

EXHIBIT 6

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August 5, 2010

VIA E-MAIL (Phyllis.Thomas@usdoj.gov)
FIRST CLASS MAIL

The Honorable Thomas E. Perez
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20003

Re: Response to August 3, 2010 letter regarding DOJ investigation pursuant to
Title VI of the Civil Rights Act of 1964

Dear Messr. Perez:

I write in response to your letter on behalf of the Civil Rights Division ("Division") of the U.S. Department of Justice ("DOJ") to counsel for the Maricopa County Sheriff's Office ("MCSO"), dated August 3, 2010. I wish to respond to several of the points raised in your letter as well as to highlight certain key issues regarding your assertion that MCSO has not cooperated with the Division's investigation under Title VI of the Civil Rights Act of 1964.

I. The Division is improperly conflating its Title VI investigation into MCSO's jails with its Section 14141 investigation into MCSO's police practices.

According to your letter, the Division apparently contends that MCSO "is not in compliance with its obligations under Title VI . . . to cooperate in the investigation of alleged national origin discrimination undertaken by the [Division]." MCSO strongly disagrees with this contention. The Division's allegation totally ignores the important distinction between DOJ's Title VI investigation, conducted by the Coordination and Review Section ("COR"), and DOJ's investigation under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), conducted by the Special Litigation Section.

As you are no doubt aware, Title VI and Section 14141 are distinct statutes, each with different purposes, different provisions, and different enforcement mechanisms.

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Your letter ignores this fact and begins with the unwarranted assumption that Title VI—a funding statute prohibiting (for purposes of this investigation) intentional national origin discrimination in federally-funded programs—somehow requires cooperation with the Division’s broad and ill-defined Section 14141 investigation, which seeks information on nearly every aspect of law enforcement policy and practice by the MCSO.

From the initiation of this investigation, DOJ has consistently made it clear that the portion of DOJ’s investigation that falls under Title VI relates only to MCSO’s jails. The Division’s March 10, 2009 letter to MCSO announcing the opening of the Division’s investigation specifically distinguished between its investigation into “patterns or practices of discriminatory police practices and unconstitutional searches and seizures” by MCSO, which falls under Section 14141 and is handled by the Special Litigation Section, and the Division’s investigation into national origin discrimination related to allegations that MCSO “fail[ed] to provide meaningful access to MCSO services for limited English proficiency (LEP) individuals” in its jails, which clearly falls under Title VI and is investigated by COR.¹

DOJ subsequently reiterated this distinction in letters to MCSO. On March 25, 2009, Shanetta Cutlar, then Chief of the Special Litigation Section, sent a letter to MCSO containing DOJ’s “First Request for Documents and Information” and also attaching a letter from Merrily Friedlander, Chief of COR.² According to Ms. Cutlar, Ms. Friedlander’s letter “provide[d] additional details regarding *those aspects of our investigation related to prohibitions against national origin discrimination.*”³ Thus, Ms. Cutlar’s letter expressly indicated that aspects of the Division’s investigation not addressed in Ms. Friedlander’s letter do not relate to prohibitions against national origin discrimination under Title VI.

This fact was confirmed by Ms. Friedlander’s letter, in which she indicated that COR was “initiating an investigation of a complaint alleging discrimination on the basis of national origin” by MCSO in the operation of its jails.⁴ As Ms. Friedlander noted, “COR is responsible for investigating complaints against recipients of federal financial assistance from DOJ under Title VI . . . and the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968.”⁵

Thus, pursuant to both Ms. Cutlar’s letter and Ms. Friedlander’s letter, it is clear that the only part of the Division’s investigation of MCSO that relates to Title VI is the

¹ Exhibit A at 1.

² Ms. Cutlar’s letter is attached hereto as Exhibit B. Ms. Friedlander’s letter is attached hereto as Exhibit C

³ Exhibit B at 1 (emphasis added).

⁴ Exhibit C at 1.

⁵ *Id.* at 2.

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investigation of allegations of national origin discrimination in MCSO's jails.⁶ As such, the only basis upon which the Division could even potentially contend that MCSO is not in compliance under Title VI is with respect to MCSO's cooperation with COR's investigation of MCSO's jails. And, as fully addressed below, MCSO has fully cooperated with COR's investigation and continues to stand willing to further assist in that investigation.

II. MCSO has fully cooperated with COR's Title VI investigation and stands ready to provide further assistance.

Contrary to your assertion in your August 3, 2010 letter, MCSO has fully cooperated with COR's Title VI investigation into MCSO's jails. Further, MCSO remains committed to such cooperation going forward.

In her March 25, 2009 letter to MCSO, Ms. Friedlander requested that MCSO provide COR with "a position statement responding to the allegations of discrimination" outlined in the letter relating to LEP services in MCSO's jails.⁷ As your August 3, 2010 letter rightly noted, MCSO has provided the position statement to COR as requested. It is also significant to note that, despite MCSO's request in the position statement that DOJ contact MCSO if DOJ "ha[d] any questions or would like any additional information" related to the Title VI investigation, DOJ has not made any additional requests for information from MCSO since MCSO submitted the position paper.

In her March 25, 2009 letter, Ms. Friedlander also requested that MCSO provide the information requested in paragraphs 43-51 of the Division's "First Request for Documents and Information." MCSO has complied with this request by submitting more than 800 pages of responsive documents in conjunction with its position paper.

It is significant to note that, in light of the fact that Ms. Cutlar and Ms. Friedlander both agreed that Ms. Friedlander's letter addressed the Division's Title VI investigation, MCSO understands that paragraphs 43-51 of the Division's "First Request for Documents and Information" are the requests that relate to the Title VI investigation. MCSO understands the remaining requests to relate to the Division's separate Section 14141 investigation. Given the distinction between the Title VI investigation and the Section 14141 investigation discussed in Section I of this letter, MCSO understands that the Division does not and could not, as a matter of law, contend that MCSO's decision

⁶ The government's investigation of MCSO police practices under Section 14141 is not pursuant to Title VI. As you are well aware, Section 14141 does not grant the Division subpoena power. To the extent that the Division now contends that Title VI somehow mandates that MCSO must cooperate with the Division's Section 14141 investigation, MCSO would respectfully request that the Division provide its legal basis for such a contention. In MCSO's view, conflating compliance obligations under Title VI with a separate investigation under Section 14141 would be an absolutely novel legal theory which has no support in the statutes, the implementing regulations, or case law.

⁷ Exhibit C at 3.

not to respond to document requests made pursuant to a Section 14141 investigation constituted a violation of Title VI. Given this fact, and given that Section 14141 does not provide the Division with subpoena power, MCSO continues to assert its right not to reply to the Division's requests that MCSO produce documents related only to the Division's Section 14141 investigation.

Thus, it is clear that MCSO has complied with Ms. Friedlander's requests for information related to the Title VI investigation and that any obligation to cooperate has been satisfied because every request made in the Title VI investigation has been complied with. To the extent that the Division believes that there are deficiencies in MCSO's efforts to provide the information requested, MCSO would seek an opportunity to meet and confer with the Division in order to identify what shortcomings the Division believes exist.

III. The Division's threat to bring a federal suit is premature.

Your August 3, 2010 letter indicates that you will "initiate civil litigation under Title VI to compel compliance" as of August 17, 2010. This threat of suit is premature given MCSO's willingness to cooperate with the Division's Title VI investigation.

As discussed above, MCSO has made good faith efforts to cooperate with the Division's Title VI investigation. Furthermore, MCSO stands ready and willing to meet and confer with the Division to address any concerns that the Division might have with regard to MCSO's cooperation and production of documents related to investigation of the complaint that forms the basis of the Title VI investigation. Thus, pursuant to 28 C.F.R. § 42.108(d), there cannot have been a determination on the part of the Division that compliance cannot be obtained by voluntary means. As such, to the extent that the Division believes that a federal civil suit to compel production of documents and information is authorized by law,⁸ such action would not yet be permissible under 28 C.F.R. § 42.108(d) because MCSO is committed to voluntary compliance with the Division's Title VI investigation.

