No. 18-____

IN THE

Supreme Court of the United States

MARICOPA COUNTY, ARIZONA,

Petitioner,

v.

MANUEL DE JESUS, ORTEGA MELENDRES, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the Ninth Circuit, the precepts of federalism often count for very little. They are, at most, but minor hurdles to be vaulted over by federal courts on their way to superimposing on State and local governmental institutions the courts' preferences as to how those institutions should be structured and run.

Here, the Ninth Circuit and the District Court have disregarded and misapplied Arizona law and this Court's precedents to find Arizona's sheriffs to be "final policymakers" for their respective counties and hold Maricopa County, Arizona ("the County") responsible for law enforcement actions over which the County had no control. The courts below have saddled the County with substantial cost and other burdens for conduct of former Sheriff Joseph M. Arpaio ("the Sheriff") and his deputies found to have been contumacious, without regard to limitations on the County's authority to provide such funding and without regard to legally condoned processes by which such funding could be obtained. Further, massive usurpations of the prerogatives of the Sheriff have been engineered and imposed, apparently on the theory that constitutional constraints on federal judicial disappear whenever the courts exercise their contempt powers.

The questions presented are:

1. Applying the analytical mandates of *McMillian v. Monroe County, Alabama*, 520 U.S. 781 (1997), to county-level governmental institutions established under Arizona law, are sheriffs "final policymakers" under 42 U.S.C. §

1983 for their counties with regard to the conduct of law enforcement matters?

2. May federal courts, consistent with the Guarantee Clause and the Tenth Amendment, compel local governmental institutions to do things they are not authorized to do under State law?

3. Are federal courts at liberty, in exercising their contempt powers, to ignore the precepts of federalism, notwithstanding this Court's decision in *Rizzo v. Goode*, 432 U.S. 362 (1976)?

PARTIES TO THE PROCEEDINGS

Defendants below were former Sheriff Joseph M. Arpaio (later replaced by Sheriff Paul Penzone), and Maricopa County, Arizona.

Plaintiffs below were Manuel de Jesus Ortega Melendres; David and Jessica Rodriguez; Velia Meraz and Manuel Nieto, Jr.; Somos America/We Are America, a non-profit membership organization; and a class of individuals described as "[a]ll Latino persons who, since January, 2007, have been or will be in the future, stopped, detained, questioned or searched by [Maricopa County Sheriff's Office] agents while driving or sitting in a vehicle on a public roadway or parking area in Maricopa County, Arizona." *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 969 (D. Ariz. 2011), *aff'd sub nom. Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012) (hereinafter "*Melendres I*").

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Maricopa County, Arizona respectfully petitions this honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 897 F.3d 1217 (9th Cir. 2018). See Pet. App. "A."

The opinion of the District Court setting forth its findings from the contempt hearing conducted during 2015 is unpublished, but it is available at 2016 WL 2783715 (D. Ariz. May 13, 2016). *See* Pet. App. "D." The District Court's opinion entering its Second Amended Second Supplemental Permanent Injunction is also unpublished, but it is available at 2016 WL 3996453 (D. Ariz. July 26, 2016). *See* Pet. App. "E". The opinion of the District Court with regard to the victim compensation program also is unpublished, but is available at 2016 WL 4415038 (D. Ariz. Aug. 19, 2016). *See* Pet. App. "F".

JURISDICTION

The Court of Appeals entered its opinion on July 31, 2018. *See* Pet. App. "A." The County's Petition for Panel Rehearing and Petition for En Banc Determination was denied by the Ninth Circuit on September 7, 2018. *See* Pet. App. "B". This Court has jurisdiction under 28 U.S.C. § 1254(1). Jurisdiction in the Ninth Circuit was based on 28 U.S.C. § 1292(a)(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of the following constitutional and statutory provisions are set forth at App. "K" to this Petition:

1. U.S. Constitution, Art. 4, § 4 (Pet. App. "K" at 364);

2. U.S. Constitution, Amendment X (*Id.* at 364);

3. 42 U.S.C. § 1983 (*Id.* at 364);

4. Arizona Constitution, Art. 4, § 19 (*Id.* at 365);

5. Arizona Constitution, Art. 12, § 3 (*Id.* at 366);

6. Arizona Constitution, Art. 12, § 4 (*Id.* at 366);

7. Arizona Constitution, Art. 22, § 17 (*Id.* at 367);

8. Arizona Rev. Stat. § 1-201 (*Id.* at 367);

9. Arizona Rev. Stat. § 11-201 (*Id.* at 367);

10. Arizona Rev. Stat. § 11-251 (*Id.* at 368);

11. Arizona Rev. Stat. § 11-401 (*Id.* at 381);

12. Arizona Rev. Stat. § 11-409 (*Id.* at 382);

13. Arizona Rev. Stat. § 11-441 (*Id.* at 382);

14. Arizona Rev. Stat. § 11-444 (*Id.* at 384);

15. Arizona Rev. Stat. § 41-1821 (*Id.* at 385); and,

16. Arizona Rev. Stat. § 41-1822 (*Id.* at 387).

STATEMENT

A. Procedural history.

This case was initiated in 2007, by Plaintiffs as a class action against Joseph M. Arpaio in his then official capacity as Sheriff of Maricopa County, Arizona ("the Sheriff"), the Maricopa County Sheriff's Office ("MCSO"), and Maricopa County ("the County"). Among other allegations, Plaintiffs asserted that the Sheriff and MCSO officers had engaged in a policy or practice of racially profiling Latinos in connection with vehicle stops in violation of the Fourth and Fourteenth Amendments. *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 969 (D. Ariz. 2011), *aff'd sub nom. Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012) (hereinafter "*Melendres I*").

On October 13, 2009, the District Court granted a stipulated motion to dismiss all claims against the County on the ground that the County's presence in the case was not necessary for Plaintiffs to obtain complete relief. R., Doc. 194.

1. The District Court's Preliminary Injunction.

More than two years after the County's dismissal, the District Court granted certain aspects of the

Plaintiffs' motion for summary judgment on December 23, 2011 and issued a Preliminary Injunction against Sheriff Arpaio and MCSO. *Melendres I*, 836 F.Supp.2d at 994. The District Court also certified a Plaintiff class comprised of "[a]ll Latino persons who, since January, 2007, have been or will be in the future, stopped, detained, questioned or searched by MCSO agents while driving or sitting in a vehicle on a public roadway or parking area in Maricopa County, Arizona." *Id.* (internal quotations omitted). All MCSO officers were enjoined from:

> detaining any person based only on knowledge or reasonable belief, without more, that the person is unlawfully present within the United States, because as a matter of law such knowledge does not amount to a reasonable belief that the person either violated or conspired to violate the Arizona human smuggling statute, or any other state or federal criminal law.

Id. The Ninth Circuit subsequently upheld the District Court's Preliminary Injunction. 695 F. 3d 990 (9th Cir. 2012).

2. The District Court's Initial Permanent Injunction And Supplemental Injunction.

Following a bench trial in the summer of 2012 on the remaining issues, the District Court issued Findings of Fact and Conclusions of Law on May 24, 2013, concluding that the Sheriff and his employees had engaged in constitutional violations against

Latinos, and entering a Permanent Injunction. *Melendres v. Arpaio*, 989 F.Supp.2d 822 (D. Ariz. 2013).

In a Supplemental Permanent Injunction/ Judgment Order ("Supplemental Injunction") issued October 2, 2013, the District Court expanded its injunctive relief. *Melendres v. Arpaio*, 2013 WL 5498218 (D. Ariz. 2013). The Supplemental Injunction required, *inter alia*, that the Sheriff and MCSO implement a community outreach program, put in place various training programs for deputies and supervisors, acquire and utilize certain data collection and tracking technologies with regard to traffic stops, implement a ratio limiting each supervisor to not more than 12 deputies under his or her supervision, impose various specific requirements on the supervisory function, and create a new system for MCSO employee performance evaluations. *Id*. at *13-*30.

The District Court also announced its intention to appoint a monitor with broad powers to oversee compliance with the terms of the Supplemental Injunction. *Id*. at *30-*36. Among functions the District Court contemplated for the monitor was "reviewing the corrective action taken by the MCSO concerning any possible violations of this Order or MCSO policy and procedures and reporting the same to the parties and the Court." *Id*. at *32. The metrics that the monitor was to use included "disciplinary outcomes for *any* violations of departmental policy," and "whether any Deputies are the subject of repeated misconduct Complaints, civil suits, or criminal charges, including for off-duty conduct . . . ." *Id*. at *34 (emphasis added).

The Sheriff and MCSO appealed from the decisions imposing the Permanent Injunction and the Supplemental Injunction, challenging certain aspects of the injunctive relief. They also asserted that MCSO, as a non-jural entity, was not a proper party.

In April 2015, the Ninth Circuit largely affirmed the District Court's orders. The Court of Appeals dismissed the MCSO as a non-jural entity, substituting the County in its place, despite the fact that substitution of the County had not been sought and had been neither briefed nor argued by any party. *Melendres v. Arpaio,* 784 F.3d 1254 (9th Cir. 2015) ("*Melendres II*").

In reviewing the Supplemental Injunction, the Ninth Circuit *Melendres II* panel noted that "[a]n injunction against state actors 'must directly address and relate to the constitutional violation itself,' and must not 'require more of state officials than is necessary to assure their compliance with the constitution [sic].'" *Melendres II* at 1265 (quoting *Millikin v. Bradley*, 433 U.S. 267, 282, and *Gluth v. Kangas*, 951 F.2d 1504, 1509 (9th Cir. 1991)).

Applying these principles, the *Melendres II* panel approved the District Court's grant of authority to the monitor to oversee compliance generally, but it imposed limits on the scope of the monitor's authority over complaints of misconduct by MCSO officers. *Melendres II* struck down provisions authorizing the monitor to "consider the 'disciplinary outcomes for *any* violations of departmental policy' and to assess whether Deputies are subject to 'civil suits or criminal charges . . . for off-duty conduct.'" 784 F.3d at 1267 (emphasis in original) (quoting from District Court's

Supplemental Injunction). Such provisions, the *Melendres II* panel held, "are not narrowly tailored to addressing only the relevant violations of federal law at issue here." *Id.*

The County filed a Petition for Writ of Certiorari seeking Supreme Court review of the Ninth Circuit's decision compelling the County's re-entry into the case, but the petition was denied. *Maricopa County v. Melendres*, 136 S.Ct. 799 (2016). The County's subsequent appeal from decisions rendered by the District Court while the County was absent from the case was dismissed by the Ninth Circuit on jurisdictional grounds. *Melendres v. Arpaio*, 815 F.3d 645 (9th Cir. 2016) (hereinafter "*Melendres III*")

3. The Contempt Proceeding.

On February 12, 2015, two months prior to the Ninth Circuit's ruling in *Melendres II* substituting the County in place of MCSO, the District Court had issued an Order to Show Cause ("OSC") for civil contempt against the Sheriff and several other alleged non-party contemnors who were all MCSO employees. R., Doc. 880. The OSC directed the Sheriff and MCSO to show cause why they should not be held in contempt for having: (1) failed to implement and comply with the Preliminary Injunction; (2) failed to comply with certain discovery obligations; and (3) failed to follow directives from the court concerning collection of recordings of traffic stops. R., Doc. 880 at 26.

The District Court held evidentiary hearings in the contempt proceeding in April, September, October and November of 2015. Although the County had been ordered back into the case in place of MCSO, the

District Court limited the right of the County to take positions inconsistent with those advanced by the Sheriff.[1]

On May 13, 2016, the court issued findings, concluding that the Sheriff and his command staff had failed to implement and had violated the court's 2011 Preliminary Injunction, had failed to disclose relevant discovery items, and had violated the court's orders concerning the collection of traffic stop recordings. R., Doc. 1677; Pet. App. "D." The court also found that the Sheriff and MCSO had manipulated internal misconduct investigations in order to minimize discipline for MCSO deputies and command staff, or that such investigations had otherwise been in some respects inadequate. R., Doc. 1677; Pet. App. "D" at pp. 114-225.

Significantly, the District Court found no evidence that violations of its Preliminary Injunction continued:

> Plaintiffs do not assert that Defendants remain in violation of the court's preliminary injunction through the continued engagement in unlawful detention practices against members of the Plaintiff class. There is, therefore, no need to use the Court's contempt power to coerce Defendants to comply with the preliminary injunction.

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[1] *See, e.g.*, R., Tr., Sept. 25, 2015, at p. 1479, l. 25 – p. 1482, l. 8; R., Doc. 1630; Pet. App. "G;" *see also* Order re Maricopa County's Motion for Recognition of Rights, Pet. App. "G." Notably, the District Court *sua sponte* concluded that the County's re-entry into the case made it inappropriate for County representatives to continue reviewing the monitor's detailed bills. Pet. App. "H."

Pet. App. "D" at pp. 225-226, ¶ 878.

4. The District Court's Second Supplemental Injunction.

The District Court subsequently issued a Second Amended Second Supplemental Permanent Injunction/Judgment Order ("Second Supplemental Injunction")[2] dated July 26, 2016, imposing extensive new injunctive remedies beyond those in place under its May 2013 Permanent Injunction and its October 2013 Supplemental Injunction. R., Doc. 1765; Pet. App. "E." The Second Supplemental Injunction gave the monitor complete control over investigations into officer misconduct and disciplinary outcomes in all cases related to Class Remedial Matters. *Id*. at pp. 296-302. [3]

The District Court declared it would "not return the final authority to the Sheriff to investigate matters pertaining to members of the Plaintiff class until it has assurance that the MCSO uniformly investigates misconduct and applies appropriate, uniform, and fair discipline at all levels of command, *whether or not the*

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[2] The Second Amended Second Supplemental Permanent Injunction / Judgment Order (R., Doc. 1765; Pet. App. "E"), dated July 26, 2016, and referenced in the text above, reflected only minor modifications in earlier versions of the Second Supplemental Permanent Injunction/ Judgment Order. *See* R., Doc. 1748 and 1760.

[3] "Class Remedial Matters" are defined to include "possible misconduct involving members of the Plaintiff class and the MCSO or the remedies to which such class members are entitled as set forth in the Findings of Fact and various supplemental orders of this Court." R., Doc. 1765; Pet. App. "E" at p. 258, ¶ 162(i).

alleged misconduct directly relates to members of the Plaintiff Class." *Id*. at p. 301, ¶ 290 (emphasis added). The monitor's authority thus was extended to assessing the fairness, thoroughness, and expeditiousness with which the MCSO "investigated, disciplined, and made grievance decisions" relating to "all internal affairs matters within the MCSO *whether or not the matters are Class Remedial Matters*." *Id*. at p. 301, ¶ 291 (emphasis added). The Second Supplemental Injunction also gave the monitor veto power over any proposed transfer of sworn personnel into or out of MCSO's Professional Standards Bureau ("PSB"), Bureau of Internal Oversight, and Court Implementation Division. *Id*. at p. 295, ¶ 268.

In addition to expanding the monitor's oversight of investigations into officer misconduct and disciplinary action, the District Court specified in minute detail the procedures MCSO is to follow in administrative investigations of "*all* allegations of employee misconduct." *Id*. at pp. 266-277 (*emphasis added*). The process by which disciplinary determinations are to be made and imposed were also prescribed in detail in the Second Supplemental Injunction. *Id*. at pp. 277-281. Similarly, specific procedures were mandated for *any* cases involving apparent criminal misconduct. *Id*. at pp. 281-284.

With respect to the supervision of MCSO patrol deputies, the District Court directed that the Sheriff is to strive for staffing that permits a supervisor to oversee no more than eight deputies, but the ratio is not allowed to exceed 10 employees per supervisor. *Id*. at p. 294, ¶ 266. The Second Supplemental Injunction also provided that, in the event the Sheriff determines an increase or decrease in the level of supervision for

any unit, squad, or shift to be warranted, he must submit a written explanation for the change to the monitor, who is then to provide the court with an assessment as to the appropriateness of the change. *Id*.

The District Court further imposed new requirements on the intake, processing, and tracking of civilian complaints. *Id*. at pp. 284-287. The Second Supplemental Injunction additionally required the Sheriff to set up and run a testing program whereby fictitious complaints will be submitted to "assess whether employees are providing civilians appropriate and accurate information about the complaint process and whether employees are notifying the Professional Standards Bureau upon receipt of a civilian complaint." *Id*. at pp. 291-293. The development and implementation of the court-mandated civilian complaint program was required to be done in consultation with the Community Advisory Board, a creature of the October 2013 Supplemental Injunction, and the County was specifically ordered to provide the funding to support that body's work. *Id*. at p. 284, ¶ 237 and p. 293, ¶¶ 261-62.

Beyond all this, the Second Supplemental Injunction appointed an Independent Investigator to investigate, in accordance with procedures prescribed in detail by the District Court, and completely independently from the Sheriff, MCSO, and its PSB, various internal affairs matters that the District Court had found to have been inadequately investigated, and various additional instances of alleged misconduct not previously investigated. *Id*. at p. 302, ¶ 294 – p. 313, ¶ 319. Further, the District Court also appointed an Independent Disciplinary Authority to make determinations as to discipline, again wholly

independently of the Sheriff, MCSO, and PSB, to be imposed with respect to all charges brought to him by the Independent Investigator. *Id*. at p. 313, ¶ 320 – p. 318. The court required the County to pay the reasonable expenses of the Independent Investigator and the Independent Disciplinary Authority and their respective staffs. *Id*. at p. 309, ¶ 308 and p. 313, ¶ 321.

