



U. S. Department of Justice

Civil Rights Division

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Assistant Attorney General

Washington, D.C. 20530

December 15, 2011

Mr. Bill Montgomery  
County Attorney  
Maricopa County  
301 West Jefferson Street  
Phoenix, AZ 85003

Re: United States' Investigation of the Maricopa County Sheriff's Office

Dear Mr. Montgomery:

We write to report the findings of the Civil Rights Division's investigation into civil rights violations by the Maricopa County Sheriff's Office ("MCSO"). Our initial inquiry began in June 2008, and the investigation has focused on MCSO's compliance with the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 and its implementing regulations at 28 C.F.R. § 42.101 *et seq.* ("Title VI"). Section 14141 prohibits law enforcement agencies, such as MCSO, from engaging in activities that amount to a pattern or practice of violating the Constitution or laws of the United States. Title VI and its implementing regulations provide that recipients of federal financial assistance, such as MCSO, may not discriminate on the basis of race, color, or national origin. These laws give the United States the authority to file legal action and obtain the necessary relief to ensure compliance with the Constitution and laws of the United States.

We notified MCSO of our formal investigation in March 2009.<sup>1</sup> During our investigation, aided by four leading police practice experts, one jail expert, and an expert on statistical analysis, we reviewed tens of thousands of pages of documentary evidence; toured MCSO's jails; and interviewed over 400 individuals, including approximately 150 former and current MCSO jail inmates, and more than 75 former and current MCSO personnel, including the Sheriff, the Chief of Enforcement, the Chief of Patrol, the Administrative Investigative Commander, the Sergeant heading MCSO's Criminal Employment Squad, and the Lieutenant heading MCSO's Human Smuggling Unit.

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<sup>1</sup> Our investigation was delayed when MCSO repeatedly refused to provide the United States with access to pertinent material and personnel. After repeated attempts to resolve the dispute short of litigation, the United States filed a lawsuit in September 2010 to secure MCSO's compliance with its legal obligations to provide information pertinent to our investigation. The United States and MCSO eventually resolved this lawsuit in June 2011 after MCSO agreed to provide us with the information and access we had been seeking.

Based upon our extensive investigation, we find reasonable cause to believe that MCSO engages in a pattern or practice of unconstitutional policing. Specifically, we find that MCSO, through the actions of its deputies, supervisory staff, and command staff, engages in racial profiling of Latinos; unlawfully stops, detains, and arrests Latinos; and unlawfully retaliates against individuals who complain about or criticize MCSO's policies or practices, all in violation of Section 14141. MCSO's discriminatory police conduct additionally violates Title VI and its implementing regulations.

We also find reasonable cause to believe that MCSO operates its jails in a manner that discriminates against its limited English proficient ("LEP") Latino inmates. Specifically, we find that MCSO, through the actions of its deputies, detention officers, supervisory staff, and command staff, routinely punishes Latino LEP inmates for failing to understand commands given in English and denies them critical services provided to the other inmates, all in violation of Title VI and its implementing regulations.

The absence of clear policies and procedures to ensure effective and constitutional policing, along with the deviations from widely accepted policing and correctional practices, and the failure to implement meaningful oversight and accountability structures, have contributed to a chronic culture of disregard for basic legal and constitutional obligations.

In addition to the formal findings noted above, we have identified three additional areas of serious concern that, while not warranting a formal pattern or practice finding at this time, require further investigation. First, our investigation revealed a number of troubling incidents involving MCSO deputies using excessive force against Latinos. Second, we observed that MCSO has implemented its immigration enforcement program in a way that has created a "wall of distrust" between MCSO officers and Maricopa County's Latino residents—a wall of distrust that has significantly compromised MCSO's ability to provide police protection to Maricopa County's Latino residents.<sup>2</sup> Third, we have expanded our investigation to encompass a review of serious allegations that MCSO failed to investigate a large number of sex crimes.

Given the systemic nature of MCSO's constitutional violations, effective resolution of this matter will require the development of a comprehensive written agreement along with federal judicial oversight. We prefer to resolve this matter without resort to further litigation, although we will not hesitate to file suit, if necessary. We would like to immediately begin a constructive dialogue about comprehensive and sustainable ways to remedy the identified violations of the Constitution and federal law. Please let us know by close of business on January 4, 2012, if MCSO is interested in having this dialogue. If MCSO is not interested or if we deem that MCSO is not engaged in good-faith efforts to achieve compliance by voluntary means, we are prepared to file a civil action to compel compliance.

In the remainder of this letter, we highlight our factual and legal findings, broadly describe our investigation of MCSO's practices, provide an outline of our factual findings in sufficient detail to give you fair notice of the violations committed, briefly discuss how those

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<sup>2</sup> During one of our interviews, an MCSO deputy used the term "wall of distrust" to describe the adverse effect of MCSO's immigration law enforcement policies on the relationship between MCSO and the Latino community.

factual findings relate to MCSO's violations of federal law, and outline the remedial measures MCSO must undertake to comply with the law.

## **SUMMARY OF FINDINGS**

### **Discriminatory Policing**

Our factual findings relating to MCSO's discriminatory police practices include, but are not limited to, the following:

- Based upon a recent statistical study, commissioned by the Department of Justice ("Department"), of MCSO traffic stop activities on Maricopa County roadways, Latino drivers are four to nine times more likely to be stopped than similarly situated non-Latino drivers.
- Our review (which was conducted with the assistance of our expert law enforcement consultants) of all of the traffic-related incident reports generated by MCSO's Human Smuggling Unit ("HSU") over a three-year period showed that roughly one-fifth of the reports, almost all of which involved Latino drivers, contained information indicating that the stops were conducted in violation of the Fourth Amendment's prohibition against unreasonable seizures.
- Individual accounts regarding MCSO deputies stopping Latinos on the basis of their appearance corroborate the use of discriminatory policing practices.
- Our investigation uncovered a number of instances in which immigration-related crime suppression activities were initiated in the community after MCSO received complaints that described no criminal activity, but rather referred, for instance, to individuals with "dark skin" congregating in one area, or individuals speaking Spanish at a local business. The use of these types of bias-infected indicators as a basis for conducting enforcement activity contributes to the high number of stops and detentions lacking in legal justification.

### **Discriminatory Jail Practices**

With respect to MCSO's jail practices, MCSO sent us a 53-page letter acknowledging its obligations to treat inmates who are limited English proficient ("LEP inmates") in accordance with its obligations under federal law and provided examples of how it allegedly complies with those obligations. However, our investigation uncovered the following:

- MCSO detention officers discriminatorily punish Latino LEP inmates who fail to understand commands given in English by, for example, locking down their pods (which increases the risk of inmate-on-inmate violence), or imposing disciplinary segregation (solitary confinement).
- MCSO detention officers refuse to accept forms completed by Latino LEP inmates in Spanish. Such forms include tank orders, which enable inmates to request basic daily services, and grievance forms, which enable inmates to identify and address alleged

mistreatment. Even in instances when Spanish language requests are accepted, Latino LEP inmates face delays in services for not submitting requests and grievance forms in English.

