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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 STATEMENT OF
UNDISPUTED FACTS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Plaintiff United States respectfully submits this Statement of Undisputed Facts pursuant to Local Civil Rule 56.1(a).

1 **PLAINTIFF’S STATEMENT OF FACTS**

2 **I. Federal financial assistance from the United States Department of Justice.**

3 1. The Department of Justice, Office of Justice Programs (“OJP”), Bureau of
4 Justice Assistance (“BJA”), administers federal grants programs that provide funding
5 to state, local, territorial, and tribal criminal justice systems, including law enforcement
6 agencies. Ex. 1 (Finn Declaration ¶ 3).

7 2. At all times since September 4, 2008, Defendant Maricopa County (“the
8 County”) has been a recipient of BJA grant funds through grant awards that are
9 currently open. See Ex. 1 (Finn Declaration ¶¶ 4-9); Ex. 2 (Grant Award No. 2008-DJ-
10 BX-0500); Ex. 3 (Grant Award No. 2009-SB-B9-2970); Ex. 4 (Grant Award No.
11 2009-DJ-BX-0342).

12 3. The County received a Justice Assistance Grant in the amount of
13 \$578,399. Ex. 1 (Finn Declaration ¶ 4); Ex. 2 (Grant Award No. 2008-DJ-BX-0500).
14 This grant had an award date of September 4, 2008, and a grant period through
15 September 30, 2011. Ex. 2 (Grant Award No. 2008-DJ-BX-0500).

16 4. In applying for the grant described in ¶ 3, Maricopa County stated that its
17 intent was to provide funds from the award to the Maricopa County Sheriff’s Office
18 (“MCSO”) for law enforcement purposes in the amounts of \$21,316 for parcel
19 interdiction and \$76,316 for the Maricopa County Neighborhood Narcotics
20 Enforcement Team (“MCNNET”). Ex. 1 (Finn Declaration ¶ 5).

21 5. The County received a Fiscal Year 2009 Recovery Act Justice Assistance
22 Grant in the amount of \$10,536,695. Ex. 1 (Finn Declaration ¶ 6); Ex. 3 (Grant Award
23 No. 2009-SB-B9-2970). This grant had an award date of August 3, 2009, and a grant
24 period through February 28, 2013. Ex. 3 (Grant Award No. 2009-SB-B9-2970).

25 6. In applying for the grant described in ¶ 5, Maricopa County stated that its
26 intent was to provide funds from the award to MCSO for law enforcement purposes in
27 the amounts of \$73,148 for parcel interdiction and \$271,292 for the MCNNET. Ex. 1
28 (Finn Declaration ¶ 7).

1 7. The County received an Edward Byrne Justice Assistance Grant in the
2 amount of \$2,429,831. Ex. 1 (Finn Declaration ¶ 8); Ex. 4 (Grant Award No. 2009-
3 DJ-BX-0342). This grant had an award date of August 21, 2009, and a grant period
4 through September 30, 2012. Ex. 4 (Grant Award No. 2009-DJ-BX-0342).

5 8. In applying for the grant described in ¶ 7, Maricopa County stated that its
6 intent was to provide funds from the award to MCSO for law enforcement purposes in
7 the amount of \$68,399 for the MCCNET. Ex. 1 (Finn Declaration ¶ 9).

8 9. The County has received \$13,544,925 since September 4, 2008, through
9 the OJP grants described in ¶¶ 3-8 above.

10 10. The DOJ Office of Community Oriented Policing Services (“COPS”)
11 advances the practice of community oriented policing in state, local, and tribal law
12 enforcement agencies. Ex. 5 (Oliphant Declaration ¶ 3). COPS administers grant
13 programs that fund law enforcement agencies around the United States. *Id.*

14 11. In 2007, MCSO applied for and was awarded a grant of \$449,999 from
15 COPS (“COPS grant”). Ex. 5 (Oliphant Declaration ¶ 5); Ex. 6 (COPS grant
16 application); Ex. 7 (COPS grant award letter).