5. The District Court's Order re Victim Compensation.

On August 19, 2016, the District Court entered its Order re Victim Compensation ("Victim Compensation Order"), directing the implementation of a program providing a voluntary, extrajudicial, mechanism for individuals claiming to have been injured by violations of the court's Preliminary Injunction to obtain compensation for their injuries. R., Doc. 1791; Pet. App. "F". Many of the terms of the program had been negotiated and agreed upon by the parties, as reflected in their Joint Notice of Stipulated Judgment for the Victim Compensation Plan ("Joint Notice"), filed July 19, 2016. R., Doc. 1747.[4] Terms on which the parties had been unable to agree were resolved in the District Court's order. The District Court's order required the County's Board of Supervisors to create a fund of $500,000, to be supplemented as needed, to provide compensation for all successful claimants. R., Doc. 1791 at p. 323. The Victim Compensation Order also mandated that the neutral, third party claims administrator be provided by the County with an additional $200,000 for notice and outreach to potential claimants, and $75,000 in start-up funds,

[4] Certain terms, however, were expressly made subject to the Defendants' rights of appeal. R., Doc. 1747.

with future services to be paid according to a price list provided by the claims administrator. *Id*. at p. 324-325.

In the Joint Notice, the County specifically noted that it was reserving the right to appeal, *inter alia*, "[a]ny County liability for funding compensation plan or other remedies to the extent such remedies are imposed as a remedy for willful and/or intentional contemptuous conduct." R., Doc. 1747 at p. 4. That the County lacked authority under Arizona law to fund remedies tied to willful or intentional contemptuous conduct had previously been raised with the court in a hearing on potential remedies conducted on May 31, 2016. Transcript of May 31, 2016 hearing at p. 9, l. 21 – p. 14, l. 13; *see* also, County's Memorandum in Response to Court's Order of May 13, 2016, R., Doc. 1688 at pp. 4-7. This concern was ignored by the District Court in its Second Supplemental Injunction and in its Victim Compensation Order. Neither of which gave any indication as to whether the relief ordered was intended as a remedy for willful or intentionally contemptuous conduct.

B. Criminal Contempt Proceedings And Sheriff Arpaio's Defeat At The Polls.

On August 19, 2016, the District Court referred Sheriff Arpaio, along with certain other alleged contemnors, for criminal contempt proceedings. R., Doc. 1792. In early November 2016, Sheriff Arpaio was defeated in his bid for re-election as the Sheriff of Maricopa County.[5] The criminal contempt charges

[5] Debra Cassens Weiss, Embattled Sheriff Joe Arpaio Loses Re-election Bid, ABA JOURNAL (Jan. 23, 2017),

against all alleged contemnors except former Sheriff Arpaio were dismissed. *See* Order, *United States v. Arpaio*, Case No. CR-16-01012-PHX-SRB (D. Ariz. Dec. 13, 2016). After a bench trial, former Sheriff Arpaio was convicted on July 31, 2017, and President Donald J. Trump pardoned him on August 28, 2017. *See United States v. Arpaio*, 887 F.3d 979, 980 (9th Cir. 2018).

C. The Ninth Circuit's Decision

The Ninth Circuit issued its decision in the County's appeal from the District Court's decisions on July 31, 2018. Pet. App. "A". The Court of Appeals rejected all the County's arguments on appeal, sustaining the Second Supplemental Injunction in all respects.

The Ninth Circuit again acknowledged that injunctive relief "must be tailored to remedy the specific harm alleged," and that "[f]ederalism principles make tailoring particularly important where, as here, plaintiffs seek injunctive relief against a state or local government." *Id.* at 9 (citation and internal quotations omitted). The Ninth Circuit further held, however, that District Courts have "broad discretion" in fashioning injunctive relief, and that such discretion is exceeded "only if [the injunctive relief] is aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation." *Id.* (citing and quoting *Melendres II*, 784 F.3d at 1265, and *Milliken v. Bradley*, 433 U.S. 267, 282 (1977)).

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http://www.abajournal.com/news/article/embattled_sheriff_joe_arpaio_loses_re_election_bid.

All of the civil contempt remedies imposed by the District Court in this case, the Ninth Circuit held without elaboration, "flow from MCSO's violations of court orders, constitutional violations, or both," and "MCSO's repeated bad-faith violations of court orders and [the presiding District Court judge's] seven years of experience with this case at the time he issued the challenged orders lead us to believe that the District Court chose the remedy best suited to cure MCSO's violations of court orders and to supplement prior orders that had proven inadequate to protect the Plaintiff class." *Id.* at 11.

The Ninth Circuit was undeterred by the admonitions of this Court in *Rizzo v. Goode*, 423 U.S. 362 (1976), about limitations on the injunctive powers of the federal judiciary inherent in the "precepts of federalism" that must be considered when the courts are asked to enjoin the conduct of State or local governmental agencies. *Rizzo*, the Ninth Circuit held, is distinguishable because there was no "pattern of police misconduct" in that case, whereas here the District Court had found constitutional violations broad in scope, involving MCSO's command staff, and flowing into management of internal affairs investigations. Pet. App. "A" at 12.

The Ninth Circuit also stated, incorrectly, that the County had failed to discuss provisions it contended violated federalism principles, or to articulate how those provisions were overbroad. In fact, the County argued in its Opening Brief that the Second Supplemental Injunction represented a massive usurpation of law enforcement managerial functions, with costs likely running into the millions of dollars,

and reduced the prerogatives of Sheriff Arpaio's successor "in the areas of employee management, internal investigations, and discipline almost to the vanishing point." Appellant County Ct. App. Opening Br. at 17. The County also questioned the necessity of such a massive upheaval in light of the District Court's finding that there was no evidence of continuing violations of the Preliminary Injunction, and there thus was no need for the court to use its contempt power to coerce compliance. *Id.* at 18.

Further to this point, the County pointed out that the District Court's appointment of an Independent Investigator and Independent Authority to deal with certain disciplinary matters appeared calculated to stack the deck to ensure that discipline would be imposed and, as such, this aspect of the Second Supplemental Injunction ran afoul of the proscription against exacting punishment as a civil contempt remedy articulated in this Court's decision in *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994). County Ct. App. Opening Br. at 21-22; *see also id.* at 33-35; and County Ct. App. Reply Br. at 5-8.

The Ninth Circuit dismissed the County's argument that it is not a proper party because the Sheriff, when acting in his law enforcement capacity, is not acting as a policymaker for the County. The Court of Appeals refused to undertake the analysis prescribed by this Court in *McMillian v. Monroe County, Alabama*, 520 U.S. 781 (1997), noting that it had "thrice" before rejected this argument, and concluded without further analysis that "'Arizona state law makes clear' that the MCSO sheriff's 'law-enforcement acts' constitute County policy because he

has 'final policymaking authority.'" Pet. App. "A" at 13-14 (quoting *Melendres III*, 815 F.3d at 650).

The Ninth Circuit brushed aside the County's argument that it lacked authority under State law to fund remedies for willful misconduct, on the ground that "[a] state statute prohibiting payment for valid federal court-ordered remedies does not excuse a defendant from complying with those remedies." *Id.* at 14 (citation omitted). Further, the Court of Appeals asserted that the County had failed to "explain how this law [A.R.S. § 11-981] would preclude it from using other types of funds to comply with the District Court's orders, such as those it uses to fund its normal operations." *Id.* at 15. In fact, the County explained in its Opening Brief that it has only such powers as are conferred upon it by the Legislature, and its sole authority to fund remedies precluded it from doing so in cases where the remedies arose out of conduct by a county-level officer or employee beyond his or her scope of employment or authority. County Ct. App. Opening Br. at 22-25.

The Ninth Circuit also stated incorrectly that "the County previously admitted its responsibility to remedy harm from MCSO's intentional misconduct in *Melendres III*." *Id.* at 15. While it is true that the County acknowledged in *Melendres III* that it was obliged to provide funding for remedies called for in the original Permanent Injunction and the Supplemental Injunction, there had been no finding at that point of any willful defiance of court orders or other intentionally contemptuous misconduct, and the authority to fund remedies for such conduct was not then in issue.

The County's Petition for Panel Rehearing and En Banc Determination was denied on September 7, 2018. Pet. App. "G". The County's Motion to Stay the Mandate was granted on September 17, 2018. Pet. App. "H".

REASONS FOR GRANTING PETITION

I. The Ninth Circuit's Conclusion That Sheriffs Are Final Policymakers For Arizona's Counties With Respect To Law Enforcement Flouts This Court's Decision In *McMillian*, Conflicts With The Decisions Of Other Circuits, And Infringes States' Sovereign Rights.

The Ninth Circuit's holding that sheriffs are final policymakers for Arizona's counties with respect to law enforcement matters misconstrues and misapplies State law, ignores the analytical approach prescribed by this Court in *McMillian v. Monroe County, Alabama*, 520 U.S. 781 (1997), conflicts with decisions of other circuits addressing the same issue, and intrudes impermissibly into territory constitutionally reserved to the sovereign prerogatives of the States.

It is vitally important for this Court to intercede to correct the Ninth Circuit's error because it will certainly result in counties being routinely required to expend substantial public resources to defend against virtually every case in which law enforcement misconduct is alleged, despite having no effective control over the conduct at issue.

A. The Ninth Circuit's Failure To Construe And Apply Arizona Law Concerning The Structure And Functions Of County-Level Governmental Institutions.

By dragging the County back into this case, the Ninth Circuit has misconstrued Arizona law in a way that denies due deference to the State's sovereign choices as to the structure of, and the allocation of functions among, governmental institutions at the county level. Law enforcement authority in Arizona's counties is devolved upon its sheriffs. *See* A.R.S. § 11-441(A)(1)-(3) (Pet. App. "K" at 382). No such authority is conferred upon the counties or their boards of supervisors. *See* A.R.S. §§ 11-201 (enumerating powers of the counties) and 11-251 (powers of supervisors) (Pet. App. "K" at 367-368).

It is well settled in Arizona that its counties and their boards of supervisors have only such authority as has been delegated to them by statute. *Hartford Accident & Indemnity Co v. Wainscott*, 41 Ariz. 439, 445-46, 19 P.2d 328, 330 (1933) ("[C]ounties have no powers to engage in any activities of any nature unless there is a statute so authorizing them expressly or by strong implication."). Inasmuch as Arizona's counties have no authority over law enforcement matters, they perforce have no authority to make law enforcement policy, and sheriffs accordingly could not possibly be policymakers for them with regard to such matters.

It has also long been a principle of Arizona law that law enforcement is a State, not a local, function.

> "The police power inheres in the state and not in its municipalities. The latter are agencies of the state and exercise police and other powers only by grant given either directly or by necessary implication."

State v. Jaastad, 43 Ariz. 458, 463, 32 P.2d 799 (1934) (quoting *Clayton v. State*, 38 Ariz. 135, 145, 297 P. 1037, 1041 (1931)); *see also Luhrs v. City of Phoenix*, 52 Ariz. 438, 448, 83 P.2d 283, 288 (1938) ("[T]he preservation of order and the protection of life and property and the suppression of crime are primary functions of the state . . . the entire state is interested in these matters, and . . . they are proper subjects for general [i.e., State] laws.").

By presuming to make sheriffs final policymakers for the counties of Arizona, the Ninth Circuit decision stands this fundamental aspect of Arizona law on its head. Those whose province it is to make the law in Arizona have chosen to deny counties authority over law enforcement, including policymaking authority. It is not for the federal courts to rewrite that law to suit their preferences. "[A] federal court would not be justified in assuming that municipal policymaking authority lies somewhere other than where the applicable law purports to put it." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988). It defies logic to suggest, as the Ninth Circuit and District Court have done in this case, that sheriffs are policymakers for Arizona's counties in an area where the counties themselves lack authority to make policy.

B. The Ninth Circuit's Decision Cannot Be Reconciled With *McMillian*.

In determining that Alabama's sheriffs do not act as policymakers for the counties when performing law enforcement functions, this Court in *McMillian v. Monroe County, Alabama*, 520 U.S. 781 (1997), deemed "most important[]" the fact that "sheriffs are given complete authority to enforce the state criminal law in their counties," but the counties themselves have been given no law enforcement authority under Alabama law, and they "cannot instruct the sheriff how to ferret out crime, how to arrest a criminal, or how to secure evidence of a crime." 520 U.S. at 790 (citations omitted). So it is also in Arizona.

There is a long line of cases holding that Arizona's counties are not liable for the tortious conduct of their sheriffs and law enforcement personnel working under the sheriffs' supervision precisely because the counties have no control over the conduct of statutorily mandated law enforcement functions. *See, e.g., Kloberdanz v. Arpaio*, 2014 WL 309078, *4-*5 (D. Ariz. 2014); *Ochser v. Maricopa County*, 2007 WL 1577910, *2 (D. Ariz. 2007); *Fridena v. Maricopa County*, 18 Ariz. App. 527, 530, 504 P.2d 58,61 (1972) (citation omitted) (County, "having no right of control over the Sheriff or his deputies in service of [a] writ of restitution, [could] not [be held] liable under the doctrine of *respondeat superior* for Sheriff's torts."). Although *respondeat superior* liability plays no role in § 1983 jurisprudence, *Monell v. Dept. of Social Services*, 436 U.S. 658, 659 (1978), the aforementioned cases firmly establish the lack of control over law enforcement functions central to *McMillian's* conclusion that Alabama sheriffs act as

agents of the State in executing their law enforcement duties

Not only is there no statutory grant of authority to Arizona counties over law enforcement matters, but it is the sheriffs who have the sole authority to supervise and impose disciplinary measures for misconduct by officers working under their command. *Hounshell v. White*, 220 Ariz. 1, 202 P.3d 466 (App. 2008). "[C]ounty governments in Arizona do not have the legal power to hire, terminate, or discipline the sheriff's employees; only the sheriff[s] possess such power." *Kloberdanz*, 2014 WL 309078 at *5; *see also* A.R.S. § 11-409 (Pet. App. "K" at 382) (deputies of elected county officers, including sheriffs, to be appointed by those officers). Nor do Arizona's counties have any role in setting minimum qualifications, setting minimum training requirements, or certifying those law enforcement officers who work under the sheriffs' supervision, as those are all functions statutorily reserved to the State. *See* A.R.S. §§ 41-1821 and 41-1822(A)(3) and (4) (Pet. App. "K" at 385, 387-388).

In addition to the fact that Arizona's statutory scheme makes no provision for the exercise of law enforcement authority by the counties, historical common law antecedents further buttress the conclusion that sheriffs act on behalf of the State, not the counties, when acting in their law enforcement capacities. As *McMillian* observed:

> As the basic forms of English government were transplanted in our country, it also became the common understanding here that the sheriff, though limited in jurisdiction to his

> county and generally elected by county voters, was in reality an officer of the State, and ultimately represented the State in fulfilling his duty to keep the peace.

520 U.S. at 794 (footnote and citations omitted).

Arizona adopted the common law as the "rule of decision in all courts of this state" to the extent "consistent with and adapted to the natural and physical conditions of this state and necessities of the people thereof, and not repugnant to or inconsistent with the Constitution of the United States or the constitution or laws of this state." A.R.S. § 1-201, Pet. App. "K" at 367.

Directly pertinent to the question at issue here, the Arizona Supreme Court has held: "The power exercised by the sheriff under the common law [of England] still pertains to our sheriff, except in so far as it has been modified by constitutional and statutory provisions." *Merrill v. Phelps*, 52 Ariz. 526, 530, 84 P.2d 74 (1938). Further, "where the Legislature has not clearly manifested its intent to repeal the common law rule, it will not be abrogated." *United Bank v. Mesa N. O. Nelson Co., Inc.*, 121 Ariz. 438, 442, 590 P.2d 1384, 1388 (1979). There is nothing in Arizona's Constitution or statutes indicating an intention to modify the common law understanding that sheriff's executing law enforcement functions act on behalf of the State sovereign, not local government.

Remarkably, notwithstanding the County's repeated entreaties, neither the Ninth Circuit nor the District Court performed any rigorous analysis in this

case applying the principles enunciated in *McMillian*. In the decision that is the subject of this Petition, the Ninth Circuit did not undertake any evaluation of *McMillian's* factors, mentioning the decision only for a brief quote of the opinion's language in *Melendres III*, where there likewise was no real analysis of Arizona law as mandated by *McMillian*. See Pet. App. "I" at 350.[6]

The Ninth Circuit also cited to *U.S. v. Maricopa County*, 889 F. 3d 648 (9th Cir. 2018) ("DOJ Case"), a related case in which the County has also filed a currently pending Petition for Writ of Certiorari (Supreme Court Case No. 18-498). The Court of Appeals failed to note that the mandate in the DOJ case had been stayed, making its effect as precedent at this point questionable. *See Bryant v. Ford Motor Co.*, 886 F.2d 1526, 1529 (9th Cir. 1989) (appellate court decision not final until mandate issues). Moreover, the DOJ Case decision cited only *Flanders v. Maricopa County*, 203 Ariz. 368 368, 54 P.3d 837 (App. 2002), as sole support for its conclusion that "[t]he limited

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[6] As mentioned previously herein, *Melendres III* was decided on jurisdictional grounds, making its pronouncement on the policymaking authority of the Sheriff obiter dictum. *See* Pet. App. "I" at 346-348. Further, *Melendres III* relied solely on *Flanders v. Maricopa County*, 203 Ariz. 368, 54 P.3d 837 (App. 2002), for the proposition that "Arizona state law makes clear that Sheriff Arpaio's law-enforcement acts constitute Maricopa County policy since he 'has final policymaking authority.'" *Melendres III*, Pet App. "I" at 350. *Flanders*, however, is an Arizona Court of Appeals decision whose vitality as an accurate reflection of Arizona law is questionable. *See Kloberdanz v. Arpaio*, 2014 WL 309078 at *5 (D. Ariz. Jan. 28, 2014); *see also Puente Arizona v. Arpaio*, 2017 WL 1133012 at *13 (D. Ariz. Mar. 27, 2017) ("Nor does it appear that the Maricopa County board [of supervisors] has authority to control the law enforcement policies or practices of the MCSO.")

guidance Arizona courts have provided on this topic further confirms that sheriffs act as policymakers for their respective counties." See Pet. App. "J" at 357.

