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 8

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF ARIZONA**

11 United States of America,

12 Plaintiff,

13 v.

14 Maricopa County, Arizona; Maricopa County
 Sheriff's Office; and Joseph M. Arpaio, in his
 15 official capacity as Sheriff of Maricopa
 County, Arizona,
 16

17 Defendants.

NO. CV10-01878-PHX-GMS

**DEFENDANTS' SEPARATE
 STATEMENT OF FACTS IN
 SUPPORT OF RESPONSE TO
 PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT**

18 Defendants, through counsel undersigned, submit their Separate Statement
 19 of Facts in Response to Plaintiff's Motion for Summary Judgment.

20 1. On March 10, 2009, the United States Department of Justice ("DOJ")
 21 initiated an investigation of the MCSO in accordance with the pattern or practice
 22 provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C.
 23 §14141("§14141") and the Omnibus Crime Control and Safe Streets Act of 1968, 42
 24 U.S.C. §3789d ("Safe Streets Act"), and the National Origin Component of Title VI of the
 25 Civil Rights Act of 1964, 42 U.S.C. §§2000d-2000d-7 ("Title VI") of the Safe Streets Act,
 26 42 U.S.C. §3789d(c). (**See Ex. 1 – U.S. Department of Justice letter dated March 10,**
 27 **2009 and PSOF Ex. 29)**

1 2. As stated in its opening letter, the DOJ was investigating “alleged
2 patterns and practices of discriminatory police practices and unconstitutional searches and
3 seizures conducted by the MCSO, and on allegations of national origin discrimination,
4 including failure to provide meaningful access to MCSO services for limited English
5 proficient (“LEP”) individuals.” (*Id.*)

6 3. On March 25, 2009, Merrily A. Friedlander, Chief of the
7 Coordination and Review Section (“COR”) of the Civil Rights Division (“CRD”) sent the
8 Maricopa County Attorney’s Office (“MCAO”) a follow up letter wherein she explained
9 that the COR was the DOJ section which investigated Title VI complaints. (*See Ex. 2 –*
10 **Merrily A. Friedlander letter dated March 25, 2009 and PSOF Ex. 32**)

11 4. In this March 25, 2009 letter, Ms. Friedlander explained that the
12 investigation of MCSO stemmed from a “complaint alleging discrimination on the basis
13 of national origin (Hispanic) by the Maricopa County Sheriff’s Office (MCSO) in the
14 operation of its jail facilities.” (*Id.*)

15 5. The referenced allegation specifically described the alleged lack of a
16 language assistance policy for LEP inmates and the existence of an alleged English only
17 policy in the jails as the basis for the Title VI investigation. (*Id.*)

18 6. The March 25, 2009 letter did not mention a Title VI police practices
19 investigation. (*Id.*)

20 7. Instead, it specifically requested a response to information requested
21 in Paragraphs 43-51 of the First Request for Documents and Information which
22 accompanied it. (*Id.*)

23 8. All nine of these requests exclusively addressed LEP issues and were
24 listed under a section entitled “Limited English Proficiency.” (*See Ex. 3 – First Request*
25 **for Documents and Information dated March 25, 2009 and PSOF Ex. 33**)

26 9. On April 30, 2009, representatives of DOJ’s Special Litigation
27 Section (“SPL”) and COR met with MCAO and MCSO representatives to discuss the
28

1 investigations and the First Request for Documents and Information. (**See Ex. 23 –**
2 **Affidavit of Clarisse McCormick, Esq.)**

3 10. During the meeting, DOJ attorneys stated that one part of the
4 investigation, the police patterns and practices investigation, was being handled by SPL,
5 while the Title VI portion of the investigation was being handled by COR. (**Id.**)

6 11. COR representatives explained that their investigation was focused
7 on national origin discrimination in the jail facilities and consisted of two components:
8 investigation of the allegations of a lack of guidance and access to LEP inmates and
9 allegations that the jail facilities had an English only policy. (**Id.**)