17 12. The original grant period for this COPS grant was September 1, 2007, to
18 August 31, 2009. Ex. 7 (COPS grant award letter). MCSO requested and received an
19 extension of the grant period to August 31, 2010. Ex. 5 (Oliphant Declaration ¶ 8);
20 Ex. 8 (COPS extension letter). Funds may be drawn down for incurred costs within 90
21 days after the August 31, 2010, end date of the COPS grant. Ex. 5 (Oliphant
22 Declaration ¶ 8); Ex. 8 (COPS extension letter).

23 13. MCSO has drawn down funds from the COPS grant, and, as of
24 September 2, 2010, the COPS grant had a balance of \$18,543. Ex. 5 (Oliphant
25 Declaration ¶ 9); Ex. 9 (COPS grant funding report).

26 14. The DOJ Criminal Division, Asset Forfeiture and Money Laundering
27 Section (“AFMLS”) administers the DOJ Equitable Sharing Program. Ex. 10 (Dery
28 Declaration ¶ 3). Through the DOJ Equitable Sharing Program, the Attorney General

1 transfers a share of forfeited property and proceeds to State and local law enforcement
2 agencies that directly participate in an investigation or prosecution that results in a
3 federal forfeiture. *Id.*

4 15. MCSO participates in the DOJ Equitable Sharing Program. Ex. 10 (Dery
5 Declaration ¶¶ 4-11); Ex. 11 (Federal Annual Certification Report for FY 2006-07);
6 Ex. 12 (Equitable Sharing Agreement and Certification for FY 2007-08); Ex. 13
7 (Equitable Sharing Agreement and Certification for FY 2008-09).

8 16. According to DOJ records, MCSO received \$3,726.98 into the equitable
9 sharing account it maintains for receipt of funds through the DOJ Equitable Sharing
10 Program for its Fiscal Year 2006-07 (from July 1, 2006, to June 30, 2007). Ex. 10
11 (Dery Declaration ¶ 5); Ex. 14 (AFMLS Detail Distribution Report for 7/1/06 to
12 6/30/07).

13 17. According to DOJ records, MCSO received \$156,945.31 into the equitable
14 sharing account it maintains for receipt of funds through the DOJ Equitable Sharing
15 Program for its Fiscal Year 2007-08 (from July 1, 2007, to June 30, 2008). Ex. 10
16 (Dery Declaration ¶ 7); Ex. 15 (AFMLS Detail Distribution Report for 7/1/07 to
17 6/30/08).

18 18. According to DOJ records, MCSO received \$126,813.44 into the equitable
19 sharing account it maintains for receipt of funds through the DOJ Equitable Sharing
20 Program for its Fiscal Year 2008-09 (from July 1, 2008, to June 30, 2009). Ex. 10
21 (Dery Declaration ¶ 9); Ex. 16 (AFMLS Detail Distribution Report for 7/1/08 to
22 6/30/09).

23 19. According to DOJ records, MCSO received \$235,706.50 into the equitable
24 sharing account it maintains for receipt of funds through the DOJ Equitable Sharing
25 Program for its Fiscal Year 2009-10 (from July 1, 2009, to June 30, 2010). Ex. 10
26 (Dery Declaration ¶ 10); Ex. 17 (AFMLS Detail Distribution Report for 7/1/09 to
27 6/30/10).

28 20. According to DOJ records, MCSO received \$31,162.12 into the equitable

1 sharing account it maintains for receipt of funds through the DOJ Equitable Sharing
2 Program for the first two months of its Fiscal Year 2010-11 to date (from July 1, 2010,
3 to August 31, 2010). Ex. 10 (Dery Declaration ¶ 11); Ex. 18 (AFMLS Detail
4 Distribution Report for 7/1/10 to 8/31/10).

5 21. MCSO has received \$554,354.35 since July 1, 2006, through the AFMLS
6 equitable sharing account transactions described in ¶¶ 16-20 above.