The Ninth Circuit neglected to mention, however, that the County had *stipulated* in *Flanders* to the Sheriff's being the policymaker for the County with respect to jail administration in *Flanders*, or that other courts have questioned whether *Flanders* accurately reflects Arizona law. See note 16, *supra*. The Ninth Circuit also failed to address *McMillian's* holding that: "Our cases on the liability of local governments under § 1983 instruct us to ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue." 520 U.S. at 785. Thus, even if *Flanders* could be taken as establishing that Arizona's sheriffs are final policymakers for the counties when it comes to jail administration (which, given the stipulation, is doubtful), *McMillian* teaches that this could not simply be presumed to demonstrate policymaker status with respect to law enforcement, the matter at issue here.

Beyond its prior decisions, the Ninth Circuit premised its conclusion in the DOJ Case that sheriffs are policymakers for Arizona's counties on the facts that: (1) sheriffs are listed among county officers in the Arizona Constitution; (2) counties are required to pay certain of the sheriffs' expenses; (3) the boards of supervisors are empowered to require county officers to submit written reports pertaining to their activities; and (4) there is some supervisory authority conferred on Arizona's boards of supervisors over county officers involved in "assessing, collecting, safekeeping, managing or disbursing the public revenues" (A.R.S.

§ 11-251(1), Pet. App. "K" at 368). The first two of these factors were present also in *McMillian*, and they were among factors expressly rejected by this Court as bases for finding that Alabama's sheriffs perform law enforcement duties on behalf of their counties. 520 U.S. at 786, 791.

The Ninth Circuit's reliance on the fact that Arizona's boards of supervisors can require county officers to submit reports on their activities is at odds with its own decision in *Goldstein v. City of Long Beach*, 715 F.3d 750, (9th Cir. 2013), in which the Court of Appeals held that the California Attorney General's authority to require State district attorneys to make reports and to call them into conferences to discuss the activities of their offices amounted to "quite limited" control and insufficient to make the district attorneys policymakers for the State. *Id.* at 756.

As to the limited supervisory authority conferred on Arizona's boards of supervisors by A.R.S. § 11-251(1) (Pet. App. "K" at 368), the Ninth Circuit ignored court decisions specifically holding that this provision pertains only to fiscal accountability, and gives boards of supervisors no control over the law enforcement activities of sheriffs and their deputies. *See Fridena v. Maricopa County*, 18 Ariz. App. 527, 530, 504 P.2d 58, 61 (1972); *Dimmig v. Pima County*, 2009 WL 3465744 at *1 (Az. App. Oct. 27, 2009) (unpublished opinion).

In sum, the Ninth Circuit has steadfastly declined to do a rigorous analysis of Arizona law to determine on whose behalf Arizona sheriffs act when carrying out law enforcement responsibilities as mandated by *McMillian*. If such an analysis is done, it compels the

conclusion that Arizona's sheriffs are *not* policymakers for their counties in the law enforcement arena.

C. The Ninth Circuit's Decision Conflicts With Rulings In Other Circuits.

Three other circuit courts of appeal have recognized that control is the linchpin under *McMillian* for determining whether a sheriff and those acting under his command act as agents of county-level government. In contrast to many city police departments that report to and work under the supervision of their city council, many county boards of supervisors and commissioners have been given no authority to control the law enforcement activities of sheriffs and their deputies.

In *Grech v. Clayton County, Georgia*, 335 F.3d 1326 (11th Cir. 2003) (en banc) the Eleventh Circuit held: "[U]nder *McMillian*, we must focus on *control*, not labels, and that under Georgia law, counties lack authority and control over sheriffs' law enforcement functions." *Id.* at 1332 (emphasis added). In another case, that same court articulated with an admirable clarity the principle that is at *McMillian's* core: "[L]ocal governments can never be liable under § 1983 for the acts of those whom the local government has no authority to control." *Turquittt v. Jefferson County, Alabama*, 137 F.3d 1285, 1292 (11th Cir. 1998) (en banc), *cert. denied*, 525 U.S. 874 (1998).

Similarly, the Seventh Circuit, in *Franklin v. Zaruba*, 150 F.3d 682 (7th Cir. 1998), *cert. denied*, 525 U.S. 1141 (1999), found that Illinois sheriffs are "independently elected officials not subject to the control of the county," that counties are not liable

under Illinois law for the actions of their sheriffs under *respondeat superior*, and that they therefore could not be held liable under § 1983 for the acts of sheriffs and their deputies. *Id.* at 685 (quoting *Ryan v County of DuPage*, 45 F.3d 1090, 1092 (7th Cir. 1995)).

In *Knight v. C.D. Vernon*, 214 F.3d 544 (4th Cir. 2000), the Fourth Circuit also saw the lack of county control over personnel decisions in the sheriff's office as the dispositive factor. Because North Carolina law vests the authority over such matters with the sheriff, not the county, the Fourth Circuit held that there could be no liability for the county under § 1983.

Common to the decisions in all three of these circuits is their faithfulness to *McMillian's* prescription that the question of who has control over law enforcement matters is the "most important[]" factor to be considered in determining whether sheriffs act as agents of the county for law enforcement purposes. 520 U.S. at 790. The Ninth Circuit clearly has not gotten this message, or it has chosen to ignore it. Either way, the need for further instruction on this score from this Court is readily apparent.

II. The Ninth Circuit's Decision Sustains District Court Orders That Fail To Respect Limits On The County's Authority Under State Law.

The District Court in this case made several findings of contumacious conduct that it characterized as knowing and/or intentional. See Pet. App. "D" at 25, 29, 35, 40. The County promptly advised the District Court of a concern as to whether it had the authority under Arizona law to fund remedies knowing and/or

intentional misconduct. R., Doc. 1688, Defendant Maricopa County, Arizona's Memorandum in Response to Court's Order of May 13, 2016 ("Response to Order of May 13, 2016"). The County pointedly requested, in light of that concern, that the court "specifically and clearly delineate which remedies are and are not imposed because of conduct the Court has found to be willful and/or intentional contempt." *Id*. at 7. This the District Court declined to do, however, when it issued its Second Supplemental Injunction. *See* Pet. App. "E".

As the County explained to the District Court, Arizona's counties "'have no power to engage in any activities of any nature unless there is a statute so authorizing them expressly or by strong implication . . . .'" Response to Order of May 13, 2016 at 5-6 (quoting *Hartford Accident & Indemnity Co*, 41 Ariz. 439, 445-46, 19 P.2d 328, 330 (1933)). As further explained to the District Court, A.R.S. § 11-981 provides authority for certain of Arizona's counties to purchase insurance, or to establish self-insurance arrangements, out of which claims of liability asserted against the affected counties or their elected or appointed officials, employees or officers, provided such individuals were acting "'within the scope of employment or authority.'" *Id*. at 6 (quoting A.R.S. § 11-981(A)(2).

Inasmuch as it is arguable that willful and intentional violations of court orders were not "within the scope of employment or authority" of the Sheriff and others found to have engaged in contemptuous conduct, the County advised the District Court, the County would be "without lawful authority under Arizona law to provide funding for measures that are

imposed to remedy willful or intentional misconduct, including conduct constituting willful or intentional contempt." *Id.* at 7. When the District Court issued its remedial orders without identifying what portions of the remedies were addressed to willful or intentional misconduct, it ignored the issue of limits on the County's authority and effectively ordered the County to fund those remedies regardless of any concerns about whether it would, in doing so, be acting in a manner contrary to Arizona law. This issue has significant practical and legal implications, in light of the Arizona Supreme Court's holding that the actions of county boards of supervisors "accomplished by a method unrecognized by statute have been described as without jurisdiction and wholly void." *Mohave County v. Mohave-Ingman Estates, Inc.*, 120 Ariz. 417, 420, 586 P.2d 978, 981, (1978).

The Ninth Circuit's treatment of this issue was even more cavalier. First, the Court of Appeals stated: "A state statute prohibiting payment for valid federal court-ordered remedies does not excuse a defendant from complying with those remedies." Pet. App. "A" at 14 (citation omitted).[7] This statement, however, does nothing to answer the question of whether federal courts can validly order State governmental institutions to do things they lack legal authority to do. To assert that a defendant must comply with court orders regardless of whatever other laws it must break in the process, seems a highly dubious position for any

[7] *Hook v. Ariz. Dept. of Corrections*, 107 F.3d 1397 (9th Cir. 1997), cited by the Ninth Circuit in this case in support of the assertion quoted in the text above, involved a statute enacted after the issuance of a federal court order for the obvious purpose of frustrating the order. There is nothing of the sort at issue here, and *Hook* is for that reason inapposite.

appellate court to espouse, with much potential for mischief.

Next, the Ninth Circuit opined that the statute (A.R.S. § 11-981) "would, at most, prevent payment from insurance of self-insurance funds," and claimed that the County had not explained "how this law would preclude it from using other types of funds to comply with the District Court's orders, such as those it uses to fund its normal operations." From this it is clear that the Court of Appeals either misapprehended the County's argument, or chose to ignore its most fundamental point. Again, it is black-letter law in Arizona that counties "have *no powers to engage in any activities of any nature* unless there is a statute so authorizing them expressly or by strong implication . . . ." *Hartford Accident & Indemnity Co.*, 41 Ariz. at 330, 19 P.2d at 445-46 (emphasis added). To put it in the simplest possible terms, the County is "precluded from using other types of funds to comply with the District Court's orders" because the Legislature has chosen not to authorize it to do so.

Both the District Court's Second Supplemental Injunction and the Ninth Circuit's facile dismissal of the County's argument ride roughshod over sovereign choices made by Arizona's lawmakers as to the structure and functions of State governmental institutions.

> It is undoubtedly a question of local policy with each state what shall be the extent and character of the powers which its various political and municipal organizations shall possess * * * for it is a question that relates to

> the internal constitution of the body politic of the state.

Claiborne Co. v. Brooks, 111 U.S. 400, 410 (1884).

The federal court's callous disregard for Arizona's choices with regard to what remedies counties are authorized to fund is an affront to the State's sovereignty, and this Court needs to restore proper judicial deference for choices relating to the internal constitution of the body politic of the state. *See Kelly v. Metropolitan Count Bd. of Education*, 836 F.2d 986, 995-96 (6th Cir. 1987) (federal judiciary has duty to prohibit school segregation, "but in no way does it follow that the judiciary has any corresponding authority to dictate" how cost of school integration will be paid for). At the very least, the institutional limits on the County's authority to fund remedies should warrant a discussion of alternative sources of funding that could avoid a direct collision between the injunctive powers of the federal courts and State choices about the structure and function of local governmental agencies.

III. The Ninth Circuit's Decision Condones District Court Orders That Massively Intrude Upon Arizona's Sovereign Prerogatives And Ignore Boundaries Mandated By The Precepts Of Federalism.

The Second Supplemental Injunction sets forth 50 pages worth of highly detailed, micromanaging prescriptions for, *inter alia*, how MCSO internal investigations are to be conducted, how internal disciplinary decisions are to be made, how supervision of patrol deputies is to be managed, how matters

assigned to the court-appointed Independent Investigator are to be investigated, and how discipline is to be determined by the court-appointed Independent Authority. Pet. App. "E" at 257-297. The Second Supplemental Injunction also significantly expanded the authority of the court-appointed monitor, assigning to him authority over internal discipline at MCSO in many respects, withholding authority over such matters from the Sheriff until the court is satisfied that MCSO uniformly investigates misconduct and applies appropriate, uniform and fair discipline at all levels of command, whether or not the conduct under investigation affects the Plaintiff class. *Id*. at 297-303. The court also conferred on the monitor veto power over various personnel moves into and out of key sections of MCSO. *Id*. at 294-297.

As this Court observed of another District Court order that was far less intrusive than the one at issue here:

> [T]he injunction imposed by the District Court was inordinately – indeed, wildly – intrusive. There is no need to belabor the point. One need only read the order . . . to appreciate that it is the *ne plus ultra* of what our opinions have lamented as a court's "in the name of the Constitution, becom[ing] . . . enmeshed in the minutiae of prison operations."

Lewis v. Casey, 518 U.S. 343, 362 (1996) (plurality opinion) (quoting *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). As with the order in the *Lewis* case, one needs only to read the Second Supplemental Injunction to see that the District Court has "enmeshed [itself] in

the minutiae" of internal discipline at MCSO for the foreseeable future.

Rizzo v. Goode, 423 U.S. 362 (1976), teaches that federal injunctive remedies are to be used sparingly, and that a party seeking to enjoin conduct of State or local governmental agencies "must contend with the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs." *Id*. at 378-79 (citation and internal quotation marks omitted). Such injunctions, this Court admonished, implicate "the principles of federalism which play such an important part in governing the relationship between federal courts and state governments." Although the injunction at issue in *Rizzo* pales by comparison in terms of its intrusiveness to that of the Second Supplemental Injunction here,[8] the Court there found the order before it went too far, rejected the District Court's "flat pronouncement that a federal court's legal power to supervise the function of the police department . . . is firmly established", and held that "[w]hen it injected itself by injunctive decree into the internal disciplinary affairs of the [Philadelphia Police Department], the District Court departed from these [federalism] precepts." *Id*. at 380.

Both the District Court and the Ninth Circuit made short work of *Rizzo* and its federalism concerns, however, distinguishing *Rizzo* on the ground that there had been no finding of a pattern of police misconduct alleged in that case, as contrasted with

[8] The *Rizzo* injunction directed the Philadelphia Police Department to draft for the court's approval a comprehensive program for handling civilian complaints, providing a list of fairly brief and fairly general "guidelines" to be used in the process. *Rizzo*, 423 U.S. at 369.

the District Court's findings in this case of constitutional violations broad in scope involving MCSO's command staff. *See* Pet. App. "A" at 11; *see also* Pet App. "E" at 245-252. But neither of the courts below made any attempt to explain how the precepts of federalism at the heart of *Rizzo* diminish or vanish altogether based on the magnitude of the conduct federal courts seek to enjoin. If the District Court in *Rizzo* departed from the precepts of federalism by "inject[ing] itself by injunctive decree into the internal disciplinary affairs" of the Philadelphia Police Department, there appears no principled basis for claiming that not to be the case here, where the court has injected itself into the internal disciplinary affairs of MCSO to a much more massive degree.

Both the courts below chose to focus on the scope of the problem to be addressed, rather than on the constitutional limits constraining federal judicial power that are essential structural elements of our system of government and do not vary in relation to the issue at hand. Nor do those limits fluctuate based on whether the injunction in question is issued as initial relief, or as a remedy for contemptuous conduct. An invasion of sovereign prerogatives is an invasion of sovereign prerogatives, no matter what may occasion it. There is an acute need for this Court to provide a barrier against the Ninth Circuit's drift back toward the premise, roundly rejected in *Rizzo*, that "a federal court's legal power to supervise the function of the police department . . . is firmly established." 423 U.S. at 380.

CONCLUSION

The Ninth Circuit's decision is one "raising . . . question[s] that [are] important and appear[] likely to recur in § 1983 litigation against municipalities . . . ." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988) (citation and internal quotation marks omitted). The misconstruction of Arizona law and the failure to assign the importance to the fact that the County has no authority over law enforcement matters as mandated by *McMillian* effectively amounts to a judicial rewriting of State law on the structure and functions of county-level governmental institutions. The Ninth Circuit's approval of District Court orders compelling the County to fund remedies tied to willful and intentional misconduct by the Sheriff and his deputies also intrudes impermissibly on the sovereign choice of Arizona to deny its counties authority to fund remedies for such misconduct. And the massive usurpation of MCSO's internal disciplinary system commanded by the District Court and endorsed by the Ninth Circuit transgresses constitutional bounds on federal judicial power that this Court clearly marked out in *Rizzo*. The County's Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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DECEMBER 6, 2018

APPENDIX

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APPENDIX A

897 F.3d 1217

United States Court of Appeals
for the Ninth Circuit

Manuel de Jesus Ortega MELENDRES; Jessica Quitugua Rodriguez; David Rodriguez; Velia Meraz; Manuel Nieto, Jr.; Somos America, Plaintiffs-Appellees,
United States of America, Intervenor-Plaintiff-Appellee,

v.

MARICOPA COUNTY, Defendant-Appellant,

And

Joseph M. Arpaio, Defendant.

No. 16-16661

Argued and Submitted March 15, 2018 San Francisco, California

Filed July 31, 2018

Appeal from the United States District Court for the District of Arizona, G. Murray Snow, District Judge, Presiding, D.C. No. 2:07-cv-02513-GMS

Attorneys and Law Firms

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John M. Gore (argued), Acting Assistant Attorney General; Thomas E. Chandler, Attorney; Appellate Section, Civil Rights Section, United States Department of Justice, Washington, D.C.; for Intervenor-Plaintiff-Appellee.

Before: J. Clifford Wallace, Susan P. Graber, and Marsha S. Berzon, Circuit Judges.

