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UNITED STATES DISTRICT COURT
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. 2:10-cv-01878-LOA

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff United States, by its undersigned counsel, moves for summary judgment on its prayer that Defendants be ordered to provide access to sources of information as required by Title VI of the Civil Rights Act of 1964, the Title VI implementing regulations issued by the Department of Justice, and related contractual assurances.

1 This motion is predicated on Rule 56 of the Federal Rules of Civil Procedure, and
2 is supported by the memorandum of points and authorities below, Plaintiff's Rule
3 56.1(a) statement of facts, the Declaration of Peter S. Gray and the exhibits attached
4 thereto, and the record in this action.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 Plaintiff United States respectfully submits this memorandum of points and
7 authorities in support of its motion for summary judgment.

8 INTRODUCTION

9 In accordance with settled law, the United States seeks immediate access to
10 documents, staff, and facilities that have been unlawfully withheld by Defendants
11 Maricopa County, the Maricopa County Sheriff's Office ("MCSO"), and Sheriff
12 Joseph M. Arpaio. As described in this memorandum, there is no dispute as to any
13 material fact and the United States is entitled to judgment as a matter of law.

14 Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial
15 assistance from discriminating against any person on the ground of race or national
16 origin. As one means of ensuring that this mandate is satisfied, DOJ's Title VI
17 regulations provide that every federal fund recipient "shall permit access" to such
18 "sources of information, and its facilities, as may be pertinent to ascertain compliance"
19 with the law. 28 C.F.R. § 42.106(c). The Ninth Circuit has long made clear that these
20 requirements give the United States "substantial latitude in scrutinizing policies and
21 practices" of federal fund recipients. *United States v. El Camino Cmty. Coll. Dist.*, 600
22 F.2d 1258, 1259-60 (9th Cir. 1979). *See infra* Part II.A.

23 Defendants are subject to Title VI because they have accepted millions of dollars
24 from the United States Department of Justice ("DOJ") for their programs and
25 activities. *See infra* Part II.B. Defendants also signed a contract for each grant of
26 federal funds from DOJ, expressly agreeing that they will comply with Title VI and its
27 access requirements. *See infra* Part II.C. Pursuant to these requirements, the United
28 States has, since March 2009, sought Defendants' voluntary cooperation with an

1 investigation of alleged national origin discrimination in MCSO’s police practices and
2 jail operations. Yet, despite their clear obligations and express contractual promises,
3 Defendants MCSO and Arpaio have refused to allow the United States to review their
4 federally-funded programs for compliance with the law. And although Defendant
5 Maricopa County agrees with the United States that Defendants are obligated to
6 cooperate, the County has not been able to provide access to MCSO’s documents,
7 facilities, or staff. *See infra* Part II.D.

8 Transparent administration of MCSO’s police practices and jail operations is
9 critical to the United States’ obligation to ensure that public funds are not being used
10 to finance illegal racial discrimination. In his message to Congress proposing the
11 enactment of Title VI, President Kennedy explained: “Simple justice requires that
12 public funds, to which all taxpayers of all races contribute, not be spent in any fashion
13 which encourages, entrenches, or results in racial discrimination.” *Civil Rights and*
14 *Job Opportunities—Message from the President*, 109 Cong. Rec. 11,156, 11,161
15 (1963), *reprinted in* 1963 U.S.C.C.A.N. 1526, 1534. This objective cannot be
16 achieved if recipients of federal funds evade their accountability obligations and
17 obstruct reasonable review of their activities.

18 To allow the United States to ensure that no person is being subjected to unlawful
19 discrimination by MCSO, the United States requests that the Court enter declaratory
20 and injunctive relief directing Defendants to produce all requested documents and
21 allow access to all requested staff and facilities within thirty days (as identified in the
22 Statement of Facts and accompanying exhibits), and to comply promptly with all
23 future requests for access. *See infra* Part II.D; SOF ¶¶ 36-39, 72.¹

24 **BACKGROUND**

25 In June 2008, the United States, through the DOJ Civil Rights Division, opened a
26 preliminary inquiry into allegations that MCSO was engaged in a pattern or practice of

27 ¹ All references in this Memorandum to “SOF ¶ __” are to the Plaintiff’s
28 Statement of Undisputed Facts filed herewith pursuant to Local Civil Rule 56.1(a).