7 **II. Contractual Assurance Agreements.**

8 22. OJP grant applications are submitted through an online process. For each
9 of the OJP awards described in ¶¶ 3, 5, and 7 above, the authorized representative of
10 the County applying for the award viewed the OJP Standard Assurances and certified
11 electronically that the applicant would comply with the requirements listed therein.
12 Ex. 1 (Finn Declaration ¶ 10); Ex. 19 (Electronic receipt of assurances for Grant
13 Award No. 2008-DJ-BX-0500); Ex. 20 (Electronic receipt of assurances for Grant
14 Award No. 2009-SB-B9-2970); Ex. 21 (Electronic receipt of assurances for Grant
15 Award No. 2009-DJ-BX-0342).

16 23. By agreeing to the OJP Standard Assurances, the County agreed that it
17 “hereby assures and certifies compliance with all applicable Federal statutes,
18 regulations, policies, guidelines, and requirements” Ex. 22 (OJP Standard
19 Assurances).

20 24. In addition, by agreeing to the OJP Standard Assurances, the County “also
21 specifically assure[d] and certifie[d]” that:

- 22 a. “It will comply with all lawful requirements imposed by the awarding
23 agency, specifically including any applicable regulations, such as 28
24 C.F.R. [part] 42” Ex. 22 (OJP Standard Assurances ¶ 4). Part 42 of
25 28 C.F.R. includes the DOJ Title VI implementing regulations. *See* 28
26 C.F.R. §§ 42.101 to 42.112;
- 27 b. “It will give the awarding agency or the General Accounting Office,
28 through any authorized representative, access to and the right to examine

1 all paper or electronic records related to the financial assistance.” Ex. 22
2 (OJP Standard Assurances ¶ 3); and

3 c. “It will comply (and will require any subgrantees or contractors to comply)
4 with any applicable statutorily-imposed nondiscrimination requirements
5” *Id.* ¶ 6.

6 25. COPS grant applications are submitted through an online process. Ex. 5
7 (Oliphant Declaration ¶ 4). That process requires grant applicants, such as MCSO, to
8 review COPS Assurances before submitting an application. *Id.*

9 26. By submitting the application for its COPS grant, MCSO assured “the
10 COPS Office that you have read, understand, and agree, if awarded, to abide by the
11 grant terms and conditions as outlined in the Assurances and Certifications.” *Id.*; Ex. 6
12 (COPS grant application, at 10). MCSO further assured that the applicant will keep a
13 signed hard copy of the Assurances. Ex. 5 (Oliphant Declaration ¶ 4); Ex. 6 (COPS
14 grant application, at 10).

15 27. In order to receive the COPS grant, MCSO, through Sheriff Joseph M.
16 Arpaio, submitted the signed award document to COPS. Ex. 5 (Oliphant Declaration
17 ¶ 6); Ex. 23 (COPS signed award document). In so doing, MCSO agreed to comply
18 with the Grant Terms and Special Conditions, which are located on the back of the
19 award document. Ex. 5 (Oliphant Declaration ¶ 6); Ex. 23 (COPS signed award
20 document). Paragraph 5 of the Grant Terms and Special Conditions requires that the
21 grantee acknowledge its agreement to abide by the COPS Assurances presented to the
22 grantee in the award application process. Ex. 5 (Oliphant Declaration ¶ 6); Ex. 23
23 (COPS signed award document ¶ 5).

24 28. In agreeing to abide by the COPS Assurances, MCSO agreed that “it will
25 comply with all legal and administrative requirements that govern the applicant for
26 acceptance and use of federal grant funds.” Ex. 24 (COPS Assurances).

27 29. In addition, in agreeing to abide by the COPS Assurances, MCSO further
28 agreed that “[i]n particular, the applicant assures us” that:

- 1 a. “It will give the Department of Justice or the Comptroller General access
2 to and the right to examine records and documents related to the grant.”
3 *Id.* ¶ 5;
- 4 b. “It will comply with all requirements imposed by the Department of
5 Justice as a condition or administrative requirement of the grant, . . . and
6 with all other applicable program requirements, laws, orders, regulations,
7 or circulars.” *Id.* ¶ 6; and
- 8 c. “It will not, on the ground of race, . . . national origin, [or other protected
9 grounds] . . . subject any person to discrimination in connection with any
10 programs or activities funded in whole or in part with federal funds,” as
11 required by the civil rights requirements found in Title VI and 28 C.F.R.
12 Part 42. *Id.* ¶ 8.