OPINION

WALLACE, Circuit Judge:

***1219** Maricopa County appeals from the district court's second supplemental injunction and victim compensation order. We have jurisdiction under 28 U.S.C. § 1292(a)(1), and we affirm.

I.

There have been multiple appeals in this case. *Melendres v. Maricopa County*, 815 F.3d 645 (9th Cir. 2016) (*Melendres III*); *Melendres v. Arpaio*, 784 F.3d

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[1] Interlineated page number designations are from the Westlaw version of the document.

1254 (9th Cir. 2015) (*Melendres II*); *Melendres v. Arpaio* (*Melendres I*), 695 F.3d 990 (9th Cir. 2012). We recount only the facts necessary to dispose of this appeal.

Plaintiffs filed this class action alleging that the Maricopa County Sheriff's Office (MCSO) racially profiled Latino drivers and passengers under the guise of enforcing federal and state immigration laws. *Melendres III*, 815 F.3d at 648. Following a bench trial, the district court found that MCSO's conduct violated Plaintiffs' constitutional rights. *Melendres v. Arpaio*, 989 F.Supp.2d 822, 895 (D. Ariz. 2013). The district court entered an injunction, ordering MCSO to take a variety of remedial measures including "appointing an independent monitor to assess and report on MCSO's compliance with the injunction, increasing the training of MCSO employees, improving traffic-stop documentation, and developing an early identification system for racial-profiling problems." *Melendres III*, 815 F.3d at 648, citing *Melendres II*, 784 F.3d at 1267. We affirmed the injunction, except for "certain provisions dealing with internal investigations and reports of officer misconduct," which we remanded for the district court to tailor "more precisely to the constitutional violations at issue." *Melendres III*, 815 F.3d at 648, citing *Melendres II*, 784 F.3d at 1267. We also dismissed MCSO and substituted Maricopa County (the County) in its place. *Melendres II*, 784 F.3d at 1260.

The district court later discovered that MCSO had deliberately violated the injunction and committed new constitutional violations. After twenty-one days of contempt proceedings, the district court found that MCSO's sheriff and his command staff knowingly

failed to implement the injunction, deliberately withheld evidence in violation of court orders, and "manipulated all aspects" of the internal affairs process to minimize discipline on MCSO deputies and command staff. *Melendres v. Arpaio*, No. CV-07-2513-PHX-GMS, 2016 WL 3996453, at *1–2 (D. Ariz. July 26, 2016).

For example, the district court found that MCSO "detained and turned over [to ***1220** federal authorities] at least 157 persons whom it could not charge for violating any state or federal laws" in violation of the injunction. *Melendres v. Arpaio*, No. CV-07-2513-PHX-GMS, 2016 WL 2783715, at ¶ 157 (D. Ariz. May 13, 2016). The district court also found that MCSO employees had failed to produce personal property seized from members of the Plaintiff class in violation of court orders. *Id.* at *29. A search of a former MCSO officer's garage "uncovered more than 1600 items," including approximately 500 drivers' licenses, "tons" of license plates, vehicle registrations, cell phones, wallets, and other items of personal property. *Id.* at ¶¶ 214, 278. MCSO later collected at least 1,665 more government-issued identification cards (IDs). *Id.* at ¶¶ 287–94. MCSO admitted that "a significant number of its deputies seized IDs and other personal property as 'trophies' and has further admitted that it destroyed much of that property." *Id.* at ¶ 852. The district court also inferred from the "absence of complaints" about the property, that "such complaints were not properly transmitted, processed, or investigated." *Id.*

Finally, the district court found that MCSO employees "did not make a good faith effort to fairly and impartially investigate and discipline misconduct." *Id.*

at *1. They "initiated internal investigations designed only to placate Plaintiffs' counsel," "named disciplinary officers who were biased in their favor and had conflicts," "promulgated special inequitable disciplinary policies pertaining only to *Melendres*-related internal investigations," "delayed investigations so as to justify the imposition of lesser or no discipline," and "asserted intentional misstatements of fact to their own investigators and to the court-appointed Monitor." *Id.* The district court explained, "Ultimately, few persons were investigated; even fewer were disciplined. The discipline imposed was inadequate. The only person who received a suspension—for one week—was also granted a raise and a promotion." *Id.*

The district court entered a second supplemental injunction to remedy the misconduct and protect Plaintiffs' constitutional rights. *Melendres*, 2016 WL 3996453, at *10. Among other things, the injunction revised MCSO's disciplinary matrix, conflict of interest and whistleblower policies, training requirements for internal affairs staff, and complaint intake and tracking procedures. *Id.* at ¶¶ 163–260. The injunction also vested the independent monitor with the authority to supervise and direct internal investigations related to the Plaintiff class and to inquire and report on other internal investigations. *Id.* ¶¶ 276, 289. It ordered the appointment of an independent investigator with disciplinary authority to investigate and decide discipline for internal investigations deemed invalid by the court. *Id.* ¶¶ 296, 320. The district court also directed the County to implement a victim compensation program for individuals injured by MCSO's violations of the first injunction. *Melendres v. Arpaio*, No. CV-07-2513-PHX-

GMS, 2016 WL 4415038, at *1 (D. Ariz. Aug. 19, 2016).The County timely appealed.

II.

[1] [2]We review the district court's factual findings for clear error and its legal conclusions *de novo*. *Melendres II*, 784 F.3d at 1260. We review the scope and terms of an injunction for an abuse of discretion. *Id.*

III.

[3]The County argues that the district court failed to tailor the terms of the second supplemental injunction to remedy the constitutional and court order violations it found. It also argues that the injunction violates federalism principles, which we construe as a variant of the first argument. ***1221** The County asks that we strike the second supplemental injunction "in its entirety." We decline to do so.[1]

[4] [5] [6]"We have long held that injunctive relief 'must be tailored to remedy the specific harm alleged.' " *Melendres II*, 784 F.3d at 1265, quoting *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991). Federalism principles make tailoring particularly important where, as here, plaintiffs seek injunctive relief against a state or local government. *See Rizzo v. Goode*, 423 U.S. 362, 378–79, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). However, a district court has broad discretion to fashion injunctive relief. *Melendres II*, 784 F.3d at 1265. The court exceeds that discretion "only if [the injunctive relief] is 'aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation.' " *Id.*, quoting *Milliken v. Bradley*, 433 U.S. 267, 282, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977). Further, where the enjoined party has a "history of noncompliance with prior

orders," and particularly where the trial judge has "years of experience with the case at hand," we give the court a "great deal of flexibility and discretion in choosing the remedy best suited to curing the violation." *Melendres II*, 784 F.3d at 1265 (citations omitted).

Here, the County specifically identifies only a handful of provisions in the second supplemental injunction as allegedly problematic. First, it cites the provision that "grant[s] the Monitor 'full access to all MCSO internal affairs investigations,' " which the County says "reach[es] beyond matters directly affecting the interests of the Plaintiff class." But the County fails to cite the rest of that provision, which says that "[w]hile the Monitor can assess all [MCSO] internal affairs investigations ... to evaluate their good faith compliance with this Order, the Monitor *does not* have authority to direct or participate in investigations of or make any orders as to matters that do not [involve members of the Plaintiff class]." *Melendres*, 2016 WL 3996453, ¶¶ 162, 292 (emphasis added).

Second, the County complains that the sheriff does not have "*any* authority" over matters related to the Plaintiff class until the district court decides that MCSO uniformly investigates misconduct and imposes fair discipline at all levels of command. Again, the County misreads the cited provision. The injunction states the "Court will not return the *final* authority to the Sheriff" until such time, not that the sheriff has no authority. *Melendres*, 2016 WL 3996453, ¶ 290 (emphasis added). The sheriff "may exercise" authority to direct and resolve matters related to the Plaintiff class, subject to override by the monitor. *Melendres*, 2016 WL 3996453, ¶ 282.

Third, the County argues that the district court gave itself "complete editorial control" over policies related to misconduct investigations, employee discipline, and grievances, including "all misconduct investigations of MCSO personnel." The cited provision, however, actually directs the sheriff in the first instance to review and revise the policies to add terms enumerated by the court. *Id.* ¶¶ 165–67. Only if the sheriff, the monitor, and Plaintiffs disagree on the sheriff's proposal will the court resolve the dispute. *Id.* ¶¶ 165–66.

***1222** Finally, the County cites the provision that directs its internal affairs department to move to an office space separate from MCSO's facilities. *Id.* ¶ 198. The district court explained the move would "promote independence and the confidentiality of investigations." *Id.*

In each instance, we are satisfied that the challenged provisions flow from MCSO's violations of court orders, constitutional violations, or both. *See Melendres II*, 784 F.3d at 1265. Each challenged provision addresses the internal affairs and employee discipline process, which the district court found based on ample evidence MCSO had "manipulated" to "minimize or entirely avoid imposing discipline on MCSO deputies and command staff." *Melendres*, 2016 WL 3996453, at *1. The district court explained that it "would have entered injunctive relief much broader in scope" had it known about "the evidence withheld by the MCSO and the evidence to which it led" when imposing the first injunction. *Id.* at *2. MCSO's repeated bad-faith violations of court orders and Judge Snow's seven years of experience with this case at the time he issued

the challenged orders lead us to believe that the district court chose the remedy best suited to cure MCSO's violations of court orders and to supplement prior orders that had proven inadequate to protect the Plaintiff class. *See Melendres II*, 784 F.3d at 1265.

The County relies on *Rizzo v. Goode*, 423 U.S. at 378–79, 96 S.Ct. 598, to argue that the injunction violates federalism principles. We reject this argument. In *Rizzo*, the Supreme Court "found no 'pattern' of police misconduct sufficient to justify the detailed affirmative injunction" against a city police department. *LaDuke v. Nelson*, 762 F.2d 1318, 1325 n.10 (9th Cir. 1985), quoting *Rizzo*, 423 U.S. at 374, 96 S.Ct. 598. By contrast, here the district court found "MCSO's constitutional violations [were] broad in scope, involve[d] its highest ranking command staff, and flow[ed] into its management of internal affairs investigations." *Melendres*, 2016 WL 3996453, at *1. The district court properly held that those characteristics distinguish this case from *Rizzo*. *Id.* at *5–6. In addition, of the four provisions that the County alleges violate federalism principles, it fails to discuss any of them or articulate how they are overbroad. We will not manufacture the County's arguments for it. *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

[7]The County also contends that the injunction constitutes an abuse of discretion in light of the costs of the remedies it imposes. We disagree. "[F]ederal courts have repeatedly held that financial constraints do not allow states to deprive persons of their constitutional rights." *Stone v. City & County of San Francisco*, 968 F.2d 850, 858 (9th Cir. 1992). Here, the "less intrusive remedies" in the first injunction "were

not effective due to Defendants' deliberate failures and manipulations." *Melendres*, 2016 WL 3996453, at *6. Therefore, the additional costs imposed by the second supplemental injunction were necessary to ensure MCSO's compliance with court orders.

Finally, the County argues that the election of a new sheriff and other MCSO personnel changes render unnecessary "the severe and onerous restrictions on managerial discretion" contained in the order. Since this appeal was filed, the district court has offered to modify its prior orders, where appropriate, to accommodate these changed circumstances, and has already granted some requests by the new sheriff to amend the original injunction. To the extent that additional changes are appropriate, we leave it to the district court, ***1223** which has overseen this litigation for many years, to consider those changes in the first instance.

The district court did not abuse its discretion in formulating the terms of the second supplemental injunction.

IV.

We turn now to the County's contention that it is not a proper party to this action because MCSO and its sheriff do not act on behalf of the County. We have already—thrice—rejected this argument. In *Melendres II*, we substituted the County as a defendant in this action in the place of MCSO, relying on a state court case holding that MCSO lacked separate legal status from the County. *Melendres II*, 784 F.3d at 1260, citing *Braillard v. Maricopa County*, 224 Ariz. 481, 232 P.3d 1263, 1269 (App. 2010). In *Melendres III*, we elaborated on the County's liability

for MCSO's actions. We explained that "under the Supreme Court's decisions interpreting 42 U.S.C. § 1983, 'if the sheriff's actions constitute county policy, then the county is liable for them.' " 815 F.3d at 650, quoting *McMillian v. Monroe County*, 520 U.S. 781, 783, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997). Applying this rule, we concluded, "Arizona state law makes clear" that the MCSO sheriff's "law-enforcement acts" constitute County policy because he has "final policymaking authority." *Melendres III*, 815 F.3d at 650. We recently revisited the issue again, holding that the sheriff acts as a final policymaker for the County on law-enforcement matters. *United States v. County of Maricopa*, 889 F.3d 648, 651 (9th Cir. 2018). Our prior decisions are binding on us now. *Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (en banc). The County is a proper party to this action.

V.

[8]Finally, the County argues that it has no authority under Arizona law to fund compliance with an injunction, such as this one, that arises from willful misconduct. Its argument is premised entirely on a state law, Arizona Revised Statute § 11-981(A)(2), that permits payment from insurance or self-insurance funds for employee conduct "within the scope of employment or authority." By negative inference, the County argues the statute *prohibits* such payments for employee conduct *outside* the scope of employment. But even assuming, without deciding, that this reading were correct, and assuming without deciding that the acts of MCSO's employees were outside the scope of employment or authority, this argument fails. A state statute prohibiting payment for valid federal court-ordered remedies does not excuse a defendant from complying with those remedies. *Hook v. Ariz.*

Dep't of Corrs., 107 F.3d 1397, 1402–03 (9th Cir. 1997). In addition, the statute that the County cites would, at most, prevent payment from insurance or self-insurance funds. Nowhere does the County explain how this law would preclude it from using other types of funds to comply with the district court's orders, such as those it uses to fund its normal operations.

In any case, the County previously admitted its responsibility to remedy harm from MCSO's intentional misconduct in *Melendres III*. 815 F.3d at 650. There, the County "concede[d] that it [was] required, by Arizona state statute, to provide funding for the massive changes the district court has imposed" and "conceded that even if we had never substituted it in place of MCSO, it would have nonetheless had to bear the financial costs associated with complying with the district court's injunction." *Id.* It cannot change its position now. *See* ***1224** *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 600–01 (9th Cir. 1996).

State law does not bar the County from funding the injunction.

VI.

The district court's orders are **AFFIRMED.**

The County shall bear Plaintiffs' costs of appeal. Fed. R. App. P. 39(a)(2).

APPENDIX B

FILED
SEP 7, 2018
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 16-16661
D.C. No. 2:07-cv-02513-GMS
District of Arizona, Phoenix

United States Court of Appeals
for the Ninth Circuit

MANUEL DE JESUS ORTEGA MELENDRES; et al.,
Plaintiffs - Appellees,

UNITED STATES OF AMERICA,
Intervenor-Plaintiff-
Appellee,

v.

MARICOPA COUNTY,
Defendant – Appellant,

and

JOSEPH M. ARPAIO,
Defendant.

ORDER

Before: WALLACE, GRABER, and BERZON, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing.

Judge Graber and Judge Berzon have voted to deny the petition for rehearing en banc, and Judge Wallace has so recommended. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to hear the matter en banc. Fed. R. App. P. 35. Accordingly, the petition for panel hearing and rehearing en banc, is **DENIED**.

IT IS SO ORDERED.

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APPENDIX C

FILED
SEP 17, 2018
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 16-16661
D.C. No. 2:07-cv-02513-GMS
District of Arizona, Phoenix

United States Court of Appeals
for the Ninth Circuit

MANUEL DE JESUS ORTEGA MELENDRES; et al.,
Plaintiffs - Appellees,

UNITED STATES OF AMERICA,
Intervenor-Plaintiff-
Appellee,

v.

MARICOPA COUNTY,
Defendant – Appellant,

and

JOSEPH M. ARPAIO,
Defendant.

Before: WALLACE, GRABER, and BERZON, Circuit Judges.

Appellant's motion to stay the mandate is GRANTED. The mandate is stayed for ninety days. If Appellant files a petition for writ of certiorari in the United States Supreme Court during the period of the stay, the stay shall continue until final disposition by the Supreme Court. *See* Fed. R. App. P. 41.

APPENDIX D

2016 WL 2783715
No. PHX–CV–07–02513–GMS.

In the United States District Court
For the District of Arizona

Manuel de Jesus Ortega MELENDRES, et al., Plaintiffs,

v.

Joseph M. ARPAIO, et al., Defendants.

FINDINGS OF FACTS – AND – ORDER SETTING A HEARING FOR MAY 31, 2016

Honorable G. Murray Snow, United States District Judge

***1**[2] This Court held 21 days of evidentiary hearings in April, September, October, and November of 2015. At issue were three different charges of civil contempt raised against Sheriff Joseph Arpaio and various other alleged non-party contemnors. Also at issue was the relief necessary to compensate the Plaintiff class for the Defendants' acts of misconduct.

The Court ordered the Parties to introduce all fact evidence that would bear on the remedies to which the Plaintiffs might be entitled.

From the substantial evidence presented during the

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[2] Interlineated page number designations are from the Westlaw version of the document.

hearing and the facts set forth in detail below, the Court finds that the Defendants intentionally failed to implement the Court's preliminary injunction in this case, failed to disclose thousands of relevant items of requested discovery they were legally obligated to disclose, and, after the post-trial disclosure of additional evidence, deliberately violated court orders and thereby prevented a full recovery of relevant evidence in this case.