IV. DOJ has no authority to compel cooperation with its Section 14141 investigation.

Section 14141 does not provide the Division with administrative subpoena power or the authority to conduct interviews of MCSO. Section 14141 thus places DOJ in the position of every other civil litigant. If DOJ has a good faith basis for believing a pattern and practice of constitutional or other violations of law exist, DOJ can file suit on that basis. This limitation on the Division's investigative authority under Section 14141

⁸ I would note in this regard that MCSO is not aware of, and your letter does not cite, any federal statute which would authorize DOJ to bring a suit to compel compliance with a Title VI investigation under these circumstances.

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reflects a reasoned decision by Congress to balance the investigative needs of the Division against the rights and interests of targets of DOJ investigations.⁹

Through your letter, the Division seeks to shoe-horn a broad police practices investigation under Section 14141 into a relatively narrow Title VI investigation relating to LEP services in jails. This is a transparent attempt to circumvent Congress's limitation of the Division's investigative authority in Section 14141 cases. The Division's overreaching thus violates the core separation of powers principles that are at the heart of our system of government. Much as the Division may find it distasteful, in the context of Section 14141 investigations, the Division, like every other civil litigant, cannot take unfettered, pre-suit discovery in the hopes of finding the basis upon which to eventually build a complaint, which is exactly what your letter seeks to do in this case.

Should the Division now contend, contrary to all prior communications on the topic, that some portion of the Special Litigation Section's Section 14141 investigation falls within the scope of Title VI, the Division would need to provide significant clarification to MCSO. The Division would need to articulate the basis upon which the Division asserts Title VI jurisdiction over a police pattern and practice investigation, particularly in light of the fact that MCSO field operations are no longer operating under a 287(g) contract. The Division would also need to articulate which portions of its First Request for Documents and Information purportedly fall within the scope of Title VI as relating to allegations of intentional racial or national origin discrimination and detail the allegations of discriminatory conduct, as it has with the jail LEP issue.¹⁰

As it stands now, the Division's desperate attempt to find a way to compel MCSO to produce documents related to a Section 14141 investigation, even though the Division clearly lacks such compulsory power, demonstrates a disregard for fundamental limitations on federal authority in our system of government. It is particularly disappointing that the Division, which of all components of DOJ should be wary of wide-

⁹ Indeed, it is strange that the Division apparently interprets its lack of subpoena power in Section 14141 cases not as a restriction on its power, but as an invitation to engage in *carte blanche* discovery requests of all aspects of law enforcement policies and practices without the focus, judicial supervision, and identification of a claim that a subpoena would require. It would seem more likely that the drafters of 14141 contemplated that, as in most civil litigation, discovery would commence after, pursuant to FRCP Rule 11, the Division conducted some legitimate, independent investigation in a Section 14141 prior to filing a complaint. By proceeding in this manner, some good faith basis of for allegations of wrongdoing would have to exist prior to the Division publicly smearing the reputation of the subject of the investigation by declaring the mere opening of the investigation a praise-worthy "accomplishment" as the DOJ has done in this case.

¹⁰ For example, it is clear that paragraph 16 of the requests, requesting "all policies, procedures and manuals" would include a wide variety of documents that have absolutely no conceivable relevance or relation to any allegation of intentional racial or national origin discrimination. Such unreasonably broad document requests are impermissible in the context of a Title VI investigation. See *United States v. Harris Methodist Fort Worth*, 970 F 2d 94 (5th Cir 1992).

ranging governmental assertions of power untethered to statutory and constitutional limitations, would engage in such conduct.

V. The Division has more than sufficient evidence to evaluate MCSO's police practices.

Setting aside the clear distinction between Section 14141 and Title VI, as a practical matter, DOJ has more than enough information to evaluate whether or not "discriminatory policing" has occurred in Maricopa County, to the extent that allegations of such conduct for the basis of the Section 14141 investigation. Indeed, it is difficult to imagine a more transparent Sheriff's Office in this regard.

Sheriff Arpaio routinely announces his crime suppression sweeps in advance of such operations. Based upon these announcements, the ACLU, MALDEF, other advocacy groups, and countless television media outlets have filmed MCSO personnel enforcing the law (including immigration related laws) on hundreds of occasions. The bottom line is that MCSO's enforcement of immigration-related laws is no secret.

Moreover, the Division has already gained access to voluminous information, including arrest records, that MCSO produced in *Melendres v. Arpaio*, No. CV-07-02513 (D. Ariz. filed July 16, 2008), a case which involves allegations of racial profiling. In addition, as a part of an agreement reached with counsel for MCSO in that case, the Division has access to the deposition transcripts of a number of high level MCSO employees.

In addition, the Division has conducted its own investigations in Maricopa County, including numerous meetings with local individuals and advocacy groups. In fact, the Division went so far as to set up a 1-800 number to solicit complaints against the MCSO from Maricopa County residents.

Furthermore, until quite recently, immigration enforcement activities of MCSO were conducted under a Section 287(g) agreement with Immigration and Customs Enforcement ("ICE"). ICE conducted its own review of MCSO's immigration enforcement practices and did not find any evidence of racial profiling. To the extent that the Division wishes to obtain ICE's report on this issue, it should be easily obtainable as MCSO obtained a copy through a routine FOIA request.

Given the wealth of available information about MCSO's policing policies and practices that has already been obtained by the Division or is readily available to the Division, it is apparent that if the basis for a Section 14141 suit existed, that basis should have been clear to the Division long ago. If that is the case, Section 14141 provides a clear vehicle by which the Division can sue MCSO. If no such basis exists, however,

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perhaps it is time for DOJ to stop its public relations campaign against Sheriff Arpaio and MCSO.

Conclusion

I appreciate the Division's consideration of the various issues discussed herein. Should the Division wish to schedule a time to meet and confer regarding any concerns that the Division has about MCSO's production of documents and information related to the Title VI investigation, please do not hesitate to contact me.

Given your threatened deadline to file suit as of August 17, 2010, MCSO requests and would appreciate your or your designee's prompt response in addressing the various questions posed herein. Also, as a courtesy, I would request that you distribute this letter to the same list of media outlets to which you distributed your August 3, 2010 letter so that MCSO's response can receive the same amount of publicity as your initial letter.¹¹

MCSO looks forward to continuing its cooperation with the Division's Title VI investigation.

Sincerely,



Robert N. Driscoll

Cc:Eric Dowell, Ogletree Deakins
Asheesh Agarwal, Ogletree Deakins
Judy Preston, Special Litigation Section
Mark Kappelhoff, Acting Chief, Coordination and Review Section

¹¹ I noted with interest that these outlets had copies of the letter nearly simultaneous with my receipt of it from your assistant via email.

Exhibit A



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 10 2009

VIA FIRST CLASS MAIL

Sheriff Joseph Arpaio
Maricopa County Sheriff's Office
100 West Washington
Suite 1900
Phoenix, AZ 85003

RE: Investigation of the Maricopa County Sheriff's Office

Dear Sheriff Arpaio:

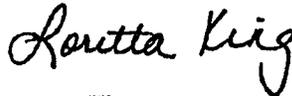
This is to inform you that the United States Department of Justice is commencing an investigation of the Maricopa County Sheriff's Office ("MCSO") pursuant to the pattern or practice provisions of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141") and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"), and pursuant to the prohibitions against national origin discrimination in Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI") and the Safe Streets Act, 42 U.S.C. § 3789d(c). Our investigation will focus on alleged patterns or practices of discriminatory police practices and unconstitutional searches and seizures conducted by the MCSO, and on allegations of national origin discrimination, including failure to provide meaningful access to MCSO services for limited English proficient (LEP) individuals.