13 30. In order to participate in the DOJ Equitable Sharing Program, law
14 enforcement agencies must annually complete an Equitable Sharing Agreement and
15 Certification form, and submit a signed affidavit. Ex. 10 (Dery Declaration ¶ 3). The
16 signed affidavit is submitted to DOJ by facsimile from the certifying law enforcement
17 agency. *Id.*

18 31. MCSO submitted a combined Equitable Sharing Agreement and affidavit,
19 signed by MCSO and the County through their authorized representatives on July 25,
20 2006, and August 16, 2006, respectively, with a certification period ending September
21 30, 2008. Ex. 10 (Dery Declaration ¶¶ 12-13); Ex. 25 (AFMLS Equitable Sharing
22 Agreement and affidavit). The Equitable Sharing Agreement was accompanied by
23 instructions providing that agencies that receive financial assistance from DOJ are
24 subject to Title VI and “are required to permit DOJ investigators access to records and
25 any other sources of information as may be necessary to determine compliance with
26 civil rights laws.” Ex. 10 (Dery Declaration ¶ 14); Ex. 26 (AFMLS Instructions). The
27 affidavit certified that MCSO “is in compliance with the nondiscrimination
28 requirements of [Title VI] and [its] Department of Justice implementing regulations.”

1 Ex. 25 (AFMLS Equitable Sharing Agreement and affidavit).

2 32. MCSO submitted an affidavit, signed by MCSO and the County through
3 their authorized representatives, following the conclusion of its Fiscal Year 2007-08.
4 Ex. 10 (Dery Declaration ¶ 15); Ex. 27 (AFMLS Affidavit for FY 2007-08). In
5 signing this affidavit, MCSO certified through Fiscal Year 2008-09 that it “is in
6 compliance with the nondiscrimination requirements of [Title VI] and [its] Department
7 of Justice implementing regulations.” Ex. 10 (Dery Declaration ¶ 15); Ex. 27 (AFMLS
8 Affidavit for FY 2007-08).

9 33. MCSO submitted an affidavit, signed by MCSO and the County through
10 their authorized representatives, following the conclusion of its Fiscal Year 2008-09.
11 Ex. 10 (Dery Declaration ¶ 16); Ex. 28 (AFMLS Affidavit for FY 2008-09). In
12 signing this affidavit, MCSO certified through Fiscal Year 2009-10 that it “is in
13 compliance with the nondiscrimination requirements of [Title VI] and [its] Department
14 of Justice implementing regulations.” Ex. 10 (Dery Declaration ¶ 16); Ex. 28 (AFMLS
15 Affidavit for FY 2008-09).

16 **III. The United States’ requests for access to sources of information.**

17 34. On March 10, 2009, the United States notified Defendants that DOJ was
18 opening an investigation of MCSO regarding alleged discrimination in violation of the
19 prohibition on national origin discrimination in Title VI of the Civil Rights Act of
20 1964, 42 U.S.C. § 2000d (“Title VI”); the pattern or practice provisions of the
21 Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d; and the
22 pattern or practice provisions of the Violent Crime Control and Law Enforcement Act
23 of 1994, 42 U.S.C. § 14141. *See* Ex. 29 (Letter from King to Arpaio of 3/10/09). The
24 United States informed Defendants that the investigation would focus on allegations of
25 national origin discrimination in MCSO’s police practices and jail operations. *See id.*;
26 Ex. 31 (Letter from Cutlar to McCormick of 3/25/09); Ex. 32 (Letter from Friedlander
27 to McCormick of 3/25/09).

28 35. On March 13, 2009, the United States conferred with Defendants’ counsel

1 by telephone and outlined the nature of the investigation. Ex. 30 (Email from
2 McCormick to Weiss of 3/13/09).

3 36. On March 25, 2009, the United States supplied Defendants with its First
4 Request for Documents and Information (“First Request”). Ex. 31 (Letter from Cutlar
5 to McCormick of 3/25/09); Ex. 32 (Letter from Friedlander to McCormick of 3/25/09);
6 Ex. 33 (First Request).