10 12. At no time during the April 30, 2009 meeting did COR suggest that
11 police practices, or any practices outside the jail facilities, were part of its Title VI
12 investigation. (**Id.**)

13 13. Before the MCSO submitted its LEP position paper pursuant to the
14 First Request for Documents and Information, SPL, COR and counsel for MCSO and the
15 Sheriff had numerous conversations pertaining to deadlines for Title VI related responses.
16 (**See Ex. 19 – Affidavit of Robert N. Driscoll, Esq.**)

17 14. These conversations, however, addressed only the LEP investigation;
18 at no point during any conversation did COR suggest that they sought information outside
19 of the LEP investigation. (**Id.**)

20 15. Not until August 3, 2010, when Assistant Attorney General Thomas
21 E. Perez sent a letter to counsel regarding the Title VI portion of the investigation, did the
22 DOJ suggest that police practices were a component of the Title VI investigation. (**Id.;**
23 **see also Ex. 4 - Thomas E. Perez letter dated August 3, 2010 and PSOF Ex. 56)**

24 16. In his August 3, 2010 letter, Mr. Perez acknowledged that MCSO had
25 responded to the LEP investigation, the only Title VI investigation of which the DOJ had
26 informed MCSO. (**Id.; see also Ex. 2 - Friedlander letter dated March 25, 2009 and**
27 **PSOF Ex. 32)**

1 17. MCSO submitted its LEP position paper in response to the LEP
2 investigation as requested. **(See Ex. 5 - MCSO Position Statement dated June 14, 2010**
3 **and PSOF Ex. 55)**

4 18. The position paper itself was 53 pages in length, accompanied by 85
5 exhibits comprising approximately 800 pages of supporting documentation. **(Id.)**

6 19. Defendants have provided and the United States has otherwise
7 received information and access relevant to its investigation. **(See Ex. 19 - Affidavit of**
8 **Robert N. Driscoll, Esq.; Ex. 20 - Affidavit of Chief Gerard Sheridan; Ex. 21 -**
9 **Affidavit of Lt. Ernest Alcala; and Ex. 22 - Affidavit of Sgt. James Seibert)**

10 20. Defendants have allowed and/or offered access to MCSO staff, as
11 well as the MCSO jail facilities set out in the United States August 25, 2010 letter to
12 MCSO. **(Id.)**

13 21. Defendants have also provided voluminous documentation in
14 response to the United States First Request for Documents and Information, despite a
15 disagreement regarding the proper scope of the United States' investigation and the
16 surreptitious tactics the United States employed to obtain information and documents with
17 the use of another federal agency, the Department of Homeland Security ("DHS"). **(Id.)**

18 22. The United States initiated an investigation alleging that MCSO
19 discriminates on the basis of national origin (Hispanic) in the operation of its jail facilities,
20 specifically alleging that the MCSO lacks a language assistance policy for limited English
21 proficient (LEP) inmates. **(See Amended Complaint; see also Ex. 2 – Friedlander**
22 **letter dated March 25, 2009 and PSOF Ex. 32)**

23 23. Despite a mention of discriminatory police practices in its initial
24 correspondence to Sheriff Arpaio on March 9, 2009, the DOJ sent a longer, more detailed
25 correspondence on March 25, 2009 in which it limited the scope of its investigation of
26 alleged national origin discrimination by the MCSO to alleged discrimination against
27 limited English proficient inmates in the Maricopa County jails. **(See Ex. 1 – DOJ letter**
28

1 **dated March 10, 2009; see also Ex. 2 –Friedlander letter dated March 25, 2009 and**
2 **PSOF Ex. 29 and 32)**