In conducting the investigation, we will seek to determine whether there are violations of the above laws by the MCSO. We have not reached any conclusions about the subject matter of the investigation. We believe that you and other MCSO officials want to operate the MCSO consistent with the requirements of the Constitution and federal law. During the course of our investigation, we will consider all relevant information, particularly the efforts the MCSO has undertaken to ensure compliance with federal law. We also will offer to provide recommendations on ways to improve practices and procedures, as appropriate. Provided that the MCSO cooperates fully with our investigation, if we conclude that there are not systemic violations of constitutional or other federal rights, we will notify you that we are closing the

investigation. If, on the other hand, we conclude there are such violations, we will inform you of the findings and attempt to work with the MCSO to remedy any such violations. In addition, we will identify any financial, technical, or other assistance the United States may be able to provide to assist the MCSO in correcting the identified deficiencies.

Our enforcement of the Violent Crime Control and Law Enforcement Act of 1994 has involved a variety of state and local law enforcement agencies, both large and small, in jurisdictions such as New York, California, New Jersey, Georgia, the District of Columbia, and Ohio. In nearly fifteen years of enforcing this statute, the good faith efforts of state and local jurisdictions working with us have enabled us routinely to resolve our claims without resorting to contested litigation. We have had similar success addressing claims of national origin discrimination under Title VI and the Safe Streets Act. We encourage the MCSO to cooperate with our investigation and can assure you that we will seek to minimize any potential disruption our efforts may have on the operations of the MCSO. Our Special Litigation Section will be handling the investigation in cooperation with the Coordination and Review Section and will contact your office to discuss the next steps. The Chief of the Special Litigation Section, Shanetta Y. Cutlar, may be reached at (202) 514-6255.

Sincerely,



Loretta King
Acting Assistant Attorney General

cc: Andrew Thomas
County Attorney
Maricopa County

Max Wilson
Chairman, Board of County Supervisors
Maricopa County

The Honorable Diane J. Humetewa
United States Attorney
District of Arizona

Exhibit B



U.S. Department of Justice
Civil Rights Division

SYC:DHW:AA:NA:pjc
DJ 207-8-8

Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

March 25, 2009

VIA ELECTRONIC AND U.S. MAIL

Clarice McCormick, Esq.
Maricopa County Attorney's Office
222 North Central Avenue
Suite 1100
Phoenix, AZ 85004

RE: Investigation of the Maricopa County Sheriff's Office

Dear Ms. McCormick:

We appreciate the Maricopa County Sheriff's Office's (MCSO) pledge to cooperate with our investigation, and we renew our commitment to conduct the investigation in a fair, objective and efficient manner. As we discussed, enclosed please find our "First Request for Documents and Information." Also enclosed is a separate letter from Merrily Friedlander, Chief of the Coordination and Review Section, which provides additional details regarding those aspects of our investigation related to the prohibitions against national origin discrimination.

We request that you produce all requested documents and materials by May 1, 2009. As we discussed, please advise if any of our requests is unclear. Please also include any related additional material we may not have requested, but you wish us to consider. Materials sent electronically should be delivered to Amin.Aminfar@usdoj.gov. Materials being sent by hard copy should be delivered to us at the following address:

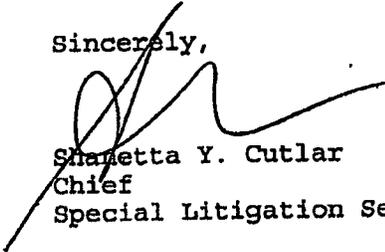
Amin Aminfar
Trial Attorney
Special Litigation Section
Civil Rights Division
601 D Street, NW
Washington, DC 20004

We reiterate our offer to meet with you and MCSO officials to discuss our investigation. Please let us know if you would like to schedule a meeting. Thank you in advance for your

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continued cooperation. If you or MCSO staff have any questions or concerns regarding the foregoing, please do not hesitate to contact us. You may reach Deputy Chief Daniel Weiss at (202) 616-6594, or me at (202) 514-6255.

Sincerely,



Shanetta Y. Cutlar
Chief
Special Litigation Section

Enclosures

INVESTIGATION OF THE
MARICOPA COUNTY SHERIFF'S OFFICE

FIRST REQUEST FOR DOCUMENTS AND INFORMATION

Please provide copies of all of the documents and materials listed below, from January 1, 2008, to the date of production, unless otherwise stated. For information maintained in electronic format, we request that you provide the information in the same format and identify the software program and version required to read the file, and also provide any explanatory information necessary to understand the structure of the file (in the case of databases, for example). For materials not maintained electronically, please provide hard copies. If you believe that any documents or information that are not identified below would assist our review of relevant issues, as set forth below, please do not hesitate to provide such documents and information.

Please feel free to contact us to discuss any questions or concerns regarding this request. If responsive documents or information do not exist, we ask that you affirmatively inform us of the same or provide us with documents that contain substantially similar information.

ORGANIZATIONAL STRUCTURE AND GENERAL INFORMATION

1. ~~A current organizational chart, delineating all components~~ within the Maricopa County Sheriff's Office ("MCSO"), including operational sub-divisions, such as regions, areas, districts, or precincts (or comparable sectors). Please indicate MCSO's reporting relationship to the rest of the Maricopa County ("County") governmental structure.
2. For each unit or component within the MCSO organizational structure, including but not limited to specialized units that are not assigned to a specific station or precinct (e.g., SWAT, vice units, and rapid response teams), include a description of:
 - a. The function of each unit;
 - b. The location of each unit;
 - c. The area where each unit is deployed;
 - d. The protocol for activating each unit;
 - e. The number of officers, by rank, in each unit; and
 - f. The written criteria used to select personnel for assignment to these duties.

3. Identify and describe the function and reporting authority of all MCSO components or government entities (internal or external) that investigate or review allegations of misconduct, including unconstitutional searches and seizures and discriminatory policing.
4. The current number of sworn and unsworn MCSO personnel, broken down by precincts, districts (or comparable sectors), delineating title, including recruits, patrol officers, agents, investigators, sergeants, lieutenants, captains, inspectors, commanders, colonels, auxiliary superintendents, and any other "command staff."
5. The current number of all members of the voluntary group(s) known as the MCSO "posse," or other similar groups, broken down by precincts, districts (or comparable sectors), as well as by specialized assignment groupings and authorization to carry firearms. Please provide the policies and procedures, or otherwise identify, the selection criteria and training for members of such voluntary groups.
6. The current number and names of all MCSO personnel certified under the Memorandum of Agreement ("MOA") between the County and United States Immigration and Customs Enforcement ("ICE"), including a listing of personnel assigned to:
 - a. ~~Violent Fugitive Apprehension Squad~~
 - b. Criminal Investigation Section
 - c. Anti-Gang Unit
 - d. Drug Enforcement Unit
 - e. Community Action Teams
7. The number and names of all MCSO personnel that have had their certification under the MOA revoked pursuant to Section IX, whether by MCSO or by ICE. Include any documentation related to such revocation.
8. All minutes of meetings of the Steering Committee convened under Section XVI of the MOA.
9. All collective bargaining agreements currently covering MCSO police personnel, including command staff.
10. Any reports or summaries related to MCSO's accreditation by the Commission on Accreditation for Law Enforcement Agencies

("CALEA"), and any other accreditation sought by the MCSO in the last five years, whether or not MCSO ultimately received such accreditation.

11. All reports, plans, and other documents proposing reforms, organizational restructuring, operational enhancements, or other performance improvement initiatives that are currently under consideration, including their expected date of implementation, relating to: searches and seizures; equal protection; citizen and internal complaints; officer recruitment and selection; internal investigations; administrative action or disciplinary systems for officers or other MCSO employees; supervision; training; and accountability.
12. All studies, analyses, audits, inspections, memoranda, minutes of meetings, reports, or other documents from all review or investigative components or entities, internal and/or external to the MCSO, relating to searches and seizures and equal protection, including those relating to the MCSO 287(g) program and accompanying MOA. Include any County and/or MCSO response to such documents.
13. If applicable, all Inter-Governmental Services Agreements with ICE.
14. If applicable, a description of all technological purchases made by ICE pursuant to Section X of the MOA, including the rationale given for the purchased technology, the current location of the purchased technology, and all uses of the purchased technology.