7 37. The First Request consists of fifty-one requests for documents related to
8 DOJ’s investigation of discriminatory police practices and jail operations. Ex. 33
9 (First Request).

10 38. The First Request sought documents covering the time period from
11 January 1, 2008, to the date of production for most of the requested documents, and
12 January 1, 2007, for a smaller set of the requested documents. *Id.* Defendants were
13 and remain recipients of federal financial assistance at all times during the period from
14 January 1, 2007, to the present. *See supra* ¶¶ 1-21.

15 39. The First Request is divided into six categories relevant to DOJ’s
16 investigation: (a) Organizational Structure and General Information; (b) Policies,
17 Procedures, and Related Materials; (c) Training; (d) Incident Reports, Complaints, and
18 Investigations; (e) Accountability; and (f) Limited English Proficiency. Ex. 33 (First
19 Request).

20 40. The First Request was also accompanied by a letter providing more detail
21 about the aspect of the national origin discrimination investigation pertaining to
22 provision of services to limited English proficient (“LEP”) individuals housed in
23 MCSO jail facilities. Ex. 32 (Letter from Friedlander to McCormick of 3/25/09).

24 41. Representatives of the United States and Defendants met in Phoenix,
25 Arizona on April 30, 2009, to discuss the United States’ investigation. Ex. 44 (Letter
26 from Driscoll to Holder of 5/29/09, at 2). The United States explained that its
27 investigation of MCSO would involve extensive document review, tours of MCSO
28 facilities, and interviews with MCSO staff and jail inmates. *See id.*

1 42. At the April 30, 2009, meeting and in subsequent correspondence, the
2 United States offered to provide financial and logistical assistance to MCSO in
3 complying with the First Request. Ex. 34 (Email from Jung to McCormick of 5/5/09);
4 Ex. 36 (Email from Jung to McCormick of 5/6/09); Ex. 37 (Email from Jung to Liddy
5 of 5/20/09). These offers were declined, *see* Ex. 35 (Email from McCormick to Jung
6 of 5/6/09); Ex. 38 (Second email from McCormick to Jung of 5/6/09), or received no
7 response.

8 43. On May 6, 2009, Defendants advised the United States that “[b]arring
9 unforeseeable circumstances, MCSO will begin producing documents within two or
10 three weeks.” Ex. 38 (Second email from McCormick to Jung of 5/6/09).

11 44. On May 12, 2009, MCSO provided the United States with eleven pages of
12 documents that MCSO identified as being partially responsive to three of the fifty-one
13 requests in the First Request. Ex. 39 (Letter from McCormick to Jung of 5/12/09). In
14 the same letter, MCSO stated: “As we agreed, MCSO will further respond to the
15 DOJ’s First Request once MCSO has completed installation and training on the IPRO
16 system [a litigation support system].” *Id.* at 2.

17 45. On May 12, May 19, May 20, and May 27, 2009, the Division contacted
18 MCSO representatives seeking information regarding the remaining document
19 production. *See* Ex. 40 (Email from Jung to McCormick of 5/12/09); Ex. 41 (Email
20 from Jung to McCormick of 5/19/09); Ex. 37 (Email from Jung to Liddy of 5/20/09);
21 Ex. 42 (Email from Jung to McCormick of 5/27/09).

22 46. In response to these requests, MCSO advised that it was “continuing to
23 work on these discovery issues with key personnel at the MCSO and counsel.” Ex. 43
24 (Email from Liddy to Jung of 5/20/09).

25 47. On May 29, 2009, MCSO informed the United States, by letter to the
26 Attorney General, that it would not cooperate with DOJ’s investigation and would “not
27 respond to any document requests from DOJ.” Ex. 44 (Letter from Driscoll to Holder
28 of 5/29/09, at 4).