1 discriminatory law enforcement. First Am. Compl. ¶ 22. On March 10, 2009, the
2 United States notified Defendants that DOJ was initiating an investigation regarding
3 alleged discrimination in MCSO's police practices and jail operations. SOF ¶ 34.
4 Shortly thereafter, the United States sought an initial production of documents
5 covering the period from January 1, 2007, to the date of production (the "First
6 Request"); and separately met with Defendants to explain that its investigation would
7 involve document review, tours of MCSO facilities, and interviews with MCSO staff
8 and jail inmates. SOF ¶¶ 35-41.

9 After an initial agreement to cooperate and the production of eleven pages of
10 records, SOF ¶¶ 43-46, MCSO reversed course. SOF ¶¶ 47-49. In a letter to the
11 Attorney General on May 29, 2009, MCSO informed the United States that it would
12 not cooperate with the investigation. SOF ¶ 47. And on July 7, 2009, Defendant
13 Arpaio held a press conference to announce publicly that MCSO would not cooperate
14 with the United States' investigation. SOF ¶ 49.

15 Over a month later, in August 2009, MCSO advised that it would consider limited
16 cooperation by preparing a partial "position paper . . . relating to the limited English
17 proficiency (LEP) policy in the jails." SOF ¶ 51. MCSO advised that it would
18 produce its partial position paper by October 2009, and asked the United States to
19 "[p]lease confirm that this timeline is acceptable to you." SOF ¶ 52. The United
20 States responded that "[g]iven the MCSO's failure to comply with the prior agreed
21 upon timeline and its failure to provide us with access to documents and persons with
22 relevant information, we cannot agree to a further extension until October [2009]. We
23 respectfully request that the MCSO submit its position statement and answers to the
24 questions no later than August 21, [2009,] and that we be allowed access to MCSO
25 facilities to review documents and interview MCSO personnel and inmates as soon as
26 possible." SOF ¶ 55.

27 Despite this exchange, MCSO did not produce any information in August 2009,
28 or in October 2009; MCSO did not produce any further information at all until it

1 submitted a partial position paper to the United States in June 2010. SOF ¶¶ 51-57.
2 This production fell far short of access to all of the information the United States
3 sought: it addressed only allegations regarding the LEP policy in MCSO’s jails while
4 saying nothing at all about the allegations of discriminatory police practices; it did not
5 agree to permit access to the requested staff and facilities; and the production of
6 documents was responsive to only two of the fifty-one requests in the First Request.
7 SOF ¶¶ 58-59.

8 Accordingly, on August 3, 2010, the United States notified Defendants that
9 absent voluntary cooperation within two weeks, the United States would commence
10 litigation to compel access to all of the requested information. SOF ¶ 60. In a further
11 exchange of detailed correspondence, the United States made clear that efforts to
12 foreclose progress on the investigation by offering only limited cooperation would not
13 be acceptable: “MCSO cannot contend that it is voluntarily complying with the
14 Department’s investigation by choosing a selective portion of the investigation as to
15 which it will provide a partial and dilatory response, while steadfastly continuing to
16 refuse to produce the vast majority of the requested documents or to permit access to
17 any relevant facilities or personnel.” SOF ¶ 62.

18 After a meet-and-confer held at MCSO’s request, MCSO advised the United
19 States on August 27, 2010, that it would not provide access to the vast majority of the
20 requested sources of information. SOF ¶¶ 72-73. The United States notified
21 Defendants on September 2 that they were not in compliance with Title VI, its
22 implementing regulations, and the related assurance agreements. SOF ¶ 74. This
23 lawsuit followed.

24 ARGUMENT

25 **I. Review of Defendants’ noncompliance with Title VI is proper in this Court.**

26 First, this matter is properly before this Court. Title VI directs agencies to adopt
27 regulations that effectuate its requirements, and provides that “[c]ompliance with any
28 requirement adopted pursuant to this section may be effected . . . by any other means

1 authorized by law.” 42 U.S.C. § 2000d-1. The Title VI implementing regulations
2 specify that the “other means authorized by law” include “[a]ppropriate proceedings
3 brought by the Department to enforce any rights of the United States under any law of
4 the United States . . . or any assurance or other contractual undertaking.” 28 C.F.R.
5 § 42.108(a)(1); *see also Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 603
6 n.24 (1983) (noting that “the Federal Government can always sue any recipient who
7 fails to comply with the terms of the grant agreement” under Title VI) (opinion of
8 White, J.).

