2015.

1           Should the Court agree to set trial for more than 15 days, the parties will confer  
2 and amend this order to provide additional potential trial dates for all trial counsel and  
3 witnesses.

4           **Q-1. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5           The United States will file its proposed findings of fact and conclusions of law on  
6 July 17, 2015, as directed by the Court's June 10, 2015 Order Setting Bench Trial (Doc.  
7 377).

8           Defendant Arpaio will file its proposed Findings of Fact and Conclusions of Law  
9 on July 17, 2015 as directed by the Court's June 10, 2015 Order Setting Bench Trial.

10          Defendant Maricopa County will file its proposed Findings of Fact and  
11 Conclusinos of Law as directed by the Court's June 10, 2015 Order Setting Bench Trial.

12          **R. MISCELLANEOUS**

13          The United States submits that resolution of the following legal issues will aid in  
14 the effective presentation or disposition of the instant action:

- 15                 1. Admissibility as substantive evidence of MCSO deputies' prior  
16                         statements, including in deposition testimony

17          The Court should permit the statements of MCSO deputies in deposition testimony  
18 and in police reports to be admitted as substantive evidence, pursuant to Rule  
19 801(d)(2)(D). See, e.g., 6 Handbook of Fed. Evid. § 801:15 (7th ed.) (the question of  
20 whether the requirements of Rule 801(d)(2)(D) have been met is determined by the  
21 court). This issue is likely to arise in the context of the United States' examination of  
22 MCSO deputies if the deputies contradict their prior statements or their memories falter,  
23 for example. The substance of deputies' prior statements would come in not just for  
24 impeachment but as substantive evidence. Because these statements were made by  
25 MCSO employees, and concern a matter within the scope of the deputies' employment,  
26 the statements qualify as nonhearsay under Rule 801(d)(2)(D), and thus may be offered  
27 into evidence to prove the truth of the matter asserted in the statement. See, e.g., 5 Jack  
28 B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence, § 801.33[2][c], at

1 801–69 (2d ed.2001) (footnotes omitted). Plaintiff further notes that there is no  
2 requirement that the person making the statement at issue have been authorized by the  
3 employer to make a statement on a particular subject; rather, the statement need only  
4 “concern a matter within the scope of [the] agency or employment.” 6 Handbook of Fed.  
5 Evid. § 801:23 (7th ed.). For example, courts have allowed statements by employees that  
6 were directly adverse to the interest of the employer to be admitted as substantive  
7 evidence. See, e.g., White v. Honeywell, Inc., 141 F.3d 1270, 1276 (8th Cir.1998)  
8 (supervisor’s racial slur against employee admissible against employer as statement  
9 “concerning a matter within the scope of the employment” under Fed.R.Evid.  
10 801(d)(2)(D)); Larch v. Mansfield Mun. Elec. Dept., 272 F.3d 63, 72-73 (1st Cir. 2001)  
11 (finding that statements of deceased former employee were properly admitted as  
12 nonhearsay under Rule 801(d)(2)(D)) (“While Mahana's job description obviously did  
13 not include making life miserable for the Electric Department, the statements were  
14 related to a matter within the scope of his employment: oversight of the Department.”);  
15 U.S. v. Rioux, 97 F.3d 648, 660 (2d Cir. 1996) (finding that court did not abuse its  
16 discretion in admitting employees’ statements against their supervisors).

17           2. Judicial determination of whether questioning of detained individuals  
18                 was compulsory

19           The Court will need to make a determination as to whether the questioning of  
20 individuals detained during MCSO worksite operations was compulsory. This issue is  
21 likely to arise in the context of the Court’s consideration of evidence of individuals’  
22 detention and questioning by MCSO deputies during MCSO worksite operations; such  
23 evidence will be presented by Plaintiff in support of its Second Claim for Relief.

