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Thomas E. Perez
Assistant Attorney General
Dennis K. Burke
United States Attorney
Roy L. Austin, Jr. (IL Bar #6228785)
Matthew Colangelo (NY Bar #4228797)
Jonathan Smith (DC Bar #396578)
Avner Shapiro (DC Bar #452475)
Peter S. Gray (DC Bar #940031)
Laurie A. Gelman (VA Bar #47743)
Amin Aminfar (NC Bar #36589)
U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(ph) 202-514-6225 / (fax) 202-514-4883
(email) amin.aminfar@usdoj.gov

Michael M. Walker (AZ Bar #20315)
Assistant U.S. Attorney
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, AZ 85004-4408
(ph) 602-514-7500 / (fax) 602-514-7760
(email) michael.walker4@usdoj.gov

Attorneys for the United States

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 OBJECTIONS TO
DEFENDANT MCSO AND
DEFENDANT JOSEPH M.
ARPAIO'S STATEMENT OF
FACTS IN SUPPORT OF
RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Plaintiff United States submits its Objections to Defendants Maricopa County Sheriff's Office and Joseph M. Arpaio's (collectively, "MCSO") Statement of Facts in Support of Response to Plaintiff's Motion for Summary Judgment.

1 1. On March 10, 2009, the United States Department of Justice (“DOJ”)
2 initiated an investigation of the MCSO in accordance with the pattern or practice
3 provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C.
4 §14141 (“§14141”) and the Omnibus Crime Control and Safe Streets Act of 1968, 42
5 U.S.C. §3789d (“Safe Streets Act”), and the National Origin Component of Title VI of
6 the Civil Rights Act of 1964, 42 U.S.C. §§2000d-2000d-7 (“Title VI”) of the Safe
7 Streets Act, 42 U.S.C. §3789d(c). (*See* Ex. 1 – U.S. Department of Justice letter dated
8 March 10, 2009 and SOF Ex. 29)

9 **Undisputed.**

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

15 **Undisputed. The United States does not dispute this paragraph, but asserts that**
16 **the March 10, 2009, notice letter states in full: “Our investigation will focus on**
17 **alleged patterns or practices of discriminatory police practices and**
18 **unconstitutional searches and seizures conducted by the MCSO, and on**
19 **allegations of national origin discrimination, including failure to provide**
20 **meaningful access to MCSO services for limited English proficient (LEP)**
21 **individuals.” SOF Ex. 29.**

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

27 **Disputed. The United States denies this paragraph to the extent that it implies**
28 **that COR is the only DOJ section that investigates Title VI complaints. The**

1 **referenced letter states that COR investigates complaints under Title VI and the**
2 **Safe Streets Act. The referenced letter does not state that COR is the only DOJ**
3 **section that does so, as MCSO contends. SOF Ex. 32.**

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

8 **Disputed. The United States denies this paragraph to the extent that it implies**
9 **that the investigation cited in the paragraph and the March 25, 2009, Friedlander**
10 **letter was the only DOJ investigation of MCSO related to Title VI. SOF Ex. 29.**

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

14 **Disputed. The United States denies this paragraph to the extent that it implies**
15 **that the cited allegations were the sole basis for the DOJ Title VI investigation.**
16 **The cited letter does not so state. SOF Ex. 32, Ex. 29.**

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

19 **Undisputed. In her March 25, 2009, letter, Ms. Friedlander addressed only that**
20 **portion of the United States’ Title VI investigation relating to allegations of**
21 **discriminatory jail practices. Nowhere in the letter does Ms. Friedlander suggest,**
22 **however, that the United States would not follow through on those aspects of its**
23 **Title VI investigation concerning discriminatory police practices discussed in the**
24 **March 10, 2009, notice letter. SOF Ex. 32.**

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

28 **Undisputed.**

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

4 **Undisputed.**

5 9. On April 30, 2009, representatives of DOJ’s Special Litigation Section
6 (“SPL”) and COR met with MCAO and MCSO representatives to discuss the
7 investigations and the First Request for Documents and Information. (*See* Ex. 23
8 Affidavit of Clarisse McCormick, Esq.)

9 **Undisputed.**

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

13 **Disputed. The United States objects to this paragraph and moves to strike it.**
14 **This paragraph relies on an affidavit that is not in the record, in violation of**
15 **Federal Rule of Civil Procedure 56(c) and Local Rule 56.1(a). The United States**
16 **further denies this paragraph because it cannot evaluate the statements in the**
17 **referenced affidavit.**

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

22 **Disputed. The United States objects to this paragraph and moves to strike it.**
23 **This paragraph relies on an affidavit that is not in the record, in violation of**
24 **Federal Rule of Civil Procedure 56(c) and Local Rule 56.1(a). The United States**
25 **further denies this paragraph because it cannot evaluate the statements in the**
26 **referenced affidavit.**

27 12. At no time during the April 30, 2009 meeting did COR suggest that police
28 practices, or any practices outside the jail facilities, were part of its Title VI

1 investigation. (*Id.*)