9 In addition, any prerequisites to suit have been met. Judicial action to effect
10 compliance with the Title VI regulations may be sought after “(1) [t]he responsible
11 Department official has determined that compliance cannot be secured by voluntary
12 means, (2) [t]he action has been approved by the Attorney General,² and (3) [t]he
13 recipient or other person has been notified of its failure to comply and of the action to
14 be taken to effect compliance.” 28 C.F.R. § 42.108(d); *see also* 42 U.S.C. § 2000d-1.
15 As set out in detail in the accompanying Statement of Facts, the United States
16 undertook exhaustive efforts to secure Defendants’ voluntary compliance with its
17 investigation, including efforts spanning more than a year after Defendants MCSO and
18 Sheriff Arpaio held a press conference to announce publicly that they would not
19 cooperate with the United States. *See generally* SOF ¶¶ 34-73. On September 2,
20 2010, after a final meet-and-confer failed to secure MCSO’s full cooperation, the
21 United States notified Defendants pursuant to 42 U.S.C. § 2000d-1 and 28 C.F.R.
22 § 42.108(d) that MCSO had failed to comply, that the United States had determined
23 that compliance could not be secured by voluntary means, and that this lawsuit would
24 follow. SOF ¶ 74. All administrative requirements have therefore been satisfied.

25 ² This function is delegated to the Assistant Attorney General for Civil Rights.
26 *See* 28 C.F.R. § 0.50 (“The following functions are assigned to . . . the Assistant
27 Attorney General, Civil Rights Division: (a) Enforcement of all Federal statutes
28 affecting civil rights . . . and authorization of litigation in such enforcement”); *see also* 28 C.F.R. § 42.112(c).

1 **II. There is no dispute of fact that Defendants’ failure to provide the United**
2 **States with access to the requested documents, staff, and facilities violates**
3 **Title VI, the implementing regulations, and related contractual assurances.**

4 A party is entitled to summary judgment if “there is no genuine issue as to any
5 material fact and . . . the movant is entitled to judgment as a matter of law.” Fed. R.
6 Civ. P. 56(c)(2). As described below, there is no material dispute that the United
7 States is entitled to investigate the use of its funds by Defendants through access to
8 those documents, staff, and facilities that the United States has determined would aid
9 in that investigation. First, the Title VI regulations and related contractual assurances
10 compel federal fund recipients to provide access to pertinent sources of information
11 within the United States’ broad discretion. *See infra* Part II.A. Second, there is no
12 dispute of fact that Defendants are recipients of federal financial assistance, and are
13 therefore bound by the Title VI access regulations and assurance agreements. *See*
14 *infra* Parts II.B and II.C. Third, there is no dispute that Defendants have unlawfully
15 failed or refused to provide access to the sources of information that the United States
16 determined were pertinent to ascertain compliance with Title VI. *See infra* Part II.D.
The United States is therefore entitled to judgment as a matter of law.

17 **A. Title VI requires accountability for public funds by allowing DOJ to**
18 **access all sources of information that may be pertinent to determine**
19 **compliance with the law.**

20 Title VI provides that “[n]o person in the United States shall, on the ground of
21 race, color, or national origin, be excluded from participation in, be denied the benefits
22 of, or be subjected to discrimination under any program or activity receiving Federal
23 financial assistance.” 42 U.S.C. § 2000d. DOJ has issued regulations to implement
24 the statute. *See* 42 U.S.C. § 2000d-1; 28 C.F.R. §§ 42.101 to 42.112.

25 Among other obligations, the Title VI regulations require “[a]ccess to sources of
26 information” to permit the United States to ensure that all non-discrimination
27 requirements are being met. 28 C.F.R. § 42.106(c). The access regulations provide
28 that “[e]ach recipient shall permit access by the responsible Department official . . . to
such of its books, records, accounts, and other sources of information, and its facilities,

1 as *may be pertinent* to ascertain compliance” with Title VI and the implementing
2 regulations.³ *Id.* (emphasis added). The regulations also require that “[e]ach recipient
3 shall keep such records and submit to the responsible Department official or his
4 designee timely, complete, and accurate compliance reports at such times, and in such
5 form and containing such information, as the responsible Department official or his
6 designee may determine to be necessary to . . . ascertain whether the recipient has
7 complied or is complying with this subpart.” *Id.* § 42.106(b).