POLICIES, PROCEDURES, AND RELATED MATERIALS

15. A description of MCSO's document retention policies and, where different and applicable, the document retention policies of the County.
16. All policies, procedures and manuals, including but not limited to general orders, standard operating procedures, orders, teletypes, bulletins, legal updates, and internal correspondence, including, but not limited to: searches and seizures; stops; frisks; arrests (including those for disorderly conduct, public intoxication, obstruction of justice, assault on a police officer, resisting arrest, and summary offenses); detention; transport of prisoners; physical restraints; brandishing of firearms; seizure and

- handling of evidence; handling of informal and formal complaints against police officers, whether filed by civilians or MCSO personnel; investigations misconduct complaints; administrative discipline and/or corrective action; community relations; and equal protection.
17. Sample copies of all forms used by the MCSO to document its law enforcement activities, including but not limited to control of persons reports, force reporting forms, incident reports, arrest reports, field incident reports, patrol logs, radio logs, call logs, arrest logs, seizure reports and logs, jail logs, desk sergeant logs and reports, and evidence logs. If any of the foregoing forms do not exist, please so state.
 18. All policies and procedures regarding the selection/nomination of MCSO personnel for training by ICE pursuant to the MOA.
 19. All policies and procedures related to the enforcement, prioritization, or execution of the authorized functions designated in Section V of the MOA.
 20. All policies or procedures related to notifying ICE of immigration enforcement activity authorized under the MOA, as described in Section XI.
 21. All policies and procedures related to MCSO's transportation of individuals detained for any reason at MCSO facilities to ICE detention facilities.
 22. All policies, procedures and manuals governing intake, investigation, classification, and disposition of citizen complaints (informal or formal). Provide a copy or other exemplar of forms, reports, and other documentation designed for use in the intake, investigation, disposition, and review of citizen complaints, including by not limited to the MCSO's citizen complaint form. Include all policies and procedures related to the complaint process outlined in Appendix B of the MOA, including the coordination of complaint handling between ICE and the MCSO.
 23. All policies and procedures related to the MCSO's provision of interpreters, telephonic or otherwise, to persons that it has detained, seized, arrested, or otherwise restrained in movement.

24. All written materials or resources available or given to members of the public that explain the MCSO's citizen complaint process.
25. Provide all documents or other information relating to management of the risk of police misconduct, including all written guidance provided to all MCSO supervisors, managers, or executives. Explain how MCSO supervisors monitor the risk of on- or off-duty misconduct or policy violation, including tortious or unconstitutional behavior, excessive force, discriminatory law enforcement, corruption, dishonesty, moral turpitude, or conduct unbecoming an officer by MCSO officers, including managers and supervisors.

TRAINING

26. A current schedule of training for new recruits or in-service training for existing MCSO personnel, from July 1, 2008 through June 30, 2009, including the training topics to be covered, and the date, time, and location of the training.
27. A current schedule of training for volunteer members of "posses" or similar volunteer groups.
28. All current training curricula for new recruits and current officers (i.e., in-service training), including roll-call training.
29. All training materials, including initial and updated training materials, relating to the MOA with ICE. In addition, include materials related to local training, as described in Section VII of the MOA.
30. Information indicating MCSO's officer annual compliance rate for required in-service training from January 1, 2008 until the present.
31. The Field Training Officer ("FTO") manual and all other documents pertaining to the criteria for the FTO program, including but not limited to: the selection of FTOs, the training of FTOs, and sample documents relating to the reporting, recording, management and accountability for the FTO program.
32. The current number of FTOs, broken down by precinct (or

comparable sector).

33. A copy of evaluation forms used to evaluate MCSO personnel, from probationary officers through supervisory staff. Production of forms should be accompanied by clear explanation of frequency of evaluation (annual, semi-annual) as well as how, and by whom, form is reviewed and endorsed by command personnel other than the direct supervisor (evaluator).

INCIDENT REPORTS, COMPLAINTS, AND INVESTIGATIONS

34. Provide all documents relating to MCSO officer arrests, including, but not limited to, arrest reports, blotter entries, incident reports, arrest warrants and supporting materials, booking logs, patrol logs, radio logs, videotapes, and any other documents related to arrests by MCSO officer from January 1, 2008 to the present.
35. All complaints and accompanying documentation, including resolution, if any, related to unlawful search and seizure or discriminatory policing, including any complaints or accompanying documentation submitted or generated pursuant to Appendix B of the MOA.

ACCOUNTABILITY

36. Describe disciplinary and appeal processes for MCSO officers.
37. Identify those personnel or entities authorized to review recommend and/or impose disciplinary or corrective action related to searches and seizures and equal protection practices by MCSO personnel.
38. A list of all incidents in which conflicts have arisen between MCSO rules, standards, and policies and the order or direction of a supervisory ICE officer, as described in Section XI of the MOA. Include a description of the nature of the conflict, the specific parties and directives involved, and the resolution of the conflict, if any.
39. A list of all filed (whether dismissed, pending, or resolved) civil and criminal cases, indictments or arrests, of or against the County and/or the MCSO and/or any sworn officers related to searches and seizures or equal protection from January 1, 2008 until the present. Include

the case number of the alleged incident and complaint, indictment, or arrest, the names of the officers specified in the complaint, indictment, or arrest, and the outcome. Also include any data in the possession of the MCSO that captures the number of prosecutions dismissed as a result of a judicial or prosecutorial finding of officer misconduct related to effectuating searches or seizures and equal protection practices.

40. Description of MCSO's system for monitoring or auditing the practices of individual MCSO officers, groups of officers and volunteer members of "posses" or similar groups, with respect to searches and seizures or equal protection practices (e.g., an "early warning," "early identification," or "red-flagging" system) and the protocols, if any, established for dealing with "at-risk" officers. Identify the personnel and/or unit responsible for inputting data into the system; for preparing any reports identifying "at-risk" officers; and for reviewing information, management and discipline/corrective action related to these reports.
41. A list of all current or former MCSO personnel recommended for termination/discipline or corrective action, the reason for the recommended discipline or corrective action, whether discipline or corrective action was imposed, and the nature and duration of any discipline or corrective action imposed from January 1, 2008 to the present.
42. ~~All data and statistical information gathered and/or maintained by the MCSO pursuant to maintaining compliance with the MOA. Include any requests made by ICE for specific tracking data.~~

LIMITED ENGLISH PROFICIENCY

Please provide the following information and, with respect to any policy, plan, procedure or data requested, provide copies of any versions in effect for the time period January 1, 2007 to the present, unless otherwise stated:

43. The breakdown of the number of inmates/detainees held in each of the MCSO jails, including the tent city, by race and national origin. Indicate how many, within each race and national origin, are LEP. Identify the primary languages spoken by the LEP persons and the total number within each

language group. Please provide this information for January 1 and March 15, 2009, and January 1, April 1, July 1, and October 1, 2008.

44. Copies of all MCSO jail policies and procedures regarding LEP inmates and visitors, including any English-only rules. Include any policies and procedures related to the allegations described in the third paragraph of the letter from Merrily Friedlander (attached) and those related to interacting with LEP persons over the phone, in person, through the MCSO web site, the translation of vital documents, and any other relevant media. Include a copy of MCSO's Language Access Plan, if one exists, and the date it went into effect. Please also explain how MCSO staff are made aware of the provisions of the plan. If the policies or procedures differ between any of the MCSO jails, please provide a copy of this information for each jail.
45. Copies of all MCSO policies and procedures regarding the visitation forms mentioned in the description of allegations in the third paragraph of the letter from Merrily Friedlander (attached). In addition, state the purpose for the forms, when the MCSO began using the forms, and whether the forms are given to all visitors. Also, please provide copies of all forms that visitors submitted at each of MCSO jails, including the tent city, for the year prior to the date of this request.
- ~~46. An explanation of how and when attorney visits with LEP inmates/detainees are scheduled to allow for the presence of an interpreter.~~
47. Copies of all complaints against MCSO received during the two years prior to the date of this request, relating in any way to any of the allegations described in the letter from Merrily Friedlander (attached). Please include the steps taken to address each complaint, a copy of the findings of any investigations, the current status of each complaint, and copies of any information gathered in connection with the complaint.
48. A copy of MCSO's policies and procedures for handling complaints, including those alleging discrimination or failure to provide services to persons who are LEP. If the procedures and/or complaint forms have been translated into any language other than English, please provide a copy of those translations.

