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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' OBJECTIONS TO
 PLAINTIFF'S STATEMENT OF
 UNDISPUTED FACTS IN
 SUPPORT OF MOTION FOR
 SUMMARY JUDGMENT**

18 Defendants submit their Objections to Plaintiff's Statement of Undisputed
 19 Facts.
 20

21 **I. Federal Financial assistance from the United States Department of Justice.**

22 1. The Department of Justice, Office of Justice Programs ("OJP"),
 Bureau of Justice Assistance ("BJA"), administers federal grants programs that provide
 23 funding to state, local, territorial, and tribal criminal justice systems, including law
 24 enforcement agencies. Ex. 1 (Finn Declaration ¶ 3).
 25

Defendants cannot dispute the facts therein.

26 2. At all times since September 4, 2008, Defendant Maricopa County
 27 ("the County") has been a recipient of BJA grant funds through grant awards that are
 28

1 currently open. See Ex. 1 (Finn Declaration ¶¶ 4-9); Ex. 2 (Grant Award No. 2008-DJ-
2 BX-0500); Ex. 3 (Grant Award No. 2009-SB-B9-2970); Ex. 4 (Grant Award No. 2009-
3 BJ-BX-0342).

4 **Defendants admit the facts therein.**

5 3. The County received a Justice Assistance Grant in the amount of
6 \$578, 399. Ex. 1 (Finn Declaration ¶ 4); Ex. 2 (Grant Award No. 2008-DJ-BX-0500).
7 This grant had an award date of September 4, 2008, and a grant period through September
8 30, 2011. Ex. 2 (Grant Award No. 2008-DJ-BX-0500).

9 **Defendants admit the facts therein.**

10 4. In applying for the grant described in ¶ 3, Maricopa County stated
11 that its intent was to provide funds from the award to the Maricopa County Sheriff's
12 Office ("MCSO") for law enforcement purposes in the amounts of \$21,316 for parcel
13 interdiction and \$76,316 for the Maricopa County Neighborhood Narcotics Enforcement
14 Team ("MCNNET"). Ex. 1 (Finn Declaration ¶ 5).

15 **Defendants admit the facts therein.**

16 5. The County received a Fiscal Year 2009 Recovery Act Justice
17 Assistance Grant in the amount of \$10,536,695. Ex. 1 (Finn Declaration ¶ 6); Ex. 3
18 (Grant Award No. 2009-SB-B9-2970). This grant had an award date of August 3, 2009,
19 and a grant period through February 28, 2013. Ex. 3 (Grant Award No. 2009-SB-B9-
20 2970).

21 **Defendants admit the facts therein.**

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

26 **Defendants admit the facts therein.**

27 7. The County received an Edward Byrne Justice Assistance Grant in
28 the amount of \$2,429,831. Ex. 1 (Finn Declaration ¶ 8); Ex. 4 (Grant Award No. 2009-

1 DJ-BX-0342). This grant had an award date of August 21, 2009, and a grant period
2 through September 30, 2012. Ex. 4 (Grant Award No. 2009-DJ-BX-0342).

3 **Defendants admit the facts therein.**

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

7 **Defendants admit the facts therein.**

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

10 **Defendants admit the facts therein.**

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

15 **Defendants cannot dispute the facts therein.**

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

19 **Defendants admit the facts therein.**

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

26 **Defendants admit the facts therein.**

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

4 **Defendants admit the facts therein.**

5 14. The DOJ Criminal Division, Asset Forfeiture and Money Laundering
6 Section (“AFMLS”) administers the DOJ Equitable Sharing Program. Ex. 10 (Dery
7 Declaration ¶ 3). Through the DOJ Equitable Sharing Program, the Attorney General
8 transfers a share of forfeited property and proceeds to State and local law enforcement
9 agencies that directly participate in an investigation or prosecution that results in a federal
10 forfeiture. *Id.*

11 **Defendants cannot dispute the facts therein.**

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

16 **Defendants admit the facts therein.**

17 16. According to DOJ records, MCSO received \$3,726.98 into the
18 equitable sharing account it maintains for receipt of funds through the DOJ Equitable
19 Sharing Program for its Fiscal Year 2006-07 (from July 1, 2006, to June 30, 2007). Ex.
20 10 (Dery Declaration ¶ 5); Ex. 14 (AFMLS Detail Distribution Report for 7/1/06 to
21 6/30/07).

22 **Defendants cannot dispute the facts therein.**

23 17. According to DOJ records, MCSO received \$156,945.31 into the
24 equitable sharing account it maintains for receipt of funds through the DOJ Equitable
25 Sharing Program for its Fiscal Year 2007-08 (from July 1, 2007, to June 30, 2008). Ex.
26 10 (Dery Declaration ¶ 7); Ex. 15 (AFMLS Detail Distribution Report for 7/1/07 to
27 6/30/08).

28 **Defendants cannot dispute the facts therein.**

1 18. According to DOJ records, MCSO received \$126,813.44 into the
2 equitable sharing account it maintains for receipt of funds through the DOJ Equitable
3 Sharing Program for its Fiscal Year 2008-09 (from July 1, 2008, to June 30, 2009). Ex.
4 10 (Dery Declaration ¶ 9); Ex. 16 (AFMLS Detail Distribution Report for 7/1/08 to
5 6/30/09).