2 **Disputed.** The United States objects to this paragraph and moves to strike it.
3 **This paragraph relies on an affidavit that is not in the record, in violation of**
4 **Federal Rule of Civil Procedure 56(c) and Local Rule 56.1(a).** The United States
5 **further denies this paragraph because it cannot evaluate the statements in the**
6 **referenced affidavit.**

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

11 **Undisputed.**

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

15 **Disputed.** The United States denies this paragraph to the extent that it implies
16 **that these conversations did not reference information outside of the LEP context**
17 **involving national origin.** Affiant points to no record of these conversations, and
18 **MCSO has produced none.** Further, conversations in the record controvert
19 **affiant.** These conversations were limited by affiant himself to LEP issues, SOF
20 **Ex. 50, Ex. 52, and affiant stated that non-LEP issues were governed by MCSO's**
21 **earlier refusal to cooperate. SOF Ex. 52.** In addition, the affiant is aware of
22 **specific reference during these conversations to National Origin issues outside of**
23 **the LEP context. SOF Ex. 51.** Again, affiant is aware that he declined to speak
24 **about these issues and referred to MCSO's refusal to cooperate. *Id.***

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

1 **Disputed.** The United States' March 10, 2009, notice letter informed MCSO that
2 **the United States' Title VI investigation encompassed allegations of**
3 **discriminatory police practices as well as discriminatory jail practices. SOF Ex.**
4 **29.**

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

9 **Disputed.** The United States' August 3, 2010, letter does not contain an admission
10 that MCSO "responded" to the LEP investigation, but does state that "[o]n June
11 14, 2010, fifteen months after the Division's request, MCSO provided for the first
12 time a position statement regarding the operation of its jail facilities. But this
13 position statement falls far short of complying with MCSO's obligation to
14 cooperate with the Division's investigation." SOF Ex. 56. Further, the United
15 States' March 10, 2009, letter informed MCSO that it was being investigated for
16 allegations of national origin discrimination under Title VI without limitation to
17 jail facilities. SOF Ex. 29.

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

21 **Disputed.** The LEP position paper, arriving 15 months after it the United States
22 **First Request for Documents and Information, was not submitted as requested.**
23 **SOF Ex. 56, Exs. 50-53.**

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

26 **Undisputed.**

27 19. Defendants have provided and the United States has otherwise
28 received information and access relevant to its investigation. (*See* Ex. 19 - Affidavit of

1 Robert N. Driscoll, Esq.; Ex. 20 - Affidavit of Chief Gerard Sheridan; Ex. 21 -
2 Affidavit of Lt. Ernest Alcalá; and Ex. 22 - Affidavit of Sgt. James Seibert)

3 **Undisputed. The United States asserts, however, that prior to the filing of this**
4 **lawsuit, the United States received only a miniscule amount of information from**
5 **MCSO that was relevant to its Title VI investigation. SOF Ex. 68.**

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

9 **Undisputed, but only to the extent that the paragraph pertains to MCSO conduct**
10 **following the filing of the complaint in this matter.**

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

16 **Disputed. The United States objects to this paragraph and moves to strike any**
17 **references to "surreptitious tactics" or coordination with DHS. The cited**
18 **affidavits are not admissible with respect to this issue and are without foundation,**
19 **not based on personal knowledge, and based on hearsay. Fed. R. Civ. P. 56(c)(2),**
20 **(4). The United States further denies employing surreptitious tactics to obtain**
21 **information and documents. As MCSO knows, the United States Department of**
22 **Justice's Office of Professional Responsibility ("OPR") thoroughly investigated**
23 **this matter at MCSO's request, concluding that MCSO's allegations were**
24 **groundless. SSOFF ¶¶ 3-5; Ex. 70.**

25 22. The United States initiated an investigation alleging that MCSO
26 discriminates on the basis of national origin (Hispanic) in the operation of its jail
27 facilities, specifically alleging that the MCSO lacks a language assistance policy for
28 limited English proficient (LEP) inmates. (*See* Amended Complaint; *see also* Ex. 2 –

1 Friedlander letter dated March 25, 2009 and PSOF Ex. 32)

2 **Disputed. None of the evidence cited in support of this paragraph limits the jail**
3 **portion of the United States’ investigation to lack of a language assistance policy**
4 **for LEP inmates. See First Am. Compl.; SOF Ex. 32.**

5 23. Despite a mention of discriminatory police practices in its initial
6 correspondence to Sheriff Arpaio on March 9, 2009, the DOJ sent a longer, more
7 detailed correspondence on March 25, 2009 in which it limited the scope of its
8 investigation of alleged national origin discrimination by the MCSO to alleged
9 discrimination against limited English proficient inmates in the Maricopa County jails.
10 (See Ex. 1 – DOJ letter dated March 10, 2009; see also Ex. 2 –Friedlander letter dated
11 March 25, 2009 and PSOF Ex. 29 and 32)

12 **Disputed. The plain language in the United States’ March 10, 2009, letter**
13 **(referred to incorrectly by MCSO as a March 9, 2009, letter) gave clear notice to**
14 **MCSO that its operations, including the referenced “discriminatory police**
15 **practices” were subject to a Title VI investigation. The March 25, 2009,**
16 **Friedlander letter, which accompanied other correspondence from the United**
17 **States and concerned only one aspect of the United States’ investigation, did**
18 **nothing to change the plain notice that MCSO received. SOF Ex. 29, Exs. 31-32.**

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

28 **Disputed. On March 10, 2009, the United States notified MCSO by letter that it**

1 was commencing a Title VI investigation encompassing both discriminatory
2 police and jail practices. Nowhere in Ms. Friedlander's March 25, 2009, letter
3 does she state or imply that the United States had changed course and no longer
4 intended to investigate discriminatory police practices. SOF Ex. 29, Exs. 31-32,
5 Ex. 56.