49. A copy, if applicable, of MCSO's service agreement with a telephonic interpreter service, as well as data showing number of calls conducted through the telephonic service and the languages utilized.
50. Copies of training materials and records of training sessions provided to MCSO staff on the use of the telephonic interpretation service, and on handling encounters with LEP persons, as well as attendee lists and encounter statistics, if available.
51. Data on language capabilities of all MCSO jail staff listed by facility, hiring plans and practices, including incentives given for bilingual skills used on the job, and any procedures relating to assignment of bilingual staff.

Exhibit C

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U.S. Department of Justice
Civil Rights Division

Coordination and Review Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

MAR 25 2009

VIA ELECTRONIC AND U.S. MAIL

Clarice McCormick, Esq.
Maricopa County Attorney's Office
222 North Central Avenue
Suite 1100
Phoenix, AZ 85004

Re: Complaint No. 171-08-21
Maricopa County (AZ) Sheriff's Office

Dear Ms. McCormick:

As we notified you by letter addressed to Sheriff Joseph Arpaio, dated March 10, 2009, from Acting Assistant Attorney General Loretta King, the Coordination and Review Section (COR), Civil Rights Division, U.S. Department of Justice (DOJ), is initiating an investigation of a complaint alleging discrimination on the basis of national origin (Hispanic) by the Maricopa County Sheriff's Office (MCSO) in the operation of its jail facilities. This investigation is being conducted in cooperation with the Special Litigation Section of the Civil Rights Division. Please note that our decision to initiate an investigation does not reflect any determination as to the merits of the complaint. Our goal is to investigate this matter in a fair and impartial manner, and to work with you to reach a productive and amicable resolution.

The complaint alleges that the MCSO lacks a language assistance policy for limited English proficient (LEP) inmates as set forth in DOJ's LEP Recipient Guidance Document (enclosed) and also has an English-only policy in its jails that discriminates against LEP inmates. The complaint alleges that detention officers, even those who are bilingual in Spanish, are required to speak to inmates in English at all times, except in case of an emergency, thereby impeding language access for inmates. Further, the complaint alleges that because of the English-only policy in the jails, LEP inmates are at risk for inadequate medical care due to the language barrier (e.g., potential misdiagnosis, incorrect administration of medications). The complaint also states that mandatory classes on government, criminal justice, and other topics discriminate against LEP inmates because they are conducted in English. The complaint notes that the MCSO provides an English language class, but asserts that the two-week course is not sufficient to remedy the problems posed by the English-only policy. Furthermore, the complaint

alleges that the MCSO schedules LEP inmates to meet with their attorneys and court-appointed interpreters at times when interpreters are often unavailable due to their regular courtroom duties, thereby impeding LEP inmates from meeting with their attorneys. In addition, the complaint asserts that the MCSO website, which contains descriptions of inmate programs, FAQs, and visitation information geared to the public, is in English only, thereby impeding LEP inmate and visitor access to important information.

The complaint further alleges that the MCSO jail visitation policy discriminates on the basis of national origin and limited English proficiency. The complaint asserts that the policy requires visitors to present identification and fill out a visitation request form with detailed questions about citizenship status and that a citizenship check is required of every visitor. The complaint alleges that this policy is implemented in a manner that is discriminatory toward Hispanic and limited English proficient visitors. In particular, the complaint claims that, in practice, Hispanic visitors are required to submit the forms, whereas others are not, and the forms are not available in languages other than English.

COR is responsible for investigating complaints against recipients of federal financial assistance from DOJ under Title VI of the Civil Rights Act of 1964 ("Title VI"), as amended, 42 U.S.C. § 2000d *et seq.*, and the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968 ("Safe Streets Act"), as amended, 42 U.S.C. § 3789d(c). Together, these statutes prohibit discrimination on the basis of race, color, national origin, sex, or religion by recipients of DOJ assistance, including grants provided through DOJ's Office of Justice Programs and the Office of Community Oriented Policing Services. Shared assets from the Criminal Division's Asset Forfeiture and Money Laundering Section also constitute federal financial assistance from DOJ. The Department's recipients include police and sheriffs' departments, state departments of corrections, and other entities. The MCSO is a recipient of federal financial assistance from DOJ and, therefore, we have jurisdiction to conduct an investigation of the issues raised in this complaint.

In the course of investigating administrative complaints against recipients of DOJ's assistance, COR seeks to determine whether alternative dispute resolution (ADR) is appropriate. The goal of ADR is to enter into a voluntary compliance agreement that resolves the concerns raised without making a formal determination concerning the merits of the complaint. If the recipient does not wish to engage in ADR or if it is not possible to achieve a voluntary resolution in this matter early in the investigation, COR may conduct a full investigation of the issues raised. (At any time during this investigation, however, ADR remains a possibility if the recipient should decide it is interested in pursuing a voluntary resolution of the matter.)

Generally, when an administrative investigation is completed, the formal results of the investigation are conveyed to the recipient and the complainant in a findings letter. If COR believes that its investigation demonstrates unlawful discrimination, however, attempts are made to resolve the matter before issuing such a letter. If an agreement cannot be reached on a remedy, an enforcement action may be initiated. This may take the form of an administrative hearing to terminate DOJ's financial assistance to the programs and activities of the recipient agency, or

may involve other means of enforcement authorized by law, including referral to a DOJ litigating section for court enforcement.

As an initial step in our investigation of this complaint, we request that the MCSO provide us with a position statement responding to the allegations of discrimination, as summarized above. In addition, please provide the information requested in ¶¶ 43-51 of the enclosed "First Request for Documents and Information." Please also feel free to send any additional information that the MCSO would like the DOJ to consider in making a determination in this case.

We are obligated to inform you that no one may intimidate, threaten, coerce, or engage in other discriminatory or retaliatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions regarding this letter, please contact Ms. Luz Lopez-Ortiz, the COR attorney assigned to this case, at (202) 616-5571. Questions about other allegations and submissions in response to the "First Request for Documents and Information" should be directed to the Special Litigation Section, as described in the attached cover letter. We very much appreciate your cooperation in this investigation.

Sincerely,

Merrily A. Friedlander

Merrily A. Friedlander
Chief

Coordination and Review Section
Civil Rights Division

Enclosure

EXHIBIT 7

ALSTON & BIRD LLP

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August 13, 2010

VIA EMAIL (dsmith@mail.maricopa.gov)

David R. Smith
County Manager
Maricopa County
County Manager's Office
301 West Jefferson Street
10th Place
Phoenix, AZ 85003-2143

Re: DOJ Title VI Investigation

Dear Mr. Smith

I write on behalf of Sheriff Arpaio in response to your letter of August 12, 2010. As an initial matter, as you are aware, the Sheriff is a constitutional officer elected by the people of Maricopa County. He does not report to you, or to the Board of Supervisors ("Board"). This point is particularly appropriate in relation to the U.S. Department of Justice ("DOJ") investigation, an investigation with respect to which the Board has already been deemed to have a conflict—having requested the investigation and the involvement of the DOJ

The Sheriff will respond to the investigation and defend and protect the reputation of the Maricopa County Sheriff's Office ("MCSO") and its Deputies as he sees fit, and he will not be intimidated by the Board's repeated threats and attempts to deny him access to counsel (while repeatedly authorizing private counsel for itself) or to otherwise undermine enforcement of the all of the laws—including immigration laws. If the Board does not like the current state of the law of Arizona or of federal law, it is free to advocate to change it—it is not free to direct the Sheriff not to enforce the laws that are on the books or to undermine the MCSO by seeking to control litigation for purposes of losing the case and scoring political points.