3 24. The March 25, 2009 letter defined the DOJ's investigation into
4 alleged MCSO Title VI non-compliance by referring only to a complaint regarding
5 language discrimination against Hispanics in the operation of its jails; in that letter,
6 however, the DOJ did not reveal that it intended to expand its investigation beyond the
7 MCSO's operation of jail facilities and, specifically, the LEP program to MCSO's police
8 function. It did not do so until August 2010. (*See Ex. 2 – Friedlander letter dated*
9 **March 25, 2009 and PSOF Ex. 32; see also Ex. 19 - Affidavit of Robert N. Driscoll,**
10 **Esq.; Ex. 6 – Robert N. Driscoll, Esq. letter dated August 5, 2010 and PSOF Ex. 57;**
11 **Ex. 7 – Robert N. Driscoll, Esq. letter dated August 13, 2010 and PSOF Ex. 61)**

12 25. As a result, the scope of the United States' compliance
13 review/investigation and its First Request went far beyond what is reasonable with regard
14 to the Title VI compliance review/investigation it defined. (*Id.*)

15 26. Accordingly, Sheriff Arpaio and previous counsel expressed concern
16 with a federal government investigation of MCSO that went well beyond language
17 efficiency programs in the Maricopa County Jail System and, instead, delved into venue
18 of MCSO law enforcement/police function—regardless of the investigation that the
19 United States itself defined. (*Id.*)

20 27. The Sheriff and counsel were entitled to question and did question
21 the apparent unreasonableness of the government's probe. (*Id.*; *see also Ex. 8 – Robert*
22 **N. Driscoll, Esq. letter dated May 29, 2009; Ex. 9 – Robert N. Driscoll, Esq. letter**
23 **dated June 18, 2009; and Ex. 10 – Robert N. Driscoll, Esq. letter dated August 27,**
24 **2010 and PSOF Ex. 66)**

25 28. With the United States own communication defining the scope of its
26 investigation, the unreasonableness of the scope of the United States' request for
27 information and investigation is clear. (**Ex 2 – Friedlander letter dated March 25, 2009**
28 **and PSOF Ex. 32; see also Ex. 19 - Affidavit of Robert N. Driscoll, Esq.)**

1 29. The MCSO questioned the propriety of the United States’
2 investigation and the unreasonable scope of its first request. (**See Ex. 6 – Driscoll letter**
3 **dated August 5, 2010 and PSOF Ex. 57; Ex. 19 - Affidavit of Robert N. Driscoll,**
4 **Esq.; see also Ex. 8 –Driscoll letter dated May 29, 2009; Ex. 9 – Driscoll letter dated**
5 **June 18, 2009; and Ex. 10 – Driscoll letter dated August 27, 2010 and PSOF Ex. 66)**

6 30. As a result, the United States covertly investigated the MCSO by
7 using the Department of Homeland Security (DHS) to obtain information and
8 documentation that the DOJ desired, but to which it was not entitled, in this investigation.
9 (**See Ex. 8 – Driscoll letter dated May 29, 2009 and Ex. 19 – Affidavit of Robert N.**
10 **Driscoll, Esq.)**

11 31. The DOJ surreptitiously entered into a document sharing
12 arrangement and deceptive scheme with the DHS to obtain interviews of MCSO
13 employees without the consent and outside the presence of counsel. (*Id.*)

14 32. The DOJ admittedly devised a plan whereby DHS would collect
15 MCSO documents and witness statements as a part of its routine audit of MCSO, with the
16 understanding that the DOJ would do the same with information gathered in its
17 investigation. (*Id.*)

18 33. Yet pursuant to MCSO counsel's inquiry, the DOJ made repeated
19 assurances that DHS did not have any role in DOJ's investigation. (*Id.*)

20 34. At no time did the DOJ bring their information sharing agreement
21 with DHS to the attention of MCSO counsel's attention. (*Id.*)

22 35. Interviews of represented MCSO individuals occurred despite the
23 fact that the DOJ attorneys knew that the individuals interviewed were represented by
24 counsel and that the DOJ had not received the consent of counsel to conduct interviews, in
25 violation of Rule 4.2(a), Arizona Rules of Professional Conduct, 4.2(a) of the District of
26 Columbia Rules of Professional Conduct. (*Id.*)