- MCSO pressures Latino LEP inmates to sign voluntary return forms that implicate constitutional and statutory rights without language assistance.
- Latino LEP inmates are limited in their ability to access important services, such as services enabling early release, and are denied access to basic information about programs and services, since most announcements are made in English only.

### **Findings Pertaining to Both Police and Jail Practices**

- MCSO retaliates against individuals who criticize its police practices, including practices relating to its discriminatory treatment of Latinos, by subjecting its critics to retaliatory detentions and arrests without cause, unfounded civil lawsuits, and other baseless complaints.
- MCSO fosters and perpetuates discriminatory police and jail practices by failing to operate in accordance with basic policing and correctional practices and by failing to develop and implement policing and correctional safeguards against discrimination in such areas as training, supervision, and accountability systems.
- The pervasive nature of MCSO's discriminatory treatment of Latinos reflects a general culture of bias within MCSO.

### **Legal Findings Under Section 14141 & Title VI and its Implementing Regulations**

The evidence uncovered during our investigation supports the following legal conclusions/determinations:

- MCSO discriminates against Latinos by engaging in police practices that violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Section 14141, Title VI, and the Department's Title VI implementing regulations.
- MCSO discriminates against its Latino LEP inmates on the basis of their national origin in violation of Title VI and the Department's Title VI implementing regulations.
- MCSO engages in a pattern or practice of unlawful seizures, including unjustified stops, detentions, and arrests, of Latinos in violation of the Fourth Amendment to the United States Constitution and Section 14141.
- MCSO engages in a pattern or practice of retaliatory actions against individuals who complain about MCSO's conduct or criticize MCSO's operations and policies,

especially its immigration-related policies, in violation of the First Amendment to the United States Constitution and Section 14141.

### **INVESTIGATIVE BACKGROUND**

In June 2008, after considering publicly available information, the Civil Rights Division opened a preliminary inquiry into allegations that MCSO was engaged in a pattern or practice of unlawful conduct. The inquiry was unrelated to a previous investigation of Maricopa County jails concerning the excessive use of force against inmates and MCSO's deliberate indifference towards their medical needs.<sup>3</sup> On March 10, 2009, we notified MCSO and Sheriff Joseph Arpaio that we were investigating allegations of discriminatory police practices, unlawful search and seizures, and discriminatory treatment of Latino LEP inmates. Shortly thereafter, MCSO refused to provide the Department with access to pertinent documents, facilities, and personnel. For over eighteen months, MCSO consistently refused to cooperate with our investigation. As a result, we had to assert our right to access pertinent sources of information. On September 2, 2010, the United States filed suit against MCSO under Title VI, its implementing regulations, and the contractual assurances MCSO had entered into with the United States, all of which require MCSO, as a recipient of federal financial assistance, to cooperate with investigations relating to Title VI compliance. During this period, we continued our investigation without the cooperation of MCSO, gathering and reviewing documents from various sources external to MCSO and interviewing numerous Maricopa County residents who provided accounts of being victims of MCSO's discriminatory police practices.

After we filed our Title VI lawsuit, MCSO reversed course, and provided us with the cooperation we had been seeking. MCSO permitted the Department's attorneys and experts to interview Sheriff Arpaio; conduct dozens of interviews, including interviews of command staff, deputies, detention officers, first-line supervisors, and jail inmates. MCSO also allowed tours of its six facilities and responded to our original document requests. Moreover, under the terms of a court-enforceable agreement entered into on June 2, 2011, MCSO committed itself to providing the Department with any remaining access the Department needed in order to complete its investigation.

Our findings are based on the information we received prior to and as a result of our Title VI suit and subsequent agreement, including reviewing official documents and interviewing numerous MCSO officials and Maricopa County residents. In addition, our findings incorporate the analysis of experts, including four current and former police executives with extensive knowledge of policing standards and practices, a correctional expert with substantial experience as a correctional administrator and a jail and prison auditor, and a statistician with extensive experience reviewing police practices.

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<sup>3</sup> In August 1995, the Civil Rights Division initiated an investigation to determine whether conditions at MCSO jails violated inmates' constitutional rights, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.* We concluded that unconstitutional conditions existed at the jails with respect to (1) the use of excessive force against inmates and (2) deliberate indifference to inmates' serious medical needs. An agreement between the United States and MCSO was reached in October 1997.

## FACTUAL FINDINGS

We find that MCSO deputies, detention officers, supervisory staff, and command staff, including Sheriff Arpaio, have engaged in a widespread pattern or practice of law enforcement and jail activities that discriminate against Latinos. This discrimination flows directly from a culture of bias and institutional deficiencies that result in the discriminatory treatment of Latinos.

### A. Discriminatory Police Practices

Both the Constitution and Title VI prohibit intentional discrimination on the basis of race, color, or national origin. In addition, Title VI's implementing regulations ban recipients of federal funds from engaging in activities that have a discriminatory effect on the basis of race, color, or national origin.

It is MCSO's prerogative to establish enforcement priorities. At the same time, in the course of implementing its enforcement priorities, MCSO must comply with the Constitution and laws of the United States. Since roughly 2007, in the course of establishing its immigration enforcement program, MCSO has implemented practices that treat Latinos as if they are all undocumented, regardless of whether a legitimate factual basis exists to suspect that a person is undocumented. By emphasizing its immigration enforcement efforts without following basic policing protocols and without implementing any meaningful safeguards against discriminatory police practices, MCSO has engaged in a series of practices that have adversely and disproportionately impacted Latinos. While MCSO has undergone some recent changes in its command staff, these problems have continued, and we have observed no substantive changes in MCSO's policies, protocols, or policing practices.

First, MCSO deputies target Latino drivers. A statistical analysis of MCSO's traffic stops made since the initiation of MCSO's immigration enforcement program—which is dominated by the use of pretextual stops—shows that MCSO's enforcement practices have a discriminatory impact on Latino drivers. We had a leading expert on measuring racial profiling through statistical analysis examine MCSO traffic stops. The expert found that Latino drivers were between four to nine times more likely to be stopped than similarly situated non-Latino drivers. Overall, the expert concluded that this case involves the most egregious racial profiling in the United States that he has ever personally seen in the course of his work, observed in litigation, or reviewed in professional literature.