6 **Defendants cannot dispute the facts therein.**

7 19. According to DOJ records, MCSO received \$235,706.50 into the
8 equitable sharing account it maintains for receipt of funds through the DOJ Equitable
9 Sharing Program for its Fiscal Year 2009-10 (from July 1, 2009, to June 30, 2010). Ex.
10 10 (Dery Declaration ¶ 10); Ex. 17 (AFMLS Detail Distribution Report for 7/1/09 to
11 6/30/10).

12 **Defendants cannot dispute the facts therein.**

13 20. According to DOJ records, MCSO received \$31,161.12 into the
14 equitable sharing account it maintains for receipt of funds through the DOJ Equitable
15 Sharing Program for the first two months of its Fiscal Year 2010-11 to date (from July 1,
16 2010, to August 31, 2010). Ex. 10 (Dery Declaration ¶ 11); Ex. 18 (AFMLS Detail
17 Distribution Report for 7/1/10 to 8/31/10).

18 **Defendants cannot dispute the facts therein.**

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

21 **Defendants admit the facts therein.**

22 **II. Contractual Assurance Agreements.**

23 22. OJP grant applications are submitted through an online process. For
24 each of the OJP awards described in ¶¶ 3, 5, and 7 above, the authorized representative of
25 the County applying for the award viewed the OJP Standard Assurances and certified
26 electronically that the applicant would comply with the requirements listed therein. Ex. 1
27 (Finn Declaration ¶ 10); Ex. 19 (Electronic receipt of assurances for Grant Award No.
28 2008-DJ-BX-0500); Ex. 20 (Electronic receipt of assurances for Grant Award No. 2009-

1 SB-B9-2970); Ex. 21 (Electronic receipt of assurances for Grant Award No. 2009-DJ-BX-
2 0342).

3 **Defendants admit the facts therein.**

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

7 **Defendants admit the facts therein. Defendants affirmatively assert**
8 **that its assurance of compliance is only a consent to reasonable administrative**
9 **searches in the form of compliance reviews that comport with constitutional**
10 **standards of reasonableness.**

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

- 13 a. “It will comply with all lawful requirements imposed by the
14 awarding agency, specifically including any applicable
15 regulations, such as 28 C.F.R. [part] 42...” Ex. 22 (OJP
16 Standard Assurances ¶ 4). Part 42 of 28 C.F.R. includes the
DOJ Title VI implementing regulations. *See* 28 C.F.R. §§
42.101 to 42.112;

17 **Defendants admit the facts therein.**

- 18 b. “It will give the awarding agency or the General Accounting
19 Office, through any authorized representative, access to and
20 the right to examine all paper or electronic records related to
the financial assistance.” Ex. 22 (OJP Standard Assurances ¶
3); and

21 **Defendants admit the facts therein.**

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

24 **Defendants admit the facts therein. Defendants affirmatively assert**
25 **that its assurance of compliance is only a consent to reasonable administrative**
26 **searches in the form of compliance reviews that comport with constitutional**
27 **standards of reasonableness.**

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

4 **Defendants admit the facts therein.**

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

11 **Defendants admit the facts therein.**

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

21 **Defendants admit the facts therein. Defendants affirmatively assert**
22 **that its assurance of compliance is only a consent to reasonable administrative**
23 **searches in the form of compliance reviews that comport with constitutional**
24 **standards of reasonableness.**

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

28 **Defendants admit the facts therein. Defendants affirmatively assert**

1 **that its assurance of compliance is only a consent to reasonable administrative**
2 **searches in the form of compliance reviews that comport with constitutional**
3 **standards of reasonableness.**

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

- 6 a. “It will give the Department of Justice or the Comptroller
7 General access to and the right to examine records and
8 documents related to the grant.” *Id.* ¶ 5;

8 **Defendants admit the facts therein.**

- 9 b. “It will comply with all requirements imposed by the
10 Department of Justice as a condition or administrative
11 requirement of the grant...and with all other applicable
12 program requirements, laws, orders, regulations, or circulars.”
Id. ¶ 6; and

12 **Defendants admit the facts therein.**

- 13 c. “It will not, on the grounds of race, ...national origin, [or other
14 protected grounds]...subject any person to discrimination in
15 connection with any programs or activities funded in whole or
16 in part with federal funds,” as required by the civil rights
17 requirements found in Title VI and 28 C.F.R. Part 42. *Id.* ¶ 8.

18 **Defendants admit the facts therein. Defendants affirmatively assert**
19 **that its assurance of compliance is only a consent to reasonable administrative**
20 **searches in the form of compliance reviews that comport with constitutional**
21 **standards of reasonableness.**

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

26 **Defendants admit the facts therein.**

27 31. MCSO submitted a combined Equitable Sharing Agreement and
28 affidavit, signed by MCSO and the County through their authorized representatives on
July 25, 2006, and August 16, 2006, respectively, with a certification period ending

1 September 30, 2008. Ex. 10 (Dery Declaration ¶¶ 12-13); Ex. 25 (AFMLS Equitable
2 Sharing Agreement and affidavit). The Equitable Sharing Agreement was accompanied
3 by instructions providing that agencies that receive financial assistance from DOJ are
4 subject to Title VI and “are required to permit DOJ investigators access to records and any
5 other sources of information as may be necessary to determine compliance with civil
6 rights laws.” Ex. 10 (Dery Declaration ¶ 14); Ex. 26 (AFMLS Instructions). The affidavit
7 certified that MCSO “is in compliance with the nondiscrimination requirements of [Title
8 VI] and [its] Department of Justice implementing regulations.” Ex. 25 (AFMLS Equitable
9 Sharing Agreement and affidavit).