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

9 **Disputed. The United States objects to this paragraph and moves to strike it.**
10 **This paragraph states a legal conclusion, not a fact, and is therefore**
11 **inappropriately included in MCSO's statement of facts. Local Rule 56.1(a).**
12 **Further, the United States denies this paragraph. Notice of the scope of the**
13 **United States' Title VI investigation was given in the March 10, 2009, notice**
14 **letter. The referenced March 25, 2009, letter did nothing to change that, and**
15 **there has been no expansion of the Title VI investigation since the United States'**
16 **March 10, 2009, letter. SOF Ex. 29, Exs. 31-32.**

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

22 **Disputed. The United States denies this paragraph to the extent that it implies**
23 **that the concerns expressed by Sheriff Arpaio and previous counsel to either the**
24 **Title VI police practices investigation or the Title VI jail investigation were**
25 **primarily about the scope of the Title VI investigation. For a period of nearly 18**
26 **months, MCSO failed to meaningfully cooperate with the United States'**
27 **investigation. For most of that time, MCSO based its refusal to cooperate on**
28 **unsubstantiated and frivolous allegations of misconduct by the United States that**

1 **had nothing to do with concerns about the scope of the United States'**
2 **investigation. SOF Ex. 44, Exs. 46-48, Ex. 56. The United States otherwise**
3 **admits that MCSO has repeatedly objected to and resisted the United States'**
4 **Title VI investigation.**

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

10 **Disputed. The United States objects to this paragraph and moves to strike it.**
11 **This paragraph states legal conclusions, not facts, and is therefore**
12 **inappropriately included in MCSO's statement of facts. Local Rule 56.1(a).**
13 **Further, the United States denies this paragraph. Notice of the scope of the**
14 **United States' Title VI investigation was given in its March 10, 2009, letter. The**
15 **March 25, 2009, Friedlander letter did nothing to change that, and there has been**
16 **no expansion of the Title VI investigation since the United States March 10, 2009,**
17 **letter. SOF Ex. 29, Exs. 31-32. The United States otherwise admits that MCSO**
18 **has repeatedly objected to and resisted the United States' Title VI investigation.**

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

23 **Disputed. The United States objects to this paragraph and moves to strike it.**
24 **This paragraph states legal conclusions, not facts, and is therefore**
25 **inappropriately included in MCSO's statement of facts. Local Rule 56.1(a).**
26 **Further, the United States denies this paragraph. Notice of the scope of the**
27 **United States' Title VI investigation was given in its March 10, 2009, letter. The**
28 **March 25, 2009, Friedlander letter did nothing to change that, and there has been**

1 **no expansion of the Title VI investigation since the United States March 10, 2009,**
2 **letter. SOF Ex. 29, Exs. 31-32. The United States otherwise admits that MCSO**
3 **has repeatedly objected to and resisted the United States' Title VI investigation.**

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

9 **Disputed. The United States objects to this paragraph and moves to strike it.**

10 **This paragraph states legal conclusions, not facts, and is therefore**
11 **inappropriately included in MCSO's statement of facts. Local Rule 56.1(a).**

12 **Further, the United States notes that for most of the period between the initiation**
13 **of the United States' investigation in March of 2009 until the filing of this lawsuit**
14 **in September of 2010, MCSO based its refusal to cooperate on reasons unrelated**
15 **to the scope of the United States' investigation. SOF Exs. 46- 47, Ex. 49. The**
16 **United States otherwise admits that the MCSO has repeatedly objected to and**
17 **resisted the United States' Title VI investigation.**

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

22 **Disputed. The United States objects to this paragraph and moves to strike it. No**
23 **admissible evidence is referenced supporting any improper investigation or**
24 **coordination with DHS. The cited exhibits are not admissible and are without**
25 **foundation, not based on personal knowledge, and rely on hearsay. Fed. R. Civ.**
26 **P. 56(c)(2), (4). Further, the United States denies this paragraph. MCSO claims**
27 **that a “covert” investigation was instituted because of MCSO's objections to the**
28 **reasonableness of the Title VI investigation. MCSO has produced no evidence**

1 showing that it voiced objections concerning the scope of the United States'
2 investigation prior to accusing DOJ attorneys of misconduct. SOF Ex. 44 .
3 Moreover, at MCSO's request, OPR thoroughly investigated MCSO's allegations
4 concerning misconduct on the part of DOJ attorneys and concluded that the
5 allegations were groundless. SSOF ¶¶ 3-5; Ex. 70.