1 48. On June 22, 2009, MCSO reiterated its refusal to produce any documents
2 or to make any of its staff available for interviews. Ex. 45 (Letter from Cutlar to
3 Driscoll of 6/22/09). The United States urged MCSO to reconsider its position, and
4 explained: “[I]n conducting our investigation we will consider all relevant information,
5 particularly the efforts MCSO has undertaken to ensure compliance with federal law.
6 It would clearly facilitate our consideration of such information for your client to
7 provide responses to our document request and allow us to speak with MCSO deputies.
8 However, irrespective of your client’s unwillingness to provide information about its
9 operations, our investigation will proceed. You acknowledged this fact and informed
10 us that you had already advised your client accordingly regarding the ‘risks’ associated
11 with its current position, including the possibility of litigation.” *Id.* at 1.

12 49. On July 7, 2009, Defendant Arpaio held a press conference and announced
13 that MCSO would not cooperate with the United States’ investigation, either by
14 providing documents or permitting interviews with personnel. Ex. 46 (Press Release,
15 Maricopa County Sheriff’s Office, *Washington D.C. Attorney for the Maricopa County*
16 *Sheriff’s Office Says U.S. Department of Justice’s Investigation is not Grounded in*
17 *Facts* (July 7, 2009)); Ex. 47 (Sandra Haros & Brandon Donahoo, *Arpaio Done*
18 *Cooperating with DOJ*, KTAR.com, July 7, 2009, at
19 <http://www.ktar.com/?nid=6&sid=1187069>); Ex. 48 (*Arpaio to DOJ: Don’t Pick on*
20 *Me*, KPHO.com, July 8, 2009, at <http://www.kpho.com/politics/19991075/detail.html>).

21 50. On August 6, 2009, the United States again requested that MCSO
22 voluntarily cooperate with its investigation. Ex. 49 (Letter from Cutlar to Driscoll of
23 8/6/09).

24 51. On August 12, 2009, MCSO advised that it was preparing a “position
25 paper . . . relating to the limited English proficiency (LEP) policy in the jails.” Ex. 50
26 (Email from Sierra to Cutlar of 8/12/09). The United States’ investigation of national
27 origin discrimination is not limited to concerns regarding the LEP policy in MCSO’s
28 jails, and includes allegations of discrimination in MCSO police practices and jail

1 operations. Ex. 29 (Letter from King to Arpaio of 3/10/09); Ex. 31 (Letter from Cutlar
2 to McCormick of 3/25/09); Ex. 32 (Letter from Friedlander to McCormick of 3/25/09);
3 Ex. 33 (First Request).

4 52. MCSO stated that it expected to provide this position paper by “the first
5 week of October” and asked the United States to “[p]lease confirm that this timeline is
6 acceptable to you.” Ex. 50 (Email from Sierra to Cutlar of 8/12/09). MCSO did not
7 agree to provide access to documents, staff, or facilities. *Id.*

8 53. The United States responded the next day that the delay until October 2009
9 for a position paper was troubling. Ex. 51 (Email from Cutlar to Driscoll of 8/13/09).
10 The United States also repeated its request for access to MCSO documents and staff by
11 a date certain. *Id.*

12 54. MCSO replied with regard to the position paper that “the October time
13 frame was one we are sure [we] can meet.” Ex. 52 (Email from Driscoll to Cutlar of
14 8/13/09). With regard to the restated request for access to documents and staff, MCSO
15 deferred discussion of those requests until after it prepared its position paper. *Id.*
16 MCSO reiterated its refusal as stated in May 2009 to cooperate with the United States’
17 investigation as to all “non-LEP issues.” *Id.*

18 55. By letter sent the next day, the United States advised that it did not agree
19 to MCSO’s proposed timeframe: “Given the MCSO’s failure to comply with the prior
20 agreed upon timeline and its failure to provide us with access to documents and
21 persons with relevant information, we cannot agree to a further extension until October
22 [2009]. We respectfully request that the MCSO submit its position statement and
23 answers to the questions no later than August 21, [2009,] and that we be allowed
24 access to MCSO facilities to review documents and interview MCSO personnel and
25 inmates as soon as possible.” Ex. 53 (Letter from Friedlander to Driscoll of 8/14/09, at
26 1-2).