27 36. Title VI is a funding statute that prohibits intentional race, color and
28 national origin discrimination. As the United States has specifically defined it, the instant

1 Title VI investigation focuses on alleged national origin discrimination in the Maricopa
2 County Jails. (**See Ex. 6 – Driscoll letter dated August 5, 2010 and PSOF Ex. 57; see**
3 **also Ex. 19 - Affidavit of Robert N. Driscoll, Esq.)**)

4 37. Nevertheless, The United States has taken the position, that its police
5 practices investigation under Section 14141 falls under the umbrella of its Title VI
6 investigation and that it had the power to compel the MCSO, Sheriff Arpaio and Maricopa
7 County to provide it with information under Violent Crime Control and Law Enforcement
8 Act of 1994, 42 U.S.C. §14141 and the Omnibus Crime Control and Safe Streets Act of
9 1968, 42 U.S.C. §3789d. (**Id.; see also Ex. 7 – Driscoll letter dated August 13, 2010**
10 **and PSOF Ex. 61)**)

11 38. Defendants disagreed with this proposition and questioned the United
12 States fusing of its Title VI national origin-jail investigation, with its Section 14141
13 investigation into MCSO's police practices. (**See Ex. 6 – Driscoll letter dated August 5,**
14 **2010, PSOF Ex. 57; Ex. 7 – Driscoll letter dated August 13, 2010, PSOF Ex. 61; see**
15 **also Ex. 8 – Driscoll letter dated May 29, 2009; Ex. 9 – Driscoll letter dated June 18,**
16 **2009; Ex. 10 – Driscoll letter dated August 27, 2010, PSOF Ex. 66; and Ex. 19 -**
17 **Affidavit of Robert N. Driscoll, Esq.)**)

18 39. The Title VI investigation is directed only toward the alleged national
19 origin discrimination in the jails. (**See Ex. 2 –Friedlander letter dated March 25, 2009,**
20 **PSOF Ex. 32; see also Ex. 6 – Driscoll letter dated August 5, 2010, PSOF Ex. 57; Ex.**
21 **7 –Driscoll letter dated August 13, 2010, PSOF Ex. 61; see also Ex. 8 – Driscoll letter**
22 **dated May 29, 2009; Ex. 9 –Driscoll letter dated June 18, 2009; Ex. 10 –Driscoll letter**
23 **dated August 27, 2010, PSOF Ex. 66; and Ex. 19 - Affidavit of Robert N. Driscoll,**
24 **Esq.)**)

25 40. The Section 14141 investigation presents police practices issues that
26 do not implicate national origin (for example, use of force and firearms training, canine
27 policies, overtime policies and searches and seizure) and do not fall under the umbrella of
28 the subject Title VI investigation with which Sheriff Arpaio and the MCSO have

1 complied. (**See Ex. 7 –Driscoll letter dated August 13, 2010, PSOF Ex. 61 and Ex. 19 -**
2 **Affidavit of Robert N. Driscoll, Esq.)**

3 41. Sheriff Arpaio and the MCSO identified a genuine disagreement
4 regarding the unreasonableness of the scope of a police practices and national origin
5 investigation under Title VI before the filing of this action and the instant Motion. (**See**
6 **Ex. 8 – Driscoll letter dated May 29, 2009 and Ex. 19 - Affidavit of Robert N.**
7 **Driscoll, Esq.)**

8 42. The Sheriff and MCSO had every right to question the United States'
9 approach to these investigations and offered to resolve this disagreement cooperatively
10 through negotiations. (**See Ex. 6 – Driscoll letter dated August 5, 2010, PSOF Ex. 57;**
11 **Ex. 7 – Driscoll letter dated August 13, 2010, PSOF Ex. 61; and Ex. 19 - Affidavit of**
12 **Robert N. Driscoll, Esq.)**