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

9 **Disputed. The United States objects to this paragraph and moves to strike it. No**
10 **admissible evidence is referenced supporting any improper investigation or**
11 **coordination with DHS. The cited exhibits are not admissible and are without**
12 **foundation, not based on personal knowledge, and rely on hearsay. Fed. R. Civ.**
13 **P. 56(c)(2), (4). Further, the United States denies this paragraph. At MCSO's**
14 **request, OPR thoroughly investigated MCSO's allegations concerning**
15 **misconduct on the part of DOJ attorneys and concluded that the allegations were**
16 **groundless. SSOF ¶¶ 3-5; Ex. 70.**

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

21 **Disputed. The United States objects to this paragraph and moves to strike it. No**
22 **admissible evidence is referenced supporting any improper investigation or**
23 **coordination with DHS. The cited exhibits are not admissible and are without**
24 **foundation, not based on personal knowledge, and rely on hearsay. Fed. R. Civ.**
25 **P. 56(c)(2), (4). Further, the United States denies this paragraph. MCSO has**
26 **cited no admission by the DOJ in the record. Further, at MCSO's request, OPR**
27 **thoroughly investigated MCSO's allegations concerning misconduct on the part**
28

1 of DOJ attorneys and concluded that the allegations were groundless. SSOF ¶¶
2 3-5; Ex. 70.

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

5 **Disputed.** The United States admits that it informed MCSO repeatedly that DHS
6 was not involved in the conduct of the United States' investigation. To the extent
7 that the paragraph references any supposed improper investigation or
8 coordination agreement between DHS and DOJ, the United States objects to this
9 paragraph and moves to strike it. No admissible evidence is referenced
10 supporting any improper investigation or coordination with DHS. The cited
11 exhibits are not admissible and are without foundation, not based on personal
12 knowledge, and rely on hearsay. Fed. R. Civ. P. 56(c)(2), (4). Further, the United
13 States denies this paragraph. MCSO's requested investigation of DOJ resulted in
14 a finding that no DOJ attorney had acted improperly or with poor judgment.
15 SSOF ¶¶ 3-5; Ex. 70.

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

18 **Disputed.** The United States objects to this paragraph and moves to strike it. No
19 admissible evidence is referenced supporting any improper investigation or
20 coordination with DHS. The cited exhibits are not admissible and are without
21 foundation, not based on personal knowledge, and rely on hearsay. Fed. R. Civ.
22 P. 56(c)(2), (4). Further, the United States denies this paragraph. The paragraph
23 references a non-existent improper agreement, and DOJ could not bring a non-
24 existent agreement to MCSO counsel's attention. *See* SSOF ¶¶ 3-5; Ex. 70.

25 35. Interviews of represented MCSO individuals occurred despite the fact that
26 the DOJ attorneys knew that the individuals interviewed were represented by counsel
27 and that the DOJ had not received the consent of counsel to conduct interviews, in
28

1 violation of Rule 4.2(a), Arizona Rules of Professional Conduct, 4.2(a) of the District
2 of Columbia Rules of Professional Conduct. (*Id.*)

3 **Disputed. The United States objects to this paragraph and moves to strike it. No**
4 **admissible evidence has been provided in support of the allegation that attorneys**
5 **employed by the United States conducted improper ex parte interviews of**
6 **represented parties. Fed. R. Civ. P. 56(c)(2). Further, the United States denies**
7 **this paragraph. The paragraph does not specify who conducted the referenced**
8 **interviews. DOJ conducted no interviews of represented individuals, did not**
9 **cause any such interviews to be conducted, or receive any notes or information**
10 **from such interviews. See SSOF ¶¶ 3-5; Ex. 70.**

11 36. Title VI is a funding statute that prohibits intentional race, color and
12 national origin discrimination. As the United States has specifically defined it, the
13 instant Title VI investigation focuses on alleged national origin discrimination in the
14 Maricopa County Jails. (*See* Ex. 6 – Driscoll letter dated August 5, 2010 and PSOF Ex.
15 57; *see also* Ex. 19 - Affidavit of Robert N. Driscoll, Esq.)

16 **Disputed. The United States objects to this paragraph and moves to strike it.**
17 **This paragraph states legal conclusions, not facts, and is therefore**
18 **inappropriately included in MCSO’s statement of facts. Local Rule 56.1(a).**
19 **Further, the United States denies this paragraph. Notice of the scope of the**
20 **United States’ Title VI investigation was given in its March 10, 2009, letter and is**
21 **not limited to MCSO jails. SOF Ex. 29. No subsequent correspondence changed**
22 **this scope. SOF Exs. 31- 33. The scope of the Title VI investigation was**
23 **reiterated in the United States August 3, 2010, letter. SOF Ex. 56.**

24 37. Nevertheless, the United States has taken the position, that its police
25 practices investigation under Section 14141 falls under the umbrella of its Title VI
26 investigation and that it had the power to compel the MCSO, Sheriff Arpaio and
27 Maricopa County to provide it with information under Violent Crime Control and Law
28 Enforcement Act of 1994, 42 U.S.C. §14141 and the Omnibus Crime Control and Safe

1 Streets Act of 1968, 42 U.S.C. §3789d. (*Id.*; *see also* Ex. 7 – Driscoll letter dated
2 August 13, 2010 and PSOF Ex. 61)