Defendants also initiated internal investigations designed only to placate Plaintiffs' counsel. Defendants did not make a good faith effort to fairly and impartially investigate and discipline misconduct or to discover other materials responsive to Plaintiffs' pretrial requests. To escape accountability for their own misconduct, and the misconduct of those who had implemented their decisions, Defendants, or their proxies, named disciplinary officers who were biased in their favor and had conflicts, Defendants remained in control of investigations in which they themselves had conflicts, Defendants promulgated special inequitable disciplinary policies pertaining only to *Melendres*-related internal investigations, Defendants delayed investigations so as to justify the imposition of lesser or no discipline, Defendants misapplied their own disciplinary policies, and Defendants asserted intentional misstatements of fact to their own investigators and to the court-appointed Monitor. The Defendants' unfair, partial, and inequitable application of discipline disproportionally damaged members of the Plaintiff class.

Ultimately, few persons were investigated; even fewer were disciplined. The discipline imposed was inadequate. The only person who received a

suspension—for one week—was also granted a raise and a promotion.

When the Court issued an Order to Show Cause and scheduled the evidentiary hearing, Defendants again failed to timely produce the evidence they were legally obligated to produce. Further, despite at least three applicable disclosure orders and despite assurances to the Court that they were disclosing and would continue to completely comply with court-ordered disclosure requirements, Defendants intentionally withheld documents involving the Plaintiff class. In doing so, they again violated court orders, made intentional misstatements of fact to the Monitor about the existence of such documents, and made additional intentional misstatements to the Monitor in an attempt to justify their concealment.

***2** In their testimony during the evidentiary hearing, Sheriff Arpaio and Chief Deputy Sheridan made multiple intentional misstatements of fact while under oath.

In short, the Court finds that the Defendants have engaged in multiple acts of misconduct, dishonesty, and bad faith with respect to the Plaintiff class and the protection of its rights. They have demonstrated a persistent disregard for the orders of this Court, as well as an intention to violate and manipulate the laws and policies regulating their conduct as they pertain to their obligations to be fair, "equitable[,] and impartial" with respect to the interests of the Plaintiff class.

Sheriff Arpaio is in civil contempt on Counts One, Two, and Three of the Order to Show Cause. Chief Deputy Sheridan is in civil contempt on Counts One and Three.

Retired Chief Sands and Lieutenant Sousa are in civil contempt on Count One.

The Court has set a hearing for May 31, 2016, in which the Parties will be able to discuss with the Court the appropriate relief in light of the factual findings below.

I.

THE MCSO FAILED TO IMPLEMENT THE COURT'S PRELIMINARY INJUNCTION (COUNT ONE OF THE ORDER TO SHOW CAUSE).

1. On December 1, 2011, with motions for class certification, summary judgment, and partial preliminary injunction pending, this Court ordered the Parties to provide supplemental briefing on several issues prior to oral argument. (Doc. 477.)[1]

2. Those issues principally involved whether the Maricopa County Sheriff's Office (MCSO) had the authority to enforce federal civil immigration law. (Doc. 477.)

3. In its supplemental brief, the MCSO acknowledged that it had no authority to enforce federal civil immigration law. The MCSO also stated that it had been training its officers, especially its Human Smuggling Unit (HSU) officers, to comply with Ninth Circuit precedent to that effect. (Doc. 488 at 1–2.)

4. Sheriff Arpaio nevertheless claimed that the MCSO held authority *under Arizona law* to detain persons based only on the reasonable suspicion that the detainees were in the United States without

authorization.

5. However, after the loss of the MCSO's 287(g) authority, (*see* Doc. 579), it remained the MCSO's office-wide policy and practice to detain and arrest persons believed to be within the United States without authorization, even when no state charges could be brought against such persons. (*See, e.g.*, Doc. 1017 at Tr. 160:15– 162:7; Doc. 1027 at Tr. 711:10–21.)

6. The preliminary injunction, entered shortly thereafter, made it clear that the MCSO had no authority under state law to detain persons based solely on their illegal presence within the United States. "[T]he fact that a person is unlawfully present, without more, does not provide officers with reasonable suspicion that the person is currently being smuggled for profit, nor does it provide probable cause that the person was at some point in the past smuggled for profit....To the extent that Defendants claim that the [Arizona] human smuggling statute, or any Arizona or federal criminal law, authorized them to detain people solely on the knowledge, let alone the reasonable suspicion, that those people are not authorized to be in the country, they are incorrect as a matter of law." (Ex. 67 at 17.)

***3** 7. The preliminary injunction further reaffirmed what the MCSO had already admitted: that under the United States Constitution, the MCSO could not "detain[ ] individuals in order to investigate civil violations of federal immigration law." (Ex. 67 at 39.) The preliminary injunction further enjoined the MCSO from "detaining any person based on actual knowledge, without more, that the person is not a legal resident of the United States."[2] (*Id.*)

8. The prohibitions of the preliminary injunction were not restricted to the HSU's operations, but rather applied to the entire MCSO. (Ex. 67 at 40 ("MCSO and *all* of its officers are hereby enjoined....") (emphasis added).)

9. After the preliminary injunction was entered, no changes were made to the MCSO's active enforcement of immigration laws, nor to its policies, practices, or operations related to immigration enforcement. The MCSO continued its past practice of detaining persons for whom it had no state charges and turning them over to ICE or Border Patrol. (Doc. 1021 at Tr. 369:21–371:7, 383:7–10; Doc. 1027 at Tr. 611:7-14, 761:2-4; *see also* Ex. 2219 at MELC209788 ("[Sergeant Trowbridge] said nothing at all changed about the way they conducted business after the Court order."), MELC209805 ("Lt. Sousa said nothing changed about the way his unit approached its work as a result of that court order.").) The MCSO also continued to detain all persons suspected of violating human smuggling laws and continued to take them to HSU offices for further interrogation to determine whether they could be charged with any state crime. If the MCSO could not substantiate state charges, then attempts were made to transfer custody of such persons to federal agencies involved with immigration enforcement.

10. The MCSO continued these unconstitutional practices until this Court entered its Findings of Fact and Conclusions of Law in May 2013.

A. Individual Liability for Failure to Implement the Court's Preliminary Injunction.

1. Sheriff Arpaio Knowingly and Intentionally Failed to Implement the Preliminary Injunction.

11. Sheriff Arpaio has conceded that he is liable for civil contempt for violating the terms of the preliminary injunction. Nevertheless, whether his contempt of the injunction was knowing and intentional is relevant to the appropriate remedy. The Court thus finds that Arpaio is in civil contempt and additionally finds that Arpaio's contempt was both knowing and intentional.

a. Sheriff Arpaio Knew That the Preliminary Injunction Existed and Was in Force.

12. On December 23, 2011, the date that the preliminary injunction issued, Mr. Casey, the MCSO's outside legal counsel, informed Sheriff Arpaio of its issuance and terms. (Doc. 1417 at Tr. 1639–43.)

13. Sheriff Arpaio further acknowledged that he may have read about the preliminary injunction in *The Arizona Republic*. (Doc. 1051 at Tr. 478.)

***4** 14. In fact, immediately upon its issuance, the preliminary injunction was featured in a front-page story in *The Arizona Republic*. The article specifically noted that "[t]he judge's ruling also bars all sheriff's officers from arresting any person 'only on knowledge or reasonable belief, without more, that the person is unlawfully present within the United States.'"[3] JJ Hensley, "Judge Curbs MCSO Tactics," *The Arizona Republic*, Dec. 24, 2011, at A1. Moreover, the article quotes Mr. Casey as stating that he had been instructed by Sheriff Arpaio to appeal the preliminary

injunction but nevertheless to have MCSO officers obey it in the meantime. *Id.*

15. At the hearing on this matter, Sheriff Arpaio reaffirmed his previous testimony that he was aware of the preliminary injunction when it came out. (Doc. 1051 at Tr. 477–78.)[4] Arpaio further testified that at all times from the date of its entry until his testimony in the evidentiary hearing, he knew that the preliminary injunction was in force and never forgot about it. (*Id.* at Tr. 480–81.)

16. Sheriff Arpaio was the only person who had the authority to decide whether to appeal the preliminary injunction, (Doc. 1051 at Tr. 479–80), and he publicly indicated that he would do so. (Doc. 1027 at Tr. 740–41.) On January 4, 2012, Mr. Casey emailed attorney Mr. Liddy, Chief Sands, and Chief MacIntyre, noting Arpaio's assertion that the preliminary injunction had no effect on ongoing MCSO operations and also noting that he was nevertheless instructed to appeal it. (Doc. 1417 at Tr. 1656:12– 1658:7; Ex. 2535 ("The Sheriff called last night....During the call, [the Sheriff] indicated that he wanted the Notice of Appeal on file even though the injunctive relief is, in actual practice, relatively harmless to MCSO field operations."); *see also* Ex. 2533 at MELC210542.)

b. Sheriff Arpaio Understood the Meaning of the Preliminary Injunction.

1) Counsel Explained the Preliminary Injunction to Sheriff Arpaio.

17. On December 23, 2011, the date the preliminary injunction issued, Mr. Casey immediately told MSCO

command staff that they could not turn anyone over to the federal authorities. (Doc. 1417 at Tr. 1639–43.) Sheriff Arpaio responded to Casey that the MCSO was not detaining anyone. (*Id.* at Tr. 1642–43.)

18. Sheriff Arpaio does not deny telling Mr. Casey that he would release people if they had no state charges to bring against them. He also testified that he told Casey that he saw no reason to detain these individuals since President Obama was going to let them go anyway. (Doc. 1458 at Tr. 2542–43.) Arpaio also does not deny telling Casey that he would follow Casey's advice regarding the preliminary injunction. (*Id.* at Tr. 2555-56.)

19. Although at the hearing Sheriff Arpaio testified that he does not remember whether he communicated with Mr. Casey about the preliminary injunction on December 23, 2011, he acknowledged that he may have had such a conversation. (Doc. 1027 at Tr. 628.)

20. That communication is verified by contemporaneous correspondence. Late on the night of December 23, 2011, Mr. Casey emailed his associate James Williams and reported that he had communicated the Court's ruling to Chief Sands, Chief MacIntyre, and Sheriff Arpaio. (Doc. 1417 at Tr. 1642–43; Ex. 2534 ("Frankly I am relatively pleased. So are Chiefs Sands and MacIntyre. Arpaio is conflicted on how he feels.").)

21. Mr. Casey's time sheet indicates several personal meetings or communications with Sheriff Arpaio in late December 2011 and in January 2012. (Doc. 1417 at Tr. 1654-55; Ex. 2533 at MELC210539–40.)

***5** 22. Sheriff Arpaio acknowledges that he may have met with attorneys regarding the preliminary injunction during this time period, but he testified that he was not "constantly" meeting with them. (Doc. 1027 at Tr. 595.)

23. Sometime shortly after the issuance of the injunction, Mr. Casey testified that he developed the "arrest or release" terminology to simplify the meaning of the injunction and to assist in explaining it to MCSO personnel. The gist of his instruction was that if the deputies detained someone they suspected of being in the United States without authorization, they either had to arrest them on a state charge, or they had to release them. (Doc. 1417 at Tr. 1647–48.)

24. Sheriff Arpaio acknowledges that Mr. Casey may have told him that the MCSO either needed to arrest those they suspected of being unauthorized immigrants on applicable state charges or release them. (Doc. 1458 at Tr. 2539–40.) Arpaio admits that Casey never told him that it was acceptable to deliver persons to Border Patrol for whom he had no state charges. (*Id.* at Tr. 2528, 2498:17–2499:11, 2500:14–2501:7.)

2) Chief MacIntyre Presented the Preliminary Injunction to Sheriff Arpaio.

25. Chief MacIntyre testified that he read the preliminary injunction and fully understood it. (Doc. 1422 at Tr. 1877–78; *see* Ex. 2219 at MELC209815.) He understood, for example, that if the MCSO had no probable cause to believe that a state crime existed, it could not hold an unauthorized alien for transfer to a federal agency. (Doc. 1422 at Tr. 1877–78; Ex. 2219 at

MELC209814–16.)

26. Chief MacIntyre felt that he had an ethical responsibility to help Sheriff Arpaio understand the necessary changes he needed to make in the department to be in compliance with the preliminary injunction. As a result, he attended a scheduled meeting on the first or second Monday of January 2012 at which the MCSO chiefs regularly meet with Arpaio and Chief Deputy Sheridan. (Doc. 1422 at Tr. 1878:23–25; Ex. 2219 at MELC209814.) He attended that meeting to make sure that Arpaio and others heard the words of the preliminary injunction and understood what it said. (Doc. 1422 at Tr. 1879.) MacIntyre "told [Sheriff Arpaio] point blank exactly what the [preliminary injunction] order says and what the requirements are." (Ex. 2219 at MELC20981; *see also* Doc. 1422 at Tr. 1880–81.) He explained it twice. (Doc. 1422 at Tr. 1880; Ex. 2219 at MELC209815.) He spoke slowly and enunciated. (Doc. 1422 at Tr. 1879–81.) Arpaio acknowledged that he heard MacIntyre. (*Id.* at Tr. 1880:11–12.)

3) Nevertheless, Sheriff Arpaio Continued to Publicly Assert That the MCSO Had the Authority to Do What the Preliminary Injunction Proscribed.

27. In June of 2012, Sheriff Arpaio gave a series of interviews in which he acknowledged that the MCSO had been arresting people for whom it had no state charge and turning them over to ICE. (Ex. 198A ("When we stop people on violations of the law, and then we have suspicion that person could be here illegally, then we call ICE.").)

28. Sheriff Arpaio also indicated an unwillingness to release such persons if ICE refused to accept them and stated that he would "work around" any such refusal. (Ex. 200A (June 25, 2012 interview with Fox News, in which Arpaio indicated that he would implement a plan to keep arresting unauthorized aliens locally even if ICE refused to accept such persons from the MCSO); Doc. 1027 at Tr. 535–38; *see also* Ex. 197A; Ex. 198A; Ex. 198B.)

***6** 29. On July 24, 2012, Sheriff Arpaio testified at the underlying trial in this matter. During his testimony, Arpaio stated that the MCSO still had the authority to and did unauthorized persons for whom the MCSO had no state charges. He testified that the MCSO turned such persons over to ICE. (Doc. 572 at Tr. 502–04.)

30. Other MCSO officers, including Chief Sands, corroborated such activity. (Doc. 579 at 105.)

31. Sheriff Arpaio's insistence that the MCSO retained the authority to detain unauthorized persons without any state grounds for detention, does not indicate a failure to understand the preliminary injunction, but rather a refusal to abide by it.

c. Sheriff Arpaio Intentionally Chose Not to Implement the Preliminary Injunction.

32. Sheriff Arpaio testified that he did not intentionally violate this Court's orders because he delegated the responsibility of the MCSO's compliance with the preliminary injunction to his subordinates and to his legal counsel. (Doc. 1051 at Tr. 479, 482, 484–85; *see also* Ex. 2219 at MELC209836 ("I don't

give the guidance. I have my lawyers and subordinates that give guidance.").)

33. In light of the evidence and testimony at the evidentiary hearing, that explanation is neither credible nor acceptable as a matter of fact or law.

1) Sheriff Arpaio Did Not Change the MCSO's Operations Against the Advice of Chief Sands, Chief MacIntyre, and Mr. Casey.

34. Chief Sands testified that he met with Sheriff Arpaio shortly after this Court issued the preliminary injunction. During that meeting, Sands told Arpaio that the MCSO would have to curtail immigration enforcement operations including saturation patrols. (Doc. 1017 at Tr. 259.) Sands also told Arpaio that all MCSO deputies should learn about the preliminary injunction, but Arpaio instructed Sands to only disseminate information regarding the preliminary injunction to the HSU. (*Id.* at Tr. 261, 328.)

35. Sheriff Arpaio acknowledges the meeting and acknowledges that he instructed Chief Sands to only instruct the members of the HSU about the preliminary injunction, but he asserts that Mr. Casey was responsible for that instruction. (Doc. 1051 at Tr. 487:13–18.) Arpaio admits, however, that he had advised Casey, incorrectly, that the MCSO did not violate the preliminary injunction. Thus, even if Casey did give such advice to Arpaio, it must be understood in that context.

36. At yet another meeting, Chief Sands told Sheriff Arpaio that the preliminary injunction required that the MCSO release unauthorized immigrants for whom

the MCSO had no state charge instead of taking them to ICE or the Border Patrol. (Doc. 1017 at Tr. 269–72; Doc. 1021 at Tr. 350–52.) This included unauthorized immigrants encountered in drop house raids. (Doc. 1017 at Tr. 269–72; Doc. 1021, Tr. at 350–52; *see also* Ex. 2219 at MELC209797.)

37. Sheriff Arpaio acknowledges that he had this second conversation with Chief Sands, although he testified that during the conversation he disagreed with Sands as to whether unauthorized immigrants encountered in drop houses might be detained as material witnesses to human smuggling. (Doc. 1051 at Tr. 487:23–489:18.)

38. After Sheriff Arpaio's 2012 trial testimony, Mr. Casey addressed Arpaio and Chief Sands and directly explained that the MCSO had no authority to detain unauthorized persons and to turn them over to federal authorities. Arpaio stated that he understood. (Doc. 1422 at Tr. 1851–54.)

***7** 39. Nevertheless, the MCSO continued to do so.

2) Instead of Instructing the MCSO to Stop Violating the Preliminary Injunction, Sheriff Arpaio Promoted Continued Detentions and Even Developed and Publicized a "Back-Up Plan" to Work Around ICE's Refusal to Accept Detained Person.

40. On September 21, 2012, Sheriff Arpaio issued a press release announcing a "back-up plan" that would allow the MCSO to continue to detain persons for whom it had no state charges in light of ICE's refusal to accept them.