As to the substance of your letter, let me inform you of facts of which you may be unaware, having been uninvolved in DOJ's investigation to date. First, the MCSO has never objected to an investigation under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 200d to 200d-7 ("Title VI"). Until recently, the only portion of the DOJ

David R. Smith
Page 2

investigation identified as a Title VI investigation had been with respect to provision of services to individuals with limited English proficiency ("LEP") and with respect to allegations of an English-only policy in MSCO jail facilities. The MCSO has responded to DOJ's requests in that regard and stands ready to respond further should more requests on LEP issues be forthcoming.

Recently, DOJ took the position that its police practices investigation (brought under another statute, 42 U.S.C. § 14141) was also within the ambit of Title VI. Given that the Title VI investigation is directed only towards allegations of national origin discrimination, there are many police practices issues (for example, canine policy, overtime policies, and searches and seizures) that do not implicate national origin discrimination and could not conceivably be covered by Title VI. MCSO is in the process of working with DOJ to clarify what police practices issues DOJ thinks implicate the issue of national origin discrimination and what complaints it has received in this regard that it desires to investigate under Title VI.

Thus, the disagreement with DOJ is simply over the appropriate scope of a police practices and national origin discrimination investigation under Title VI. Whether the issue of scope is resolved through negotiations or in a court establishing the boundaries of the investigation under federal law, is well within the authority of the Sheriff's Office to address this issue with DOJ. Clearly, DOJ is not entitled to information unrelated to its Title VI investigation just because the Title VI investigation exists; the Sheriff is simply requiring compliance with the law, not flouting it, as you suggest.

If you or counsel for the Board would like to be briefed on this specialized area of the law (with which Mr. Irvine is apparently unfamiliar given his letter to Mr. Perez dated August 12, 2010) or the status of the investigation, please feel free to contact me directly at the direct dial number listed above.

Sincerely,



Robert N. Driscoll

cc: Thomas K. Irvine

EXHIBIT 8

ALSTON & BIRD LLP

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Robert N. Driscoll

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May 29, 2009

HAND DELIVERY

The Honorable Eric H. Holder Jr.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Janet Napolitano
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Re: Civil Rights Division/Department of Homeland Security Investigation of
the Maricopa County Sheriff's Office – Impermissible Contact with
Represented Parties and Concerns of Improper Political Influence

Dear Attorney General Holder and Secretary Napolitano:

This firm, along with Brian D. Black and L. Eric Dowell of the firm of Olgetree Deakins, has recently been retained to represent the Maricopa County Sheriff's Office ("MCSO") in (1) the investigation commenced on March 10, 2009 by the United States Department of Justice ("DOJ" or "Department") Civil Rights Division's Special Litigation Section pursuant to the pattern or practice provisions of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141") and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"); (2) the investigation commenced by the Coordination and Review Section under the prohibitions against national origin discrimination in Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI") relating to services for limited English proficient (LEP) individuals; and (3) in the audit review being conducted by the Department of Homeland Security ("DHS") regarding the U.S. Immigration and Customs Enforcement's ("ICE") 287(g) program. While the factual basis for these investigations is unclear, it appears that the investigations focus on the MCSO's enforcement of immigration laws pursuant to its agreement with DHS under the ICE 287(g) program.

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I write to make you aware of what appears to be a serious violation of ethical standards of conduct required of DOJ attorneys and to seek assurances that political rivalries and score-settling play no role in these investigations.

CONTACT WITH REPRESENTED PARTIES AND UNDISCLOSED INFORMATION SHARING

Although no lawsuit is pending, relevant ethical standards apply during a DOJ investigation. *See* 28 C.F.R. Part 77. Under the ethical standards applicable to lawyers (which may include the standards of the District of Columbia, Arizona, or other states depending on the bar admission of the attorneys involved in this matter), contact by DOJ attorneys with represented parties, except through their counsel, is prohibited.

The Maricopa County Attorney's Office ("MCAO" or "Counsel") was made aware of the investigation being conducted by the Civil Rights Division's Special Litigation Section by letter dated March 10, 2009, to which Counsel responded on March 13, 2009, and, since that time, Counsel has engaged in negotiations regarding discovery and possible witness interviews requested by DOJ. Thus, there is no question that at least as of March 13, 2009, the Department was aware that the MCSO was represented by Counsel.

More recently, as part of the investigation, attorneys from DOJ Civil Rights Division and Counsel held a meeting on April 30, 2009 in Maricopa County to discuss the investigation and DOJ's attendant discovery requests. On the morning of April 27, 2009, Counsel had a teleconference with the DOJ Civil Rights Division attorneys to discuss disclosure of documents, wherein Counsel reminded DOJ of MCSO's concerted efforts to closely track all documents disclosed as part of the DOJ investigation. On that same morning of April 27, 2009, DHS arrived at MCSO to begin an inspection of MCSO's 287(g) program. Having been through several ICE audits previously, MCSO deputy chiefs afforded DHS agents ICE's customary free access to the documents and employees of MCSO. On April 27 and 28, 2009, DHS agents met with numerous MCSO employees, and reviewed and obtained MCSO documents. On April 28, 2009, DOJ Civil Rights Division attorneys notified Counsel that DHS agents were being invited to the DOJ's meeting on April 30, 2009. Upon Counsel's inquiry, the Department assured Counsel that DHS had no role in the DOJ investigation. However, contrary to DOJ's assurances, Counsel subsequently learned from DHS that, two weeks earlier, DHS agents and DOJ Civil Rights Division attorneys had met to fully set forth their plans of action with MCSO and to devise a document-sharing arrangement, to potentially include the sharing of witness statements. Thus, those documents and witness statements that DHS agents were collecting from MCSO during the DHS inspection were obtained with the express understanding that they would be provided to DOJ for use in the DOJ investigation and any future litigation with MCSO. As a result, the Department, through agents of DHS, knowingly contacted and interviewed represented parties without any legal authorization or consent from Counsel.

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This improper document-sharing arrangement and deceptive scheme to obtain interviews of MCSO employees without Counsel present for purposes of the DOJ investigation, devised and coordinated by DOJ attorneys, was confirmed by Mr. Carlton Mann of the Office of Inspector General of DHS in an April 28, 2009 conversation with Counsel. Mr. Mann stated that two weeks prior to the April 30, 2009 meeting in Maricopa County, he and five DOJ attorneys (including some or all of those attending the April 30, 2009 meeting) tasked with handling the investigation of the MCSO met to set forth a plan of action whereby DHS would collect documents and witness statements as part of their routine audit and share those documents and possibly the witness statements with DOJ with the understanding that DOJ would do the same with information gathered in its investigation. This understanding was reached despite the fact that both investigations were to be completely independent of each other and despite DOJ's repeated assurances that DHS "[did] not have a role in [DOJ's] investigation." See Attachment 1 (E-mail from Je Yon Jung, Senior Trial Attorney, DOJ Civil Rights Division, to Clarisse McCormick, Deputy County Attorney, MCSO (April 28, 2009 12:53 pm MST)). According to Mr. Mann, the DOJ Civil Rights Division attorneys were well aware that DHS would be in Phoenix on April 27, 2009 to start its MCSO inspection. Yet, at no time did DOJ bring the DHS information sharing arrangement to the attention of Counsel. The matter was only addressed after Counsel confronted the DOJ attorneys with this information during the April 30, 2009 meeting.