3 **Disputed. The United States has cited only Title VI as statutory authority in**
4 **contending that MCSO, Sheriff Arpaio, and Maricopa County, as recipients of**
5 **federal funding, have obligations to provide the United States with information.**
6 **First Am. Compl. ¶¶ 12-14. The United States otherwise admits that allegations**
7 **of discriminatory police practices police misconduct may implicate a variety of**
8 **federal statutes, including 42 U.S.C. § 14141 and 42 U.S.C. § 3789d, as well as**
9 **Title VI.**

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

17 **Disputed. The United States has cited only Title VI as statutory authority in**
18 **contending that MCSO, Sheriff Arpaio, and Maricopa County, as recipients of**
19 **federal funding, have obligations to provide the United States with information.**
20 **First Am. Compl. ¶¶ 12-14. The United States admits that allegations of police**
21 **misconduct may implicate a variety of federal statutes, including 42 U.S.C. §**
22 **14141, 42 U.S.C. § 3789d, and Title VI. The United States otherwise admits that**
23 **MCSO has repeatedly resisted and disagreed with the United States' statutory**
24 **ability to access MCSO documents, persons, and facilities.**

25 39. The Title VI investigation is directed only toward the alleged national
26 origin discrimination in the jails. (*See* Ex. 2 –Friedlander letter dated March 25, 2009,
27 PSOF Ex. 32; *see also* Ex. 6 – Driscoll letter dated August 5, 2010, PSOF Ex. 57; Ex.7
28 –Driscoll letter dated August 13, 2010, PSOF Ex. 61; *see also* Ex. 8 – Driscoll letter

1 dated May 29, 2009; Ex. 9 –Driscoll letter dated June 18, 2009; Ex. 10 –Driscoll letter
2 dated August 27, 2010, PSOF Ex. 66; and Ex. 19 - Affidavit of Robert N. Driscoll,
3 Esq.)

4 **Disputed. The United States objects to this paragraph and moves to strike it.**

5 **This paragraph states legal conclusions, not facts, and is therefore**
6 **inappropriately included in MCSO’s statement of facts. Local Rule 56.1(a).**

7 **Further, the United States denies this paragraph. Notice of the scope of the**
8 **United States’ Title VI investigation was given in its March 10, 2009, letter and is**
9 **not limited to MCSO jails. SOF Ex. 29. No subsequent correspondence changed**
10 **this scope. SOF Exs. 31- 33. The scope of the Title VI investigation was**
11 **reiterated in the United States’ August 3, 2010, letter. SOF Ex. 56.**

12 40. The Section 14141 investigation presents police practices issues that do
13 not implicate national origin (for example, use of force and firearms training, canine
14 policies, overtime policies and searches and seizure) and do not fall under the umbrella
15 of the subject Title VI investigation with which Sheriff Arpaio and the MCSO have
16 complied. (*See* Ex. 7 –Driscoll letter dated August 13, 2010, PSOF Ex. 61 and Ex. 19 -
17 Affidavit of Robert N. Driscoll, Esq.)

18 **Disputed. The United States objects to this paragraph and moves to strike it.**

19 **This paragraph states legal conclusions, not facts. It is therefore inappropriately**
20 **included in MCSO’s statement of facts. Local Rule 56.1(a). Further, the United**
21 **States denies this paragraph. MCSO police practices implicate Title VI because**
22 **police practices such as the one cited in the paragraph can be applied in a**
23 **discriminatory manner. SOF Ex. 64. Moreover, prior to the filing of this lawsuit,**
24 **MCSO refused to meaningfully comply with the United States’ Title VI**
25 **investigation. SOF Ex. 44, Ex. 56, Ex. 61, Ex. 66, Ex. 68.**

26 41. Arpaio and the MCSO identified a genuine disagreement regarding the
27 unreasonableness of the scope of a police practices and national origin investigation
28 under Title VI before the filing of this action and the instant Motion. (*See* Ex. 8 –

1 Driscoll letter dated May 29, 2009 and Ex. 19 - Affidavit of Robert N. Driscoll, Esq.)
2 **Disputed. MCSO was given notice of the United States' investigation on March**
3 **10, 2009. SOF Ex. 29. MCSO received the United States' First Request for**
4 **Documents and Information on March 25, 2009. SOF Ex. 31, Ex. 33. MCSO**
5 **claimed that it was arranging for responses to that document request shortly**
6 **thereafter. SOF Ex. 35. MCSO then announced that it was refusing further**
7 **cooperation on May 29, 2009, for reasons that did not include "unreasonableness**
8 **of . . . scope." SOF Ex. 44. Only after the United States threatened suit did**
9 **MCSO formulate an objection based on unreasonableness of scope. SOF Exs. 56-**
10 **57. Accordingly, although MCSO cites the May 29, 2009, letter, no objection**
11 **based on unreasonableness of scope was raised until its August 5, 2010, letter,**
12 **written well over a year after MCSO received the United States' First Request for**
13 **Documents and Information. SOF Ex. 31, Ex. 33, Ex. 57.**

14 42. The Sheriff and MCSO had every right to question the United States'
15 approach to these investigations and offered to resolve this disagreement cooperatively
16 through negotiations. (See Ex. 6 – Driscoll letter dated August 5, 2010, PSOF Ex.
17 57; Ex. 7 – Driscoll letter dated August 13, 2010, PSOF Ex. 61; and Ex. 19 - Affidavit
18 of Robert N. Driscoll, Esq.)

