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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

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

Defendants.

No. 2:10-cv-01878-GMS

PLAINTIFF'S REPLY TO DEFENDANT MCSO AND DEFENDANT SHERIFF JOSEPH M. ARPAIO'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

AND

RESPONSE TO CROSS-MOTION FOR SUMMARY JUDGMENT

The Maricopa County Sheriff's Office and Sheriff Joseph M. Arpaio (collectively, "MCSO") concede that as a recipient of federal funds, MCSO is obligated—by statute, regulation, and contract—to provide the United States with access to its sources of information by allowing the United States to review relevant documents, inspect MCSO facilities, and interview personnel. MCSO has not disputed facts establishing that for roughly eighteen months the United States attempted to obtain from MCSO the access to which it was entitled under the law and received almost nothing. MCSO's eighteen months of uncooperativeness led to this lawsuit and warrant entry of summary judgment for the United States.[1]

In its Response to the United States' Motion for Summary Judgment ("Response"): (1) MCSO does not contest any material facts alleged by the United States; (2) MCSO advances the meritless argument that its belated, post-suit responses to the United States' requests for access render this matter moot; (3) MCSO complains about the scope of the United States' document requests in an attempt to obscure the fact that prior to the filing of this lawsuit, MCSO provided only a miniscule amount of access to its sources of information; (4) MCSO ignores long-standing regulations and precedents requiring language support for individuals with limited English proficiency ("LEP") under Title VI; (5) MCSO makes groundless allegations concerning misconduct by the United States in an attempt to distract this Court from MCSO's obligations to comply with Title VI; and (6) MCSO argues without basis that the United States cannot investigate MCSO's police practices under Title VI because discriminatory police practices also implicate another federal civil rights statute.

[1] Pursuant to Local Rule 56.1(b)(1), the United States is separately filing a statement that addresses each of the factual assertions contained in the Statement of Facts MCSO filed in support of its cross-motion for summary judgment. The United States notes that, while it disputes many of the facts asserted in MCSO's Statement, there are no "*genuine* disputes of *material* fact" that would preclude summary judgment for the United States, as discussed further in this Memorandum.

Below, the United States details the material facts conceded by MCSO and responds to MCSO's arguments.

I. MCSO concedes the principal material facts.

In its Response, MCSO either admits or does not dispute the material facts alleged by the United States. In so doing, MCSO admits to violating Title VI and the contractual assurances into which it entered. MCSO's Response establishes the following:

1. MCSO admits that it receives funds from the United States, and that receiving these funds requires MCSO to comply with Title VI and its implementing regulations. DO ¶¶ 4-7, 11-13, 15-21, 22-33.[2]
2. MCSO admits that it entered into enforceable contractual assurances with the United States obliging it to comply with Title VI. DO ¶¶ 22-33.
3. MCSO admits to receiving a letter from the United States on March 10, 2009, stating that the United States was initiating an investigation focusing "on alleged patterns and practices of discriminatory police practices and unconstitutional searches and seizures conducted by the MCSO, and allegations of national origin discrimination, including failure to provide meaningful access to MCSO services for limited English proficient (LEP) individuals."[3]
4. MCSO admits that on March 25, 2009, MCSO received the United States' First Request for Documents and Information, consisting of 51 document requests. DO ¶ 36.

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[2] All references in this Response to "DO ¶ __" are to the MCSO's Objections to Plaintiff's Statement of Undisputed Facts, Dckt. 42.

[3] MCSO formally denies the paragraph in the Plaintiff's Statement of Undisputed Facts in which the United States describes this letter, but subsequently admits that the letter MCSO received contains the quoted language. *See* DO ¶ 34. In any case, MCSO has included the March 10, 2009, letter as its own exhibit. Def. Ex. 1.

5. MCSO does not contest that when MCSO and United States representatives met to discuss the United States' investigation on April 30, 2009, the United States' representatives explained that the investigation of MCSO "would involve extensive document review, tours of MCSO facilities, and interviews with MCSO staff and jail inmates." DO ¶ 41.

6. MCSO does not contest that on May 12, 2009, MCSO responded to the United States' requests for access to jail and police related documents, personnel, and facilities, by providing the United States with just eleven pages of documents. DO ¶ 44.

