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25 UNITED STATES DISTRICT COURT  
 26 DISTRICT OF ARIZONA

27 United States of America,  
 28 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 MARICOPA  
COUNTY'S RESPONSE TO  
MOTION FOR SUMMARY  
JUDGMENT**

**AND**

**RESPONSE TO CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

27 Maricopa County (the "County"), a recipient of federal funding, failed to comply  
 28 with its obligations under Title VI and related assurance agreements when it did not

1 ensure that its subrecipient, the Maricopa County Sheriff's Office and Maricopa  
2 County Sheriff Joseph M. Arpaio (collectively "MCSO"), cooperated with the United  
3 States' Title VI investigation. For many months, MCSO, a department of the  
4 Maricopa County government, refused to cooperate with the United States'  
5 investigation in a manner that was flagrant and unambiguous. The County responded  
6 to this misconduct with inaction. The County is held responsible and liable for  
7 MCSO's misconduct under Title VI's statutory scheme, under the assurance  
8 agreements it entered into, under state law setting forth the relationship of Arizona's  
9 sheriff's offices to county government, and under principles of municipal liability. For  
10 these reasons, and because there is no genuine issue of material fact in dispute, an  
11 entry of summary judgment for the United States is warranted.<sup>1</sup>

12 **I. Maricopa County does not contest any of the material facts alleged by the**  
13 **United States.**

14 In its Response to the United States' Motion for Summary Judgment  
15 ("Response"), the County either admits or does not dispute the material facts alleged  
16 by the United States. The County's response concedes that it is a recipient of funding  
17 from the United States and that it has provided those funds to MCSO, a "department  
18 within the County," with the intent of supporting MCSO's law enforcement activities.  
19 Response 8; MCSF ¶¶ 2, 7-9.<sup>2</sup> The County also concedes that it has entered into  
20 contractual assurances obligating it to abide by Title VI and its regulations. Response  
21 2; MCSF ¶ 22-24. Finally, the County does not dispute that MCSO, a subrecipient of  
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24 <sup>1</sup> Pursuant to Local Rule 56.1(b)(1), the United States is separately filing a  
25 statement that addresses each of the factual assertions contained in the Statement of  
26 Facts the County filed in support of its cross-motion for summary judgment. The  
27 United States notes that, while it disputes many of the facts asserted in the County's  
28 Statement, there are no "*genuine disputes of material fact*" that would preclude  
summary judgment for the United States, as discussed further in this Memorandum.

<sup>2</sup> All references in this Response to "MCSF ¶ \_\_\_" are to the County's  
Controverting and Separate Statement of Facts, Dckt. 44.

1 federal funding, provided the United States with almost no access to its sources of  
2 information. MCSF ¶¶ 34-74.

3 Title VI, its implementing regulations, and related assurance agreements require  
4 federal fund recipients to provide the United States with broad access to a variety of  
5 sources of information to enable the United States to determine whether the recipient is  
6 complying with federal law. 28 C.F.R. § 42.106(b)-(c). The County’s arguments do  
7 little to negate the central, material facts that establish that the County violated Title  
8 VI, its implementing regulations, and related assurance agreements.

9 **II. The County’s argument that it had little notice of MCSO’s failure to**  
10 **cooperate with the government’s investigation is at odds with the**  
11 **uncontested facts of the case.**

12 The County suggests in its Response that it lacked notice of MCSO’s non-  
13 compliance because it was not “copied in on” or otherwise informed of MCSO’s  
14 failure to cooperate with the United States’ investigation. These assertions are at odds  
15 with the County’s own admissions.

16 The uncontested evidence establishes that the County was aware of MCSO’s  
17 unwillingness to cooperate with the United States’ Title VI investigation. The County  
18 does not dispute that in March 2009 it received notice when the United States initially  
19 opened its Title VI investigation into the practices of its subrecipient—MCSO. MCSF  
20 ¶ 34. Nor can the County dispute that the United States’ First Request for Documents  
21 and Information went to the County Attorney, and that the County Attorney was  
22 responsible for responding to the United States’ initial requests. *See, e.g.*, SOF Ex. 31,  
23 Ex. 36, Exs. 38-39.<sup>3</sup> Further, the County also cannot dispute that roughly four months  
24 later, on July 7, 2009, it learned that Maricopa County’s Sheriff, Joseph Arpaio, held a  
25 news conference where he publicly announced that he would not cooperate with the  
26 United States’ investigation, either by providing documents or permitting interviews  
27 with personnel. MCSF ¶ 49. Given the Sheriff’s statements, and the attention those

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28 <sup>3</sup> All references in this Response to “SOF ¶ \_\_\_” are to the Plaintiff’s Statement  
of Undisputed Facts, Dckt. 19.