19 **Disputed. The United States objects to this paragraph and moves to strike it.**
20 **This paragraph states legal conclusions, not facts, and is therefore**
21 **inappropriately included in MCSO's statement of facts. Local Rule 56.1(a). The**
22 **United States admits that in August 2010, MCSO requested, and received, the**
23 **opportunity to meet and confer with the United States to discuss its obligations**
24 **under Title VI. SOF Ex. 57. The United States denies obtaining any meaningful**
25 **cooperation from MCSO prior to the filing of this lawsuit.**

26 43. The Sheriff and the MCSO explained their disagreement with the scope of
27 the United States' Title VI investigation in this regard, yet the United States filed this
28 action and this Motion complaining that the Sheriff and the MCSO have failed to

1 cooperate—despite the facts. The United States has taken the position that its authority
2 in a Title VI investigation is unlimited. (See Amended Complaint; see also Ex. 10 –
3 Driscoll letter dated August 27, 2010, PSOF Ex. 66; Ex. 8 – Driscoll letter dated May
4 29, 2009; Ex. 9 – Driscoll letter dated June 18, 2009; and Ex. 19 - Affidavit of Robert
5 N. Driscoll, Esq.)

6 **Disputed. MCSO has cited no evidence in the record showing that it agreed to**
7 **voluntarily comply with all of their obligations under Title VI. Instead, MCSO**
8 **continued, and continues, to claim that the United States is not entitled to the**
9 **access it has requested pursuant to Title VI. SOF Ex. 61, Ex. 63, Ex. 66. MCSO**
10 **has cited no admission or other evidence in the record that the United States has**
11 **stated that its Title VI authority is “unlimited.” The United States has made no**
12 **such statement and has only asserted that it is entitled to the access that it**
13 **requested in this matter. SOF Exs. 64-65.**

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

21 **Disputed. MCSO has pointed to no evidence in the record showing that the**
22 **United States made any such representation, and the United States denies that it**
23 **made any such representation. SOF Exs. 64-65. The United States instead has**
24 **stated only that it is entitled to the access it has requested in this matter. SOF**
25 **Exs. 64- 65.**

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

1 **Disputed. The United States has only required that MCSO provide the access**
2 **that the United States has requested in this matter. SOF Exs. 64-65.**

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

13 **Disputed. The United States denies this paragraph to the extent that it implies**
14 **that the United States had not initiated any review of MCSO practices prior to**
15 **the new Presidential administration. The United States has twice notified MCSO**
16 **that inquiry into MCSO began in June 2008. First Am. Compl. 5, United States’**
17 **Motion for Summary Judgment 3. Moreover, MCSO has itself represented that**
18 **DHS was engaged in an audit, not an investigation, of MCSO which was itself**
19 **part of a nationwide review of 287(g) programs. SOF Ex. 44, SSOFF ¶ 1. Finally,**
20 **this paragraph is irrelevant to any issue in this litigation.**

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

25 **Disputed. The United States denies this paragraph to the extent that it implies**
26 **the 100 day Progress Report indicated that the United States had made a**
27 **determination regarding wrongdoing involving MCSO. Instead, the Progress**
28 **Report noted that from 2001 to 2008, the Civil Rights Division had averaged three**

1 **new police practice investigations a year, and that its investigation of MCSO was**
2 **one of two police practice investigation opened by the Division up to that point in**
3 **2009. Finally, this paragraph is irrelevant to any issue in this litigation.**

4 48. Moreover, the Civil Rights Division Deputy acknowledged that media
5 reports provided the basis of the investigations, and that the DOJ was not yet in
6 possession of the facts that would establish a Constitutional violation. (*Id.*)
7 **Disputed. The United States objects to this paragraph and moves to strike it.**
8 **MCSO offers no admissible evidence of this statement; the referenced exhibits are**
9 **without foundation, are not based on personal knowledge, and are based on**
10 **hearsay. Further, the United States denies this paragraph. Fed. R. Civ.**
11 **P. 56(c)(2), (4). The United States' investigation is based on a variety of sources,**
12 **including specific complaints. SOF Ex. 64. The paragraph is also irrelevant to**
13 **this litigation.**

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

23 **Undisputed. The United States does not dispute that members of the United**
24 **States Congress may have publicly called for an investigation into the actions of**
25 **MCSO. This paragraph is irrelevant to this litigation, however.**

26 50. The United States argues that “[t]ransparent administration of MCSO's
27 police practices and jail operations is critical to the United States obligation to ensure
28 that public funds are not being used to finance illegal racial discrimination.” (Dkt. 18,

1 p. 4)

2 **Undisputed.**

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

7 **The United States admits that the United States cites articles in which MCSO**
8 **states that it will not cooperate with the Department of Justice. The article cited**
9 **by the United States is SOF Ex. 47 and 48, not SOF Ex. 13, as MCSO states in this**
10 **paragraph.**