The rules for contacting represented parties are clearly delineated in the District of Columbia, the State of Arizona and federal guidance for DOJ attorneys. Under the District of Columbia Rules of Professional Conduct

a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter, unless the lawyer has prior consent of the lawyer representing such other person or is authorized to do so by law or court order

Rule 4.2(a). Likewise, Rule 4.2(a) of the Arizona Rules of Professional Conduct states that "a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." Rule 4.2 of the ABA Model Rules of Professional Conduct has virtually identical language. Moreover, the Ethical Standards for Attorneys for the Government make it clear that where an attorney does not have the authority or right to engage in an activity the Government can not delegate or direct an agent to do so either. See 28 C.F.R. § 77.4(f).

Further evidence of the Department's coordination with DHS is DHS's most recent document request. See Attachment 2 (E-mail from Justin Brown, Office of Inspections, Office of the Inspector General, DHS to Clarisse McCormick, Deputy County Attorney, MCSO (May 15, 2009 6:45 am MST)). This request goes beyond the matters specifically addressed in, and that are relevant to, the Memorandum of

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Agreement ("MOA") entered into between the MCSO and ICE and relating to the Section 287(g) program. Indeed, as Attachment 2 shows, after coordinating with DOJ, DHS requested information from Counsel that predates the implementation of the 287(g) program and addresses topics well beyond those discussed in the MOA. The requests make clear that these DHS and DOJ investigations have been functionally merged as it is impossible to discern which agency is requesting what information and for what particular purpose.

This scheme appears designed to evade the limitations on the DOJ under Section 14141 (which does not provide subpoena power and therefore effectively requires a cooperative approach) and the limitations on DHS, which may investigate issues related to the 287(g) agreement under the MOA. Based upon a review of the facts and documents, it appears that DHS's investigative powers are being abused as an improper discovery tool for the DOJ. Given that this arrangement was never communicated to Counsel until after the fact, and given the implications of DOJ using DHS and ICE to collect documents and testimony from senior members of the MCSO without Counsel present for possible future use in a federal lawsuit against the MCSO, Counsel will not respond to any document requests from DOJ or DHS until appropriate assurances are made that negotiations with DOJ are not rendered irrelevant by DOJ's surreptitious use of ICE and DHS to contravene any agreements that are reached.

By copy of this letter I am making a formal request that the DOJ Office of Professional Responsibility ("OPR") investigate both this issue and the issue of possible improper political influence discussed below. However, regardless of the outcome of any OPR review of DOJ's conduct, I ask that each of you refer this letter to the appropriate person(s) who can provide assurances that any materials related to DOJ's apparent cooperation with ICE and DHS will be preserved and produced, including:

- e-mails;
- notes;
- Outlook calendar and hard copy calendar entries;
- cell phone records;
- text messages; and
- any other documentation related to the internal discussion of the coordination between DOJ and DHS that would reflect participants in such meetings and the substance of any agreements and any communications about the respective investigations.

Preservation of such evidence is critical to establish what is or is not improperly obtained evidence as this matter moves forward.

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In addition, given that the MCSO has not been provided with copies of the documents obtained by DHS, or notes or transcripts of the interviews of represented witnesses, I request that these be provided at this time.

Finally, I ask that both the DOJ and the DHS name an appropriate senior-level attorney, with the necessary authority, to coordinate with the MCSO and its counsel to explain the terms and level of intersection and cooperation of the multiple investigations so that MCSO can make an appropriate decision on whether to handle the parallel investigations separately, in a coordinated fashion, or to cooperate at all with the DOJ and DHS under the circumstances.

POLITICAL INFLUENCE

The context in which these issues arise raises additional concerns as well. More specifically, in the first two months of the new Administration, the MCSO has become the subject of three ostensibly independent federal investigations: (1) the Civil Rights Division Special Litigation Section's investigation into alleged patterns and practices of Constitutional or legal violations; (2) the Coordination and Review Section's investigation into allegations of discrimination against LEP individuals; and (3) DHS's investigation into the MCSO's 287(g) program (notwithstanding the complete absence of any previous complaints or concern from ICE or DHS under the MOA). When one law enforcement agency becomes subject to three federal investigations in a matter of weeks immediately after a shift of political control in Washington, it is difficult not to speculate that politics played a role in the decision or that policy differences related to hot-button topics such as local law enforcement's vigorous enforcement of immigration-related crimes are being litigated through enforcement actions rather than squarely addressed through appropriate policy-making.

Furthermore, prominent Democratic members of Congress have publicly called for investigation into MCSO and its elected Sheriff, Sheriff Joseph Arpaio. Indeed, in a February 12, 2009 letter sent to both of you, four Democratic members of the House Judiciary Committee made the inflammatory assertion that Sheriff Arpaio's "repeated course of conduct . . . values publicity opportunities over the civil rights of residents of Arizona." See <http://judiciary.house.gov/news/pdfs/Committee090212.pdf>. Despite the prejudicial nature of this statement, at the time of the letter and to this day, there has been no federal investigation establishing any misconduct on the part of MCSO or Sheriff Arpaio. Indeed, when asked if he had been briefed on specific evidence of racial profiling by MCSO, Representative John Conyers said "[n]o, no I haven't been briefed on it. We are getting ready to hold a hearing on it." See <http://www.cnsnews.com/public/content/article.aspx?RsrcID=45078>. Yet, in a moment of apparent unintentional irony, in a February 13, 2009 press release touting the aforementioned February 12, 2009 letter of which he was the first signatory, Representative Conyers noted that "[m]edia stunts and braggadocio are no substitute for fair and effective law enforcement." See <http://judiciary.house.gov/news/090212.html>. In their attempt to spur an investigation of MCSO and Sheriff Arpaio by DOJ, these

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politicians' use of unfounded, inflammatory allegations such as those in the February 12, 2009 letter only serve to heighten concerns about the appearance of politicization of the federal investigative process.

As you are aware, recently Congress and the DOJ Inspector General have issued numerous reports investigating alleged improper political influence over the Department's investigative function by senior Department leaders. Given the possibility that political influence has played a role in the decision to launch these investigations of the MCSO – indeed the explicit and overt efforts by political officials to influence the decision to open these investigations – it is incumbent upon each of you individually and each of your offices and subordinates to preserve all records related to the genesis of these investigations.

I am aware that the Department, in its letter to MCSO, has made the commitment “to conduct the investigation in a fair, objective and efficient manner,” but such assurances ring hollow in light of the Department's “100 Day Progress Report” released in April of 2009, which treats the mere decision to open an investigation of the MCSO as an accomplishment in and of itself notwithstanding that the merits and/or actual facts being investigated have yet to be determined. Indeed, the Civil Rights Division Deputy assigned to the case acknowledged that “media reports” provided the basis for the investigation and that the Department was not yet in possession of facts that would establish a Constitutional violation.

The Department is under an obligation to operate even-handedly and refrain from strong-arm tactics that essentially force law enforcement agencies into a consent decree or Memorandum of Agreement regardless of the existence of any actual Constitutional violations, much less a “pattern and practice” of them. To the contrary, the Department's historical approach to these matters could itself be characterized as a “pattern or practice” of coerced compliance with the Department's law enforcement policy preferences rather than enforcement of Constitutional standards and the laws as written by Congress. Indeed, a review of the Department's conduct of the 14141 program reveals that, after opening an investigation, there are virtually no instances where the Department has not found a purported Constitutional problem and demanded changes in policing policies of the law enforcement agency in question via a consent decree or Memorandum of Agreement. One would think that investigations conducted in a “fair, objective and efficient manner” would, on occasion, reveal that a local law enforcement agency complied with Constitutional standards and that no further action was necessary. It should come as no surprise that my client is skeptical of the Department's assurances of fairness and impartiality in the face of this record and the most recent actions of the Department described above. While in the past other law enforcement agencies may have acquiesced to the Department's strategy of opening investigations without any particularized basis and then seeking a remedy without ever establishing any actual Constitutional violations, this practice is not acceptable to the MCSO. As evidenced by the complete absence of any record of complaints about MCSO's conduct by ICE and

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DHS under its MOA as well as the absence of any record of a "pattern or practice" of Constitutional violations ever having been established in court, the MCSO has worked diligently to uphold all state and federal laws and serve and protect the citizens of Maricopa County. It will vigorously defend its actions and require that the Department establish a particularized factual basis for the investigation, rather than merely a response to conjecture and political posturing by Sheriff Arpaio's critics of his lawful enforcement of state and federal immigration laws.