13 43. The Sheriff and the MCSO explained their disagreement with the
14 scope of the United States' Title VI investigation in this regard, yet the United States filed
15 this action and this Motion complaining that the Sheriff and the MCSO have failed to
16 cooperate—despite the facts. The United States has taken the position that its authority in
17 a Title VI investigation is unlimited. (**See Amended Complaint; see also Ex. 10 –**
18 **Driscoll letter dated August 27, 2010, PSOF Ex. 66; Ex. 8 – Driscoll letter dated May**
19 **29, 2009; Ex. 9 – Driscoll letter dated June 18, 2009; and Ex. 19 - Affidavit of Robert**
20 **N. Driscoll, Esq.)**

21 44. In an August 24, 2010 meeting between DOJ and MCSO counsels,
22 the DOJ would not acknowledge that any issue was beyond the scope of the Title VI
23 investigation (including issues of use of force, to discipline of deputies, to uniform and
24 dress policies). (**See Ex. 10 – Driscoll letter dated August 27, 2010, PSOF Ex. 66; see**
25 **also Ex. 6 – Driscoll letter dated August 5, 2010, PSOF Ex. 57; Ex. 8 –Driscoll letter**
26 **dated May 29, 2009; Ex. 9 – Driscoll letter dated June 18, 2009; and Ex. 19 -**
27 **Affidavit of Robert N. Driscoll, Esq.)**

1 45. The United States contended that every document typically requested
2 in a police practices investigation, is also relevant to a Title VI investigation limited to
3 alleged national origin discrimination in the Maricopa County Jails. (*Id.*)

4 46. The MCSO became the subject of three independent investigations in
5 a matter of weeks after the change in Administration in Washington, D.C.: 1) the Civil
6 Rights Division Special Litigation Section's investigation into alleged pattern and
7 practices of Constitutional or legal violations; 2) the Coordination and Review Section's
8 investigation into allegations of discrimination against LEP individuals, and; 3) the
9 Department of Homeland Security's investigation into the MCSO's 287(g) program
10 (notwithstanding the complete absence of any previous complaints or concern from ICE
11 or DHS under the Memorandum of Agreement.) (**See Ex. 8 – Driscoll letter dated May**
12 **29, 2009 and Ex. 19 - Affidavit of Robert N. Driscoll, Esq.; see also PSOF Ex. 44**)

13 47. In fact, the DOJ's 100 day Progress Report released in April 2009,
14 treated the mere decision to open an investigation of the MCSO as an accomplishment in
15 and of itself, despite the fact that the merits and/or actual facts being investigated have yet
16 to be determined. (*Id.*)

17 48. Moreover, the Civil Rights Division Deputy acknowledged that
18 media reports provided the basis of the investigations, and that the DOJ was not yet in
19 possession of the facts that would establish a Constitutional violation. (*Id.*)

20 49. Furthermore, in February 2009, four Democratic members of the
21 House Judiciary Committee publicly called for an investigation of Sheriff Arpaio, despite
22 acknowledging the absence of any federal investigation establishing any misconduct of
23 Sheriff Arpaio or MCSO. (*Id.*; **see also Ex. 11 – U.S. House of Representatives**
24 **Committee on the Judiciary letter dated February 12, 2009; Ex. 12 – U.S. House of**
25 **Representatives Judiciary Committee Press Release dated February 13, 2009; and**
26 **Ex. 13 – CNS News article entitled “Sheriff Arpaio has ‘no intention’ of testifying**
27 **before Conyers Committee on alleged immigration enforcement abuses” dated**
28 **March 16, 2009)**

1 50. The United States argues that "[t]ransparent administration of
2 MCSO's police practices and jail operations is critical to the United States obligation to
3 ensure that public funds are not being used to finance illegal racial discrimination." (**Dkt.**
4 **18, p. 4**)

5 51. It also cites to an internet article regarding Sheriff Arpaio's
6 unwillingness to cooperate with the Department of Justice (DOJ). (*Id.*; *see also* **Ex. 13 -**
7 **CNS News article entitled "Sheriff Arpaio has 'no intention' of testifying before**
8 **Conyers Committee on alleged immigration enforcement abuses" dated March 16,**
9 **2009**)