Second, MCSO's HSU, which purportedly focuses on interdicting both human smugglers and their victims, engages in unlawful conduct in its attempts to enforce immigration-related laws. HSU deputies stop, detain, and/or arrest Latino drivers without adequate cause. When we reviewed all of the traffic-related incident reports generated by HSU from March 2006 to March 2009, we found that roughly 20% of the reports contained information indicating that the stops, almost all of which involved Latino drivers, were conducted without reasonable suspicion or probable cause. Further, HSU's enforcement actions rarely result in human smuggling arrests. During our interviews, an HSU deputy stressed that his unit conducts a "ton of stops" and he estimated the "hit rate" (success rate as measured by frequency of smuggling arrests) to be at 10% to 15%. Accordingly, 85% to 90% of the vehicles HSU stops purportedly based on suspicion of immigration violations have, at most, committed a traffic violation. Pretextual stops

motivated by racial bias, or that are the result of a policy targeting a protected group, are impermissible. The typical characteristic of HSU's enforcement efforts is, therefore, the targeting and harassment of Latino drivers rather than the effective enforcement of immigration law, an element of MCSO's overall pattern of discrimination against Latinos in Maricopa County.

Third, witness accounts are consistent with the data: MCSO's immigration enforcement practices are unconstitutional and are harming innocent Latinos. Below are just two of the many examples we discovered during our investigation:

- A.A., a legal resident of the United States who is Latino, was pulled over by an MCSO deputy in June 2008, during a crime suppression operation in Mesa, due to an alleged failure to use his turn-signal. The deputy requested that A.A. provide a driver license and other documents. A.A. did not produce a driver license, but did provide the deputy with an Arizona identification card, a valid work visa, a Social Security card, and a Mexican passport. Without any evidence that A.A. had engaged in criminal activity, the deputy instructed him to sit on the curb of the street for 15 minutes. The deputy then placed A.A. under arrest for failing to provide any type of proper identification, even though A.A. had provided him with multiple documents in satisfaction of the Arizona law regarding unlicensed drivers. A.A. was incarcerated for 13 days before his citation was dismissed.
- B.B., a legal resident of the United States, and his 12 year-old son, a U.S. citizen, are both Latino. In May 2009, a group of MCSO deputies conducted a raid of a house neighboring B.B.'s home that the deputies suspected of being a "drop house" for human smuggling. At some point during the raid, two of the MCSO deputies involved entered A.A's home after obtaining consent to enter. Without obtaining consent to search, the deputies searched the home without a warrant. Although they found no evidence of criminal activity in the house, the MCSO deputies proceeded to handcuff both B.B. and his son with plastic zip-ties and remove them from their home. The deputies directed both to sit on the sidewalk next to approximately ten other individuals who had been removed from the neighboring house. MCSO released B.B. and his son without any citation after detaining them with restraints for more than an hour.

Fourth, we find that MCSO's regular and highly publicized "crime suppression" operations adversely impact Latinos. During these operations, which often use vast numbers of personnel for many hours and which one MCSO lieutenant referred to as "round-ups of illegal aliens," deputies are encouraged to make high-volume pretextual traffic stops in targeted locations. We have identified and interviewed Latinos who, though legally present in the United States, were arrested or detained without cause as a consequence of these operations.

Fifth, MCSO's Criminal Employment Squad ("CES") deputies, tasked with interdicting undocumented persons by enforcing state forgery and identity theft statutes, routinely raid businesses in a manner that harms innocent Latino workers. Specifically, CES's deputies typically detain and investigate the immigration status of all employees at a raided worksite,

whether or not the employees are listed in the warrant authorizing the raid. The CES targets worksites where most, if not all, of the employees are Latino.

Sixth, MCSO makes use of unverified tips and/or constituent complaints about the presence of Latinos that are infected with bias against Latino persons, but contain no credible information concerning criminal activity or immigration violations, in selecting sites for immigration enforcement operations. This practice too has had a disparate and adverse impact on Maricopa County's Latino residents. For example:

- Sheriff Arpaio received a letter in August 2008 expressing dismay that the employees of a Sun City McDonald's did not speak English and suggesting that Sheriff Arpaio should "check this out" and "check out Sun City." Because the letter only alleged that a business had Spanish-speaking employees, the only basis it provided for a police response was the biased assumption that speaking Spanish was indicative of undocumented status. Though the letter did not describe unlawful conduct of any kind, Sheriff Arpaio wrote a note on the letter directing a response thanking the writer "for the info" and stating that he would "look into it." Sheriff Arpaio also forwarded the letter to MCSO Enforcement Chief Brian Sands with the handwritten instruction "for our operation." Two weeks later, MCSO conducted an immigration operation in Sun City.
- Sheriff Arpaio also received a letter in May 2008 complaining that police had not stopped day laborers in Mesa "in order to determine whether these day laborers are here under legitimate circumstances" although the writer of the letter "believe[d] that they were in the country illegally." Sheriff Arpaio marked the quoted sections of the letter, believing them to be "intelligence," and forwarded the letter to Chief Sands. Sheriff Arpaio later testified that being a day laborer is not a crime. Sheriff Arpaio then received a similar letter later that month stating that Mesa needed "a sweep . . . terribly" and accusing specifically Latino members of MCSO and the Mesa Police Department of negligence in pursuing "illegals." Sheriff Arpaio directed that a thank you letter be written, noted that "I will be going into Mesa," and forwarded the letter to Chief Sands. Chief Sands later testified that he assumed that the letter's author correlated undocumented persons with "dark-complexed people." Despite the bias evident in both letters, MCSO conducted crime suppression operations in Mesa on June 26-27, 2008, and on July 14, 2008.

Seventh, we note that MCSO's prioritization of immigration enforcement may have compromised its ability to secure the safety and security of Maricopa County residents. Since MCSO shifted its focus toward combating illegal immigration, violent crime rates in the county have increased significantly as compared to similarly situated jurisdictions.<sup>4</sup> From 2004 to the

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<sup>4</sup> Clint Bolick, *Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office*, 229 Goldwater Institute Policy Report, Dec. 2, 2008, at 1 (citing FBI Uniform Crime Reporting Statistics); See also Ryan Gabrielson & Paul Giblin, *Reasonable Doubt*, East Valley Tribune (July 9-13, 2008), [http://www.eastvalleytribune.com/special\\_reports/reasonable\\_doubt/](http://www.eastvalleytribune.com/special_reports/reasonable_doubt/); Jacques Billeaud, *Critics: 'Tough' Sheriff Botched Sex-Crime Cases*, Associated Press (Dec. 4, 2011), <http://abcnews.go.com/US/wireStory/critics-tough-sheriff-botched-sex-crime-cases> (reporting that MCSO failed to adequately investigate approximately 70 in El



end of 2007, reported violent crimes grew by over 69 percent, including a 166 percent increase in homicides over the three-year period.<sup>5</sup> Since 2008, violent crime rates have remained at roughly the same level in Maricopa County, while dropping by over 10 percent in similarly situated jurisdictions.<sup>6</sup>

## **B. Discriminatory Language Access Jail Practices**

The national origin discrimination prohibited by Title VI and its implementing regulations includes practices and procedures that deny meaningful access to linguistic minorities subject to the jurisdiction of a federally funded recipient. MCSO, through its correctional officers, supervisory staff, and command staff, implements language access practices that have a discriminatory impact on Latinos (who make up the vast majority of MCSO's LEP inmates). In its June 2010 Position Statement, MCSO acknowledged the importance of communicating with Spanish-speaking inmates in Spanish: "Because of the large number of Spanish speaking inmates, the use of Spanish is not only important to everyday communication, it is essential to the overall operation of the jails and the safety of the inmates and officers." Nonetheless, MCSO's language access practices fall far short of what is required and disproportionately harm Latinos in a number of ways.