27 56. MCSO advised the United States on November 10, 2009, that it expected
28 to produce the position paper in “mid-December” 2009. Ex. 54 (Email from Sierra to

1 Friedlander of 11/10/09).

2 57. MCSO produced its position paper on June 14, 2010, nearly fifteen months
3 after it was first requested in March 2009. Ex. 55 (Letter from Gill to Kappelhoff of
4 6/14/10).

5 58. The June 2010 position paper addressed only the allegations regarding the
6 LEP policy in MCSO's jails, and did not contain any information relating to the United
7 States' investigation of national origin discrimination in MCSO police practices. *Id.*

8 59. The June 2010 position paper attached 85 exhibits consisting of
9 approximately 800 pages of documents regarding MCSO's jail practices. *Id.* at 53.
10 These documents were fully responsive to two of the fifty-one requests in the First
11 Request. Ex. 62 (Email from Preston to Driscoll of 8/20/10); *see also* Ex. 56 (Letter
12 from Perez to Driscoll of 8/3/10, at 2 n.2).

13 60. On August 3, 2010, the United States notified Defendants that MCSO "is
14 not in compliance with its obligations under Title VI . . . to cooperate in the
15 investigation of alleged national origin discrimination undertaken by the Department
16 of Justice Civil Rights Division Absent MCSO's voluntary cooperation with this
17 investigation within two weeks – by August 17, 2010 – the Department will file a Title
18 VI civil action to compel access to the requested documents, facilities, and personnel."
19 Ex. 56 (Letter from Perez to Driscoll of 8/3/10, at 1).

20 61. In its response on August 5, MCSO raised objections to a finding of
21 noncompliance with Title VI, and requested "an opportunity to meet and confer in
22 order to identify what shortcomings the [Civil Rights] Division believes exists" in
23 MCSO's response to the investigation. Ex. 57 (Letter from Driscoll to Perez of
24 8/5/2010, at 4).

25 62. On August 12, 2010, the United States agreed to MCSO's request for a
26 meet-and-confer to determine whether litigation could be avoided, and advised that
27 litigation would follow "unless MCSO provides the complete cooperation outlined
28 herein." Ex. 58 (Letter from Perez to Driscoll of 8/12/10, at 3). The United States

1 explained that it expected MCSO to provide access to all pertinent sources of
2 information that the United States had requested: “MCSO cannot contend that it is
3 voluntarily complying with the Department’s investigation by choosing a selective
4 portion of the investigation as to which it will provide a partial and dilatory response,
5 while steadfastly continuing to refuse to produce the vast majority of the requested
6 documents or to permit access to any relevant facilities or personnel.” *Id.* at 2.

7 63. On August 12, 2010, Maricopa County acknowledged that as recipients of
8 federal financial assistance, Defendants were obligated to cooperate with the United
9 States’ investigation. Ex. 59 (Letter from Irvine to Perez of 8/12/10).

10 64. On the same day, County Manager David R. Smith instructed Defendant
11 Arpaio to cooperate with the United States’ investigation: “My letter is direction to
12 MCSO, as a sub-recipient through Maricopa County of Title VI funds, to fully
13 cooperate in any DOJ Title VI inquiry, and to not expend any public monies resisting
14 the DOJ’s Title VI inquiry in any way. In addition, you should have the August 5,
15 2010 Driscoll letter rescinded and, in its place, provide the DOJ contractual assurances,
16 signed by the appropriate MCSO representatives, that MCSO will fully cooperate in
17 the DOJ’s Title VI inquiry.” Ex. 60 (Letter from Smith to Arpaio of 8/12/10, at 1).

18 65. MCSO responded to the County on August 13, 2010, and refused to
19 comply with the County’s instruction. Ex. 61 (Letter from Driscoll to Smith of
20 8/13/10).