Finally, I have grave concerns about whether the Civil Rights Division's attorneys assigned to this matter can truly conduct an unbiased and impartial investigation in light of what appears to be the Department's predetermined conclusion regarding the MCSO's law enforcement activities. The Department's decision to essentially issue a press release taking credit for the mere opening of the investigation as some type of civil rights victory makes it very difficult, if not impossible, for the attorneys working on the matter to ultimately conclude that no violation exists. Given the very public mention of the investigation in the "100 Days Progress Report," a conclusion that no further action was warranted would risk embarrassing the DOJ leadership, which has in effect already taken credit for an investigation that has not yet begun. While we would all hope that the attorneys assigned to the investigation would not take the fact that the Department has already cited the investigation as an example of delivering on the President's promise to "reinvigorate federal civil rights enforcement" into consideration, it is asking a great deal of them. I therefore request that the public and the attorneys and agents working on this matter be reminded 1) that no conclusions have been reached regarding the MCSO; 2) that DOJ and DHS leadership would be perfectly satisfied with a complete vindication of MCSO if justified by the facts and the law; and 3) that political considerations and views should not and will not play any role in any decision making.

Thank you for your prompt attention to this matter. Should you have any questions, please do not hesitate to have the appropriate designee contact me at the direct dial listed above.

Sincerely,



Robert N. Driscoll

Cc: Loretta King, Acting Assistant Attorney General
United States Department of Justice

Mary Patrice Brown, Acting Counsel
Office of Professional Responsibility

The Honorable Eric H. Holder Jr.
The Honorable Janet Napolitano
May 29, 2009
Page 8

Shanetta Y. Cutlar
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ATTACHMENT 1

The information contained in this e-mail is confidential (attorney-client privileged) and is intended solely for the use of the recipients listed above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the transmitted information is strictly prohibited. If you have received this transmission in error, please immediately notify the sender and delete this e-mail.

From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]
Sent: Tuesday, April 28, 2009 4:30 PM
To: McCormick Clarisse
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Subject: Re: Thursday's Meeting

Clarisse-

We certainly don't want to cause concern with the list of attendees. Our goal is to ensure as uniform an approach as possible for Maricopa in its dealings with the federal govt - both DHS as well as the Civil Rights Division. Since our meeting is informational, we believed it would be helpful to have everyone present so that we could compare and contrast the differences between our role for Maricopa and answer Maricopa's questions. We can certainly address this further in person, and bring in the DHS team after everyone is comfortable with their presence.

Thank you,
Je Yon

From: McCormick Clarisse <mccormc@mcao.maricopa.gov>
To: Jung, Je Yon (CRT)
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Sent: Tue Apr 28 17:04:21 2009
Subject: RE: Thursday's Meeting

Je Yon,

MCSO's understanding is that DHS is here to conduct a routine audit. The DHS team has already been introduced to and is working with key contacts at MCSO. Therefore, given that the DHS team has no involvement in the DOJ's investigation, we see no need to have the DHS team attend the meeting on Thursday.

Thank you.

Clarisse

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From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]
Sent: Tuesday, April 28, 2009 1:32 PM

5/29/2009

To: McCormick Clarisse
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Subject: Re: Thursday's Meeting

sse-

Because there are different federal agencies conducting concurrent investigations/inspections, we thought it would be helpful to your office and client to understand the various agencies' inquiries and requests.

If you disagree please advise as our intention is to assist in an efficient process.

Je Yon

Je Yon

From: McCormick Clarisse <mccormc@mcao.maricopa.gov>
To: Jung, Je Yon (CRT)
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Sent: Tue Apr 28 16:25:39 2009
Subject: RE: Thursday's Meeting

Je Yon,

You stated that the members of the DHS inspection team have no role in the MCSO investigation, but it would be helpful to have them at the meeting. Frankly, I am unclear how it would be helpful to have them present if they have no role in the investigation. Could you please explain further so I can accurately explain it to my client? Thank you.

Clarisse

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From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]
Sent: Tuesday, April 28, 2009 12:53 PM
To: McCormick Clarisse
Cc: Weiss, Daniel (CRT); Aminfar, Amin (CRT)
Subject: RE: Thursday's Meeting

Clarisse-

I am getting confirmation on the names of the DHS team members who are planning on attending our Thursday meeting. I will forward it to you as soon as I receive them. As for their role in our MCSO investigation, they do not have a role in our investigation. However, because they are another federal agency conducting a separate DHS inspection during the same week that we are in Phoenix for our introductory meeting, we thought it would be helpful to have all of the various federal agency representatives in the same room.

Thank you,

Je Yon

From: McCormick Clarisse [mailto:mccormc@mcao.maricopa.gov]
Sent: Tuesday, April 28, 2009 2:59 PM
To: Jung, Je Yon (CRT)
Subject: RE: Thursday's Meeting

5/29/2009

Je Yon,

If you could provide me with their names and explain their role in the MCSO investigation, I would appreciate it.

Thank you.

Clarisse

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From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]

Sent: Tuesday, April 28, 2009 11:16 AM

To: McCormick Clarisse

Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)

Subject: Thursday's Meeting

Clarisse-

I wanted to let you know that I believe some of the members of the DHS inspection team that is down in Phoenix this week may also be joining us for our 9:00 a.m. meeting with your office and members of the MCSO.

If you need me to get a confirmation on their names, I can do that. Just let me know.

Thanks,

Je Yon

5/29/2009

ATTACHMENT 2

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From: Brown, Justin [mailto:justin.brown@dhs.gov]
Sent: Friday, May 15, 2009 6:45 AM
To: McCormick Clarisse
Cc: Barron-Irby Irene; Outten-Mills, Deborah
Subject: RE: DHS Interviews of MCSO Officers

Clarisse -

As we discussed yesterday, I am forwarding a list of items we requested from the Sheriff's Office but have yet to receive in part or in full, as well as a number of new items we would like.

- Arrest, prosecution, and case disposition data for the 377 287(g) cases we identified and provided through the ICE SAC office the week before our visit
- A synopsis of training (topics covered & hours dedicated to the coverage) MCSO deputies receive on 4th amendment compliance, civil rights/civil liberties protections, and guidance on non-discrimination or profiling on the basis of race or ethnicity (e.g., a breakdown of the peace officer academy training MCSO deputies receive)
- MCSO Off-duty work policy
- MCSO Use of Force policy and form(s)
- MCSO Critical Incident Review policy and description of the critical incident review board function, process, and composition (if not already discussed in the policy)
- Internal Affairs spreadsheet listing complaints and investigations related to 287(g) officers
- MCSO annual statistics on calls for service from 2005 to the present, broken out by the reported basis for the call (e.g., domestic violence, traffic accident response, etc.)
- Operational plans for all operations involving 287(g) officers, as well as associated intelligence reports, data, and information on the basis for conducting each operation
- Operational statistics on stops, citations, and arrests by ethnicity and charge for each of the above operations (if available)
- Overall MCSO Human Smuggling Unit statistics on stops, citations, and arrests by ethnicity and charge (if available)
- MCSO Human Smuggling Unit annual operating cost
- MCSO 287g jail support annual cost

5/29/2009

These materials will provide us with the documentation and information we need to properly describe the 287(g) program in Maricopa County. We appreciate the effort that it will take to assemble them, and your continuing assistance in our review.

Please contact me if you would like clarification on any of the above items or if MCSO requires further information to properly identify what we are seeking.

Regards,

Justin

Justin H. Brown
Office of Inspections
Office of Inspector General
Department of Homeland Security
202.254.4219 (phone)
202.254.4304 (fax)

5/29/2009