24           Under Michigan v. Summers, 452 U.S. 692 (1981), the police’s authority to detain  
25 to protect the integrity of the search carries with it some power to question detainees.  
26 See, e.g., Muehler v. Mena, 544 U.S. 93, 94 (2005) (officers’ questioning of Mena about  
27 her immigration status during legitimate detention was not a Fourth Amendment  
28 violation). However, there are limits to the police’s authority to question incident to their

1 search. See, e.g., Terry v. Ohio, 392 U.S. 1, 20 (1968) (explaining that the seizure must  
2 be “reasonably related in scope to the circumstances which justified the interference in  
3 the first place”). For example, compulsory questioning in the course of an otherwise  
4 authorized detention during a search warrant operation is unreasonable and thus violates  
5 the Fourth Amendment. Ganwich v. Knapp, 319 F. 3d 1115, 1122 (9th Cir. 2003)  
6 (detention may violate the Fourth Amendment if the detention is unreasonable or is  
7 carried out in an unreasonable manner).

8 To determine whether questioning was compulsory or coerced, some courts,  
9 including the District of Arizona, will weigh the same factors courts consider in  
10 determining whether an investigative stop or questioning has turned into a custodial  
11 interrogation. See Maryland v. Shatzer, 59 U.S. 98, 99 (2010) (custodial interrogation  
12 carries “inherently compelling pressures”); Berkemer v. McCarty, 468 U.S. 420, 421  
13 (1984) (same); Bettin v. Maricopa Cnty., 2007 WL 1713319, \*10-11 (D. Ariz. 2007)  
14 (holding that police authority to question pursuant to a legitimate detention “evaporated”  
15 when “Defendants removed Plaintiff from her home and took her to the sheriff's office  
16 for questioning without placing Plaintiff under arrest and without having a reasonable  
17 belief that Plaintiff was suspected of criminal activity”); U.S. v. Hamilton, 2012 WL  
18 1029450, \*4 (W.D. Ky. 2012) (considering cases that examine whether police have  
19 “overreach[ed] in their interrogation of Summers-detainees”). Those factors include:

- 20 • the number of law enforcement personnel and whether they were armed (see  
21 U.S. v. Craighead, 539 F.3d 1073, 1084 (9th Cir. 2008));
- 22 • whether the suspect was at any point restrained, either by physical force or by  
23 threats (Id.);
- 24 • whether the questioned individual is “isolated” or segregated from others (Id.;  
25 see also U.S. v. Kim, 292 F.3d 969, 974 (9th Cir. 2002));
- 26 • the duration of the detention (see Kim, 292 F.3d at 974);

- 1           • the duration and character of the interrogation (see U.S. v. Daubmann, 474 F.  
2           Supp. 2d 228, 233 (D.Mass. 2007) (citing United States v. Fornia–Castillo, 408  
3           F.3d 52, 63 (1st Cir.2005)); and
- 4           • whether the individual was subject to an overbearing police presence,  
5           including being kept under constant guard by agents (Daubmann, 474 F. Supp.  
6           2d at 234).

7                   3. Judicial determination of sufficiency of MCSO warrants

8           The Court will need to make a determination as to whether the search warrants  
9           relied on by MCSO in its worksite operations presented sufficient probable cause to  
10          support the searches for the individuals listed on the warrants. This issue is likely to arise  
11          in the context of the Court’s consideration of evidence of the searches and detentions  
12          conducted during MCSO worksite operations; such evidence will be presented by the  
13          United States in support of its Second Claim for Relief.

14          The United States will argue that the search warrants relied on by MCSO in its  
15          worksite operations lacked sufficient probable cause to support searches of the  
16          individuals listed on the warrants because, among other reasons, the warrants listed  
17          multiple individuals to be searched without specific information as to each individual and  
18          relied on stale information to justify the searches for the individuals. “A search warrant  
19          designating more than one person or place to be searched must contain sufficient  
20          probable cause to justify its issuance as to each person or place named therein.”  
21          Greenstreet v. County of San Bernardino, 41 F.3d 1306, 1309 (9th Cir. 1994) (internal  
22          citations omitted); see also Marks v. Clarke, 102 F.3d 1012, 1029 (9th Cir. 1996) (“a  
23          warrant to search ‘all persons present’ for evidence of crime may only be obtained when  
24          there is reason to believe that all those present will be participants in the suspected  
25          criminal activity,” which “not the case here, and would not be the case with respect to a  
26          raid on any family home, where innocent family members or friends might be residing or  
27          visiting”); State v. Reid, 319 Or. 65, 71, 872 P.2d 416, 419 (1994) (search illegal, as  
28          “affidavit did not demonstrate probable cause to believe that *all* ‘persons present’ on the