41. Generally, Sheriff Arpaio reviews all of the MCSO's press releases before they go out, especially if they quote him. (Doc. 1051 at Tr. at 493–94.) The September 21, 2012 press release quotes Arpaio as saying: "I expected that [ICE's refusal to accept persons from the MCSO for whom it did not have state charges] would happen eventually, so I had a back-up plan in place which was to take these illegal immigrants not accepted by ICE to the Border Patrol." (Ex. 51; *see also* Ex. 199B.) The press release continues: "So as directed by the Sheriff, last night deputies took the two suspects to Border Patrol." (Ex. 51; *see also* Ex. 199B.)

42. Four days after the MCSO issued the press release, the Ninth Circuit rejected Sheriff Arpaio's appeal of the preliminary injunction. *See Melendres*, 695 F.3d at 1000–02.

43. On the day the Ninth Circuit affirmed the preliminary injunction, Mr. Casey sent notification of the decision to MCSO personnel and to Sheriff Arpaio's personal secretary.[5] (Ex. 2533 at MELC210588 (TJC entry on 09/25/2012).)

44. Two days later on October 9, 2012, apparently in light of the Ninth Circuit's affirmance of this Court's preliminary injunction, Sheriff Arpaio issued a press release stating: "My back-up plan is still in place and we will continue to take these illegal aliens not accepted by ICE to the Border Patrol." (Ex. 82; Doc. 1027 at Tr. 563:21–564:2.)

45. Sheriff Arpaio's publication of his back-up plan, and the incidents that led to it, came to the attention

of Plaintiffs' counsel. Plaintiffs' counsel wrote a letter to Mr. Casey accusing the MCSO of violating the preliminary injunction.

46. When Mr. Casey discussed the Plaintiffs' allegations with Chief Sands, Sands told Casey that the press releases describing the back-up plan were issued to assist Sheriff Arpaio in his upcoming re-election campaign. (Doc. 1417 at Tr. 1690:12–1691:5, 1695:2–7; Doc. 1422 at Tr. 1959:24–1961:2.)

47. Mr. Casey met with Sheriff Arpaio.[6] During the meeting, Casey told Arpaio that he had never been informed of a back-up plan or a press release discussing one, and that he believed the back-up plan as described in the MCSO press releases violated the preliminary injunction. (Doc. 1417 at Tr. 1691–93.) Casey explained that in his judgment the preliminary injunction did not allow the MCSO to detain persons against whom it could not bring state charges to turn them over to ICE, the Border Patrol, or any other federal authority. (*Id.* at Tr. 1691–92; Doc. 1422 at Tr. 1801–02.)

***8** 48. Mr. Casey also raised with Sheriff Arpaio his concern about the fact that the press release said that this had been the MCSO's consistent practice for over six years, because this was contrary to Arpaio's previous assurances to him that the MCSO was not detaining persons to turn them over to ICE. (Doc. 1417 at Tr. 1692–94.)

49. Sheriff Arpaio's response to Mr. Casey was that "he was the Sheriff, and he made the decisions." (Doc. 1417 at 1692:13–15.)

50. In the conversation, Sheriff Arpaio indicated to Mr. Casey that ICE and the Border Patrol had directed the MCSO to detain and turn over to them persons whom the MSCO believed to be unauthorized and for whom it had no state charges. (Doc. 1422 at Tr. 1802:7–14.)

51. In fact, the Court finds that neither ICE nor the Border Patrol ever instructed the MCSO to turn over to them any persons whom the MCSO believed to be in the United States without authorization. Casey never saw any documentation suggesting that ICE or the Border Patrol had actually issued such instructions. (Doc. 1422 at Tr. 1802:7–14; *see also* Ex. 2514.) Defendants introduced no credible testimony or evidence at the hearing that federal agencies ever gave the MCSO any such instructions.

52. Moreover, to accept Sheriff Arpaio's statement that ICE and/or the Border Patrol directed him to turn over unauthorized persons for whom he had no state charges contradicts Arpaio's own press releases which indicate that it was *his* "back-up plan" to turn unauthorized persons over to the Border Patrol once ICE began refusing to accept them. (Ex. 51; *see also* Ex. 199B.) Additionally, even if ICE or the Border Patrol had issued such a direction to the MCSO, any such direction would not have changed the explicit orders of this Court to the MCSO prohibiting it from doing so.

53. Mr. Casey, taking his client at his word that federal authorities had given Sheriff Arpaio such direction, determined that it was possible to construct a good faith argument that the MCSO was not violating the preliminary injunction. But Casey told Arpaio that even though he could make such an argument, he did not believe that it would prevail. (Doc. 1417 at Tr.

1691–95; Doc. 1422 at Tr. 1802, 1847–49.)

54. Mr. Casey advised Sheriff Arpaio that the MCSO should cease activities pursuant to Arpaio's back-up plan because it was in violation of the preliminary injunction. (Doc. 1417 at Tr. 1693 ("It was not a pleasant conversation…but [I] relayed to him that this is a problem. This cannot go on.").)

55. Sheriff Arpaio assured Mr. Casey that operations pursuant to his back-up plan would cease. (Doc. 1417 at Tr. 1693, 1700:23–25.)

56. Despite his communications with Mr. Casey, Sheriff Arpaio continued to directly instruct the head of the HSU to continue to detain such persons and turn them over to ICE.

57. Lieutenant Jakowinicz, who was then in charge of the HSU, recalls a meeting with Sheriff Arpaio during the latter part of 2012, (Doc. 1051 at Tr. 404:13–16), in which Arpaio directed Jakowinicz to call the Border Patrol if ICE refused to take custody of an individual for whom the MCSO did not have state charges justifying detention. (*Id.* at Tr. 371:9–372:9.) Arpaio acknowledges that he had this conversation with Jakowinicz. (Doc. 1027 at Tr. 553–54.)

3) Sheriff Arpaio's Persistent and Publicized Violations of the Preliminary Injunction Were Motivated by His Belief that Such Activities Would Benefit His Upcoming Re-election Campaign.

***9** 58. Sheriff Arpaio knowingly ignored the Court's order because he believed that his popularity resulted,

at least in part, from his enforcement of immigration laws. (Doc. 1017 at Tr. 277:5–13; Ex. 196C (August 31, 2012 interview with Fox News in which Arpaio states: "[T]hey like me because I'm enforcing the illegal immigration laws. So I think that should send a message that I am doing what the people elected me to do.").) He also believed that it resulted in generous donations to his campaign. (Ex. 196D (August 31, 2012 Fox News interview in which Arpaio states: "I've raised 7.5 million [dollars] just to run for Sheriff...."); Ex. 201B (April 13, 2012 interview in which Arpaio refers to the "big bucks" he is raising).)

59. Sheriff Arpaio spoke frequently with the media and the public about the MCSO's immigration work. (Doc. 1017 at Tr. 186:8–11.) The operations of the HSU remained very important to Arpaio. (Doc. 1027 at Tr. 640:22–24, 737:2–4.) They resulted in media attention, (Doc. 1051 at Tr. 390:7–21), and were designed to do so. (*Id.* at Tr. 440:10–441:3.) As Lieutenant Sousa put it, "Sheriff [Arpaio] and Chief Sands used the Human Smuggling Division as a political tool to gain attention. They always knew the details of our activity and put out press release after press release about them." (Ex. 2219 at MELC209893; Ex. 2898 MELC-IA013691; *see also* Ex. 2559B MELC-IA013646.)

60. Because the HSU was important to his popularity, "[Sheriff Arpaio] kept very aware of its operations and the number of arrests of illegal aliens that HSU operations produced." (Doc. 1017 at Tr. 187; *see* Ex. 2898 at MELCIA013691; *see also* Ex. 2559B at MELC-IA013646–47; Ex. 2561 at MELC1337434 (Lieutenant Sousa stated: "I was frustrated with all the demands from Chief Sands and the Sheriff for constant operations and arrests so they could put out press

releases to the media. For Sheriff Arpaio, the Human Smuggling Unit was a gold mine of media coverage.").)

61. HSU officers felt that it was the HSU's duty to make Sheriff Arpaio look good to the media and to the public. (Doc. 1017 at Tr. 185.)

62. Throughout the effective term of the preliminary injunction, even from its entry, Sheriff Arpaio's press releases indicate an awareness that the injunction was entered and that Arpaio nevertheless continued to enforce all federal immigration laws. (Doc. 1027 at Tr. 527–534.)

63. On December 30, 2011, immediately after the preliminary injunction was entered, Sheriff Arpaio issued a press release that quoted him as stating: "I will continue to enforce illegal immigration laws." (Ex. 75.) On February 9, 2012, Arpaio issued a press release stating: "Sheriff Arpaio continues to crackdown on immigration and will not be deterred by activist groups and politicians for [sic] enforcing all immigration laws." (Ex. 76.) On March 28, 2012, the MCSO issued a press release noting that "Arpaio remains adamant about the fact that his office will continue to enforce both state and federal illegal immigration laws as long as the laws are on the books." (Ex. 77; *see also* Ex. 200B (March 2012 interview in which Sheriff Arpaio acknowledges that he continues to arrest undocumented persons); Ex. 2828A (Arpaio states that he will continue to enforce state laws and federal laws); Ex. 2829A (April 5, 2012 interview with CBS Evening News in which Arpaio notes that people do not like him because he is enforcing illegal immigration laws); Ex. 196A (August 31, 2012 Fox News Interview in which the Sheriff states with

respect to immigration: "I'm enforcing state laws and federal laws. I enforce all the laws."); Ex. 84 (October 18, 2012 MCSO press release that states: "In addition six Illegal Aliens were turned over to ICE for deportation," and further states: "We will continue to be vigilant in the fight against identity theft and Illegal Immigration...."); Ex. 2832C (January 27, 2013 interview in which Arpaio states: "There are a certain group [sic] here that don't want me to enforce the immigration laws.").)

***10** 64. Chief Sands told Mr. Casey that the press releases describing the back-up plan were issued to assist Sheriff Arpaio in his upcoming re-election campaign. (Doc. 1417 at Tr. 1690:12–1691:5, 1695:2–7; Doc. 1422 at Tr. 1959:24–1961:2.)

65. The Court finds that Sheriff Arpaio knowingly and intentionally ensured that the MCSO did not comply with the preliminary injunction.

2. Chief Deputy Sheridan Knowingly and Intentionally Failed to Implement the Preliminary Injunction.

66. Chief Deputy Sheridan admits that he is in civil contempt for violating the orders of the Court. (Doc. 1043 at Tr. 925:14–927:2, 970:9–13.)

67. Chief Deputy Sheridan is the second in command at the MCSO and is responsible for all of its operations. (Doc. 1043 at Tr. 822:10–11, 23–25, 864:7–9.) Within the MCSO, only he and Public Information Officer Lisa Allen report directly to Sheriff Arpaio. (Doc. 1027 at Tr. 602:8–17; Doc. 1043 at Tr. 823:3–16.) The MCSO designated Sheridan the interim Chief Deputy for

Maricopa County in September 2010, after David Henderschott retired. (Doc. 1051 at Tr. 344:14–20; Doc. 1043 at Tr. 948:19–21; Doc. 1465 at Tr. 1478:9–20.) Sheridan transitioned from "interim Chief Deputy" to "Chief Deputy" in May 2011. (Doc. 1043 at Tr. 948:22–23.)

68. Despite his position as second in command at the MCSO, Chief Deputy Sheridan testified that he remained ignorant of the preliminary injunction until March 27, 2014. (Doc. 1043 at Tr. 887.) This testimony is demonstrably false.

69. In between November 30, 2011, the time that the Court requested supplemental briefing concerning the MCSO's authority to enforce federal civil immigration law, and December 16, 2011, the date on which the MCSO filed its supplemental brief acknowledging that it had no such authority, Chief Deputy Sheridan met with Mr. Casey, Chief Sands, Chief MacIntyre, and Sergeant Palmer from the HSU about this case. (Doc. 1389 at Tr. 1087:24–1088:23; Doc. 1417 at Tr. 1628:3–7; Ex. 2533 at MELC210537.)

70. As of December 23, 2011, Chief Deputy Sheridan was aware of the *Melendres* litigation, (Doc. 1043 at Tr. 887:22–888:2, 890:17–19,) and he believed that lawsuits were a serious matter. (*Id.* at Tr. 889:9–11, 890:20–22.)

71. On December 23, 2011, Mr. Casey sent an email designated as one of high importance to Chief Deputy Sheridan. (Doc. 1043 at Tr. 887:22–888:5; Doc. 1422 at Tr. 1748:4–1749:3; Ex. 187.) The email had a copy of the preliminary injunction attached, and the portion of the email regarding the preliminary injunction was

written in bold. (Ex. 187.)

72. The Defendants have represented to the Court that Chief MacIntyre's only duty in connection with the receipt of the December 23, 2011 email was to ensure that Chief Deputy Sheridan and Chief Sands both knew of the preliminary injunction. (*See, e.g.*, Doc. 989 at Tr. 12:2–4.)

73. Chief Deputy Sheridan subscribes to and reads *The Arizona Republic*. (Doc. 1043 at Tr. 901-05.) The *Republic* featured a series of articles pertaining to the issuance of the preliminary injunction, and Sheridan acknowledges that he may have read the articles. (*Id.* at Tr. 905.)

74. Chief Deputy Sheridan participated with both Sheriff Arpaio and Chief MacIntyre in the January 2012 meeting, *see supra* ¶ 26, in which MacIntyre slowly and carefully explained the preliminary injunction and what it required to Arpaio, Sheridan, and the other chiefs. (Doc. 1422 at Tr. 1878:19–1881:8; *cf.* Ex. 2219 at MELC209817.)

***11** 75. Chief Deputy Sheridan was also part of the meeting between Sheriff Arpaio and Chief Sands, *see supra* ¶¶ 34–35, at which Sands indicated to Arpaio that the preliminary injunction needed to be disseminated throughout the MCSO, but Arpaio told Sands to only discuss it within the HSU. (Doc. 1017 at Tr. 259:7–17, 260:9–16, 261:4–20.)

76. On January 31, 2012, Chief Deputy Sheridan was present at a meeting of the Maricopa County Board of Supervisors at which the Board discussed with the County Attorney the preliminary injunction granted

by this Court, and the County's appeal of that injunction. (Doc. 1389 at Tr. 1107–1110, 1113:6–11; Ex. 2878.)

77. Chief Deputy Sheridan was kept apprised of settlement discussions between Plaintiffs' and Defendants' counsel. (Doc. 1043 at Tr. 891–94; Ex. 2541.)

78. Chief Deputy Sheridan held a status conference with Chief MacIntyre and Mr. Casey about this case on February 6, 2012. (Ex. 2533 at MELC210549.) He had a similar conference on March 23, 2012. (Doc. 1417 at Tr. 1674:5–17; Ex. 2533 at MELC210556.)

79. Mr. Casey further met with Chief Deputy Sheridan to discuss the *Melendres* case on April 3, 2012. (Ex. 2510; Ex. 2533 at MELC210559; Doc. 1417 at Tr. 1675:2–5.) Sheridan received briefings on the progress of the trial as it occurred. (*See, e.g.*, Ex. 2533 at MELC210580.) On September 25, 2012, Mr. Casey sent an email to Sheridan, among others, informing him that the Ninth Circuit had affirmed this Court's preliminary injunction. (Doc. 1389 at Tr. 1075:17–21; Ex. 2511.)

80. Chief Deputy Sheridan was aware of the existence of Sheriff Arpaio's back-up plan for delivering unauthorized persons to the Border Patrol. (Doc. 1389 at Tr. 1082–83.)

81. And as Chief Deputy reporting to Sheriff Arpaio, Sheridan was well aware of the political benefit that Arpaio received from the MCSO continuing to make immigration arrests, and the importance Arpaio placed on the public perception that the MCSO was

continuing to do so.

82. On October 11, 2012, Mr. Casey sent an email of high importance to Chief Deputy Sheridan and two others. He attached a letter from Plaintiffs' counsel and various MCSO press releases explaining that Plaintiffs' counsel had alleged that recent actions and press releases by the MCSO demonstrated that the MCSO was violating this Court's preliminary injunction. (Ex. 2512.)

83. The email indicated the need for Chief Deputy Sheridan and the other recipients to immediately learn the facts surrounding the incidents and press releases that Plaintiffs' counsel alleged violated the preliminary injunction, especially in light of the pending election, so that Defendants' counsel could advise and respond to the situation. (Doc. 1417 at Tr. 1683–89; Doc. 1389 at Tr. 1076:23–1078:6; Ex. 2512.)

84. On the same day, Mr. Casey also copied Chief Deputy Sheridan on correspondence sent to the lieutenant then in charge of the HSU in aid of his factual investigation. (Doc. 1389 at Tr. 1083:19–1084:7; Ex. 2513.)

85. A week later, Mr. Casey copied Chief Deputy Sheridan on his correspondence back to Plaintiffs' attorney in which he responded to the Plaintiffs' allegations. (Doc. 1389 at Tr. 1084:20–1085:6; Ex. 2514.)

86. Chief Deputy Sheridan testified that he read the Court's findings of fact and conclusions of law when they came out in May 2013. He had multiple extended conferences with Mr. Casey two days later. (Ex. 2533

at MELC210605.) Those findings discuss in several places the preliminary injunction and the MCSO's violation of it.