10 **Defendants admit the facts therein. Defendants affirmatively assert**
11 **that its assurance of compliance is only a consent to reasonable administrative**
12 **searches in the form of compliance reviews that comport with constitutional**
13 **standards of reasonableness.**

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

21 **Defendants admit the facts therein.**

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

1 **Defendants admit the facts therein.**

2 **III. The United States' requests for access to sources of information.**

3 34. On March 10, 2009, the United States notified Defendants that DOJ
4 was opening an investigation of MCSO regarding alleged discrimination in violation of
5 the prohibition on national origin discrimination in Title VI of the Civil Rights Act of
6 1964, 42 U.S.C. § 2000d (“Title VI”); the pattern or practice provisions of the Omnibus
7 Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d; and the pattern or
8 practice provisions of the Violent Crime Control and Law Enforcement Act of 1994, 42
9 U.S.C. § 14141. *See* Ex. 29 (Letter from King to Arpaio of 3/10/09). The United States
10 informed Defendants that the investigation would focus on allegations of national origin
11 discrimination in MCSO’s police practices and jail operations. *See id.*; Ex. 31 (letter from
12 Cutlar to McCormick of 3/25/09); Ex. 32 (Letter from Friedlander to McCormick of
13 3/25/09).

14 **As to Paragraph 34, Defendants deny this Paragraph. Defendants**
15 **assert that Exhibit 29 states that Plaintiff’s “investigation will focus on alleged**
16 **patterns or practices of discriminatory police practices and unconstitutional searches**
17 **and seizures conducted by the MCSO, and on allegations of national origin**
18 **discrimination, including failure to provide meaningful access to MCSO services for**
19 **limited English proficient (LEP) individuals.” Defendants further assert that**
20 **Exhibit 31 relates to “additional details regarding those aspects of our investigation**
21 **related to the prohibitions against national origin discrimination.” The document**
22 **refers to neither police practices nor jail operations. Defendants further assert that**
23 **Exhibit 32 clearly sets forth a narrow and specific “investigation of a complaint**
24 **alleging discrimination on the basis of national origin (Hispanic) by the Maricopa**
25 **County Sheriff’s Office (MCSO) and the operation of its jail facilities” (Exhibit 32),**
26 **and further narrows the focus of the investigation by the DOJ by stating that “the**
27 **Complaint alleges that the MCSO lacks a language assistance policy for limited**
28 **English proficient (LEP) inmates as set forth in DOJ’s LEP Recipient Guidance**

1 **Document (enclosed) and also has an English-only policy in its jails that**
2 **discriminates against LEP inmates.” Exhibit 32 continues to describe alleged**
3 **deficiencies in the LEP program and includes an allegation that the MCSO jail**
4 **visitation policy “discriminates on the basis of national origin and limited English**
5 **proficiency.” The narrow scope of the investigation that is set forth in Exhibit 32 is**
6 **specifically limited by this Exhibit, and says nothing about other police practices or**
7 **jail operations.**

8 35. On March 13, 2009, the United States conferred with Defendants’
9 counsel by telephone and outlined the nature of the investigation. Ex. 30 (Email from
10 McCormick to Weiss of 3/13/09).

11 **As to Paragraph 35, Defendants deny this Paragraph. Defendants**
12 **assert that Exhibit 30 only represents that McCormick and Weiss spoke on March**
13 **13, 2009. There is no reference to an outline of “the nature of the investigation.”**

14 36. On March 25, 2009, the United States supplied Defendants with its
15 First Request for Documents and Information (“First Request”). Ex. 31 (Letter from
16 Cutlar to McCormick of 3/25/09); Ex. 32 (Letter from Friedlander to McCormick of
17 3/25/09); Ex. 33 (First Request).

18 **Defendants admit the facts therein. Defendants further assert,**
19 **however, that Plaintiff’s First Request for Documents and Information was clearly**
20 **limited by the language in Exhibit 31 and, more specifically, Exhibit 32, as outlined**
21 **in Defendants’ Response to Paragraph 34 above. As noted in Exhibit 31, which was**
22 **attached to Plaintiff’s First Request for Documents and Information, and by Exhibit**
23 **32, which Plaintiff contends “provides additional details regarding those aspects of**
24 **our investigation related to the prohibitions against national origin discrimination,”**
25 **Plaintiff’s investigation was specifically limited to “an investigation of a complaint**
26 **alleging discrimination on the basis of national origin (Hispanic) by the Maricopa**
27 **County Sheriff’s Office (MCSO) in the operation of its jail facilities. The**
28 **investigation included an inquiry pertaining to the language assistance policy for**

1 **limited English proficient (LEP) inmates, with a further inquiry into the MCSO jail**
2 **visitation policy.” Nothing in Exhibits 31 or 32 refer to any investigations into**
3 **MCSO police practices or overall jail operations.**

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

7 **As to Paragraph 37, Defendants deny this Paragraph. As stated above**
8 **in Defendants’ Responses to Paragraphs 34, 35 and 36, Plaintiff’s First Request for**
9 **Documents and Information was specifically limited by Plaintiff as stated in Exhibits**
10 **31 and 32. Those documents do not refer to discriminatory police practices or**
11 **overall jail operations.**