8 These regulations permit the United States to exercise broad discretion in
9 determining what sources of information “may be pertinent” to ascertain compliance
10 with Title VI. The Ninth Circuit has held that “[i]n exercising its investigatory
11 powers” under Title VI, a federal agency “must have substantial latitude in scrutinizing
12 policies and practices of the institution” for possible discrimination. *El Camino*, 600
13 F.2d at 1259-60 (applying the identical Title VI access regulation promulgated by the
14 Department of Health, Education, and Welfare).

15 Federal grant recipients are bound to comply with the Title VI access
16

17 ³ The obligation to provide access to pertinent sources of information is not
18 unique to DOJ, but rather is a universal feature of the federal grant-making system.
19 Every single federal agency that has promulgated Title VI regulations includes
20 requirements that are identical or substantially similar to those in the DOJ access
21 regulation. *See* 7 C.F.R. § 15.5(c) (Dep’t of Agric.); 22 C.F.R. § 209.6(c) (Agency for
22 Int’l Dev.); 15 C.F.R. § 8.7(c) (Dep’t of Commerce); 45 C.F.R. § 1203.6(c) (Corp. for
23 Nat’l & Cmty. Serv.); 32 C.F.R. § 195.7(c) (Dep’t of Defense); 34 C.F.R. § 100.6(c)
24 (Dep’t of Educ.); 10 C.F.R. § 1040.89-3 (Dep’t of Energy); 40 C.F.R. § 7.85 (Env’tl.
25 Protection Agency); 41 C.F.R. § 101-6.209-3 (Gen. Servs. Admin.); 45 C.F.R.
26 § 80.6(c) (Dep’t of Health & Human Servs.); 6 C.F.R. § 21.9(c) (Dep’t of Homeland
27 Sec.); 24 C.F.R. § 1.6(c) (Dep’t of Hous. & Urban Dev.); 43 C.F.R. § 17.5(c) (Dep’t of
28 the Interior); 29 C.F.R. § 31.5(c) (Dep’t of Labor); 14 C.F.R. § 1250.105(c) (NASA);
45 C.F.R. § 1110.6(c) (Nat’l Found. on the Arts & Humanities); 45 C.F.R. § 611.6(c)
(Nat’l Sci. Found.); 10 C.F.R. § 4.33 (Nuclear Regulatory Comm’n); 5 C.F.R.
§ 900.406(c) (Office of Personnel Mgmt.); 13 C.F.R. § 112.9(c) (Small Bus. Admin.);
22 C.F.R. § 141.5(c) (Dep’t of State); 18 C.F.R. § 1302.6(c) (Tenn. Valley Auth.); 49
C.F.R. § 21.9(c) (Dep’t of Transp.); 38 C.F.R. § 18.6(c) (Dep’t of Veterans Affairs);
18 C.F.R. § 705.6(c) (Water Resources Council).

1 requirements not only by regulation but also by contract. The Title VI regulations
2 require that every application for federal financial assistance “shall, as a condition to
3 its approval . . . , contain or be accompanied by an assurance that the program will be
4 conducted . . . in compliance with all requirements imposed by or pursuant to this
5 subpart.” 28 C.F.R. § 42.105(a)(1).

6 The Ninth Circuit has long held that the United States may enforce its rights
7 under both the Title VI access regulations and related assurance agreements to compel
8 access to pertinent documents, staff, and facilities when evaluating compliance with a
9 recipient’s non-discrimination obligations. In *United States v. Phoenix Union High*
10 *School District*, 681 F.2d 1235 (9th Cir. 1982), the United States Department of
11 Education sought access to school district records in order to determine whether the
12 school district was complying with Title VI in its student assignment policies. *Id.* at
13 1236-37. Noting the “congressionally mandated duty to investigate whether public
14 programs receiving federal funds are complying with Title VI,” *id.* at 1238, the Ninth
15 Circuit held that both the Title VI access regulation,⁴ and the contractual assurance that
16 the school district had signed agreeing to comply with that regulation, “place[] a clear
17 responsibility on the School District to cooperate with the Department of Education’s
18 investigation to determine whether the School District is complying with the
19 requirements of Title VI.” *Id.* at 1237. The Ninth Circuit reached the same outcome in
20 *El Camino*, compelling the defendant to comply with requests for access to
21 information from the Department of Health, Education, and Welfare under that
22 Department’s Title VI regulations, and noting that “we cannot excuse the College for
23 its failure to comply with the regulations that it accepted in obtaining federal funding.”
24 600 F.2d at 1259-60.