1 statements received both in Arizona and nationally, SOF Exs. 46-47, the County  
2 cannot now credibly argue that it was unaware or had no notice of MCSO's flagrantly  
3 uncooperative posture. Additionally, the County admits that on August 3, 2010, it  
4 received notice from the United States that MCSO had failed to cooperate with the  
5 United States' Title VI investigation. Response 4.

6 Because the County admits to facts establishing that it had notice of the United  
7 States' investigation and of MCSO's longstanding refusal to cooperate, the Court  
8 should reject the County's argument that it did not have sufficient knowledge of this  
9 investigation.

10 **III. As a recipient of federal financial assistance, the County is responsible for**  
11 **the noncompliance of its subrecipients, including MCSO.**

12 Maricopa County's principal argument in opposition to the United States'  
13 motion for summary judgment is that, although the United States has a "general right  
14 to the information it seeks to conduct its investigation of the complaint of  
15 discriminatory practices," Response 7, the County is not responsible for MCSO's  
16 failure to cooperate. This argument is incorrect.

17 First, Title VI and its implementing regulations require all recipients of federal  
18 financial assistance both to comply with all program requirements *and* to secure that  
19 compliance from any subrecipients. Maricopa County is a "primary recipient" of  
20 federal funds, some of which it subsequently distributed to MCSO as a subrecipient.  
21 *See* 28 C.F.R. § 42.102(g); *see also* SOF ¶¶ 2-21. As a primary recipient, the County  
22 is responsible for ensuring that its subrecipients, including MCSO, comply with Title  
23 VI, including the Title VI access requirements at issue in this case. The primary  
24 recipient must obtain from its subrecipients and have available for Department of  
25 Justice ("DOJ") review such compliance reports from its subrecipients "as may be  
26 necessary to enable the primary recipient to carry out its obligations." 28 C.F.R.  
27 § 42.106(b). In addition, the regulations contemplate that recipients will obtain access  
28 to requested sources of information when that information is in the possession of a

1 subrecipient. *See id.* § 42.106(c) (“the recipient shall . . . set forth the efforts which it  
2 has made to obtain the information”).

3 Second, the contractual assurance agreements that the County signed as a  
4 condition of receiving federal funds also render it responsible for the noncompliance of  
5 any subrecipients. When the County received federal financial assistance from DOJ’s  
6 Office of Justice Programs (“OJP”), the County assured the federal government that it  
7 would comply with 28 C.F.R. Part 42—the Department of Justice’s implementing  
8 regulations. *See* SOF ¶¶ 22-24. The County also agreed that it “will comply (*and will*  
9 *require any subgrantees or contractors to comply*) with . . . [Title VI of] the Civil  
10 Rights Act of 1964 (42 U.S.C. § 2000d).” *See* SOF ¶ 24 (emphasis added).<sup>4</sup> Finally,  
11 the County agreed more specifically that DOJ “shall have access to and the right to  
12 examine all records (including, but not limited to, books, papers, and documents)  
13 related to this [award], including *such records of any subrecipient . . .*” *See* SOF Ex. 3,  
14 ¶ 15 (emphasis added). This language expressly contemplates that the County will  
15 ensure that MCSO, as one of its subrecipients, complies with Title VI’s requirements.  
16 *Id.*

17 Third, the County is responsible for MCSO’s noncompliance as a matter of state  
18 law. Arizona state courts have held the County responsible and liable for the actions  
19 of MCSO. *Stackhouse v. Maricopa Cnty.*, No. CV-05-0028, 2006 WL 3292500, at \*2  
20 (D. Ariz. Nov. 13, 2006) (citing *Flanders v. Maricopa Cnty.*, 54 P.3d 837, 847 (Ariz.  
21 Ct. App. 2002)). Their willingness to do so stems from their recognition that MCSO is  
22 an instrumentality of the County. *See Braillard v. Maricopa Cnty.*, 232 P.3d 1263  
23 (Ariz. Ct. App. 2010); *Ekweani v. Maricopa Cnty. Sheriff’s Office*, No. CV-08-1551,  
24 2009 WL 976520, at \*2 (D. Ariz. Apr. 9, 2009). Indeed, Maricopa County has itself  
25 acknowledged in prior litigation that “the Sheriff [is] its chief policymaker for [its] jail  
26 facility.” *Flanders*, 54 P.3d at 847; *see also Guillory v. Greenlee Cnty.*, No. CV-05-

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28 <sup>4</sup> The United States asserts that Maricopa County provided funding from many  
of these OJP grants to MCSO. SOF ¶¶ 3-8.