First, our investigation revealed that officers have refused to accept forms completed by LEP inmates in Spanish, including tank orders, which contain requests for the most basic daily jail services, and grievance forms, which enable inmates to identify and address alleged mistreatment. In one incident, an inmate reported that a detention officer told him: "This is America. You have to fill [your tank order] out in English." Detention officers confirmed that comments like these were made by fellow officers. In addition, four detention officers admitted that they do not accept inmate requests written in Spanish. One detention officer recounted that she returns tank orders submitted to her in Spanish and instructs the inmate to obtain an English translation.

Second, Latino LEP inmates are told to sign important forms written in English without the aid of appropriate language assistance. For example, witnesses report that MCSO officials pressure Latino LEP inmates to sign English language voluntary return forms by yelling at them, routinely failing to advise them of their rights, and confining them in uncomfortably cold cells for extended periods of time. Although signing a voluntary return form may allow an individual to avoid a formal order of removal—a type of expulsion from the United States that carries more severe immigration consequences for the expelled individual—a person who signs a voluntary return form has agreed, in effect, to leave the United States without attempting to (or working with an attorney to attempt to) assert any rights he or she may have to stay.

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Mirage and more than 400 countywide, respectively, sex-crimes—including dozens of child molestations—during a three-year period ending in 2007).

<sup>5</sup> Bolick, *supra* note 4, at 4.

<sup>6</sup> FBI Uniform Crime Reporting Statistics for MCSO, Mesa Police Department, and Phoenix Police Department, <http://www.ucrdatatool.gov/>.

Third, detention officers punish, directly and indirectly, Latino LEP inmates for their inability to fully understand or fluently speak English. For instance, the inability of one Latino LEP inmate to understand a command given in English can result in the confinement (“lockdown”) of an entire house or pod. Lockdowns are sometimes in effect for as long as 72 hours. When a lockdown is ordered, inmates must return to their cells and are denied access to the visitor area, canteen recreation area, television, non-legal telephone calls, and inmate programs. Punishing other inmates for a Latino LEP inmate’s inability to understand English commands endangers the LEP inmate. A Latino LEP inmate’s inability to understand a detention officer’s English language instructions also can result in the detention officer sending the inmate into disciplinary segregation, commonly referred to as being sent to the “hole.” Inmates sent to the hole are confined 23 hours each day, and are denied non-legal telephone use, regular visits, television, program participation (including church services), and access to the canteen (except hygiene items). Such disciplinary actions are especially troubling when considering that many Latino LEP inmates reported that they never received a copy of the Inmate Rules and Regulations, or did not receive a copy in a language they could comprehend, denying them a basic understanding of jail policies.

Fourth, MCSO discriminates against Latino LEP inmates by failing to provide them with equal access to a range of services, opportunities, and benefits available to other inmates. For example:

- Detention officers have denied requests for new clothes or sheets when items are soiled because the inmates made the request in Spanish. One Latino LEP inmate attempted to use a fellow inmate as an interpreter to explain that her sheets were soiled. The detention officer refused the request, insisting that the inmate had to make the request herself in English.
- Latino LEP inmates are frequently denied access to basic information about programs and services as most announcements are made in English only, including announcements about recreation and the collection of grievances.
- Latino LEP inmates have been denied the opportunity to serve in trustee-type positions whereby certain inmates assist with daily tasks in the jails, which adversely impacts the LEP inmates because inmates selected to perform these chores typically receive preferential treatment, such as additional food, a change of clothes, and greater freedom of movement.
- Latino LEP inmates are denied access to important activities, including access to a program that enables inmates to obtain early release by performing community service.

### **C. Direct Evidence of Discriminatory Bias**

We find a pervasive culture of discriminatory bias against Latinos at MCSO that reaches the highest levels of the agency. Supervisors of MCSO’s police operations, including at least one directly involved in supervising the HSU, have sent emails that demean and express derision for Latinos to fellow command staff members, deputies, and posse volunteers, often using county

email accounts. One email mocks individuals of Mexican national origin by including as an attachment a faux driver license issued to an individual caricatured to be Mexican and designated as originating from “Mexifornia,” with a driver class of “illegal alien.” Yet another email contains two pictures purporting to illustrate the difference between “Indian Yoga” and “Mexican Yoga,” contrasting a picture of a man in a yoga pose and an apparently inebriated man prone on the ground.

In MCSO’s jails, detention officers direct racial slurs at Latino inmates. Detention officers also insult or ignore Latino inmates when they attempt to communicate in Spanish. A detention officer confirmed that officers on her shift frequently tell Latino LEP inmates to speak in English. Other detention officers observed similar hostility: detention officers learn curse words in Spanish, enabling them to swear at Latino inmates, and report hearing staff using slurs when referring to Latino persons. Our investigation also found that MCSO detention officers call Latinos “wetbacks,” “Mexican bitches,” “fucking Mexicans,” and “stupid Mexicans” when either talking among themselves or addressing Latino inmates.

Sheriff Arpaio’s own actions have helped nurture MCSO’s culture of bias. For example, Sheriff Arpaio has frequently distributed racially charged constituent letters, annotating the letters with handwritten notes that appear to endorse the content of the letter, circulating the letters to others on the command staff, and/or saving the letters in his personal file. Many of these letters contain no meaningful descriptions of criminal activity—just crude, ethnically derogatory language about Latinos. For example, Sheriff Arpaio received a letter asking him to do a “round-up” at 29th Street and Greenway in Phoenix. The letter justified the requested police action by asserting that “[i]f you have dark skin, then you have dark skin. Unfortunately, that is the look of the Mexican illegals who are here illegally.” Instead of ignoring the request to focus on “dark-skin[ned]” people, Sheriff Arpaio, believing that the letter was relevant “intelligence,” passed it on to a member of his command staff with a note instructing him to “[h]ave someone handle this.” Labeling as “intelligence” a letter explicitly equating skin color with law-breaking and instructing a subordinate to address it are striking examples of how Sheriff Arpaio has promoted a culture of bias in his organization and clearly communicated to his officers that biased policing would not only be tolerated, but encouraged.

#### **D. Departures from Policing and Correctional Standards and Procedures**

MCSO has adopted and maintained deficient policies and procedures that depart from policing and correctional standards and lead to violations of constitutional and federal rights. We find that MCSO’s oversight and accountability, training in non-biased policing, and policies for deputy conduct substantially depart from generally accepted policing standards. MCSO’s practices are often most egregiously deficient where they directly relate to MCSO’s immigration enforcement program.