7. MCSO does not contest that, after providing the United States with just eleven pages of documents, MCSO informed the United States, in a letter dated May 29, 2009, that it would not cooperate with the United States' investigation, and would "not respond to any document requests from DOJ." DO ¶ 41.

8. MCSO does not contest that "on June 22, 2009, MCSO reiterated its refusal to produce any documents or to make any of its staff available for interviews." DO ¶ 48.

9. MCSO does not contest that, despite MCSO's unambiguous refusal to cooperate detailed above, the United States continued to seek voluntary compliance through requesting responses to the United States' document requests and access to MCSO staff. DO ¶¶ 50, 53, 55.

10. MCSO admits that on June 14, 2010, well over a year after receiving the United States' requests for documents and access to staff and facilities, Defendants supplemented their original eleven pages of production with a position paper addressing only two of the 51 document requests. DO ¶¶ 58-59.

11. MCSO admits to facts establishing that, as of a week before the filing of this lawsuit on September 2, 2010, the only documents the United States

had obtained from MCSO were the eleven pages provided on May 12, 2009, and the position paper with attachments provided on June 14, 2010, and that these documents were responsive to only two of the United States' 51 document requests.[4] DO ¶¶ 54, 58-59

12. MCSO does not contest that, as of the filing of this lawsuit, the United States had not toured MCSO's jail facilities or interviewed any of MCSO's jail or police personnel despite the United States' past efforts to obtain such access. DO ¶ 41; Response 12.

Title VI and its implementing regulations require federal fund recipients to provide the United States with broad access to a variety of sources of information to enable the United States to determine whether the recipient is complying with federal law. 28 C.F.R. §§ 42.106(b), 42.106(c). As detailed above, the uncontested facts establish that MCSO is a recipient of such funding; that MCSO has entered into contractual assurances obligating it to abide by Title VI and its regulations; and that, although MCSO was aware of the United States' requests for information, MCSO provided almost no access at all, much less the access to which the United States is entitled. Because there is no genuine dispute of material fact that MCSO failed to fulfill its obligations under Title VI and the related assurance agreements, the United States' motion for summary judgment should be granted.

II. MCSO's belated, post-suit responses to the United States' various requests for access do not render this matter moot.

Despite conceding the material facts regarding its failure to meet the obligations imposed by Title VI, MCSO raises meritless arguments in opposition to the United States' motion for summary judgment (and in support of its own cross-motion for

[4] Five days before this lawsuit was filed, MCSO notified the United States that documents the United States had already obtained without MCSO's assistance from the private plaintiffs in Melendres v. Arpaio, CV 07-2513-PHX-GMS, were responsive to a few of the United States' document requests.

summary judgment). One argument on which MCSO relies heavily is that its post-complaint decision to begin cooperating in the United States' investigation renders this lawsuit moot. *See* Response 11-16. But "[i]t is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). Without this rule, "the courts would be compelled to leave '[t]he defendant . . . free to return to his old ways.'" *Id.* at 289 n.10 (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)).

Indeed, "the standard . . . for determining whether a case has been mooted by MCSO's voluntary conduct is stringent: 'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000). The party alleging mootness bears a "heavy burden" of persuading the court "that the challenged conduct cannot reasonably be expected to start up again." *Id.*

MCSO has not met its heavy burden of demonstrating that its wrongful behavior could not reasonably be expected to recur absent a ruling by this Court. The United States sought MCSO's cooperation in its investigation for nearly eighteen months without success. SOF ¶¶ 34-74. Only after the United States filed its complaint in this action did MCSO begin to cooperate in the United States' investigation by providing the requested documents and allowing facility tours and staff interviews. *See* Response 12-17 (noting that MCSO's cooperation began in November 2010, several months after the United States filed its First Amended Complaint and Motion for Summary Judgment). The Ninth Circuit has made clear that this type of "litigation history"—the decision to comply with the law only after being sued—is probative of the likelihood of future noncompliance. *Rosemere Neighborhood Ass'n v. EPA*, 581 F.3d 1169, 1175 (9th Cir. 2009).

In addition, even as MCSO touts its newfound responsiveness to the United States' requests, MCSO repeatedly states that the United States' Title VI investigation is, as a whole, improper. *See, e.g.*, Response 16 ("Production of and access to documentation has occurred pursuant to the United States' request, despite the impropriety of the United States' Title VI investigation."). MCSO's characterization of its cooperation as a matter of courtesy rather than of obligation under Title VI provides the United States with good reason to expect that MCSO's wrongful behavior will recur.