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

17 **Defendants admit the facts therein.**

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

23 **As to Paragraph 39, Defendants deny this Paragraph. Defendants**
24 **contend that Plaintiff’s exhibits support the fact that Plaintiff’s requests were not**
25 **relevant to the asserted basis for the investigation (and as limited by Exhibits 31 and**
26 **32) as defined by Plaintiff. In addition, even if, as stated in Paragraph 34 of**
27 **Plaintiff’s Statement of Undisputed Facts, that Plaintiff asserts that “the**
28 **investigation would focus on allegations of national origin discrimination in MCSO’s**

1 **police practices and jail operations,” Plaintiff’s initial request went well beyond a**
2 **reasonable administrative search that comports with constitutional standards of**
3 **reasonableness. Defendants also affirmatively assert that Plaintiff’s requests were**
4 **substantially overbroad and burdensome. In any event, Plaintiff’s investigation, by**
5 **its own admission, was limited by Exhibits 31 and 32.**

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

10 **As to Paragraph 40, Defendants admit that Exhibit 32 provides further**
11 **information about the aspects of the investigation, and, in fact substantially limits**
12 **the investigation, but further assert that the access, documents, and other**
13 **information sought by Plaintiff in its request go well beyond the bounds of the**
14 **alleged “complaint” cited in, and limited by, Exhibit 32. The requests are**
15 **unreasonable, overbroad and do not comport with constitutional standards of**
16 **reasonableness.**

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

22 **As to Paragraph 41, Defendants admit that representatives of the**
23 **United States and Defendants met in Phoenix on April 30, 2009, to discuss the United**
24 **States’ investigation. Exhibit 44, the letter cited in Plaintiff’s Paragraph 41, also**
25 **notes then-counsel Robert N. Driscoll’s concern with alleged ethical and discovery**
26 **abuses by the Department of Homeland Security and the Department of Justice in**
27 **supposedly “independent” investigations. At page 5 of the Driscoll letter, then-**
28 **counsel makes it clear that there will be no further response to requests from DOJ or**

1 **DHS “until appropriate assurances are made that negotiations with DOJ are not**
2 **rendered irrelevant by DOJ’s surreptitious use of ICE and DHS to contravene any**
3 **agreements that are reached.” In addition, despite Plaintiff’s repeated assertions**
4 **that its investigation is based on numerous, yet unnamed, “complaints,” page 7 of**
5 **Exhibit 44 notes that “the Civil Rights Division Deputy assigned to the case**
6 **acknowledged that ‘media reports’ provided the basis for the investigation and that**
7 **the Department was not yet in possession of facts that would establish a**
8 **Constitutional violation.”**

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

15 **As to Paragraph 42, Defendants admit that at one time Plaintiff agreed**
16 **to “split the costs” of copying documents (see Exhibit 34) and at another time “to pay**
17 **for” copying of documents to be produced (Exhibit 37). Defendants explained to**
18 **Plaintiff “that some of the requested documents contained legally protected criminal**
19 **justice information” and that “MCSO would prefer to complete the redaction, bates**
20 **stamping, and copying process using MCSO personnel.” (Exhibit 37).**

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

24 **Defendants admit the facts therein.**

25 44. On May 12, 2009, MCSO provided the United States with eleven
26 pages of documents that MCSO identified as being partially responsive to three of the
27 fifty-one requests in the First Request. Ex. 39 (Letter from McCormick to Jung of
28 5/12/09). In the same letter, MCSO stated: “As we agreed, MCSO will further respond to

1 the DOJ's First Request once MCSO has completed installation and training on the IPRO
2 system [a litigation support system]." *Id.* at 2.

3 **As to Paragraph 44, Defendants assert that they provided to Plaintiff**
4 **responses to Requests No. 17, 45, and 47 and explained further responses would be**
5 **forthcoming.**

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

11 **As to Paragraph 45, Defendants deny this Paragraph. Defendants**
12 **assert that Exhibits 40 and 41 pertain to one "blank citation form" that was missing**
13 **and that the concern about the one missing form was addressed by Defendants.**

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

17 **As to Paragraph 46, Defendants admit that Plaintiff made an inquiry**
18 **concerning document production and, again, about one blank citation form.**
19 **Defendants advised that they were working on the discovery issues with personnel**
20 **and counsel.**

21 47. On May 29, 2009, MCSO informed the United States, by letter to the
22 Attorney General, that it would not cooperate with DOJ's investigation and would "not
23 respond to any document requests from DOJ." Ex. 44 (Letter from Driscoll to Holder of
24 5/29/09, at 4).

25 **As to Paragraph 47, Defendants assert that Exhibit 44, the letter cited**
26 **in Plaintiff's Paragraph 41, also notes then-counsel Robert N. Driscoll's concern with**
27 **alleged ethical and discovery abuses by the Department of Homeland Security and**
28 **the Department of Justice in supposedly "independent" investigations. At page 5 of**

1 the Driscoll letter, then-counsel makes it clear that there will be no further response
2 to requests from DOJ or DHS “until appropriate assurances are made that
3 negotiations with DOJ are not rendered irrelevant by DOJ’s surreptitious use of ICE
4 and DHS to contravene any agreements that are reached.” In addition, despite
5 Plaintiff’s repeated assertions that its investigation is based on numerous, yet
6 unnamed, “complaints,” page 7 of Exhibit 44 notes that “the Civil Rights Division
7 Deputy assigned to the case acknowledged that ‘media reports’ provided the basis
8 for the investigation and that the Department was not yet in possession of facts that
9 would establish a Constitutional violation.”