Contrary to standard policing practices throughout the country, MCSO supervisors have made a variety of statements undervaluing the usefulness of statistics and data collection for effective law enforcement. MCSO does not require deputies on patrol to keep a log of their activities, but instead requires them only to enter a highly limited amount of data into the Computer Aided Dispatch system and to produce records only for their citations and arrests. Consequently, whenever one of its deputies stops a motorist without issuing a citation, MCSO

cannot review the basis for the stop, nor can it directly track the ethnicity of the stopped driver. MCSO's decision to allow its deputies to go about their traffic work without having to report many of their stops ensures that MCSO will be unable to properly monitor its deputies' traffic work or identify officers engaged in racial profiling. In the jails, MCSO has no reliable practice of documenting which inmates are LEP, leaving detention officers to guess at the language needs of the inmates.

MCSO has failed to put in place meaningful oversight and accountability structures. Such structures include systems for documenting deputy or detention officer activity and for handling complaints. MCSO departs significantly from generally accepted policing standards in its implementation of these systems. With respect to complaints, MCSO has a policy of routing all misconduct complaints to the immediate supervisor of the deputy involved. The first-line supervisor then has discretion to close the investigation without any further involvement from the command structure or Internal Affairs and without further documenting the complaint in any way. Consequently, MCSO does not track complaints directed at deputies or units within the organization. Further, because deputy misconduct often reflects poorly on the actions or inactions of the first-line supervisor, MCSO's system of relying on first-line supervisors places the critical determination of whether to go forward with an investigation in the hands of someone who has an inherent conflict of interest in having a matter thoroughly investigated.

The complaint process is also substandard in the jails. When inmates file grievances against detention officers, it is common practice for the detention officer named in the complaint to resolve the grievance by pressuring the inmate to sign a release, resulting in no further review of the complained-of activity.

Contrary to standard law enforcement practices, MCSO neither offered nor required training on how to avoid engaging in biased policing until as recently as 2010 (well over a year after we notified MCSO of the commencement of our investigation into biased police practices). While MCSO provided us with rosters showing that most of its deputies have now completed the training, most of the deputies and supervisors we interviewed in January 2011, including those routinely engaged in immigration enforcement policing, either stated that they had never received the training or that they had little to no recollection of what the training was about.

Just as MCSO failed to provide training on how to avoid biased policing, MCSO's training on how to work with LEP inmates has been inadequate. Although there is one reference to language barriers in the MCSO Jail Diversity curriculum, the material is so scant that a detention officer who completed the training just several months prior to his interview did not recall any instruction on the subject.<sup>7</sup>

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<sup>7</sup> In a July 28, 2011, submission to the Civil Rights Division, MCSO counsel provided a draft copy of a June 2011 PowerPoint entitled "Limited English Proficiency" and an undated nine-page draft "Lesson Plan: Limited English Proficiency." This revised curriculum fails to address many of the deficiencies in MCSO's language service provisions identified in this letter, including, for example, the failure to instruct non-Spanish speaking detention officers on how to make announcements in Spanish, translate inmate forms filled out in Spanish, and communicate with inmates in housing units where the Language Line is unavailable.

The most egregious deviations from policing norms relate to the way in which MCSO operates the two units most directly involved in its immigration enforcement activities, HSU and CES. Standard police procedures require MCSO to provide additional oversight over the activities of these two units because of the sensitive nature of their work. But MCSO has provided deputies in these units with little in the way of policy guidance, training, or oversight. For example, HSU relies heavily on pretextual stops, but has no meaningful policies discussing when pretextual stops are appropriate, their legality, or any other aspect of their conduct. As such, MCSO has failed to appreciate the need to develop critical protocols to ensure compliance with important constitutional and statutory requirements.

With regard to correctional standards, MCSO has failed to meet its LEP obligations under Title VI, the regulations implementing Title VI, or the standards that MCSO set for itself to satisfy these obligations. On June 14, 2010, over a year after we had informed MCSO of our investigation into its treatment of Latino LEP inmates, MCSO issued a Position Statement in which it represented to the United States that it had taken a number of measures to ensure language access for its LEP inmates. However, when we toured MCSO's jail facilities in January 2011, we discovered that the Statement was inconsistent with the actual state of affairs at the jails. For example, contrary to the Statement's representations, detention officers refused to accept written requests by inmates in Spanish, failed to use or rely upon a Foreign Language Skills Roster, and continued to rely on inmates to provide other inmates with language assistance. They also failed to use an available telephonic interpretation service or to request bilingual colleagues to assist them in communicating with LEP inmates. We find that MCSO's practice of relying on inmates to interpret or translate is dangerous for both inmates and detention officers and is a departure from generally accepted correctional practices.

#### **E. Retaliatory Actions**

We find that MCSO command staff and deputies have engaged in a pattern or practice of retaliating against individuals for exercising their First Amendment right to free speech. Under the direction of Sheriff Arpaio and other command staff, MCSO deputies have sought to silence individuals who have publicly spoken out and participated in protected demonstrations against the policies and practices of MCSO—often over its immigration policies. MCSO command staff and deputies have arrested individuals without cause, filed meritless complaints against the political adversaries of Sheriff Arpaio, and initiated unfounded civil lawsuits and investigations against individuals critical of MCSO policies and practices.

- One of the victims of MCSO's retaliatory practices is C.C., an organizer with an immigration rights community organization who for several years has engaged in public speech critical of MCSO's practices and its treatment of Latinos. On July 29, 2010, C.C. participated in a peaceful protest against MCSO. During the course of the protest, MCSO arrested him and charged him with failure to obey a police officer and blocking a public thoroughfare. C.C. was released that night. On July 30, 2010, C.C. stood across the street from the Lower Buckeye Jail watching another protest. A video recording of the incident shows six or more MCSO deputies approaching and then arresting C.C., who was simply standing with his hands by his side at the time. Chief Sands stated that C.C. was arrested for violating his order of release. As the

incident unfolded, Sheriff Arpaio posted a series of approving messages on a social networking site.

C.C. was detained at the Fourth Avenue Jail, pending his initial court appearance, and not allowed to speak to his attorney while there. MCSO deputies charged him with obstructing a judicial proceeding, but on August 3, 2010, then-Maricopa County Attorney Rick Romley dropped the charge, admitting that there was no probable cause for the arrest.

MCSO deputies also retaliated against members of Maricopa Citizens for Safety and Accountability ("MCSA"), an organization highly critical of what they called MCSO's discriminatory treatment of Latinos. In December 2008, during two separate public meetings of the County Board of Supervisors, MCSO deputies arrested members of MCSA when the MCSA members attempted to express their opposition to certain MCSO actions. The individuals arrested were all charged with criminal trespassing, and some were also charged with disorderly conduct. None of the charges resulted in convictions, and those charged subsequently filed a lawsuit against Maricopa County and MCSO for wrongful arrest, malicious prosecution, and civil rights violations. On July 6, 2010, the parties reached a mediated settlement.