Any recurrence of MCSO's misconduct would significantly undermine the United States' efforts at a critical juncture in its investigation. In the coming weeks, the United States seeks to conduct additional interviews, including interviews of Sheriff Arpaio and other senior managers, and to obtain all of the documents it needs to complete its investigation. The United States has good reason to believe MCSO's misconduct will return absent either an agreement between the parties or a judgment in the United States' favor. For this and for all of the other above-stated reasons, the Court should reject MCSO's argument that its belated, post-complaint decision to cooperate renders this lawsuit moot.

III. MCSO's argument that the scope of the United States' requests for information is unreasonable should be rejected.

MCSO also argues that the United States' motion for summary judgment should be denied because the United States' information request was unreasonably broad. Specifically, MCSO argues that while the United States is entitled to information relating to the operation of its jail practices, the United States' requests for information relating to MCSO's police practices are unreasonable. Response 5-6. Because MCSO acknowledges, as it must, controlling caselaw that the United States is entitled to "considerable latitude" in conducting its investigation, *United States v. El Camino Cmty. Coll. Dist.*, 600 F.2d 1258, 1259 (9th Cir. 1979), MCSO's overbreadth argument should be rejected.

Under Title VI, the United States is entitled to all of the information it has asked MCSO to produce. The scope of a Title VI investigation is broad by its very nature. When any part of "a department, agency, special purpose district, or other instrumentality of a State or local government" receives federal financial assistance, "all of the operations" of that agency are covered by Title VI. 42 U.S.C. § 2000d-4a(1)(A); *see, e.g.*, *Fleming v. Yuma Reg'l Med. Ctr.*, 587 F.3d 938, 940 (9th Cir. 2009). And as the Ninth Circuit has made clear, Title VI's implementing regulations give the United States "considerable latitude in scrutinizing policies and practices" of federal fund recipients. *El Camino*, 600 F.2d at 1259-60. The Court also construed these provisions as contemplating "virtually an open-file examination of all of [the recipient's] records and programs." *Id.* at 1259.[5]

Despite agreeing that the United States is entitled to "substantial latitude" in conducting its investigation, *see* Response 16-17, MCSO nonetheless claims that the United States' investigation is unreasonably broad to the extent that it includes a review of discriminatory police practices in addition to discriminatory jail practices. MCSO contends that the United States "limited the scope of its [Title VI investigation] . . . to alleged discrimination against L[imited] E[nglish] P[roficiency] inmates in the Maricopa County jails," and did not provide adequate notice that it was also investigating discriminatory police practices. Response 5-6. The evidence is at odds with this position.

[5] The United States does not agree with MCSO's assertion that the reasonableness standard articulated by the Fifth Circuit in *United States v. Harris Methodist Fort Worth*, 970 F.2d 94, 99-100 (5th Cir. 1992) applies here. *Harris* adopts a standard for compliance reviews conducted entirely at the United States' discretion under 28 C.F.R. § 42.107(a), while the case at bar involves an investigation prompted by third party complaints, about which the regulations direct the responsible Department official to "make a prompt investigation." 28 U.S.C. § 42.107(c). Because this case involves an investigation required by § 42.107(c), and not a discretionary compliance review as authorized by § 42.107(a), *Harris* has no applicability here. And in any event, as described *infra* Parts III-VI, the United States' investigation is well within constitutional standards of reasonableness.

The United States' March 10, 2009, notice letter to MCSO initiating an investigation under Title VI and other civil rights statutes states: "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." SOF ¶ 34 and Ex. 29 (emphasis added). The meaning of this sentence cannot be plainer. Given the United States' clear statement of intent to investigate discriminatory police practices coming shortly after a statement that the investigation was being conducted, in part, pursuant to Title VI, a statute that concerns itself with discrimination, MCSO had every reason to understand that the United States' Title VI investigation would extend to police practices. Further, the letter clearly communicates to MCSO that the investigation into national origin discrimination under Title VI, included, and was therefore not limited to, treatment of LEP individuals. For this reason too, MCSO had every reason to conclude that the Title VI investigation embraced its police as well as its jail practices.