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

14 **Disputed. The United States objects to this paragraph and moves to strike it.**
15 **This paragraph states a legal conclusion, not a fact, and is therefore**
16 **inappropriately included in MCSO's statement of facts. Local Rule 56.1(a). The**
17 **paragraph also quotes hearsay evidence. Fed. R. Civ. P. 56(c)(2). Further, the**
18 **United States denies this paragraph to the extent that it implies that the United**
19 **States has ever made the statement contained therein rather than those requests**
20 **for access it has actually made. SOF Exs. 64-65.**

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

28 **Disputed. The United States objects to this paragraph and moves to strike it.**

1 **The paragraph is unsupported by admissible evidence as to any alleged “political**
2 **nature” of the investigation; the cited exhibits are without foundation, are not**
3 **based on personal knowledge, and are hearsay. Fed. R. Civ. P. 56(c)(2), (4).**
4 **Further, the United States denies this paragraph. The United States has never**
5 **made the kind of demands referenced in this paragraph. SOF Exs. 64-65.**

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

9 **Disputed. The United States has not received the cooperation it has requested.**
10 **SOF Ex. 56, Ex. 68.**

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

16 **Disputed. The United States objects to this paragraph and moves to strike it.**
17 **This paragraph is unsupported by evidence in the record; the cited affidavits**
18 **reflect only personal knowledge of access given to MCSO. Further, the United**
19 **States denies this paragraph. The referenced August 25, 2010, letter includes**
20 **requests that pertain to both MCSO jail and police practices. SOF Ex. 65.**
21 **MCSO’s cited exhibits only reflect access given with respect to MCSO jails.**

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

26 **Undisputed that five counsel for the United States met with MCSO’s counsel on**
27 **November 2, 2010, but those counsel were not all Assistant U.S. Attorneys (four**
28 **were attorneys with the Civil Rights Division of the Department of Justice).**

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

5 **Undisputed (with the same qualification identified in response to ¶ 56).**

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

9 **The United States admits that MCSO made initial overtures of compliance with**
10 **Title VI at the November 2, 2010, meeting, and the United States asserts that**
11 **counsel for MCSO nevertheless claimed that the United States was not entitled to**
12 **the requests for access it has made in this matter.**

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

15 **Undisputed.**

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

18 **Undisputed.**

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

23 **Undisputed.**

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

27 **Undisputed.**

28

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

5 **Undisputed.**

6 64. Accompanied by MCSO tour guides Sergeant James Seibert and
7 Lieutenant Ernest Alcalá, as well as officers assigned to a given facility selected at
8 random, the DOJ team toured Fourth Avenue (including Central Intake), Durango,
9 Estrella, Towers, Lower Buckeye, and In Tents jail facilities—i.e. all of the Maricopa
10 County jail facilities that the United States requested to tour. (See Ex. 21 - Affidavit of
11 Lt. Ernest Alcalá; and Ex. 22 - Affidavit of Sgt. James Seibert)

12 **Undisputed.**

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

14 **Undisputed.**

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

17 **Undisputed.**

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

20 **Undisputed.**

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

25 **Undisputed.**

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

28 **Undisputed.**

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

4 **Undisputed.**

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

7 **Undisputed.**

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

9 **Undisputed.**

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

14 **Undisputed.**

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

18 **Undisputed.**

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

20 **Undisputed.**

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

23 **Undisputed.**

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

26 **Undisputed. The United States agrees that MCSO pledged cooperation following**
27 **the filing of the complaint in this matter, but notes that this pledge is called into**
28 **serious question by MCSO's responses in this litigation, in which MCSO argues**

1 **that, under Title VI, the United States is not entitled to responses to its requests**
2 **for information. Response to United States' Motion for Summary Judgment 12.**

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

5 **Undisputed. The United States notes that MCSO has, after the filing of the**
6 **complaint in this matter, permitted the United States to interview its personnel.**

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

12 **Undisputed.**

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

18 **Undisputed.**

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

21 **Undisputed.**

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

28 **Undisputed.**

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

3 **Disputed. The United States does not have any information to confirm the**
4 **existence of tours and visits MCSO may have arranged for other organizations.**

5 84. The United States' requested inmate interview schedule was as follows:
6 November 16, 2010 (two teams--one full day/one just in the afternoon); November 17
7 and 18, 2010 (two teams all day); November 19, 2010 (one team all day); November
8 22 and 23, 2010 (two teams all day); November 24, 2010 (one team all day);
9 November 30, December 2, and December 3, 2010 (two teams all day). (*Id.*)

10 **Undisputed.**

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

14 **Undisputed.**

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

16 **Undisputed.**

17 87. The postponement of the command staff interviews was, in part, due to the
18 voluminous MCSO documentation that the United States had received on November 5,
19 2010 via overnight delivery in response to the First Request and pursuant to the pledge
20 of MCSO Chiefs at the aforementioned November 2, 2010 meeting. (*Id.*)

21 **Undisputed.**

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

24 **Disputed. This documentation contained only General Policies and Detention**
25 **Policies. The United States requested all MCSO policies, including standard**
26 **operating procedures and the policies MCSO employs for each of its subdivisions.**
27 **SOF Ex. 33.**