25 Every other court to consider the question has likewise concluded that the United

26
27 ⁴ The section of the Department of Education’s Title VI regulation on which the
28 Ninth Circuit relied in *Phoenix* is identical to the corresponding DOJ regulation at
issue in this case. *Compare* 34 C.F.R. § 100.6(c), *with* 28 C.F.R. § 42.106(c).

1 States may enforce its Title VI regulations (and regulations that implement related
2 statutes prohibiting discrimination in federally-funded programs) to compel access to
3 pertinent information. In *United States v. County of Fairfax*, for example, the United
4 States alleged employment discrimination by Fairfax County in violation of the Safe
5 Streets Act⁵ and Title VII. 629 F.2d 932, 935-36 (4th Cir. 1980). The United States
6 also alleged that Fairfax County “had refused to supply the Department of Justice with
7 data necessary to a determination of whether the County was in compliance with the
8 non-discrimination provisions of . . . the [Safe Streets Act] and the regulations
9 promulgated thereunder.” *Id.* at 936 & n.3 (citing 28 C.F.R. § 42.106); *see also United*
10 *States v. County of Fairfax*, 19 Fair Empl. Prac. Cas. (BNA) 753, 754-55 (E.D. Va.
11 1979) (citing 28 C.F.R. § 42.207). The district court held both that the County was
12 required to maintain records needed to ascertain compliance with its non-
13 discrimination obligations, and that “the refusal of the County to supply the
14 Department of Justice with the information it requested was in error.” *County of*
15 *Fairfax*, 19 Fair Empl. Prac. Cas. (BNA) at 75. On appeal, the Fourth Circuit directed
16 that the district court amend its remedial order to include prospective relief to ensure
17 the United States’ ability to access pertinent information, holding that “[i]n granting
18 injunctive relief, [the district court] should both have required compliance with the
19 record keeping and disclosure requirements of existing law, and imposed requirements
20 for periodic reports to enable it to monitor compliance with the decree.” *County of*
21 *Fairfax*, 629 F.2d at 941-42 & n.11.

22 Other courts have reached the same result. *See, e.g., Freeman v. Cavazos*, 939

23
24 ⁵ The non-discrimination provision of the Safe Streets Act is modeled on Title VI
25 and prohibits discrimination on the basis of race, national origin, or other protected
26 grounds “in connection with any programs or activity funded . . . with funds made
27 available under this chapter.” 42 U.S.C. § 3789d(c)(1). The Safe Streets Act
28 implementing regulations contain an access requirement analogous to that in the Title
VI regulations, which provides: “Each recipient shall . . . [p]ermit reasonable access
. . . to its books, documents, papers, and records, to the extent necessary to determine
whether the recipient is complying with” the statute. 28 C.F.R. § 42.207(a)(2).

1 F.2d 1527, 1531 (11th Cir. 1991) (holding that the DeKalb County School District was
2 required to comply with Department of Education regulations requiring cooperation
3 with a Title VI and Section 504 investigation); *United States v. Baylor Univ. Med.*
4 *Ctr.*, 736 F.2d 1039, 1040-41 (5th Cir. 1984) (applying regulations issued by the
5 Department of Health and Human Services under Section 504, which incorporate the
6 Title VI access requirements, and holding that the defendant “must allow [HHS]
7 access to the facility and information requested for the purposes of investigating a
8 complaint of discrimination on the basis of handicap”); *cf. Lopez v. Metro. Gov’t of*
9 *Nashville*, 594 F. Supp. 2d 862, 867 (M.D. Tenn. 2009) (relying on the DOJ and
10 Department of Education implementing regulations for Title IX, which expressly
11 incorporate the Title VI regulations of both agencies, and holding that “[i]t would be
12 anomalous to charge the United States with enforcement of Title IX but, at the same
13 time, preclude it from obtaining information relevant to its enforcement
14 responsibilities”).

15 **B. There is no dispute of fact that Defendants are subject to Title VI and**
16 **its implementing regulations as recipients of federal financial**
assistance from DOJ.

17 There is no dispute of fact that Defendants are subject to the broad access
18 requirements in the Title VI regulations. At all times relevant to this enforcement
19 action, Defendants have been recipients of federal financial assistance from DOJ.

20 The DOJ Office of Justice Programs (“OJP”), Bureau of Justice Assistance
21 (“BJA”), administers federal grant programs that provide funding to state, local,
22 territorial, and tribal criminal justice systems, including law enforcement agencies.
23 SOF ¶ 1. Since 2008, Maricopa County has received over \$13.5 million in federal
24 funds through three grants from OJP, each of which is currently open. SOF ¶¶ 2-9. In
25 applying for each of these grants, the County stated that it would provide sub-awards
26 to MCSO for specific law enforcement purposes. SOF ¶¶ 4, 6, 8.