Finally, MCSO officials have resorted to using official harassment to silence MCSO's critics. Between October 2007 and November 2009, former Chief Deputy David Hendershott filed, in his official capacity, unfounded complaints with the Arizona State Bar against five attorneys, alleging that they had engaged in ethical violations. Each of the complaints was filed against individuals who made public statements critical of MCSO's jail policies, investigatory tactics, and/or police practices.

Similarly, on November 30, 2009, Hendershott, acting in his official capacity, filed four complaints with the Arizona Commission on Judicial Conduct against judges who had made critical public comments about MCSO and Sheriff Arpaio or had rendered decisions detrimental to MCSO's interests. All of these bar and judicial complaints were dismissed as insufficient to warrant even an investigation.

In a related action, Sheriff Arpaio participated as a named plaintiff in a civil federal racketeering suit filed against the same judges targeted by Hendershott, as well as a number of other County officials. The claims against the judges echoed those claims in the complaints filed by Hendershott. The suit was eventually abandoned.

The arrests and harassment undertaken by MCSO have been authorized at the highest levels of the agency and constitute a pattern of retaliatory actions intended to silence MCSO's critics.

#### **F. Additional Areas of Serious Concern**

In addition to the violations of the Constitution and federal law described above, there are three additional areas of serious concern where, at the moment, we do not make a formal pattern or practice finding, but our review continues. These areas of concern are:

- Use of excessive force against Latinos;
- Reduction of policing services to the Latino community; and
- Gender and/or national origin bias by failing to adequately investigate sex crimes.

These three issues are of concern standing alone and may also relate to our ultimate findings concerning MCSO's discriminatory police practices. A deliberate failure to provide policing services, or a deliberate indifference to public safety needs of certain communities, implicates important constitutional protections and can compromise public safety and undermine public confidence in MCSO. It does not matter for the purposes of the Constitution and federal laws whether it is an act of commission or omission.

With regard to use of force, our investigation revealed multiple instances of MCSO deputies using excessive force, a troubling trend made more problematic by MCSO's failure to have in place meaningful systems of accountability and supervision. Such systems are also crucial components in deterring and addressing the use of excessive force, and their absence is a glaring flaw in MCSO's institutional practices relating to the use of force. MCSO's use of excessive force may constitute a pattern or practice of Fourth Amendment violations under Section 14141, and our investigation into this conduct is ongoing.

- In February 2009, D.D., a Latino U.S. citizen, was driving home when a trailing MCSO deputy turned on his emergency lights to signal a traffic stop, allegedly for a failed brake light on D.D.'s vehicle. The MCSO deputy did not activate his siren, and D.D. drove the remaining short distance to his house because he feared how the MCSO deputy would treat him because of his Latino ethnicity. When D.D. exited his car, the MCSO deputy purposefully struck D.D. with his patrol car, pinning D.D. under the vehicle and dragging him for more than ten feet. The MCSO deputy did not attempt to remove D.D., and instructed other arriving deputies to "leave him there." D.D. was eventually extracted by the local fire department. The deputy's actions caused serious injury, including broken bones, burns, and other injuries. D.D. sued MCSO for his injuries; the lawsuit was eventually settled for \$600,000. The MCSO deputy claimed that the incident was an accident arising from D.D. attempting to flee his vehicle. MCSO arrested the deputy, and he was charged with aggravated assault.
- In May 2009, an MCSO deputy stopped E.E., a Latino U.S. citizen, after E.E. picked up a Latino day laborer. The deputy told E.E. that he had pulled him over for speeding, but E.E. suspected that he had been pulled over because of his and his passenger's Latino ethnicity. E.E. questioned the deputy's reason for pulling him over. The deputy, along with other MCSO deputies who had arrived on the scene, responded by forcibly removing E.E. from his vehicle, twisting his arm, head, and neck and causing E.E. to fall and hit his face on the pavement. The MCSO deputies kept E.E. on the ground, handcuffed him, and searched him. E.E. was bleeding from multiple lacerations to his face, and experienced neck and back pain from the holds the MCSO deputies had used to remove him from his vehicle. E.E. was ultimately taken to a medical facility where he received treatment for injuries to his face, neck, shoulder, and back. E.E. was never charged with any offense that might explain the officers' use of force. Instead, E.E. was charged with criminal speeding and failure to produce identification. Both of these charges were eventually dropped.

We continue to investigate whether MCSO has implemented its immigration enforcement program with deliberate indifference to the way in which the program compromises MCSO's ability to provide effective policing services to Maricopa County's Latino population. There are indicators that MCSO has undermined its own ability to engage in effective policing in the Latino community. Much of a modern-day police agency's effectiveness is predicated on building a relationship of trust with all segments of the community. MCSO has done almost nothing to build such a relationship with Maricopa County's Latino residents. The absence of trust has substantially compromised effective policing by limiting the willingness of witnesses and victims to report crimes and speak to the police about criminal activity.

MCSO deputies we interviewed admitted that the immigration enforcement program, which lacks basic accountability and quality control measures and is characterized by wide-ranging and poorly planned "crime suppression" operations, has adversely affected their ability to obtain information and cooperation from the County's Latinos. One deputy informed us that MCSO's "aggressive" immigration interdiction efforts create a "wall of distrust" that divides the Latino community and MCSO. Another deputy was told by his supervisors to expect that he would encounter hostility from people who believed they were being stopped because of their ethnicity. A different MCSO deputy bemoaned the impact of MCSO's immigration-related operations, stressing that they "affect our ability to work in a community that hates you." The Police Executive Research Forum, an independent, national organization made up of police executives, interviewed a number of law enforcement officers in Maricopa County who believe that MCSO has enforced immigration laws in a way that has poisoned the relationship between law enforcement and Latinos, hindering general law enforcement efforts within the Latino community.<sup>8</sup> Our investigation further found no evidence that MCSO has acted to improve its relationship with the Latino community, preferring instead to simply continue the practices that have compromised its effectiveness in the Latino community.

Finally, we are continuing our review of allegations that MCSO has failed to investigate a large number of sex crimes.<sup>9</sup> The Sheriff's office has acknowledged that 432 cases of sexual assault and child molestation were not properly investigated over a three-year period ending in 2007.<sup>10</sup> These cases only came to light after a review by the El Mirage Police Department of a period in which MCSO was under contract to provide policing services to that community. It appears that many of the victims may have been Latino. If established, this may constitute a failure to provide police services in a manner that constitutes gender and/or national origin discrimination in violation of the Equal Protection guarantee of the United States Constitution.<sup>11</sup> Our review will not be limited to the pre-2007 cases, but include any allegations that the practice continued after that time.

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<sup>8</sup> Debra A. Hoffmaster, *et al.*, *Police and Immigration: How Chiefs are leading their communities through the challenges*, Police Executive Research Forum 39 (2010).

<sup>9</sup> Gabrielson, *supra* note 4; Billeaud, *supra* note 4.