1 premises would be associated with the criminal activity taking place there”). In addition,  
2 search warrants based on stale information generally will not establish probable cause for  
3 a search. See, e.g., People v. Hulland, 110 Cal. App. 4th 1646, 1652 (52-day delay  
4 between controlled drug buy and issuance of search warrant was deemed too long to  
5 support probable cause; “delays of more than four weeks are generally considered  
6 insufficient to demonstrate probable cause”); Hemler v. Superior Court, 44 Cal. App. 3d  
7 430, 432–33 (1975) (delay of 34 days between a controlled sale of cocaine and the  
8 officer’s affidavit for a search warrant was insufficient to support probable cause). Even  
9 more so than illegal drugs, people frequently move from place to place; thus stale  
10 information that a person worked at a particular business, particularly where such  
11 information is unsupported by recent surveillance or even evidence of the person’s work  
12 schedule, cannot provide probable cause that a person will be present at a place to be  
13 searched.

#### 14 4. Leading questions on direct examination of MCSO deputies

15 The Court should permit the United States to ask leading questions during direct  
16 examination of MCSO deputies. Courts have “broad discretion” as to whether to permit  
17 leading questions on direct examination, and the court’s determination of this question  
18 will be reversed “only if ‘the judge’s action ... amounted to, or contributed to, the denial  
19 of a fair trial.’” Miller v. Fairchild Indus., Inc., 885 F.2d 498, 514 (9th Cir. 1989)  
20 (internal citations omitted). Rule 611 provides that, although leading questions typically  
21 are not permitted on direct examination, they may be used “[w]hen a party calls a hostile  
22 witness, an adverse party, or a witness identified with an adverse party.” Fed.R.Evid.  
23 611(c). By virtue of their employment relationship with defendant MCSO, MCSO  
24 deputies are witnesses identified with an adverse party; thus, Plaintiff should be permitted  
25 to ask MCSO deputies leading questions during the course of direct examination. See,  
26 e.g., Ellis v. City of Chicago, 667 F.2d 606, 612-13 (7th Cir. 1981) (in action by dog  
27 owners to recover against city and its police officer under section 1983 of Title 42 and  
28 Fourteenth Amendment after officer killed dog, officer’s fellow policemen, who were

1 employed by the defendant City of Chicago and who had worked closely with the  
2 defendant police officer, “clearly qualified as witnesses identified with an adverse party”  
3 for purposes of Fed.R.Evid. 611(c)); Ratliff v. City of Chicago, No. 10 C 739, 2012 WL  
4 7993412, at \*1 (N.D. Ill. Nov. 20, 2012) (in action against the City of Chicago, non-  
5 defendant police officers, “by virtue of their employment with Defendant City of  
6 Chicago, by their involvement (even if tangential or limited) with the case, and by their  
7 relationship with the Defendant Officers as their co-workers, clearly qualify as  
8 ‘witness(es) identified with an adverse party’ for purposes of Rule 611(c)”). See also  
9 U.S. v. Duncan, 712 F.Supp 124 (S.D. Ohio 1998) (under Fed.R.Evid. 611(c), law  
10 enforcement official may qualify as an “witness identified with an adverse party” in  
11 action brought by Government against criminal defendants, absent positive showing that  
12 witness is not hostile, biased or so identified with Government that presumption of  
13 hostility should not be indulged). Furthermore, leading questions should be permitted  
14 during direct examination of MCSO deputies whether those deputies are current or  
15 former employees of MCSO. See, e.g., Stahl v. Sun Microsystems, Inc., 775 F.Supp.  
16 1397 (D.Colo. 1991) (finding it appropriate to permit plaintiff in employment  
17 discrimination action to use leading questions on direct examination of former employee  
18 of defendant, who remained clearly identified with defendant, both through her previous  
19 employment and her ongoing relationship with key witness who attended trial on behalf  
20 of defendant).