10 52. Transparency does not require the "free access to the entire office"
11 (MCSO) that the DOJ insists upon. (*See* **Ex. 14 – July 7, 2009, 5:43 p.m. article**
12 **"Arpaio Done Cooperating with DOJ"; see also PSOF Ex. 47**)

13 53. Certainly, Robert Driscoll, Esq. and Sheriff Arpaio were both critical
14 of the ethical questionability of the DOJ's investigation of MCSO, including the political
15 nature of the investigation; yet the DOJ inappropriately insisted on unfettered access to
16 the MCSO, and the unreasonable scope of the investigation. (*Id.*; *see* **Ex. 6 – Driscoll**
17 **letter dated August 5, 2010, PSOF Ex. 57; Ex. 8 –Driscoll letter dated May 29, 2009;**
18 **Ex. 9 – Driscoll letter dated June 18, 2009; Ex. 10 – Driscoll letter dated August 27,**
19 **2010, PSOF Ex. 66; and Ex. 19 - Affidavit of Robert N. Driscoll, Esq.)**

20 54. Nevertheless, the United States has actually been the beneficiary of
21 the transparency and access it desires to conduct its compliance review under Title VI,
22 despite objections and hyperbole. (*Id.*)

23 55. Despite the unreasonableness and improprieties of the United States'
24 investigation, Sheriff Arpaio has granted the United States access to MCSO staff and
25 facilities as the United States requested in its August 25, 2010 letter, **contrary to the**
26 **United States' contention. (See Ex. 21 - Affidavit of Lt. Ernest Alcala; and Ex. 22 -**
27 **Affidavit of Sgt. James Seibert)**

1 56. Within twelve (12) days of their appearance, the undersigned counsel
2 met with five Assistant U.S. Attorneys in Phoenix to discuss the United States' First
3 Request and its investigation of MCSO, generally. (**See Ex. 20 - Affidavit of Chief**
4 **Gerard Sheridan**)

5 57. On November 2, 2010, five Assistant U.S. Attorneys met with
6 MCSO Chiefs Jerry Sheridan and Jack MacIntyre, as well as defense counsel, William R.
7 Jones, John T. Masterson and Joseph J. Popolizio at the offices of Jones, Skelton &
8 Hochuli, P.L.C. (**Id.**)

9 58. As a result of that meeting, Chiefs Sheridan and MacIntyre pledged
10 that the United States would receive access to MCSO facilities, staff, and inmates as
11 requested. (**Id.**)

12 59. During the November 2, 2010 meeting, Chief Sheridan offered to
13 commence the requested tours of the MCSO facilities that very afternoon. (**Id.**)

14 60. The United States declined that offer and, instead, elected to return
15 the following week to tour the MCSO facilities. (**Id.**)

16 61. One week later, on the morning of November 9, 2010, a team of DOJ
17 Attorneys from Washington, D.C. met with MCSO command staff and counsel at 4th
18 Avenue Jail. (**See Ex. 20 - Affidavit of Chief Gerard Sheridan; Ex. 21 - Affidavit of**
19 **Lt. Ernest Alcalá; and Ex. 22 - Affidavit of Sgt. James Seibert**)

20 62. During that meeting, MCSO command staff, once again, pledged to
21 cooperate with the DOJ's investigation. (**See Ex. 20 - Affidavit of Chief Gerard**
22 **Sheridan**)

23 63. At the conclusion of that meeting, a the DOJ attorney team began a
24 day-long tour of the Maricopa County Jails. (**See Ex. 20 - Affidavit of Chief Gerard**
25 **Sheridan; Ex. 21 - Affidavit of Lt. Ernest Alcalá; and Ex. 22 - Affidavit of Sgt. James**
26 **Seibert**)

27 64. Accompanied by MCSO tour guides Sergeant James Seibert and
28 Lieutenant Ernest Alcalá, as well as officers assigned to a given facility selected at