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

21 As to Paragraph 48, Defendants admit that Exhibit 45 confirms the
22 existence of Exhibit 44, the letter cited in Plaintiff’s Paragraph 41, and notes then-
23 counsel Robert N. Driscoll’s concern with alleged ethical and discovery abuses by the
24 Department of Homeland Security and the Department of Justice in supposedly
25 “independent” investigations. At page 5 of the Driscoll letter, then-counsel makes it
26 clear that there will be no further response to requests from DOJ or DHS “until
27 appropriate assurances are made that negotiations with DOJ are not rendered
28 irrelevant by DOJ’s surreptitious use of ICE and DHS to contravene any agreements

1 that are reached.” In addition, despite Plaintiff’s repeated assertions that its
2 investigation is based on numerous, yet unnamed, “complaints,” page 7 of Exhibit 44
3 notes that “the Civil Rights Division Deputy assigned to the case acknowledged that
4 ‘media reports’ provided the basis for the investigation and that the Department was
5 not yet in possession of facts that would establish a Constitutional violation.”

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

15 As to Paragraph 49, Defendants deny that Sheriff Arpaio “held a press
16 conference and announced that MCSO would not cooperate with the United States’
17 investigation, either by providing documents or permitting interviews with
18 personnel.” Rather, Exhibits 46, 47 and 48 note that Defendants, through former
19 counsel, requested that the DOJ’s Office of Professional Responsibility investigate
20 “what appears to be a politically motivated investigation alleging the use of racial
21 profiling by the Maricopa County Sheriff’s Office.” Other allegations of unethical
22 conduct by the DOJ are set forth in Exhibits 46, 47 and 48. Defendants also assert
23 that the DOJ had failed to respond to Defendants’ concerns and questions
24 concerning allegations of unethical and politically motivated investigations of
25 Defendants.

26 50. On August 6, 2009, the United States again requested that MCSO
27 voluntarily cooperate with its investigation. Ex. 49 (Letter from Cutlar to Driscoll of
28 8/6/09).

1 **As to Paragraph 50, Defendants admit that Plaintiff sent a letter to**
2 **former counsel on August 6, 2009. Defendants affirmatively assert that the letter**
3 **makes it clear that the DOJ is, again, refusing to address issues and concerns**
4 **referenced in previous correspondence and emails between Plaintiff, Defendants and**
5 **counsel, refusing to identify the relevance of certain requested information and/or**
6 **identify or provide information with respect to alleged “complaints” supposedly**
7 **received by the DOJ. Rather, the letter makes clear the unreasonable and**
8 **unconstitutional overreaching requests for information and access sought by**
9 **Plaintiff.**

10 51. On August 12, 2009, MCSO advised that it was preparing a “position
11 paper...relating to the limited English proficiency (LEP) policy in the jails.” Ex. 50
12 (Email from Sierra to Cutlar of 8/12/09). The United States’ investigation of national
13 origin discrimination is not limited to concerns regarding the LEP policy in MCSO’s jails,
14 and includes allegations of discrimination in MCSO police practices and jail operations.
15 Ex. 29 (Letter from King to Arpaio of 3/10/09); Ex. 31 (Letter from Cutlar to McCormick
16 of 3/25/09); Ex. 32 (Letter from Friedlander to McCormick of 3/25/09); Ex. 33 (First
17 Request).

18 **As to Paragraph 51, Defendants admit that Plaintiff was informed**
19 **through counsel that MCSO was working on a position paper related to LEP policy**
20 **in the jails. Defendants cannot take a position on whether the “United States’**
21 **investigation of national origin discrimination is not limited to concerns regarding**
22 **the LEP policy in MCSO’s jails, and includes allegations of discrimination in MCSO**
23 **police practices and jail operations,” since the United States has made every effort to**
24 **conceal the alleged “complaints” it has received and to withhold information from**
25 **Defendants concerning any specific areas of concern in its continuing efforts to**
26 **conduct an unreasonable, overbroad, and unconstitutional siege of the Maricopa**
27 **County Sheriff’s Office. In addition, as previously noted, Exhibits 31 and 32,**
28 **admissions by Plaintiff, substantially limited the scope of Plaintiff’s investigation.**

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

5 **As to Paragraph 52, Defendants admit that it expected the position**
6 **paper to be provided in October. Defendants further assert that at this time, the**
7 **DOJ had still not responded to any of the questions and concerns expressed by**
8 **Defendants and counsel to Plaintiff (Exhibit 44).**

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

13 **As to Paragraph 53, Defendants admit that the United States is**
14 **troubled. Defendants further assert that the DOJ had still failed to address any**
15 **questions and concerns expressed by Defendants and counsel to Plaintiff (Exhibit**
16 **44).**

17 54. MCSO replied with regard to the position paper that “the October
18 time frame was one we are sure [we] can meet.” Ex. 52 (Email from Driscoll to Cutlar of
19 8/13/09). With regard to the restated request for access to documents and staff, MCSO
20 deferred discussion of those requests until after it prepared its position paper. *Id.* MCSO
21 reiterated its refusal as stated in May 2009 to cooperate with the United States’
22 investigation as to all “non-LEP issues.” *Id.*

23 **As to Paragraph 54, Defendants admit that, at that time, they felt that**
24 **“the October time frame was one we are sure we can meet...” Defendants further**
25 **assert that as to other documents and witnesses related to LEP issues, Defendants**
26 **advised that they would address any concerns by Plaintiff concerning documents and**
27 **witnesses which might address such concerns. Defendants further advised Plaintiff**
28 **that as to other issues addressed, Defendants could not respond in that the DOJ “has**