28

1 89. The MCSO has provided other documentation in response to the DOJ's
2 First Request and before the filing of this action and Motion. (See Ex. 15 – Maricopa
3 County Attorney’s Office letter dated May 12, 2009, PSOF Ex. 39; Ex. 16 – Robert N.
4 Driscoll, Esq. letter dated August 25, 2009; Ex. 17 – Robert N. Driscoll, Esq. letter
5 dated September 16, 2009; and Ex. 18 – Robert N. Driscoll, Esq. letter dated August
6 27, 2010 regarding first Melendres cross-reference list of documents, PSOF Ex. 67)
7 **The United States admits that MCSO sporadically provided a limited amount of**
8 **documentation prior to the filing of this lawsuit.**

9 90. These designated documents go beyond DOJ's requests associated with
10 LEP and into the realm of police function, despite the dispute between the parties
11 regarding the proper scope of the Title VI investigation. (*Id.*)
12 **Undisputed. Prior to August 27, 2010, the Defendants production of documents**
13 **relating to police practices consisted only of the original eleven pages that MCSO**
14 **provided to the United States on May 12, 2009. SOF Ex. 39. Then on August 27,**
15 **2010, just five days before the United States was forced to file suit in this matter**
16 **to obtain access to MCSO’s sources of information, MCSO designated certain**
17 **documents that MCSO had been forced to provide in discovery to another litigant**
18 **as responsive to eleven of the United States’ fifty one document requests. SOF**
19 **Ex. 67.**

20 91. Moreover, the DOJ has presumably received documentation and interview
21 information pursuant to its "deal" with the DHS. (*See* Ex. 18 – Driscoll letter dated
22 August 27, 2010 regarding first *Melendres* cross-reference list of documents, PSOF
23 Ex. 67 and Ex. 19 - Affidavit of Robert N. Driscoll, Esq.)
24 **Disputed. The United States objects to this paragraph and moves to strike it.**
25 **The paragraph is not supported by admissible evidence in the record. Fed. R.**
26 **Civ. P. 56(c)(2), (4). The cited exhibits either make no reference to any agreement**
27 **with DHS, or are without foundation, are hearsay, and are not based on personal**
28 **knowledge. *Id.* Further, the United States denies this paragraph. No improper**

1 **“deal” exists or has existed between DOJ and DHS. SSOFF ¶¶ 3-5; Ex. 70. The**
2 **paragraph is also irrelevant to this litigation.**

3 92. What's more, the MCSO has designated documents disclosed in *Melendres*
4 *v. Arpaio, et al*, No. CV-07-2513-PHX-GMS, (approximately 12,850 pages) as
5 responsive to the DOJ's First Request, as requested in the August 25, 2010 letter. (*Id.*)
6 **Undisputed to the extent that five days before the United States filed this lawsuit,**
7 **MCSO designated documents it was required to turn over in discovery in another**
8 **litigated matter as responsive to eleven of the United States' document requests.**

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

10 **Undisputed.**

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

14 **Undisputed.**

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

16 **Undisputed. The United States agrees that, after it was threatened with a lawsuit,**
17 **MCSO began providing more documents while simultaneously denying its**
18 **obligations to do so.**

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

22 **Undisputed.**

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

28 **Undisputed.**

1 Dated: February 4, 2011

Respectfully submitted,

2 Thomas E. Perez
3 Assistant Attorney General

4 Dennis K. Burke
5 United States Attorney

6 /s/ Amin Aminfar

7 Roy L. Austin, Jr. (IL Bar #6228785)
8 Matthew Colangelo (NY Bar #4228797)
9 Jonathan Smith (DC Bar #396578)
10 Avner Shapiro (DC Bar #452475)
11 Peter S. Gray (DC Bar #940031)
12 Laurie A. Gelman (VA Bar #47743)
13 Amin Aminfar (NC Bar #36589)
14 U.S. Department of Justice
15 Civil Rights Division
16 950 Pennsylvania Avenue, N.W.
17 Washington, DC 20530
18 (ph) 202-514-6255 / (fax) 202-514-4883
19 (email) amin.aminfar@usdoj.gov

20 Michael M. Walker (AZ Bar #20315)
21 Assistant U.S. Attorney
22 Two Renaissance Square
23 40 North Central Avenue, Suite 1200
24 Phoenix, AZ 85004-4408
25 (ph) 602-514-7500 / (fax) 602-514-7760
26 (email) michael.walker4@usdoj.gov

27 Attorneys for the United States
28

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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:

Thomas K. Irvine
Polsinelli Shughart PC
3636 N. Central Avenue, Suite 1200
Phoenix, AZ 85012

Cynthia Renee Estrella
Polsinelli Shughart PC
1 E. Washington Street, Suite 1200
Phoenix, AZ 85004

William R. Jones, Jr.
Jones Skelton & Hochuli PLC
2901 N. Central Avenue, Suite 800
Phoenix, AZ 85012

John T. Masterson
Jones Skelton & Hochuli PLC
2901 N. Central Avenue, Suite 800
Phoenix, AZ 85012

Joseph John Popolizio
Jones Skelton & Hochuli PLC
2901 N. Central Avenue, Suite 800
Phoenix, AZ 85012

Attorneys for Defendants

/s/ Amin Aminfar

Amin Aminfar