1 0352, 2006 WL 2816600, at \*4-5 (D. Ariz. Sept. 28, 2006); Ariz. Const. Art. XII § 4  
2 (designating sheriffs as county officers on county payrolls).

3 Finally, the County is responsible for MCSO's noncompliance because Sheriff  
4 Arpaio is the County's chief and final policymaker for jail practices. Municipal  
5 liability attaches "when execution of a government's policy or custom, whether made  
6 by its lawmakers or by those whose edicts or acts may fairly be said to represent  
7 official policy, inflicts the injury . . . ." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658,  
8 694 (1978). Based on this principle, this Court has already rejected Maricopa  
9 County's argument that Sheriff Arpaio is not a final policymaker for the County with  
10 respect to law enforcement issues. *Melendres v. Arpaio*, 598 F. Supp. 2d 1025, 1039  
11 (D. Ariz. 2009). The Ninth Circuit also has held that a county may be liable for civil  
12 rights violations committed by a sheriff's office acting in its official capacity. *See*  
13 *Cortez v. Cnty. of Los Angeles*, 294 F.3d 1186, 1188-89 (9th Cir. 2002); *Streit v. Cnty.*  
14 *of Los Angeles*, 236 F.3d 552, 559-65 (9th Cir. 2001). Indeed, "[t]here may be no  
15 'clearer case of county liability' than for the policies of a sheriff charged by law with  
16 responsibility for a county's jails." *Flanders*, 54 P.3d at 847 (citing *Blackburn v.*  
17 *Snow*, 771 F.2d 556, 571 (1st Cir. 1985)); *accord Murphy v. Cnty. of Yavapai*, No. CV-  
18 04-1861, 2006 WL 2460916 (D. Ariz. Aug. 23, 2006).

19 A policy need not be formal or recurring to result in municipal liability.  
20 Municipal liability may be derived from any "policy or custom" that causes the harm,  
21 including harm caused by officials whose actions "may fairly be said to represent  
22 official policy." *Monell*, 436 U.S. at 694. A local government body can be  
23 responsible for a custom even if the custom "has not received formal approval through  
24 the body's official decision-making channels." *Id.* at 690-91. Further, municipal  
25 liability may be premised on a single decision by a municipal policymaker if the  
26 decision was part of a conscious choice to ratify the conduct. *See Lassiter v. City of*  
27 *Bremerton*, 556 F.3d 1049, 1055 (9th Cir. 2009); *City of Phoenix v. Yarnell*, 909 P.2d

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1 377, 385 (Ariz. 1995). It also is clear that “[a] policy can be one of action or inaction.”  
2 *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

3 Here, MCSO clearly set forth a policy and custom—based on conscious  
4 decisions—to deny the United States the access required under Title VI. For example, it  
5 is undisputed that, on July 7, 2009, Sheriff Arpaio held a press conference and  
6 announced that MCSO would not cooperate with the United States’ investigation, either  
7 by providing documents or permitting interviews with personnel. *See* MCSF ¶ 49. Such  
8 actions by the chief policymaker in the county for jails result in County liability. *See*,  
9 *e.g.*, *Flanders*, 54 P.3d at 847.

10 **IV. The United States has not sought termination of federal financial assistance**  
11 **in this proceeding.**

12 The County argues in its response that wholesale termination of federal  
13 financial assistance under Title VI is improper in this instance and that the relief  
14 available to DOJ in this matter should be limited. Response 7-9. The County’s  
15 argument has no bearing on this matter. The United States is not seeking termination  
16 of funds in this proceeding, and instead seeks only declaratory and injunctive relief  
17 compelling the Defendants to provide access to all requested documents, staff, and  
18 facilities. *See* First Am. Compl. ¶¶ 52; Plaintiff’s Motion For Summary Judgment 17.  
19 Accordingly, the Court should disregard the County’s argument as to federal funding  
20 in this matter.

21 **CONCLUSION**

22 Under Title VI’s statutory scheme, applicable regulations, contractual  
23 assurances, Arizona state law governing the organization of sheriff’s offices, and  
24 municipal liability standards, Maricopa County is liable for MCSO’s violation of the  
25 Title VI access requirements. The County has not raised any genuine issue of material  
26 fact regarding its liability in this regard. Summary judgment should accordingly be  
27 entered for the United States and denied to the County.  
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1 Dated: February 4, 2011

Respectfully submitted,

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6 /s/ Amin Aminfar

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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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