27 The DOJ Office of Community Oriented Policing Services (“COPS”) advances
28 the practice of community oriented policing by administering grant programs that fund

1 state, local, and tribal law enforcement agencies. SOF ¶ 10. In 2007, MCSO was
2 awarded a grant of \$449,999 from COPS. SOF ¶ 11. This COPS grant is currently
3 open, and MCSO has drawn down funds from this grant. SOF ¶¶ 12-13.

4 In addition, the DOJ Criminal Division, Asset Forfeiture and Money Laundering
5 Section (“AFMLS”) administers the DOJ Equitable Sharing Program. SOF ¶ 14.
6 Through the Equitable Sharing Program, the Attorney General transfers a share of
7 forfeited property and proceeds to state and local law enforcement agencies that
8 directly participate in an investigation or prosecution that results in a federal forfeiture.
9 *Id.* MCSO participates in the Equitable Sharing Program and, since July 1, 2006, has
10 received over \$550,000 into the equitable sharing account it maintains through
11 AFMLS. SOF ¶¶ 15-21.

12 The grant funds that Maricopa County and MCSO have received through OJP,
13 COPS, and the Equitable Sharing Program constitute federal financial assistance under
14 Title VI. *See* 28 C.F.R. § 42.102(c). Maricopa County and MCSO are both recipients
15 of this federal financial assistance. *See* 28 C.F.R. § 42.102(f) (defining “recipient” to
16 mean any political subdivision “to whom Federal financial assistance is extended,
17 directly or through another recipient”); SOF ¶¶ 1-21. There is therefore no dispute of
18 fact that, as recipients of federal financial assistance through OJP, COPS, and the
19 Equitable Sharing Program, Maricopa County and MCSO are subject to Title VI and
20 its implementing regulations in their federally-funded programs or activities.

21 **C. Defendants signed contractual assurances in which they agreed to**
22 **comply with Title VI and with all requirements imposed pursuant to**
23 **the DOJ regulations.**

24 In addition to being subject to Title VI and its implementing regulations as
25 recipients of federal financial assistance, there is no dispute of fact that Defendants are
26 contractually bound by the assurance agreements that they signed each time they
27 applied for federal grant funds.

28 *1. OJP contractual assurances.* For each of the three OJP grants that Maricopa
County has received since 2008 and that is currently open, the County certified that it

1 would comply with the requirements listed in the OJP Standard Assurances. SOF
2 ¶¶ 2-9, 22. By agreeing to the OJP Standard Assurances, the County agreed in broad
3 terms that it “hereby assures and certifies compliance with all applicable Federal
4 statutes, regulations, policies, guidelines, and requirements” SOF ¶ 23. In
5 addition to this broad assurance, the County also specifically certified that “[i]t will
6 comply with all lawful requirements imposed by the awarding agency, specifically
7 including any applicable regulations, such as [the DOJ Title VI regulations at] 28
8 C.F.R. [part] 42” SOF ¶ 24. MCSO is bound by the assurances that the County
9 signed as to grants for which MCSO received sub-awards. *See* 28 C.F.R. § 42.105(b);
10 SOF ¶¶ 4, 6, 8.

11 2. *COPS contractual assurances.* MCSO also signed contractual assurances that
12 it would comply with its obligations under Title VI. As a condition of receiving its
13 COPS grant in 2007, MCSO certified that it would “abide by the grant terms and
14 conditions as outlined in the [COPS] Assurances and Certifications.” SOF ¶¶ 25-27.
15 In agreeing to abide by the COPS Assurances, MCSO agreed that “it will comply with
16 all legal and administrative requirements that govern the applicant for acceptance and
17 use of federal grant funds.” SOF ¶ 28. In addition to this broad assurance, MCSO
18 agreed in particular that “[i]t will comply with all requirements imposed by the
19 Department of Justice as a condition or administrative requirement of the grant, . . .
20 and with all other applicable program requirements, laws, orders, regulations, or
21 circulars.” SOF ¶ 29. The COPS Assurances further specify, and MCSO agreed, that
22 the civil rights requirements with which it would comply include those contained in 28
23 C.F.R. Part 42, Subpart C (which contains the DOJ Title VI regulations). *Id.*

24 3. *Equitable Sharing Program contractual assurances.* In addition, MCSO is
25 bound by the contractual assurances it signed as a participant in the DOJ Equitable
26 Sharing Program. In order to participate in the Equitable Sharing Program, law
27 enforcement agencies must annually complete an Equitable Sharing Agreement and
28 Certification form, and submit a signed affidavit. SOF ¶ 30. For each year within the

1 scope of the United States’ First Request, from 2007 through the present, MCSO
2 submitted an Equitable Sharing Agreement and signed affidavit that enabled it to be
3 recertified as a participant in the Equitable Sharing Program. SOF ¶¶ 30-33.