1 **declined to explain in any meaningful way what it is investigating.” Defendants also**
2 **advised that they had received no response from the DOJ to concerns expressed in**
3 **former counsel’s letter to Attorney General Holder (Exhibit 44).**

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

12 **As to Paragraph 55, Defendants admit that Plaintiff did not “agree to a**
13 **further extension until October.” Defendants further admit that Plaintiff requested**
14 **the position paper and answers to questions no later than August 21 and that the**
15 **DOJ be allowed access to MCSO facilities to review documents and interview MCSO**
16 **personnel and inmates as soon as possible. Defendants further assert that Plaintiff**
17 **continued to request access to documents from persons with “relevant information,”**
18 **but failed to provide any guidance or information as to what was “relevant.”**
19 **Plaintiff had still not responded to questions and concerns expressed by former**
20 **defense counsel (Exhibit 44).**

21 56. MCSO advised the United States on November 10, 2009, that it
22 expected to produce the position paper in “mid-December” 2009. Ex. 54 (Email from
23 Sierra to Friedlander of 11/10/99).

24 **As to Paragraph 56, Defendants admit that they expected to produce**
25 **the referenced position paper in mid-December 2009. Defendants also assert that**
26 **they explained their limited resources and that they were at the same time involved**
27 **in significant issues surrounding the Department of Homeland Security’s 287(g)**
28 **Memorandum of Agreement.**

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

4 **As to Paragraph 57, Defendants admit that it produced its position**
5 **paper on June 14, 2010.**

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

10 **As to Paragraph 58, Defendants admit that the June 2010 position**
11 **paper addressed issues regarding the LEP policy in MCSO jails. Defendants assert**
12 **that Plaintiff had still not responded to questions and concerns expressed to the**
13 **United States and the DOJ concerning its purported allegations and investigation**
14 **and did not provide any information concerning the relevancy of requested access**
15 **and information. Defendants further assert that they responded to Plaintiff’s**
16 **investigation as specifically limited by Plaintiff in Exhibits 31 and 32.**

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

22 **As to Paragraph 59, Defendants agree that Plaintiff admits that it**
23 **received documents that were fully responsive to requests numbered 46 and 48 in the**
24 **original Request for Information. Defendants also note that Plaintiff admits that it**
25 **received, through another source, responses to Requests 6, 8, 12, 14, and 29.**

26 60. On August 3, 2010, the United States notified Defendants that MCSO
27 “is not in compliance with its obligations under Title VI...to cooperate in the investigation
28 of alleged national origin discrimination undertaken by the Department of Justice Civil

1 Rights Division...Absent MCSO's voluntary cooperation with this investigation within
2 two weeks – by August 17, 2010 – the Department will file a Title VI civil action to
3 compel access to the requested documents, facilities, and personnel.” Ex. 56 (Letter from
4 Perez to Driscoll of 8/13/10, at 1).

5 **As to Paragraph 60, Defendants admit that the United States**
6 **threatened Defendants with a civil action by letter dated August 3, 2010. Defendants**
7 **further assert that by this date Plaintiff had still not responded to questions and**
8 **concerns expressed by Defendants (Exhibit 44) and failed to explain, define, or**
9 **identify specific issues of concern or relevancy which would provide Defendants an**
10 **ability to make informed decisions concerning reasonableness, relevancy, access and**
11 **further document requests.**

12 61. In its response on August 5, MCSO raised objections to a finding of
13 noncompliance with Title VI, and requested “an opportunity to meet and confer in order
14 to identify what shortcomings the [Civil Rights] Division believes exists” in MCSO’s
15 response to the investigation. Ex. 57 (Letter from Driscoll to Perez of 8/5/2010, at 4).

16 **As to Paragraph 61, Defendants assert that Exhibit 57 identifies**
17 **previously expressed concerns and questions by Defendants concerning Plaintiff’s**
18 **“investigations” and advises that MCSO “has fully cooperated with COR’s Title VI**
19 **investigation and stands ready to provide further assistance.” The Exhibit further**
20 **asserts MCSO’s commitment to cooperation going forward. The Exhibit further**
21 **discusses Plaintiff’s threat to bring federal suit as being premature and states that**
22 **MCSO “stands ready and willing to meet and confer with the Division to address**
23 **any concerns that the Division might have with regard to MCSO’s cooperation and**
24 **production of documents related to investigation of the complaint that forms the**
25 **basis of the Title VI investigation. The Exhibit further identifies issues in dispute**
26 **concerning the difference between the DOJ’s Title VI investigation and a Section**
27 **14141 investigation. Defendants also assert that to this date, Plaintiff had still**
28 **refused to answer questions and concerns addressed in Exhibit 44.**

1 62. On August 12, 2010, the United States agreed to MCSO’s request for
2 a meet-and-confer to determine whether litigation could be avoided, and advised that
3 litigation would follow “unless MCSO provides the complete cooperation outlined
4 herein.” Ex. 58 (Letter from Perez to Driscoll of 8/12/10, at 3). The United States
5 explained that it expected MCSO to provide access to all pertinent sources of information
6 that the United States had requested: “MCSO cannot contend that it is voluntarily
7 complying with the Department’s investigation by choosing a selective portion of the
8 investigation as to which it will provide a partial and dilatory response, while steadfastly
9 continuing to refuse to produce the vast majority of the requested documents or to permit
10 access to any relevant facilities or personnel.” *Id.* at 2.