***12** 87. Nonetheless, despite overwhelming evidence to the contrary, Chief Deputy Sheridan denies having any knowledge of the injunction until March 2014. (Doc. 1043 at Tr. 887.) Chief Deputy Sheridan further testified that he was not involved in trial preparation, and does not believe that he ever spoke to Mr. Casey until after the *Melendres* trial. (*Id.* at Tr. 950, 953.) The Court finds these to be knowing misstatements.

88. Upon resuming his testimony in September, Chief Deputy Sheridan stated that in December 2011, the *Melendres* case was not an important matter relative to the other matters he was dealing with, and that he did not pay any attention to it since it was principally in the hands of Chief Sands. (*See* Doc. 1465 at Tr. 1383:12–1386:6.)

89. This testimony is not credible. Immigration enforcement was extremely important to Sheriff Arpaio in terms of the publicity that it generated for him and for the MCSO. It is not credible that Chief Deputy Sheridan, as Arpaio's immediate subordinate in charge of all of the MCSO's operations, would have been wholly ignorant of a matter of such importance to Arpaio.

90. Further, many of the issues Chief Deputy Sheridan cites as preoccupying had been ongoing for some time, *e.g.*, the matter relating to Sheriff Arpaio's failure to investigate a number of child abuse cases arising from El Mirage. These matters were not new to Sheridan. He had assumed the duties of acting Chief Deputy in

September 2010 and had been given the position in May 2011—seven months before the preliminary injunction was issued.

91. Chief Deputy Sheridan could not have remained in perpetual ignorance of the preliminary injunction during the seventeen months in which it was in force, especially in light of his involvement with the *Melendres* case, the issues it presented with respect to Sheriff Arpaio's political popularity, and the amount of correspondence he received about it.

92. The Court thus finds that Chief Deputy Sheridan was fully apprised of the terms of the preliminary injunction and fully informed of Sheriff's Arpaio's decision to ignore it. He was responsible for implementing its terms, and he did nothing to do so.

3. Former Executive Chief Brian Sands Is Liable for Civil Contempt for Knowingly and Intentionally Failing to Comply with the Preliminary Injunction.

a. Chief Sands Knew that the Preliminary Injunction Existed and Was in Force.

93. Between 2009 and the date of his retirement in 2013, Chief Sands was the principal contact between the MCSO and its outside attorneys in the *Melendres* case. (Doc. 1417 at Tr. 1613.) This includes the time during which the preliminary injunction was issued. He was also the Chief of Enforcement at the MCSO.

94. The MCSO's counsel had multiple extended meetings with Chief Sands about this case both before and after the MCSO avowed to this Court that it did

not attempt to enforce federal immigration law, and between then and when the preliminary injunction issued. Such conferences occurred on at least December 6, 15, 16, 21, and 22, 2011. (Doc. 1417 at Tr. 1628, 1629; Ex. 2533 at MELC210537–39.)

b. Chief Sands Understood the Meaning of the Preliminary Injunction

95. Chief Sands received a copy of the preliminary injunction from Mr. Casey, (Doc. 1051 at Tr. 338:9–14; Ex. 187), which he discussed with him. (Doc. 1422 at Tr. 1956:5–7, *see* Ex. 2534.) Sands understood its meaning, (Doc. 1017 at Tr. 269:13–25, 271:2–18; *see* Doc. 1417 at Tr. 1641:2–1642:2, 1647:23–1648:5; Doc. 1422 at Tr. 1956:19–1957:1), and he was in charge of handling it. (Doc. 1422 at Tr. 1965.)

***13** 96. As such, Chief Sands had actual notice of the preliminary injunction.

97. Chief Sands does not dispute that Mr. Casey instructed him that the MCSO must either have probable cause to arrest suspected illegal immigrants on a state criminal charge or release them entirely. (Doc. 1422 at Tr. 1969–71, 1974–77.)

98. Chief Sands testified that Mr. Casey specifically told him that the preliminary injunction affected the operations of the HSU and all saturation patrols. (Doc. 1017 at Tr. 256–57.)

99. Further, Chief Sands does not contest Mr. Casey's testimony that in August of 2012, after Casey learned through trial testimony in this matter that the MCSO was continuing to violate the preliminary injunction,

that Casey instructed Sheriff Arpaio and Sands not to further detain unauthorized persons in the absence of state charges. (Doc. 1422 at Tr. 1979:18–23.)

100. Chief Sands does not contest Mr. Casey's testimony that they agreed that the MCSO would cease detaining such persons. He also does not contest Casey's testimony that after Casey became aware of Arpaio's back-up plan in September 2012, that Casey met with both Sands and Arpaio and advised them that in his opinion this conduct violated the preliminary injunction. (Doc. 1422 at Tr. 1979:18–23.) Nor does Sands contest Casey's testimony that Sands told him that Arpaio had published his back-up plan to gain advantage in the upcoming election. (*Id.* at Tr. 1979:18–23.)

c. Chief Sands Knowingly Permitted the HSU to Continue Its Practices in Violation of the Preliminary Injunction.

101. There is no evidence that Chief Sands did anything to correct Mr. Casey's misimpression, initially received from Sheriff Arpaio, that the preliminary injunction did not significantly affect MCSO's operations.

102. For example, when Mr. Casey communicated to Chief Sands on January 4, 2012 that Sheriff Arpaio indicated to him that the preliminary injunction had no significant effect on MCSO operations, there is no evidence that Sands attempted to correct Arpaio's misleading statements to Casey. (Doc. 1417 at Tr. 1656:12–1648:7; Ex. 2535 ("During the call, [Sheriff Arpaio] indicated that...the injunctive relief is, in actual practice, relatively harmless to MCSO field

operations.").)

103. In fact, Chief Sands furthered that misunderstanding by himself assuring Mr. Casey that no violations of the preliminary injunction were occurring. (Doc. 1417 at Tr. 1680:2–10.)

104. Chief Sands knew that HSU deputies were transporting unauthorized immigrants for whom they had no state charge to ICE or the Border Patrol, yet he did nothing to stop them. (Doc. 1021 at Tr. 356.)

105. Chief Sands testified that he told Chief Trombi to read the preliminary injunction but did not know whether Trombi did so.

106. Chief Sands and Chief Trombi continued to receive shift summaries and emails from HSU operations that indicated if the unit arrested anyone, for what charges they were arrested, and the number of people the HSU turned over to ICE because there were no state charges. (Doc. 1051 at Tr. 378:2–13, 381:19–382:2; Ex. 212 (March 31, 2011 email from Lieutenant Sousa to Sands and others explaining that the HSU is turning over individuals it cannot charge to ICE); *see also* Ex. 2219 at MELC209890–93.)

***14** 107. Chief Sands and Chief Trombi also received departmental reports after HSU interdiction events that described the time, location, people involved, and a narrative of the event. (Doc. 1051 at Tr. 377:13–24.) Both chiefs were aware that the HSU continued to detain persons for whom there were no state charges. Sands also knew that immigration interdiction operations continued to happen regularly in the HSU after the injunction. (*Id.* at Tr. 356:3–7.)

108. Instead of directing the HSU to cease such operations, or at least to conduct them within the bounds of the preliminary injunction, Chief Sands, together with Sheriff Arpaio, pressured the HSU to increase the number of unauthorized aliens they arrested in their operations. (*See, e.g.*, Ex. 2559B at MELCIA0132648.) They were doing this for the political benefit it provided Arpaio. (*See* Doc. 1017 at Tr. 276:16–277:13; Doc. 1422 at Tr. 1806:7–10, 1846:12–17.)

d. Chief Sands Failed to Communicate the Requirements of the Preliminary Injunction to His Subordinates.

109. Chief Sands spoke to Lieutenant Sousa once a day during this period. (Doc. 1027 at Tr. 763:25–764:3.) Sands testified that he told Sousa not to violate the preliminary injunction. He does not recall giving him any more specific instruction. (Doc. 1422 at Tr. 1965–67.)

110. Yet, Chief Sands knew that Lieutenant Sousa had, or purported to have, an understanding that the HSU did not need to alter its practices to be in compliance with the preliminary injunction. (Doc. 1027 at Tr. 707–11, 759–61.)

111. In April, when Lieutenant Jakowinicz replaced Lieutenant Sousa as the head of the HSU, Chief Sands discussed the preliminary injunction order with Jakowinicz for only a few minutes and only told him that he should read it and study it. (Doc. 1017 at Tr. 264:5–21.) Sands never mentioned completing the training scenarios nor that HSU operations were in

violation of the injunction, nor did he mention that the MCSO could not detain persons for whom it had no state charge to turn them over to ICE or the Border Patrol.

e. Chief Sands Failed to Oversee the Implementation of Training Scenarios Drafted in Response to the Preliminary Injunction.

112. Chief Sands emphasizes that he should not be held in contempt because he arranged for Lieutenant Sousa and Sergeant Palmer to prepare training scenarios for HSU deputies concerning the scope of the preliminary injunction. (Doc. 1422 at Tr. 1975–78.)

113. Yet, Sheriff Arpaio, Chief Sands, and Lieutenant Sousa all represented to Mr. Casey that the preliminary injunction did not materially affect the MCSO's operations, and that such operations did not have to change to be in compliance. (Doc. 1417 at Tr. 1680:2–10; Doc. 1027 at Tr. 759-61.) In light of the direction that Casey was receiving, he did not view the training scenarios as more than a prophylactic measure. (Doc. 1417 at Tr. 1652; *see* Ex. 2535.) Neither did Sousa. (Ex. 2219 at MELC209890.)

114. Further, Lieutenant Sousa testified that it was he who directed Sergeant Palmer to create the training scenarios. (Doc. 1027 at Tr. 773; Ex. 2219 at MELC209890) ("Based on my review of these strings of emails, I believe I initiated this training and was not directed or ordered to by Chief Trombi or Chief Sands."). Although Sousa acknowledged that it was possible Chief Sands directed him to create the training scenarios, Sousa testified that as he remembered it, he had taken the initiative without direction from Sands. (Doc. 1027 at Tr. 779:21–780:15.)

***15** 115. In any event, Sergeant Palmer's training scenarios were never completed, and they never went out. Chief Sands was copied on all communications regarding the training scenarios. He was thus aware that the training scenarios were not being prepared in a timely fashion and that the scenarios were never completed or promulgated.

f. Chief Sands Did Not Take Reasonable Steps to Implement the Preliminary Injunction.

116. In his briefs submitted in conjunction with the evidentiary hearing, but not in his testimony itself, Chief Sands argues that he should not be held in contempt because he would have been fired for doing anything other than what he did with regard to the preliminary injunction.

117. It may be that Chief Sands felt pressure or was ordered to benefit Sheriff Arpaio and his 2012 electoral chances by not implementing the terms of the preliminary injunction. In any case, however, he misled at least counsel for Arpaio, if not his own subordinates, about the actual nature and effect of the injunction on the MCSO's operations. As such, he was aware of the Court's order and did not take reasonable steps to implement it.

118. A party is liable for civil contempt if clear and convincing evidence demonstrates that the relevant actor(s) did not take all reasonable steps to comply with the Court's specific and definite orders. *Balla v. Idaho State Bd. Of Corr.*, 869 F.2d 461, 466 (9th Cir. 1989); *Stone v. City & Cnty. Of S.F.*, 968 F.2d 850, 856 (9th Cir. 1992) (quoting *Sekaquaptewa v. MacDonald*,

544 F.2d 396, 404 (9th Cir. 1976)).

119. For a non-party to be held in contempt, it "must either abet the defendant or must be legally identified with him." *N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 633 (9th Cir. 1977).

120. Chief Sands is in civil contempt for its violation.

4. Lieutenant Sousa Is Liable for Civil Contempt for Failing to Take Reasonable Steps to Implement the Preliminary Injunction.

a. Lieutenant Sousa Knew the Preliminary Injunction Existed.

121. Lieutenant Sousa immediately read the preliminary injunction after it was sent to him on December 23, 2011. (Doc. 1027 at Tr. 707–08.)

122. Lieutenant Sousa came to the conclusion, which he subsequently shared with Mr. Casey and Chief Sands, that nothing about the HSU's operations needed to change in light of the requirements of the preliminary injunction.[7] (Doc. 1027 at Tr. 707– 11, 760-61.)

123. Lieutenant Sousa testified that part of the reason for his conclusion was that he believed (erroneously) that once the HSU called ICE during an immigration interdiction traffic stop and ICE said that it wanted the MCSO to hold the person, the detention then became ICE's detention rather than the MCSO's. (Doc. 1027 at Tr. 775 ("A: The way I believed it was back

then, I believed that once I said they wanted him and detained him, it was their detention. Q: You know that not to be accurate now, though? A: I know exactly what the judge meant now, it's not accurate. Q: But back then that was your interpretation? A: Yes, ma'am.").)

***16** 124. Nevertheless, such a belief was not reasonable because the authority described would merely constitute 287(g) authority in all HSU officers, an authority which was selective even when it existed within the MCSO, and which Sousa knew to have been cancelled two years earlier.

1) The Training Scenarios Prepared by Sergeant Palmer After Discussing the Meaning of the Preliminary Injunction with Lieutenant Sousa Demonstrate that Sousa Understood that the Injunction Required Changes to MCSO Policies.

125. Despite his view expressed to Mr. Casey and Chief Sands that the HSU's operations were not violating the injunction, Lieutenant Sousa testified that he recommended the preparation of training scenarios for the MCSO as a whole. However, in light of the fact that he did not think that the HSU was violating the injunction, he did not see any urgency in doing so. (Ex. 2219 at MELC209890 ("I didn't believe we were violating the Order, so there was no urgency in my mind at the time to get the Order out Office wide.").)

126. He testified that he made the recommendation because of his understanding of the need to halt the larger MCSO practice, existing at the time, of phoning ICE during traffic stops in which the MCSO

encountered unauthorized persons—thus violating the preliminary injunction. (Doc. 1027 at Tr. 710:11–711:24.)

127. It is not possible for the Court to discern how Lieutenant Sousa thought that the HSU practice in this regard was permissible under the injunction, while the larger MCSO practice was not.

128. Nevertheless, on January 11, 2012, Lieutenant Sousa assigned Sergeant Palmer to begin drafting training scenarios for an e-learning program on the preliminary injunction. (Doc. 1051 at Tr. 328:4–17, 329:3–12; Ex. 189; Ex. 2536.) This training, if implemented, would have changed how the HSU operated. (Doc. 1051 at Tr. 375:7–13.)

129. Eight days later, on January 19, 2011, Sergeant Palmer returned a draft containing four training scenarios to Lieutenant Sousa. According to Palmer, these training scenarios were "constructed...in accordance with the many conversations [Sousa and Palmer] have had, as well as taking into account the information conveyed to [them] both from Tim Casey concerning Judge Snow's order." (Ex. 2538; Ex. 189; Doc. 1017 Tr. at 239–40.)

130. The Court concludes therefore that the training scenarios prepared by Sergeant Palmer are persuasive evidence of what, at the time, they believed the preliminary injunction required.

131. At least the first two scenarios drafted by Sergeant Palmer represent a clear understanding of the principles set forth in the preliminary injunction. For example, the second scenario involves a fifteen

minute traffic stop in which the passengers are apparently unauthorized aliens. The scenario makes clear that the MCSO deputies "cannot detain based solely on the reasonable suspicion these passengers may be illegal aliens," but rather, the persons must be released. (Ex. 2538 at CaseySub000047.) Palmer testified that this was his understanding of the Court's order and that it would have changed the way the MCSO had operated in the past. (Doc. 1017 at Tr. 160, 162.)

132. Lieutenant Sousa similarly testified that scenario #2 indicated a change from existing MCSO policy. (Doc. 1027 at Tr. 793–94.)

***17** 133. There is no indication in the training scenarios or otherwise that MCSO deputies could turn an MCSO stop into an ICE stop if they timely called ICE and received direction from ICE to take the person into custody.

134. The only possible exceptions to scenario #2 are those set forth in scenario #3 and to some extent scenario #4. (Ex. 2538.)

135. Scenario #3 incorrectly posited that the HSU might maintain some authority to turn persons over to ICE if they cited, but did not arrest, unauthorized persons on state charges. (Ex. 2538.)

136. Scenario #4 incorrectly assumed that there was probable cause to believe that all persons involved in the stop of a suspected human smuggling load were involved in the crime of human smuggling without setting forth facts sufficient to draw that conclusion as to each individual person involved in the stop. (Ex.

2538.)

2) Other Evidence Undermines Lieutenant Sousa's Purported Interpretation of the Preliminary Injunction's Demand.

137. In October 2015, during his second round of testimony in the evidentiary hearing, Lieutenant Sousa testified that Mr. Casey misguided him concerning the scope of the injunction. (Doc. 1458 at Tr. 2704–08; *see, e.g.*, Ex. 2219 at MELC209889 ("Based on sitting through the Civil Contempt of Court Hearing in April of this year and listening to all testimony, I got the sense Tim Casey was telling us what we wanted to hear; not what we needed to hear.").)

138. Nevertheless, Lieutenant Sousa's testimony was that, after reading the preliminary injunction and discussing it with Mr. Casey, it was he who told Casey that the HSU was not violating the terms of the preliminary injunction, not vice-versa.

139. Lieutenant Sousa further testified that Mr. Casey never used the terms "arrest or release" in discussing the court's preliminary injunction order with him. (Doc. 1458 at Tr. 2705–08.) But Sousa's testimony is not inconsistent with Casey's testimony. Casey testified that he did not immediately develop the "arrest or release" rubric, but rather developed it shortly after the issuance of the preliminary injunction to more simply explain the concept involved to MCSO leadership. (Doc. 1417 at Tr. 1647.) According to Casey's contemporaneous time records, the last

conference he had with Sousa on the topic of the preliminary injunction was on December 30—only one week after the injunction was issued. (Ex. 2533.)