MCSO acknowledges that the March 10 letter references an investigation of "discriminatory police practices," *see* Response 5, but claims that the United States limited the scope of its investigation in a subsequent letter on March 25, 2009. The March 25 letter contains no such limiting language or even a reference to the scope of the United States' Title VI investigation. SOF ¶ 36 and Ex. 32. MCSO seeks to create ambiguity concerning the meaning of the March 10 letter where there is none.[6]

When, almost seventeen months after the commencement of this investigation, MCSO, for the first time, sought to justify their non-compliance with Title VI's requirements by claiming insufficient notice as to the full scope of the investigation,

[6] Interpretation of unambiguous written instruments is traditionally a question of law, and resolution of ambiguity can in any case be resolved on summary judgment. *See Southern Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003).

the United States reiterated in a letter dated August 3, 2010, and then again in subsequent meetings that the United States was investigating MCSO's police practices as well as its jail operations under Title VI. DSOF ¶ 15.[7] Nonetheless, in the face of these clear, unambiguous reiterations of the scope of the United States' Title VI investigation, MCSO refused to provide the United States with meaningful access to police related sources of information prior to the commencement of this lawsuit. *See* SOF ¶¶ 47-59.

While MCSO now suggests that it resisted providing police related information because it had concluded that, in contradistinction to the United States' investigation of MCSO's jails, the United States had failed to provide adequate notice of its Title VI police investigation, for most of this investigation, MCSO's response to police-related requests has been largely indistinguishable from its response to the United States' jail-related requests. *See* SOF ¶¶ 47-59. Early in its investigation, the United States sought and was denied access to the jails to conduct tours, interviews of inmates, and interviews of jail staff. *See* SOF ¶ 54. Further, the March 2009 document request contained nine document requests relating solely to the jails to which MCSO refused to respond. *See* SOF ¶ 54 and Ex. 33. In June and July 2009, when United States attorneys pressed MCSO for responses to both its jail and police related requests, MCSO representatives, including Defendant Arpaio, unambiguously told the United States that they would not cooperate. *See* SOF ¶ 54. Over a year later, when the United States finally obtained documents from MCSO, those documents were only responsive to two of the United States' nine jail related document requests. SOF ¶ 59. In sum, until the United States filed this lawsuit, MCSO consistently refused to provide the United States with anything approaching what it would need to determine whether MCSO engaged in either discriminatory jail or police practices. Thus, the

[7] All references in this Response to "DSOF ¶ __" are to the MCSO's Separate Statement of Facts, Dckt. 41.

amount of notice received by MCSO has little to do with its willingness to cooperate and is no more than a recently devised excuse for its noncompliance.

Finally, even assuming MCSO actually had good faith concerns about the scope of the United States investigation, those concerns would not have entitled MCSO to simply defy or ignore all of the United States' requests for information. Instead, MCSO should have produced any undisputed materials and negotiated in good faith about the rest. *Cf. Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court (Cebull)*, 408 F.3d 1142, 1149 (9th Cir. 2005) (holding that, in context of discovery production requests, blanket refusals are insufficient to resist production); *SEC v. First Fin. Grp. of Tex., Inc.* 659 F.2d 660, 668-69 (5th Cir. 1981) (holding that blanket assertions of privilege are improper means of resisting discovery requests and that privilege must be invoked particularly as to each record requested).

Because there is no genuine dispute of material fact that all of the information requested by the United States is well within its Title VI investigative authority and because MCSO failed to provide the United States with access to sources of information that MCSO concedes are well within the scope of the United States' investigation, this Court should reject MCSO's argument that the scope of the United State's investigation entitles MCSO to defy the United States' requests for information.

IV. MCSO ignores longstanding regulations and precedents requiring language support for LEP individuals under Title VI.

MCSO contends that the United States cannot investigate allegations that MCSO violated Title VI when it failed to ensure that LEP individuals were given proper access to services through language support. As an initial matter, the United States has made clear that its investigation includes allegations of national origin discrimination against Latino persons that go beyond the failure to provide adequate language services. *See* First Am. Compl. ¶¶ 3, 12-21; SOF ¶¶ 34-35. Therefore, the issue of whether Title VI extends to protecting LEP individuals is not presented here

because, as discussed above, MCSO's noncompliance goes far beyond an unwillingness to cooperate with the LEP related aspects of the United States' investigation.