11 **As to Paragraph 62, Defendants admit that the United States agreed to**
12 **a “meet and confer” and reiterated its threat of civil litigation. Defendants also**
13 **assert that to this date Plaintiff had refused to address questions and concerns**
14 **conveyed in Exhibit 44 and failed to identify “relevant” or “pertinent” areas of**
15 **inquiry or to provide any information concerning specific alleged “complaints”**
16 **which would allow Defendants to make informed decisions concerning**
17 **reasonableness, relevancy and/or pertinence and thus to respond to Plaintiff’s**
18 **unreasonable, overly burdensome and unconstitutional request for information and**
19 **access.**

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

23 **As to Paragraph 63, Defendants deny this Paragraph. Exhibit 59 is a**
24 **letter from counsel for another Defendant to this litigation and is not relevant to**
25 **Plaintiff’s Motion for Summary Judgment. Defendants object to Exhibit 59 as it is**
26 **irrelevant and hearsay. The document lacks foundation and is not an admission as**
27 **to these Defendants.**

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

9 **As to Paragraph 64, Defendants admit the contents of the letter which is**
10 **Exhibit 60. Defendants object to the letter as being irrelevant and hearsay. Exhibit**
11 **60 lacks foundation and is not an admission by these Defendants.**

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

14 **As to Paragraph 65, Defendants assert that former counsel advised the**
15 **County Manager that "[t]he MCSO has responded to DOJ's requests...and stands**
16 **ready to respond further should more requests on LEP issues be forthcoming.**
17 **Defendants, through counsel, further informed the County Manager that "MCSO is**
18 **in the process of working with DOJ to clarify what police practices issues DOJ thinks**
19 **implicate the issue of national origin discrimination and what complaints it has**
20 **received in this regard that it desires to investigate under Title VI." It should**
21 **further be noted that at this time the United States and/or DOJ had not responded to**
22 **concerns and questions expressed in Exhibit 44 and had failed to identify specific**
23 **areas of relevancy or specific "complaints" allegedly received by DOJ in order that**
24 **Defendants could make informed decisions concerning reasonableness, relevancy,**
25 **constitutionality, and the requests for access and information. Defendants further**
26 **object to Exhibit 61 as irrelevant.**

27 66. On August 20, 2010, in advance of the meet-and-confer, the United
28 States advised MCSO that it considered the documents produced with MCSO's June 2010

1 position paper to be fully responsive of two of the fifty-one requests in the First Request,
2 and that it considered documents requested of MCSO in the related litigation captioned
3 *Melendres v. Arpaio*, No. 2:07-cv-02513-PHX-GMS (D. Ariz.), to be coextensive with
4 five additional requests. Ex. 62 (Email from Preston to Driscoll of 8/20/10). The United
5 States reiterated that it considered the remaining forty-four requests to still be entirely
6 outstanding, and also advised MCSO that the United States intended to secure MCSO's
7 agreement at the meet-and-confer to permit access to MCSO's staff and facilities. *Id.*

8 **As to Paragraph 66, Defendants admit that the United States confirmed**
9 **that it had received documents fully responsive to seven of its requests for**
10 **information. Defendants further assert that Plaintiff had still failed to respond to**
11 **concerns and questions expressed in Exhibit 44 and had failed to identify specific**
12 **areas of relevancy or specific “complaints” allegedly received by DOJ in order that**
13 **Defendants could make informed decisions concerning reasonableness, relevancy,**
14 **constitutionality, and the requests for access and information.**

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

18 **As to Paragraph 67, Defendants admit that MCSO, through former**
19 **counsel, asked the United States to disclose specific underlying complaints alleging**
20 **national origin discrimination. Former counsel thoroughly explained the reasons for**
21 **such a request and note that “[i]t is these complaints that would define the proper**
22 **scope of a Title VI inquiry.” In addition, counsel also noted that “in order to discuss**
23 **the appropriate scope of DOJ’s document request under Title VI, we need to know**
24 **what allegations are being investigated.”**

25 68. The United States responded the same day that there was no
26 requirement that any specific complaint be communicated to MCSO. Ex. 64 (Email from
27 Preston to Driscoll of 8/23/10). The United States nonetheless specified that the
28 investigation entailed “numerous credible and specific allegations of national origin

1 discrimination related to jail operations and police practices, including, *inter alia*, stops,
2 searches, uses of force, detention, arrests, and other police practices.” *Id.*

3 **As to Paragraph 68, Defendants admit that Plaintiff refused to provide**
4 **any information concerning specific complaints and continued to refuse to address**
5 **the questions and concerns expressed in Exhibit 44 and failed to provide any basis at**
6 **all for Defendants to address questions of reasonableness and relevancy and make**
7 **informed decisions concerning Plaintiff’s request for access and documents.**
8 **Defendants further note that while Exhibit 64 states that Plaintiff’s investigation “is**
9 **in fact based *in part* (emphasis added) on numerous credible and specific allegations**
10 **of national origin discrimination related to jail operations and police practices,**
11 **including, *inter alia*, stops, searches, uses of force, detention, arrests, and other police**
12 **practices,” Plaintiff again refused to provide any specific information which would**
13 **allow Defendants to make informed decisions concerning reasonableness, relevancy,**
14 **constitutionality, and the requests for access and information. In addition (and**
15 **contrary to Plaintiff’s assertions of “numerous credible and specific allegations”),**
16 **and as noted in Exhibit 44, at page 7, “the Civil Rights Division Deputy assigned to**
17 **the case acknowledged that ‘media reports’ provided the basis for the investigation**
18 **and that the Department was not yet in possession of the facts that would establish a**
19 **Constitutional violation.”**

20 69. More than a year earlier, the United States had explained, in response
21 to the same request from MCSO, that there was no obligation to identify specific
22 complainants or allegations of discrimination. Ex. 49 (Letter from Cutlar to Driscoll of
23 8/6/09).