1 random, the DOJ team toured Fourth Avenue (including Central Intake), Durango,
2 Estrella, Towers, Lower Buckeye, and In Tents jail facilities—i.e. all of the Maricopa
3 County jail facilities that the United States requested to tour. **(See Ex. 21 - Affidavit of**
4 **Lt. Ernest Alcalá; and Ex. 22 - Affidavit of Sgt. James Seibert)**

5 65. Defense attorneys Popolizio and Masterson also attended the tours.
6 **(Id.)**

7 66. MCSO personnel and counsel complied with the DOJ team's every
8 request. **(Id.)**

9 67. During the jail tours, the DOJ team spoke directly to MCSO
10 detention officers, all of whom were allowed to speak freely with the DOJ Attorneys.
11 **(Id.)**

12 68. As the tours occurred, MCSO detention officers answered the DOJ
13 Attorney team's questions regarding the particular jails, including pods within the jails,
14 jail programs, the provision of medical care, as well as inmate (including LEP inmate)
15 access to programs and medical care. **(Id.)**

16 69. Neither defense counsel nor present command staff curtailed the open
17 dialogue between the MCSO officers and the members of the DOJ team. **(Id.)**

18 70. In addition, during the facility tours, DOJ Attorney team members
19 also spoke with Correctional Health Services (CHS) personnel, the medical professionals
20 who provide medical care to inmates in the Maricopa County Jail system. **(Id.)**

21 71. During the tours, members of the U.S. Attorney team requested
22 medical and grievance forms available at each facility. **(Id.)**

23 72. Each request was granted without hesitation. **(Id.)**

24 73. Furthermore, MCSO Sergeant James Seibert provided the DOJ
25 Attorneys with MCSO duty rosters as requested and pledged to provide inmate rosters the
26 next morning when the DOJ Attorneys were scheduled to commence inmate and
27 command staff interviews. **(Id.)**

1 74. As initially agreed, inmate and MCSO command staff interviews
2 were scheduled to commence on November 10, 2010. (**See Ex. 20 - Affidavit of Chief**
3 **Gerard Sheridan**)

4 75. The United States, however, postponed their commencement. (*Id.*)

5 76. Instead, the U.S. Attorneys elected to commence inmate interviews
6 on November 16, 2010 and to postpone command staff interviews indefinitely. (*Id.*)

7 77. As with the inmate interviews, MCSO has pledged cooperation
8 regarding the DOJ interviews of MCSO staff which will occur in the future. (*Id.*)

9 78. The MCSO is patiently awaiting word from the DOJ regarding when
10 it would like to commence MCSO staff interviews. (*Id.*)

11 79. The DOJ has already received interviews of MCSO officials,
12 however. Pursuant to an agreement with MCSO, the DOJ has received videotapes and
13 transcripts of interviews with 21 top MCSO officials in connection with *Melendres v.*
14 *Arpaio, et al*, No. CV-07-2413-PHX-GMS, a case involving allegations of racial profiling
15 by the MCSO.

16 80. Pursuant to the United States' request, inmate interviews were
17 scheduled to occur November 16, 17, 18, 19, 22, 23, 24, and 30, as well as December 2
18 and 3, 2010; these interviews have proceeded as requested, unless the teams of Assistant
19 United States Attorneys and their interpreters altered their requested schedule. (**See Ex.**
20 **21 - Affidavit of Lt. Ernest Alcalá; and Ex. 22 - Affidavit of Sgt. James Seibert**)

21 81. The MCSO/Sheriff Arpaio has accommodated every request by a
22 DOJ interview team to alter the inmate interview schedule, also. (*Id.*)

23 82. In addition, MCSO staff accommodated the United States by
24 accepting the United States requested inmate interview schedule, by providing it with
25 legal rooms to conduct ex parte interviews at each facility and by accommodating several
26 teams consisting of Assistant United States Attorneys and interpreters to conduct
27 interviews simultaneously. (**See Ex. 20 - Affidavit of Chief Gerard Sheridan; Ex. 21 -**
28 **Affidavit of Lt. Ernest Alcalá; and Ex. 22 - Affidavit of Sgt. James Seibert**)