4 The Equitable Sharing Agreement was accompanied by instructions providing
5 that “[a]gencies receiving assistance are required to permit DOJ investigators access to
6 records and any other sources of information as may be necessary to determine
7 compliance with civil rights laws.” SOF ¶ 31. And each annual affidavit certified that
8 MCSO “is in compliance with the nondiscrimination requirements of [Title VI] and
9 [its] Department of Justice implementing regulations.” SOF ¶¶ 31-33.

10 There is no dispute of fact that these contractual assurances – agreed to as an
11 express condition of receiving OJP, COPS, and Equitable Sharing Program funds –
12 require that Defendants comply with the Title VI regulations. *See, e.g., Lau v. Nichols*,
13 414 U.S. 563, 568-69 (1974) (“Respondent school district contractually agreed to
14 ‘comply with Title VI . . . and all requirements imposed by or pursuant to the
15 Regulation’ of HEW. . . . The Federal Government has the power to fix the terms on
16 which its money allotments to the States shall be disbursed.”).

17 **D. There is no dispute of fact that Defendants have refused to provide the**
18 **requested access, and the United States is therefore entitled to**
19 **injunctive relief as a matter of law.**

20 As recipients of federal financial assistance, Defendants are bound to comply
21 with the access requirements in the Title VI regulations and related assurances. There
22 is no dispute of fact that MCSO has refused to permit access to pertinent sources of
23 information that DOJ has requested to determine compliance with Title VI.

24 MCSO informed the United States by letter to the Attorney General in May 2009
25 that it would not cooperate with this investigation, and MCSO held a press conference
26 in July 2009 to state its position publicly. SOF ¶¶ 47, 49. Although MCSO produced
27 limited documents nearly a year later, in June 2010, MCSO then made clear once again
28 that it would not cooperate in full with the United States’ investigation. SOF ¶¶ 57-73.
On August 27, 2010, MCSO advised the United States that, although it would not

1 identify specific requests to which it was objecting, “[w]e . . . certainly did not agree
2 that every document DOJ requested is required to be produced in a Title VI
3 investigation.” SOF ¶ 73. As to the production of those unspecified documents that it
4 would agree to disclose, MCSO advised that it would not agree to any deadline at all.
5 *Id.* (“[W]e did not agree to a September 10, 2010 deadline at our meeting, and we
6 cannot agree to one now. . . . We can advise you of timing more specifically as
7 matters progress.”). Nor did MCSO agree to provide access by a date certain to the
8 specific staff and facilities the United States requested. SOF ¶ 73.

9 MCSO’s obligation under the law is to provide such access as “may be pertinent
10 to ascertain compliance” with Title VI. 28 C.F.R. § 42.106(c); *see also id.*
11 § 42.106(b). MCSO is not entitled to determine unilaterally what access it will
12 provide, nor may it refuse all reasonable deadlines after eighteen months of attempts
13 by the United States to secure access. *See El Camino*, 600 F.2d at 1260; *see also*
14 *Baylor*, 736 F.2d at 1040-41, 1050 (directing the defendant to allow the United States
15 access to the facility and information requested within thirty days); *County of Fairfax*,
16 629 F.2d at 941-42 & n.11 (holding that the district court abused its discretion in
17 failing to compel the defendant to submit scheduled compliance reports). Moreover,
18 Defendant Maricopa County has itself agreed that MCSO’s response violates the Title
19 VI requirements, and instructed MCSO to provide access to the information that the
20 United States seeks. SOF ¶ 64. MCSO, however, has refused to comply with the
21 County’s instruction. SOF ¶ 65. There is no genuine dispute of fact that MCSO has
22 refused to provide the requested access, and Maricopa County has not secured
23 MCSO’s compliance.