To the extent the Court needs to consider this question at all, the United States clearly has the authority to conduct an investigation under Title VI involving allegations that the denial of services to LEP individuals constitutes discrimination on the basis of national origin. MCSO's argument to the contrary ignores Supreme Court precedent, long-standing federal agency regulations, and more than 35 years of consistent agency interpretation of those regulations.

The Supreme Court held over three decades ago that a federal fund recipient's denial of an education to a group of non-English speakers violated Title VI and its implementing regulations. *Lau v. Nichols*, 414 U.S. 563, 569 (1974). As the Court explained, "[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" Title VI regulations. *Id.* at 568; *see also id.* at 570-71 (Stewart, J., concurring in result). Since *Lau*, other courts have held that failure to provide meaningful access to LEP persons constitutes national origin discrimination. *See, e.g.*, *Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), *rev'd on other grounds*, 532 U.S. 275; *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI). And the Ninth Circuit has also specifically recognized in other contexts that refusal to provide language services can result in national origin discrimination. *See Yniguez v. Arizonans for Official English*, 69 F.3d 920, 947 (9th Cir. 1995) ("language is a close and meaningful proxy for national origin"), *vacated on other grounds*, 520 U.S. 43 (1997); *Odima v. Westin Tucson Hotel*

Co., 991 F.2d 595, 601 (9th Cir. 1993) ("accent and national origin are obviously inextricably intertwined"); *Asian Am. Bus. Group v. City of Pomona*, 716 F. Supp. 1328 (C.D. Cal. 1989) (finding an ordinance requiring commercial signs to devote one-half their advertising space to English alphabetical characters constitutes discrimination based on national origin).[8]

The cases cited by MCSO hold only that the failure to provide language assistance did not, in those particular cases, amount to *intentional* discrimination on the basis of national origin. These cases did not go so far as to hold, as MCSO argues, that failure to provide language assistance can never constitute discrimination on the basis of national origin under Title VI. *See Mumid v. Abraham Lincoln High Sch.*, 618 F.3d 789, 794-95 (8th Cir. 2010); *Hannoon v. Fawn Eng'g Corp.*, 324 F.3d 1041, 1047-48 (8th Cir. 2003); *Soberal-Perez v. Heckler*, 717 F.2d 36, 42 (2d Cir. 1983); *Garcia v. Gloor*, 618 F.2d 264, 268 (5th Cir. 1980); *Franklin v. District of Columbia*, 960 F. Supp. 394, 431-32 (D.D.C. 1997). Moreover, DOJ's Title VI implementing regulations prohibit not only intentional discrimination but also facially-neutral practices that have a discriminatory impact, *see* 28 C.F.R. § 42.104(b)(2), and the Ninth Circuit has recognized that language policies can in fact have a discriminatory adverse impact on the basis of national origin. *See Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1488 (9th Cir. 1993) ("As applied '[t]o a person who speaks only one tongue or to a person who has difficulty using another language than the one spoken in his home,' an English-only rule [in the workplace] might well have an adverse impact.") (citing *Gloor*, 618 F.2d at 270). Federal agency actions implementing these

[8] Congress also has recognized that failure to provide LEP persons meaningful access can constitute national origin discrimination, noting approval of *Lau* by enacting provisions in the Education Amendments of 1974, Pub. L. No. 93-380, §§ 105, 204, 88 Stat. 503-512, 515. These provisions adopted the "essential holding" of *Lau*, *see Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981), and provided funds to assist school districts in providing bilingual education to comply with Title VI and its regulations as interpreted in *Lau*.

regulations are in accord, and have consistently construed Title VI's prohibition on both intentional and disparate-impact discrimination to require that recipients of federal financial assistance provide meaningful access for LEP persons. *See, e.g.*, 28 C.F.R. § 42.405(d)(1); Department of Health and Human Services (HHS) Notice, 35 Fed. Reg. 11,595 (1970); 45 Fed. Reg. 82,972 (1980); Executive Order 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

Because the United States' investigation of alleged national origin discrimination is not limited to the failure to provide adequate language services to LEP individuals—and because an investigation regarding only the discriminatory denial of language services would be authorized by Title VI in any event—the Court should reject MCSO's arguments concerning the basis for the United States' investigation.