##### 21 5. Relevance of certain evidence of MCSO discriminatory intent

22 The Court will need to make a determination as to the relevance of certain  
23 evidence of MCSO’s discriminatory intent. This issue is likely to arise in the context of  
24 the Court’s evaluation of evidence to be presented by the United States in support of its  
25 First Claim for Relief, and which will also be relevant to Plaintiff’s presentation of its  
26 Third, Fourth, and Fifth Claims for Relief. As articulated in Vill. of Arlington Heights v.  
27 Metro. Housing Dev. Corp., 429 U.S. 252 (1977), courts must consider the totality of  
28 circumstances in deciding whether defendants have acted with discriminatory intent in

1 perpetuating a course of conduct challenged as racially discriminatory and, thus, in  
2 violation of the Equal Protection Clause. Proving discriminatory purpose requires  
3 evidence that the resulting adverse effect on persons of a particular race or national origin  
4 was a “motivating factor,” but not necessarily the sole or primary motivation, for the  
5 challenged conduct. Arlington Heights, 429 U.S. at 265-68; see also Rosenbaum v. City  
6 and Cnty. of San Francisco, 484 F.3d 1142, 1152-53 (9th Cir. 2007). Rather, in  
7 evaluating discriminatory intent, courts will consider factors including, but not limited to,  
8 the “sequence of events leading up to the challenged decision,” “the legislative or  
9 administrative history,” including “contemporary statements by members of the  
10 decisionmaking body,” “departures from the normal procedural sequence,” and  
11 defendants’ statements about the “purpose of the official action.” Arlington Heights, 429  
12 U.S. at 267-78; see also Rogers v. Lodge, 458 U.S. 613, 626 (1982). Therefore, in  
13 evaluating whether Defendants’ challenged law enforcement policies and practices were  
14 motivated by discriminatory intent, it is appropriate for the Court to consider a broad  
15 range of evidence, including, but not limited to: Defendants’ statements, such as may be  
16 contained in MCSO news releases, e-mail messages between MCSO deputies, public  
17 statements by Sheriff Arpaio, and correspondence between MCSO officials and private  
18 citizens; MCSO’s departures from normal protocol, including evidence of normal law  
19 enforcement protocols for executing search warrants, issuing press releases relating to the  
20 execution of search warrants, and the selection of geographic locations for law  
21 enforcement operations; the sequence of events leading up to MCSO’s law enforcement  
22 decisions, including evidence of MCSO’s lack of attempts to contact crime victims, lack  
23 of action to learn whether individuals named in MCSO search warrants were current  
24 employees, or would be present at the worksite, at the time of MCSO worksite  
25 operations; the historical background of MCSO law enforcement decisions, including  
26 evidence of the development of MCSO’s Human Smuggling Unit and application of the  
27 employer sanctions law; and the adverse impact of MCSO law enforcement operations on

28

1 Hispanic individuals, including evidence of the adverse impact on Hispanics of MCSO  
2 worksite operations, traffic stops, and jail policies and procedures. Id.

3 **S. MODIFICATION OF ORDER**

4 The Court may, in order to prevent manifest injustice or for good cause shown, at  
5 the trial of the action or prior thereto upon application of counsel for either party, made in  
6 good faith, or upon the motion of the court, modify the Final Pretrial Order upon such  
7 conditions as the court may deem just and proper.

8  
9 APPROVED AS TO FORM AND CONTENT:

10 /s/ Jennifer L. Mondino  
11 Jennifer L. Mondino (NY Bar No. 4141636)  
12 ATTORNEY FOR PLAINTIFF THE UNITED STATES

13 /s/ John Masterson  
14 John Masterson  
15 ATTORNEY FOR DEFENDANTS MARICOPA COUNTY SHERIFF'S OFFICE AND  
16 JOSEPH M. ARPAIO

17 /s/ Richard Walker  
18 Richard Walker  
19 ATTORNEY FOR DEFENDANT MARICOPA COUNTY, ARIZONA

20 **THIS JOINT PRETRIAL ORDER IS HEREBY APPROVED ON THIS \_\_\_ DAY**  
21 **OF \_\_\_\_\_, 2015.**

22  
23 \_\_\_\_\_  
24 Roslyn O. Silver  
25 United States District Judge

26 Copies to all counsel of record  
27  
28