<sup>10</sup> *Sheriff Joe Arpaio apologizes for botched El Mirage sex-crime cases*, Associated Press, Dec. 5, 2011, <http://www.azcentral.com/news/articles/2011/12/05/20111205arpaio-apologizes-botched-cases.html>.

<sup>11</sup> *See Investigation of the New Orleans Police Department*, U.S. Department of Justice, Civil Rights Division., pp. 43-49. March 16, 2011, <http://www.justice.gov/crt/about/spl/nopd.php>.



## LEGAL DISCUSSION

### A. Discriminatory Policing

Section 14141, a provision of the Violent Crime Control and Law Enforcement Act of 1994, grants the United States a cause of action to sue a state or local government for equitable and declaratory relief when a “governmental authority . . . engage[s] in a pattern or practice of conduct by law enforcement officers . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”

An agency such as MCSO violates the Equal Protection Clause when its decision-maker adopts a facially neutral policy or practice with a discriminatory intent, and that policy or practice has a discriminatory effect. *Washington v. Davis*, 426 U.S. 229, 239-40 (1976). While discriminatory intent need not be the only motive, an Equal Protection violation occurs when the circumstantial evidence shows that a policy at issue was adopted “because of, not merely in spite of, its adverse effects upon an identifiable group.” *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). To assess whether intentional discrimination infected the decision-making process, courts look to the totality of the circumstances with particular attention to factors that the Supreme Court has identified as most probative of discriminatory intent. *Village of Arlington Heights v. Metro. Hous. Redev. Corp.*, 429 U.S. 252 (1977). Those factors include: evidence of discriminatory effect; evidence of departures from normal procedures; the specific sequence of events that led to the discriminatory practices at issue; and contemporaneous statements from a decision-maker that reveal a discriminatory intent. *Id.* at 266-68.

As described above, our investigation uncovered substantial evidence of the kind identified by the Supreme Court in *Arlington Heights*, showing that Sheriff Arpaio has intentionally decided to implement his immigration program in a manner that discriminates against Latinos. Our evidence further shows that discrimination against Latino persons exists in a wide range of MCSO practices. We have obtained compelling statistical evidence showing that MCSO deputies routinely stop Latinos at much higher rates than similarly situated non-Latinos on Maricopa County roadways. This evidence speaks directly to both the discriminatory effects and discriminatory motives of MCSO deputies engaged in traffic enforcement. It is difficult to conceive of any valid, non-discriminatory explanation for stopping Latino drivers at a rate that is four to nine *times* higher than the rate for similarly situated non-Latino drivers. In addition to this statistical evidence, other data and witness statements show that MCSO deputies, particularly members of the HSU or the CES, frequently detain and/or arrest Latino drivers without cause. Additionally, the evidence of a culture of bias at MCSO discussed above directly relates to the impermissible motives behind the actions of MCSO’s deputies. For these and other reasons, the evidence establishes that MCSO is engaged in a pattern or practice of Equal Protection violations.

Discriminatory law enforcement activities are likewise prohibited by Title VI. Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance.” 42 U.S.C. § 2000d. In addition, Title VI’s implementing regulations proscribe “criteria or methods of administration” that exert a discriminatory effect on the basis of race, color, or national origin.

28 C.F.R. § 42.104(b)(2). For the reasons detailed in the findings section above, the evidence obtained to date establishes that MCSO has violated the aforementioned regulation.

### **B. Unreasonable Seizures**

We conclude that MCSO has engaged in a pattern or practice of conduct by its law enforcement officers that has deprived many of Maricopa County's Latino residents of their right, under the Constitution's Fourth Amendment, to be "secure in their persons, houses, papers, and effects, against unreasonable . . . seizures." U.S. Const. amend. IV. "The 'general Fourth Amendment approach' requires courts to examine the totality of the circumstances to determine whether a . . . seizure is reasonable." *United States v. Guzman-Padilla*, 573 F.3d 865, 876 (9th Cir. 2009) (quoting *United States v. Knights*, 534 U.S. 112, 118 (2001)). To qualify as "reasonable," arrests must be based on probable cause to believe that an arrestee has or is committing a crime, and even brief detentions, such as traffic stops, must be based on reasonable suspicion of criminal activity. See *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968). Reasonable suspicion, at a minimum, means "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. King*, 244 F.3d 736, 738 (9th Cir. 2001).

In this instance, we have both data and witness statements showing that MCSO deputies, in the course of engaging in immigration-related enforcement activities, frequently stop or arrest Latinos without either probable cause or reasonable suspicion. As discussed above, the HSU arrest reports we analyzed provide us with reasonable cause to believe that HSU officers routinely stop Latino motorists without appropriate cause. Moreover, there are a number of other practices related to MCSO's immigration enforcement program that frequently result in Fourth Amendment violations. For example, our investigation revealed that CES deputies typically detain *all* those present within the vicinity of the business they are raiding. In certain instances, these mass detentions of innocent individuals have lasted for extended periods of time, and, in at least one case, lasted for roughly two hours. These types of prolonged detentions of innocent individuals without specific evidence of criminal activity constitute Fourth Amendment violations. See *Ganwich v. Knapp*, 319 F.3d 1115, 1121 (9th Cir. 2003).

### **C. Discriminatory Jail Practices**

Title VI authorizes the United States to initiate civil litigation in federal court for injunctive relief against a recipient of federal financial assistance whose program or activity violates Title VI or its implementing regulations. 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.108. MCSO's language access procedures violate Title VI if MCSO maintains those procedures to intentionally discriminate against Latinos on the basis of their national origin or if the procedures have a discriminatory effect on Latinos. 28 C.F.R. § 42.104(b)(2); *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995). In this instance, MCSO's language access procedures and practices are intentionally discriminatory and have a discriminatory effect.

Our investigation demonstrates that MCSO's language access procedures intentionally discriminate against Latinos. There is substantial evidence that biases against Latinos have played a role in MCSO's decision to maintain its current language access practices and procedures. MCSO has been on notice for many years of its legal obligation to treat LEP

inmates in a non-discriminatory manner. In 2002, the Department of Justice issued non-discrimination/LEP language access standards applicable to the correctional functions of law enforcement agencies receiving federal financial assistance, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455 (June 18, 2002). When accepting grants from the Department, MCSO officials signed assurances promising to abide by Title VI, including an assurance in which MCSO agreed that, “[p]ursuant to Department of Justice guidelines (June 18, 2002 Federal Register (Volume 67, Number 117, pages 41455-72)), under Title VI of the Civil Rights Act of 1964, it will ensure meaningful access to its programs and activities by persons with limited English proficiency.” In March 2009, we informed MCSO that we were investigating allegations that its language assistance program in its jails discriminated against Latino LEP inmates, thereby putting MCSO on notice that the United States had received complaints articulating serious concerns relating to its language access program. Finally, grievances filed by Latino LEP inmates, particularly regarding the lack of access to church services, also have placed MCSO on notice as to the absence of services for Latino LEP inmates. Although MCSO has ample reason to know that its policies are denying Latino LEP inmates access, MCSO persists in maintaining many of its discriminatory practices.