V. MCSO's various allegations concerning misconduct by the United States' representatives constitute nothing more than groundless attempts to distract this Court from MCSO's obligations to comply with the access requirements of Title VI.

MCSO also opposes summary judgment on the ground that, in two respects, the *conduct* of the United States' investigation has been unreasonable. First, MCSO reiterates its unsupported accusation—initially raised more than a year ago—that DOJ attorneys surreptitiously entered into an agreement with the Department of Homeland Security ("DHS") for the purpose of improperly obtaining statements that MCSO personnel made to DHS. *See* SOF Ex. 44. As MCSO knows full well—but has failed to advise the Court—these allegations were fully investigated and rejected over seven months ago by DOJ's independent Office of Professional Responsibility ("OPR"). OPR's investigation, commenced at MCSO's request, concluded that no such surreptitious agreement had been entered into and that no DOJ attorney had committed professional misconduct or exercised poor judgment in connection with the MCSO

investigation. SSOF ¶¶ 3-5; Ex. 70.[9] The willingness of MCSO to continue making the same groundless accusations in the face of OPR's findings exonerating the DOJ attorneys involved demonstrates that MCSO's allegations have stemmed not from any fact-based concern about the conduct of the United States' attorneys, but from a desire to forestall a review of its jail and police practices.

Second, MCSO alleges that its refusal to cooperate was justified because the United States' investigation was politically motivated. MCSO's principal evidence of a politically motivated investigation is that the United States announced its investigation of MCSO in March 2009, two months after a change of presidential administration. *See* Response 9. As with its baseless claim of improper attorney conduct, MCSO's allegation of political targeting was also thoroughly investigated and rejected by OPR. SSOF ¶¶ 3-5; Ex. 70. Further, MCSO's allegation ignores the fact that the United States first opened a preliminary inquiry into alleged discrimination by MCSO in June 2008, during the prior presidential administration. First Am. Compl. ¶ 22. Also, the United States commenced its preliminary inquiries after reviewing credible and specific complaints and other material concerning MCSO. *See* 28 C.F.R. § 42.107(c) (Title VI regulations provide that the DOJ "will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply [with Title VI]"). For these reasons, this Court should grant the United States' motion for summary judgment and reject MCSO's efforts to resurrect its wholly unfounded assertions that the United States' investigation has been conducted in any improper manner.

VI. MCSO's allegation that an investigation under Section 14141 necessarily excludes Title VI, or vice versa, is unfounded and unconvincing.

Finally, MCSO claims without citation to any authority that the United States has in some way improperly "fused" Title VI and 42 U.S.C. § 14141 by investigating

[9] All references in this Response to "SSOF ¶ __" are to the Plaintiff's Supplemental Statement of Facts, filed herewith pursuant to Local Civil Rule 56.1(a).

discriminatory police practices under both statutes. This argument is unpersuasive given that allegations of national origin discrimination made against MCSO implicate both statutes.[10] MCSO's suggestion that investigation of certain police practices, such as use of force, and searches and seizures, implicate only § 14141, likewise is nonsensical. The statutory scheme of Title VI broadly implicates the entirety of a federally-funded program or activity, as described above. *See* 42 U.S.C. § 2000d-4a(1)(A). Additionally, all of the police practices identified by MCSO may be used or applied in a discriminatory manner, thereby directly implicating Title VI. Finally, despite repeated requests by the United States, MCSO has failed to identify specific requests made by the United States that are outside the scope of its Title VI investigation, choosing instead to take the unsupported position that the United States' requests comprise an "unlimited" investigation. DSOF ¶ 44. The United States has never asserted that its investigation is "unlimited," but has asserted instead that MCSO, as a federal fund recipient, cannot simply shut the door to the United States' requests for access.

CONCLUSION

For the reasons stated above, the uncontested record establishes that the defendants have not met their obligations under Title VI, and the United States' motion for summary judgment should be granted.

[10] Title VI prohibits discrimination on the basis of national origin by federal fund recipients such as MCSO. Section 14141 also reaches national origin discrimination by prohibiting a pattern or practice of conduct by law enforcement officers that deprives persons of rights protected by the "Constitution or laws of the United States," including the 14th Amendment's Equal Protection Clause and federal statutory protections, such as the Safe Streets Act and Title VI itself.

Dated: February 4, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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