1 83. All of this occurred in addition to the previously scheduled tours and
2 visits of other organizations. (*Id.*)

3 84. The United States' requested inmate interview schedule was as
4 follows: November 16, 2010 (two teams--one full day/one just in the afternoon);
5 November 17 and 18, 2010 (two teams all day); November 19, 2010 (one team all day);
6 November 22 and 23, 2010 (two teams all day); November 24, 2010 (one team all day);
7 November 30, December 2, and December 3, 2010 (two teams all day). (*Id.*)

8 85. Through December 3, 2010, the DOJ teams, pursuant to their
9 requests, conducted approximately 54 hours of interviews of 86 inmates selected from
10 inmate rosters at Estrella, Durango, Tents, and Lower Buckeye jails. (*Id.*)

11 86. And more interviews may occur in the future. (*Id.*)

12 87. The postponement of the command staff interviews was, in part, due
13 to the voluminous MCSO documentation that the United States had received on
14 November 5, 2010 via overnight delivery in response to the First Request and pursuant to
15 the pledge of MCSO Chiefs at the aforementioned November 2, 2010 meeting. (*Id.*)

16 88. The documentation consisted of all of the MCSO policies (1101
17 pages) that the United States requested within the First Request. (*Id.*)

18 89. The MCSO has provided other documentation in response to the
19 DOJ's First Request and before the filing of this action and Motion. (*See Ex. 15 –*
20 **Maricopa County Attorney's Office letter dated May 12, 2009, PSOF Ex. 39; Ex. 16**
21 **– Robert N. Driscoll, Esq. letter dated August 25, 2009; Ex. 17 – Robert N. Driscoll,**
22 **Esq. letter dated September 16, 2009; and Ex. 18 – Robert N. Driscoll, Esq. letter**
23 **dated August 27, 2010 regarding first *Melendres* cross-reference list of documents,**
24 **PSOF Ex. 67)**

25 90. These designated documents go beyond DOJ's requests associated
26 with LEP and into the realm of police function, despite the dispute between the parties
27 regarding the proper scope of the Title VI investigation. (*Id.*)

1 91. Moreover, the DOJ has presumably received documentation and
2 interview information pursuant to its "deal" with the DHS. **(See Ex. 18 – Driscoll letter**
3 **dated August 27, 2010 regarding first Melendres cross-reference list of documents,**
4 **PSOF Ex. 67 and Ex. 19 - Affidavit of Robert N. Driscoll, Esq.)**

5 92. What's more, the MCSO has designated documents disclosed in
6 *Melendres v. Arpaio, et al*, No. CV-07-2513-PHX-GMS, (approximately 12,850 pages) as
7 responsive to the DOJ's First Request, as requested in the August 25, 2010 letter. **(Id.)**

8 93. It did so on August 27, 2010. **(Id.)**

9 94. Further, the MCSO has also provided 11 documents associated with
10 grievance and visitation processes, as well as 808 pages of documents in support of its
11 LEP position paper. **(See Ex. 20 - Affidavit of Chief Gerard Sheridan)**

12 95. But the production does not stop there. **(Id.)**

13 96. On December 10, 2010, the MCSO and Sheriff Arpaio sent via
14 Federal Express a hard drive containing 931 gigabytes of documentation responsive to the
15 First Request, also. **(Id.)**

16 97. As discussed with the DOJ, even more is yet to come. As the DOJ is
17 aware, undersigned counsel has received 116 boxes of documents in response to the First
18 Request, which must be either placed in electronic format or made available to DOJ
19 counsel for review, to avoid the exorbitant cost of reproducing hundreds of thousands of
20 pages. **(Id.)**

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DATED this 10th day of December, 2010.

JONES, SKELTON & HOCHULI, P.L.C.

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