MCSO’s language access procedures and practices have a discriminatory effect upon MCSO’s LEP inmates. As detailed above, MCSO’s LEP inmates, who are overwhelmingly Latino, do not receive the same services and benefits as non-LEP inmates, are pressured to sign important immigration-related documents without language assistance, and are singled out for punishments, such as being subjected to lockdowns and disciplinary segregation for failing to understand English commands. In all of these ways and more, MCSO’s language access practices disproportionately and adversely impact the Latino inmates in MCSO’s jails. *See Lau v. Nichols*, 414 U.S. 563, 568 (1974) (noting that “[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 and applicable regulations); *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 947-48 (9th Cir. 1995), *vacated on other grounds*, 520 U.S. 43 (1997) (striking down the English-only amendment to the Arizona Constitution, stating that the amendment’s impact “is especially egregious because it is not uniformly spread over the population, but falls almost entirely upon Hispanics and other national origin minorities”).

#### **D. Retaliatory Practices**

We find that MCSO has violated Section 14141 by engaging in a pattern or practice of conduct by its law enforcement officers that has deprived a number of Maricopa County residents of their First Amendment rights. The First Amendment prohibits government actors from “abridging the freedom of speech,” U.S. Const. amend. I, and prohibits a government official from subjecting an individual to retaliatory actions for speech that falls under the protections of the First Amendment. *Hartman v. Moore*, 547 U.S. 250, 251 (2006). The Ninth Circuit has held that to prove a First Amendment retaliation claim, a plaintiff must show “that by his actions [the defendant] deterred or chilled [the plaintiff’s] political speech and such deterrence was a substantial or motivating factor in [the defendant’s] conduct.” *Mendocino Env’tl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999). To succeed in bringing a

First Amendment retaliation claim, courts have held that plaintiffs must show only that “an official’s acts would chill or silence a person of ordinary firmness from future First Amendment activities.” *Id.* The plaintiff must also show that the “chilling effect was a but-for cause of the defendant’s action.” *Skoog v. County of Clackamas*, 469 F.3d 1221, 1232 (9th Cir. 2006).

In this case, we have identified instances of retaliatory actions by MCSO officials. Some of the most serious incidents involve MCSO deputies, at times apparently acting at the direction of MCSO’s leadership, bringing false criminal charges against MCSO’s critics. The fact that all of the charges are subsequently dismissed strongly suggests that the “chilling effect was [the] but-for cause” of the police action. Moreover, such maliciously motivated charges would have the effect of silencing a person of ordinary firmness from engaging in future protected speech. Based on our review of the evidence, there is reasonable cause to believe that MCSO officials have committed a series of retaliatory actions directed at perceived critics of MCSO that are designed to chill the exercise of protected First Amendment activities.

### **REMEDIAL MEASURES**

The factual findings detailed above provide reasonable cause to believe that MCSO has committed violations of the First, Fourth, and Fourteenth Amendments to the United States Constitution, Section 14141, and Title VI. The Civil Rights Division accordingly notifies you that, absent MCSO taking clear steps toward reaching an agreement with the Division to correct these violations in the next 60 days, the United States will conclude that voluntary compliance is not possible and will initiate civil litigation to compel compliance with Section 14141 and Title VI. Should MCSO indicate within those 60 days that it does not intend to work with the Division, we may initiate suit in fewer than 60 days. MCSO is further cautioned not to intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws we enforce.

The constitutional violations and institutional deficiencies highlighted above are the product of an ingrained culture that encourages and tolerates the discriminatory treatment of Latino persons and an agency that lacks the requisite policies and practices to ensure effective and constitutional law enforcement. Reform will require sustained commitment to long-term structural, cultural, and institutional change, including, but not limited to, the following:

- Training for Deputies: MCSO must develop effective and meaningful training for deputies in constitutional policing, including how to perform stops, searches, seizures, and arrests consistent with the requirements of the Fourth and Fourteenth Amendments.
- Special Operations and Specialized Units: MCSO must develop and implement detailed policies, procedures, and training regarding (1) special operations, including, but not limited to, crime suppression sweeps or saturation patrols, worksite raids, drop house raids, and roving smuggling patrols, and (2) specialized units, including, but not limited to, SWAT, HSU, and CES.

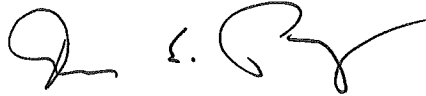
- Data Collection and Risk Management: MCSO must develop and implement a data collection system regarding all law enforcement activity in order to enable MCSO to supervise, manage, and intervene, when appropriate. Such a program requires detailed auditable reports for traffic and pedestrian stops; immigration-related stops, raids, or inquiries; searches and seizures; and worksite raids.
- Complaint System and Internal Affairs: MCSO must develop and implement a comprehensive complaint, investigation, and disciplinary system to enable it to hold officers accountable when they violate policy and/or the law. The complaint system must be accessible to all community members and allow the public to make complaints against MCSO staff and deputies without fear of retaliation. The internal investigative process should include clear avenues for adjudication, discipline, and criminal prosecution, if necessary, as well as access for LEP individuals.
- Language Access: MCSO must develop and implement a comprehensive language access program for its deputies and officers who encounter LEP individuals in the jails and for its enforcement activity in the community. Training on this program must be routine and detailed, such that all staff are aware of their language access obligations and are held accountable for failure to implement appropriate measures.
- Community Outreach: MCSO must meet the law enforcement needs of all its residents, regardless of their race or ethnicity. To that end, MCSO must engage with and reach out to Maricopa County's Latino residents to ensure that it is fairly and effectively providing them with law enforcement services.

We strongly believe that effective policing and constitutional policing go hand in hand. In recent years, we have worked productively and collaboratively with law enforcement agencies across the country, *increasingly at their request*, to address serious concerns that threaten to undermine public confidence and hinder operational effectiveness. Our goal in every case is to work collaboratively to obtain a detailed understanding of the precise challenges and their root causes, and to develop and implement sustainable reform measures that will reduce crime, ensure respect for the Constitution, and increase public confidence in law enforcement. We stand ready to work cooperatively with you to address the concerns outlined in this letter, and we remain prepared to take prompt, appropriate legal action if you choose to forego collaboration.

The violations we have identified are serious, and voluntary compliance with the Constitution and federal law will require a detailed agreement incorporating the foregoing remedial measures. Given the systemic nature of the constitutional violations, effective compliance in this case will require federal judicial oversight; a court-enforceable agreement will provide the structure, transparency, and accountability necessary to achieve sustained success.

Please note that this letter is a public document. It will be posted on the Civil Rights Division's website. We look forward to hearing from you soon. If you have any questions, please contact Jonathan Smith, Chief of the Special Litigation Section, at (202) 514-6255.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. E. Perez', with a stylized flourish at the end.

Thomas E. Perez  
Assistant Attorney General

cc: William R. Jones, Jr.  
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