24 MCSO has raised a number of objections to the United States’ request, but none
25 of those objections excuse its failure to comply with the law. First, MCSO has
26 contended that its obligation to cooperate with the United States’ investigation may be
27 satisfied in part by documents it has already produced in the lawsuit captioned
28 *Melendres v. Arpaio*, No. 2:07-cv-02513-PHX-GMS (D. Ariz.). *See* SOF ¶ 73. Even

1 assuming that the *Melendres* document production – which was subject to the scope
2 and limitation requirements of Fed. R. Civ. P. 26(b) rather than the broader Title VI
3 access regulations – could satisfy some part of the Defendants’ obligation in this case,
4 MCSO itself has acknowledged that its *Melendres* production is partially responsive to
5 only eleven of the United States’ fifty-one document requests. SOF ¶ 73. And the
6 *Melendres* document production of course does not satisfy Defendants’ obligation to
7 allow pertinent staff interviews and facility tours.

8 Second, MCSO has argued that an unspecified portion of the United States’
9 request is unrelated to allegations of national origin discrimination. SOF ¶ 70. This
10 determination is not MCSO’s to make, *see* 28 C.F.R. §§ 42.106(b), (c); and is in any
11 case incorrect. All of the items sought in the First Request seek information regarding
12 MCSO’s operations that “may be pertinent to ascertain compliance” with Title VI, as
13 permitted by 28 C.F.R. § 42.106(c).⁶ *See* SOF ¶ 71. As a large law enforcement
14 agency, MCSO engages in numerous activities that may implicate Title VI, and the
15 United States is obliged to understand these operations thoroughly in order to make an
16 adequate Title VI assessment. The inability to access and review all of the policies and
17 procedures informing an officer’s actions, for example, could risk an incorrect
18 assessment of those actions. Indeed, the Title VI regulations expressly authorize the
19 types of requests made here: “The investigation should include, whenever appropriate,
20 a review of the pertinent practices and policies of the recipient, the circumstances
21

22 ⁶ The First Request is divided into six categories of requested records. SOF ¶ 39.
23 The first three categories – “organizational structure and general information,”
24 “policies, procedures, and related materials,” and “training” – are pertinent to
25 determining whether any evidence of national origin discrimination is part of an
26 official or unofficial policy. *See id.* The fourth and fifth categories – “incident reports,
27 complaints, and investigations,” and “accountability” – are pertinent to determining
28 whether MCSO’s police practices and complaint responses comply with the Title VI
non-discrimination requirements. *See id.* The final category, “limited English
proficiency,” is pertinent to determining whether MCSO’s jail practices discriminate
on the basis of national origin. *See id.*

1 under which the possible noncompliance . . . occurred, and other factors relevant to a
2 determination” 28 C.F.R. § 42.107(c). All items listed in the First Request fall
3 well within the “substantial latitude” that the United States possesses in exercising its
4 Title VI investigative powers. *El Camino*, 600 F.2d at 1260.

5 Nor can MCSO contend that some portion of its operations is exempt from Title
6 VI review. By the terms of the statute, the entirety of MCSO’s operations may be
7 examined for compliance with Title VI. *See* 42 U.S.C. § 2000d (prohibiting
8 discrimination in “any program or activity” that receives federal financial assistance);
9 *id.* § 2000d-4a(1)(A) (“[T]he term ‘program or activity’ and the term ‘program’ mean
10 *all of the operations of . . .* a department, agency, special purpose district, or other
11 instrumentality of a State or of a local government.” (emphasis added)).

12 Because there is no dispute of fact that Defendants have failed to provide access
13 to sources of information that are pertinent to ascertain compliance with Title VI, the
14 United States is entitled to judgment as a matter of law. The United States requests
15 that the Court direct Defendants to comply within thirty days by responding in full to
16 the First Request and by allowing access to the staff and facilities set out in the United
17 States’ August 25, 2010, letter to MCSO. SOF ¶ 36-39, 72. This timeframe is more
18 than reasonable, especially in an investigation already pending for eighteen months.
19 *Cf. Baylor*, 736 F.2d at 1040-41, 1050.

20 CONCLUSION

21 Plaintiff respectfully requests that this Court grant Plaintiff’s Motion for
22 Summary Judgment and compel Defendants to provide immediate access to the
23 requested documents, staff, and facilities. Plaintiff also requests that this Court enjoin
24 Defendants to comply with all future requests that may be pertinent to Plaintiff’s
25 investigation of alleged national origin discrimination in MCSO’s police practices and
26 jail operations.

1 Dated: September 13, 2010
2

Respectfully submitted,

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