21 66. On August 20, 2010, in advance of the meet-and-confer, the United States
22 advised MCSO that it considered the documents produced with MCSO’s June 2010
23 position paper to be fully responsive to two of the fifty-one requests in the First
24 Request, and that it considered documents requested of MCSO in the related litigation
25 captioned *Melendres v. Arpaio*, No. 2:07-cv-02513-PHX-GMS (D. Ariz.), to be
26 coextensive with five additional requests. Ex. 62 (Email from Preston to Driscoll of
27 8/20/10). The United States reiterated that it considered the remaining forty-four
28 requests to still be entirely outstanding, and also advised MCSO that the United States

1 intended to secure MCSO's agreement at the meet-and-confer to permit access to
2 MCSO's staff and facilities. *Id.*

3 67. The afternoon before the meet-and-confer, MCSO asked that the United
4 States disclose the specific underlying complaints or complainants who may have
5 alleged national origin discrimination. Ex. 63 (Email from Driscoll to Preston of
6 8/23/10).

7 68. The United States responded the same day that there was no requirement
8 that any specific complaint be communicated to MCSO. Ex. 64 (Email from Preston
9 to Driscoll of 8/23/10). The United States nonetheless specified that the investigation
10 entailed "numerous credible and specific allegations of national origin discrimination
11 related to jail operations and police practices, including, inter alia, stops, searches, uses
12 of force, detention, arrests, and other police practices." *Id.*

13 69. More than a year earlier, the United States had explained, in response to
14 the same request from MCSO, that there was no obligation to identify specific
15 complainants or allegations of discrimination. Ex. 49 (Letter from Cutlar to Driscoll
16 of 8/6/09).

17 70. Also on the afternoon before the meet-and-confer, MCSO asserted that
18 certain of the United States' document requests did not relate to any Title VI issues.
19 Ex. 63 (Email from Driscoll to Preston of 8/23/10). MCSO specified only one such
20 request (Request No. 16) out of the fifty-one requests for documents in the First
21 Request. *Id.*

22 71. The United States responded the same day that all "51 requests, including
23 Request 16 which you know goes to police behavior during vehicular and pedestrian
24 stops, will help us determine if MCSO is compliant with Title VI." Ex. 64 (Email
25 from Preston to Driscoll of 8/23/10).

26 72. The United States and MCSO held a meet-and-confer on August 24, 2010.
27 Ex. 65 (Letter from Preston to Driscoll of 8/25/10, at 1). The following day, the
28 United States set out its expectations of cooperation and requested that MCSO produce

1 all outstanding documents within two weeks, and that MCSO allow access to
2 identified staff and facilities within thirty days. *Id.* at 1-2. The United States advised
3 MCSO that absent agreement to these requests by August 27, 2010, the United States
4 would determine that compliance could not be secured by voluntary means. *Id.* at 2, 5.

5 73. On August 27, 2010, MCSO advised the United States by letter that it
6 would not provide full cooperation with the United States' requests for access to
7 sources of information. Ex. 66 (Letter from Driscoll to Preston of 8/27/10). MCSO
8 wrote that "[w]e . . . certainly did not agree that every document DOJ requested is
9 required to be produced in a Title VI investigation." *Id.* at 4. MCSO also wrote that it
10 would not agree to any deadline for document production: "[W]e did not agree to a
11 September 10, 2010 deadline at our meeting, and we cannot agree to one now. . . . We
12 can advise you of timing more specifically as matters progress." *Id.* MCSO also
13 wrote that records produced in the lawsuit captioned *Melendres v. Arpaio*, No. 2:07-
14 cv-02513-PHX-GMS (D. Ariz.), may be responsive to certain of the United States'
15 document requests; and MCSO specified documents within the *Melendres* production
16 that it identified as partially responsive to eleven of the fifty-one requests in the First
17 Request. *Id.* at 3; Ex. 67 (Letter from Driscoll to Preston of 8/27/10 re: "First
18 *Melendres* Cross-Reference").

19 74. On September 2, 2010, the United States notified Defendants that they had
20 failed to comply with Title VI, its implementing regulations, and the related
21 contractual assurances; that the United States had determined that compliance could
22 not be secured by voluntary means; and that the United States would commence civil
23 litigation to effect compliance. Ex. 68 (Letter from Perez to Driscoll of 9/2/10).

24 Dated: September 13, 2010

Respectfully submitted,

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Assistant Attorney General

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28 Dennis K. Burke

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