24 **As to Paragraph 69, Defendants admit that the United States had**
25 **refused for over a year to provide information pertaining to the basis of their**
26 **investigation and any purported “complaints.” In fact, Exhibit 49, in paragraph 3,**
27 **leads the reader to believe that the United States Department of Justice has no idea**
28 **what it is looking for and “cannot identify the specific MCSO policies and practices,**

1 **if any, that may be relevant to whatever we may find.”**

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

7 **As to Paragraph 70, Defendants admit that, as one example, MCSO,**
8 **through counsel, noted that a certain request did not appear to relate to national**
9 **origin discrimination. Defendants assert that said assertion was made as just that,**
10 **an example, and was not meant to be exhaustive. It should also be noted that at this**
11 **time, Plaintiff had still not responded to concerns and questions expressed in Exhibit**
12 **44 and had failed to identify specific areas of relevancy or specific “complaints”**
13 **allegedly received by DOJ in order that Defendants could make informed decisions**
14 **concerning reasonableness, relevancy, constitutionality, and the requests for access**
15 **and information.**

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

20 **As to Paragraph 71, Defendants admit that the United States contended**
21 **that all of the requests were related to Title VI. Defendants further assert that as of**
22 **this date Plaintiff had still failed to respond to concerns and questions expressed in**
23 **Exhibit 44 and had failed to identify specific areas of relevancy or specific**
24 **“complaints” allegedly received by DOJ in order that Defendants could make**
25 **informed decisions concerning reasonableness, relevancy, constitutionality, and the**
26 **requests for access and information.**

27 72. The United State and MSCO held a meet-and-confer on August 24,
28 2010. Ex. 65 (Letter from Preston to Driscoll of 8/25/10, at 1). The following day, the

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

6 **As to Paragraph 72, Defendants admit that the meet and confer was**
7 **held on August 24, 2010. Defendants further admit that the United States sent**
8 **Exhibit 65 to former counsel for Defendants. Defendants further admit that the**
9 **United States stated that it would make a unilateral determination concerning**
10 **voluntary compliance. Defendants further assert that as of this date Plaintiff had**
11 **still failed to respond to concerns and questions expressed in Exhibit 44 and had**
12 **failed to identify specific areas of relevancy or specific “complaints” allegedly**
13 **received by DOJ in order that Defendants could make informed decisions**
14 **concerning reasonableness, relevancy, constitutionality, and the requests for access**
15 **and information.**

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

1 **As to Paragraph 73, Defendants deny that MCSO, through former**
2 **counsel, advised the United States “that it would not provide full cooperation with**
3 **the United States’ request for access to sources of information.” In fact, Defendants**
4 **assert that Exhibit 66 states the opposite: “As such, on behalf of MCSO, I want to**
5 **clearly state that MCSO is committed to cooperating with DOJ’s Title VI**
6 **investigation into national origin discrimination. In this regard, MCSO will identify**
7 **the numerous responsive documents already in DOJ’s possession and will take**
8 **reasonable steps to search for and produce additional relevant, responsive**
9 **documents to the extent DOJ does not have them. Furthermore, to the extent that no**
10 **responsive documents exist for a given request, MCSO will so state. Based upon my**
11 **understanding of DOJ’s investigative focus as articulated during our meeting,**
12 **MCSO will initially focus its use of resources on identifying and producing**
13 **responsive documents that could be relevant to allegations of racial profiling,**
14 **discriminatory policing and traffic stops, and employer sanctions investigations,**
15 **which are topics that I understand to be of principle concern for DOJ.” Defendants**
16 **further admit that Exhibit 66 contains a discussion as to the timing of production**
17 **and a discussion of deadlines. Defendants further admit that Exhibit 66 references**
18 **documents secured by Plaintiff through other sources. Defendants also assert that**
19 **Exhibit 67 identifies documents in the possession of Plaintiff responsive to 11 of the**
20 **51 requests in Plaintiff’s First Request. Those documents responsive to 11 of the 51**
21 **requests contain 166 subparts.**

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

27 **As to Paragraph 74, Defendants admit that the United States**
28 **unilaterally determined that MCSO failed to comply with Title VI as referenced in**

1 **Exhibit 68. Defendants further assert that as of this date Plaintiff had still failed to**
2 **respond to concerns and questions expressed in Exhibit 44 and had failed to identify**
3 **specific areas of relevancy or specific “complaints” allegedly received by DOJ in**
4 **order that Defendants could make informed decisions concerning reasonableness,**
5 **relevancy, constitutionality, and the requests for access and information.**

6
7 DATED this 10th day of December, 2010.

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

9
10 By /s/Joseph J. Popolizio

11 William R. Jones, Jr.

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1 ORIGINAL electronically filed
2 this 10th day of December, 2010.

3 COPY e-mailed
4 this 10th day of December, 2010, to:

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