140. Nonetheless, even if Mr. Casey did not use the exact "arrest or release" rubric in describing the terms of the preliminary injunction to Lieutenant Sousa, Sergeant Palmer's training scenario #2 indicates that the basic meaning of the preliminary injunction was communicated to Sousa very early on.

141. Moreover, Lieutenant Sousa testified that he called Mr. Casey within a week of receiving the Court's preliminary injunction and told him his theory about an MCSO stop becoming an ICE stop if ICE was timely contacted and direction was timely received. He testified that Casey never told him this was an incorrect understanding. (Doc. 1458 at Tr. 2705; *see also* Ex. 2219 at MELC209889.) As mentioned, however, in his April testimony, Sousa had testified that this was his understanding, not that he had confirmed it with Casey. (Doc. 1027 at Tr. 775.)

***18** 142. Further, even if Lieutenant Sousa's supposed understanding had been correct, it would not permit the HSU to hold persons after ICE had refused them so that it could locate another federal agency to take them from the MCSO. Sousa, nonetheless, knew the HSU engaged in this practice. (Doc. 1027 at Tr. 720–21.)

143. Nor would it justify the HSU's practice of taking all persons detained in a suspected human smuggling load into custody for questioning. Sousa also knew that the HSU engaged in this practice.

144. Sergeants Palmer and Trowbridge independently related that, pursuant to the instruction that they received from Chief Sands and Lieutenant Sousa, the HSU detained everyone in human smuggling loads and took them to the HSU offices even when they did not have probable cause to believe that some of them had committed a state crime. (Doc. 1017 at Tr. 172–77, 246–49; Doc. 1021 at Tr. 430–33, 451, 454–55; *see, e.g.*, Ex. 2219 at MELC209796 ("Sands said understanding of the court order was that it meant MCSO was not allowed to detain people for being undocumented but MCSO could still hold them for questioning if it was trying to build a case against human smugglers."); *see also* Ex. 2219 at MELC209791–92 ("I [Palmer] was told[ ] if we have indicators of human smuggling, um, we are allowed to continue asking questions and furthering investigation in the detainment so long as we are moving forward in that regard."); Ex. 2219 at MELC90789 (Sergeant Trowbridge discussing the continued questioning of detainees by the MCSO or by ICE).)

145. The interview process conducted at the HSU offices could take anywhere from a few to several hours. (Doc. 1017 at Tr. 175:17–176:1, 176:17–20.) If, during the interviews, a basis was discovered to bring state charges against such persons, state charges were brought. If no basis was discovered, then MCSO officers would call ICE or the Border Patrol to arrange to deliver such persons to them. (*Id.* at Tr. 176:2–16.) They would further make Lieutenant Sousa aware of such transfers of non-chargeable persons to ICE or the Border Patrol. (*Id.* at Tr. 178.)

146. Thus, there is simply no evidence that the HSU ever made any detentions of the type that Lieutenant

Sousa claimed he ran by Mr. Casey. The evidence is to the contrary.

147. Nor does Lieutenant Sousa's supposed understanding appear within the scenarios prepared by Sergeant Palmer after "the many conversations" Palmer had with Sousa on the topic. (Doc. 1017 at Tr. 239–40; Ex. 2538; Ex. 189.) It is in fact inconsistent with Palmer's scenario #2.

148. Nor is Lieutenant Sousa's October testimony consistent with his own April testimony in which he indicated that while he did not believe the HSU was violating the injunction, he did believe that other MCSO deputies may have done so by phoning ICE during traffic stops in which they encountered unauthorized persons. (Doc. 1027 at Tr. 710:11–711:24.) If, as he testified, this was the reason he believed all MCSO officers should receive training on the preliminary injunction, it is inconsistent with his later testimony that it was permissible for MCSO members to make calls to ICE during a traffic stop.

b. Lieutenant Sousa, Regardless of His Implausible Interpretation of the Preliminary Injunction, Allowed the HSU to Contravene the Court's Order.

149. Although Lieutenant Sousa did take steps to prepare what he considered to be prophylactic training scenarios, he testified that he did not consider such training urgent, and his actions belie any urgency.

***19** 150. Lieutenant Sousa never made a concerted effort to bring the training scenario project to a conclusion during the final three months he remained

at the HSU, although he did remind Lieutenant Jakowinicz and Sergeant Palmer of its pendency before his departure.

151. Lieutenant Sousa was aware of the preliminary injunction and its terms, and he was the commanding officer of the HSU, yet he did not take reasonable steps to implement the preliminary injunction within the HSU, he did not set forth the nature of the HSU's procedures to his attorney in order to determine whether they required adjustment, and he did not take action to understand the injunction's true scope.

5. Chief MacIntyre Is Not Liable for Civil Contempt.

152. Chief MacIntyre was initially Mr. Casey's point of contact on the *Melendres* case. (Doc. 1417 at Tr. 1618; 1422 at Tr. 1904:17–1905:3.) Casey testified that MacIntyre was a trusted member of Sheriff Arpaio's executive staff, and Arpaio liked to solicit MacIntyre's opinion on legal matters. (Doc. 1417 at Tr. 1635.) After MacIntyre was replaced by Chief Sands as the principal client contact, Arpaio asked Casey to keep MacIntyre in the loop on the case; Casey did so as a courtesy. (*Id.* at Tr. 1633–35.)

153. Chief MacIntyre agrees with Mr. Casey and Sheriff Arpaio's description of his role and relationship with Arpaio in this respect. (Doc. 1422 at Tr. 1868:10–1870:3; *see also* Ex. 2219 at MELC209813; Ex. 32 at 13 of 53 ("In my capacity as the Deputy Chief, Custody Bureau One for the MCSO...I work as needed with attorneys for the Maricopa County Attorney's Office and/or Outside Counsel in their defense of civil litigation matters pending in state or federal courts

against Sheriff Joseph M. Arpaio and/or the MCSO.").)

154. With the possible exception of Sheriff Arpaio, Chief MacIntyre was as aware as anyone that Arpaio and the MCSO were in constant violation of the preliminary injunction during its pendency.

155. But there seems to be no dispute that Chief MacIntyre had no command authority by which he could implement the orders in *Melendres* with the MCSO patrols. (Doc. 1495 at Tr. 3666.)

156. Thus there is an insufficient basis on which to find that Chief MacIntyre had sufficient personal responsibility for implementing the preliminary injunction. He is therefore not liable for civil contempt for failing to take reasonable steps to implement it.

B. The MCSO's Failure to Follow the Preliminary Injunction Harmed Members of the Plaintiff Class.

157. During the period that the preliminary injunction was in place, the MCSO continued its immigration interdiction operations. As a result of its street interdiction operations, and in violation of the preliminary injunction, the HSU detained and turned over at least 157 persons whom it could not charge for violating any state or federal laws to ICE and/or the Border Patrol. (Doc. 1051 at Tr. 384:4–14, 386:16–22; Ex. 208; Ex. 209.)

158. The HSU also continued its workplace enforcement and other operations. After such operations, and in violation of the preliminary injunction, it arrested, detained, and transported

additional members of the Plaintiff class to ICE and/or the Border Patrol when it could not charge these people for committing any state or federal crime.

***20** 159. The MCSO did not keep records on persons whom its regular non-HSU patrol officers detained and turned over to ICE. (Doc. 1353 at Tr. 9–10.)

160. Nevertheless, Lieutenant Sousa testified that it was a common occurrence to hear deputies from District II call federal authorities concerning the referral of an unauthorized immigrant to them. (Doc. 1458 at Tr. 2610–12; *see also* Ex. 2219 at MELC209810.)

161. During the period that the preliminary injunction was in place, the MCSO used pre-textual traffic stops to examine a person's citizenship and enforce federal civil immigration law. The MCSO used race as one factor among others in determining whom it would stop, regardless of whom it ultimately arrested and/or detained. As a result, the MCSO stopped members of the Plaintiff class who were authorized residents of the United States that it would not have otherwise had grounds to stop if it complied with the preliminary injunction.

162. Further, the MCSO detained persons for unreasonable periods of time to investigate their immigration status. (Doc. 579.)

163. Defendants' violation of the preliminary injunction therefore resulted in harm to many class members who were detained when they otherwise would not have been regardless of whether they were ultimately transferred to ICE or the Border Patrol.

164. Plaintiffs do not allege that Defendants continued to enforce federal civil immigration law after this Court issued its findings of fact and conclusions of law on May 24, 2013. (Doc. 579.)

II.

THE MCSO FAILED TO COMPLY WITH COURT RULES, DISCOVERY OBLIGATIONS, AND COURT ORDERS REQUIRING PRODUCTION (COUNTS TWO AND THREE OF THE ORDER TO SHOW CAUSE).

165. Sheriff Arpaio admits that he is in civil contempt for the MCSO's failure to provide recordings, documents, and other tangible items that were requested by Plaintiffs prior to the underlying trial in this matter. (Doc. 1027 at Tr. 626:6–627:10, Tr. 627:16–19.)

166. The Court so finds.

167. Chief MacIntyre, who was also noticed as a possible non-party contemnor on this count of the Order to Show Cause, was outside counsel's chief client contact at the start of this litigation. It was to MacIntyre that Mr. Casey sent Plaintiff's original demand to preserve documents and tangible items. (Doc. 1417 at Tr. 1618:18–21; Ex. 32, Doc. 235-1 at 21.) MacIntyre denies his personal liability for civil contempt.

168. The original preservation letters were sent by Plaintiffs to the MCSO on or about July 21, 2008. Those letters requested that the MCSO "preserve all

documents, including but not limited to all electronically stored information ("ESI") that are relevant to" or resulting from specifically enumerated "crime suppression operations" and future such saturation patrols that were the focus of the underlying lawsuit in this case. (Ex. 32, Doc. 235-1 at 23–24.)

169. In Mr. Casey's email of the same date transmitting the preservation letter to Chief MacIntyre, Casey directed MacIntyre to "[p]lease make certain that the appropriate person at the MCSO knows to KEEP AND PRESERVE the attached listing of categories of information." (Ex. 32, Doc. 235-1 at 21.)

***21** 170. Chief MacIntyre testified that at the time he may not have known who that appropriate person was. (Doc. 1422 at Tr. 1901–03.) As a result, he apparently sent the preservation letter to no one. MacIntyre's failure to send the preservation letter to anyone is sufficiently blameworthy to merit sanction against Defendants. However, the preservation order was not a Court order, and therefore failure to appropriately communicate the litigation hold does not merit a finding of contempt against MacIntyre.

171. In addition to the litigation hold demand, Plaintiffs' counsel sent, at the same time, a largely identical Arizona Public Records Access Act request to then Captain Paul Chagolla. Captain Chagolla directly forwarded the Request to Lieutenant Doris Culhane—then the director of the MCSO Legal Liaison Office. (Ex. 32, Doc. 235 at 31 ¶ 5.)

172. Lieutenant Culhane averred that she treated the request as a "litigation hold" and instructed the

"appropriate units within the MCSO to keep and preserve all electronic and hard copy documents prepared in the future that were responsive to [the] request." (Ex. 32, Doc. 235-1 at 32–33 ¶ 7.)

173. In February 2009, Plaintiffs followed up the preservation demands with broad interrogatories and document production requests seeking any documents or tangible things referencing MCSO traffic stops, created during MCSO traffic stops, resulting from MCSO traffic stops, or guiding an officer's discretion during MCSO traffic stops. (Doc. 65 at 5 ¶ 13; Doc. 843 at 9 n.3.) Examples of the relevant discovery requests are cited in the Order to Show Cause. (Doc. 880 at 18–20.)

174. Mr. Casey relayed these interrogatories to the Legal Liaison Office. (Doc. 1417 at Tr. 1620.) According to MCSO procedure, litigation discovery requests were handled by that office.

175. At some point, because of Mr. Casey's perception that the Legal Liaison Office did not timely respond to the discovery requests, Casey asked Chief Sands if he could directly contact Lieutenant Sousa regarding requests for materials and information that he thought would be at the HSU. Sands authorized such direct contact with Sousa. (Doc. 1417 at Tr. 1618–19; Doc. 1027 at Tr. 662, 664, 777.)

176. It remained Mr. Casey's impression that the Legal Liaison Office handled the document requests with respect to the MCSO as a whole, but Casey was authorized to inquire directly with Lieutenant Sousa where document requests pertained to the HSU. (Doc. 1417 at Tr. 1619–20.)

177. By the fall of 2009, Mr. Casey and/or the Legal Liaison Office had made a large number of requests from Lieutenant Sousa for documents and other materials responsive to discovery. (*See, e.g.*, Ex. 32, Doc. 235-2 at 3 ¶¶ 5–8.)

178. At that time, however, Plaintiffs discovered that Defendants had destroyed their individual stat sheets pertaining to HSU operations despite the preservation order. Lieutenant Sousa testified that he did not know about the MCSO's preservation obligation and the necessity of preserving documents and items until after Plaintiffs discovered that the HSU had destroyed the stat sheets. (Doc. 1027 at Tr. 662, 765–67.)

179. If Lieutenant Sousa had not been previously aware of any order or direction to preserve materials related to HSU operations, then presumably neither had any HSU staff member.

180. On December 8, 2009, in response to his apparently new knowledge of the preservation order, Lieutenant Sousa sent out an inaccurately narrow description of it to HSU staff. The email limited the scope of the types of materials HSU deputies should save to "all incoming and outgoing emails [that] reference any operations we are running for the purpose of future litigation." (Ex. 216.) The directive said nothing about retaining recordings, reports, documents, identifications, license plates, personal property, or other items seized from members of the Plaintiff class. (*See id.*)

***22** 181. Lieutenant Sousa acknowledged that the process for communicating and generating responses to discovery requests "could have been a lot better" at

the HSU. (Doc. 1027 at Tr. 778–79.)

182. When Lieutenant Sousa received a discovery request, responses to such requests were not logged properly. (Doc. 1027 at Tr. 664, 778.)

183. Lieutenant Sousa did not personally request that individual HSU deputies search for responsive documents and items. Nor did he search the files or computers of other HSU personnel for such responsive documents. (Doc. 1027 at Tr. 673.)

184. While Sousa testified that he believes he directed his sergeants to search for such responsive documents, (*id.*), Sergeant Palmer testified in the April 2015 evidentiary hearings that he was never requested to search for video or audio recordings prior to May 2014.[8] (Doc. 1017 at Tr. 229–30.)

185. Sergeant Trowbridge testified similarly to Sergeant Palmer. (Doc. 1051 at Tr. 457–59.)

186. Lieutenant Sousa testified that at the same time that he was fielding discovery requests from Mr. Casey, he was also fielding many requests from the Public Information Office within the MCSO for information regarding immigration operations and arrests. (Doc. 1027 at Tr. 664–65; *see also* Ex. 2559B; Ex. 2561 at MELC1337434– 36.) He was also under pressure from Sheriff Arpaio to produce high numbers of immigration arrests.

187. Lieutenant Sousa did not feel he was given adequate resources by the chain of command to deal with the various discovery and information requests and at the same time supervise HSU operations. (Doc.

1027 at Tr. 665–66, 776; Ex. 2561 at MELC1337434–36.)

188. Lieutenant Sousa left the HSU to go to SWAT in April of 2012.

189. When Lieutenant Sousa left the HSU, he instructed Lieutenant Jakowinicz, his replacement, merely that HSU members had to save emails pertaining to operations. (Doc. 1051 at Tr. 367, 392–93.) Sousa gave Jakowinicz no instructions regarding recordings, other documents, or items seized during HSU detentions.

190. Sergeant Palmer similarly left the HSU in the late spring of 2012. (Doc. 1017 at Tr. 166.)

A. The MCSO Failed to Produce Recordings of Traffic Stops.

191. Despite Defendants' failure to provide any recordings to Plaintiffs prior to trial, MCSO members had been videotaping traffic stops with their own equipment prior to 2009. (Doc. 1027 at Tr. 675; Doc. 700 at Tr. 57; *see, e.g.*, Ex. 154 at MELC098129.)

192. By late 2009, the MCSO was issuing body video cameras to HSU members to record their traffic stops. (Doc. 1017 at Tr. 149, 229–30; Doc. 1027 at Tr. 675, 683; Ex. 43; Ex. 44; Ex. 154.)

193. Upon the MCSO's issuance of cameras, Lieutenant Sousa orally issued a standard operating protocol that directed HSU members to record and maintain all videos of their stops whenever possible. (Doc. 1027 at Tr. 684–85, 703; *see also* Doc. 1017 at Tr.

197.)

194. HSU members were issued various devices for recording their contacts including body cameras, eyeglass cameras, and cameras mounted on a dashboard. (Doc. 1017 at Tr. 195, 230; Doc. 1043 at Tr. 882:21–25; Ex. 43; Ex. 44 at MELC004763–64.)

***23** 195. HSU deputies' recordings were transferred to CDs and stored in individual binders—one for each deputy—in HSU offices or retained on an external hard drive at the HSU. (Doc. 1017 at Tr. 194; Ex. 44 at MELC004764; *see also* Ex. 154 at MELC098109, MELC098111, MELC098106.)

196. As of May 9, 2011, the HSU supplemented Lieutenant Sousa's earlier oral directive with a written policy that required HSU officers to turn in recordings of traffic stops that might be evidence in any proceedings. (Doc. 1027 at Tr. 677–82; Ex. 169 at MELC114964–65.)

197. The MCSO also issued video recording equipment to other deputies, units, and divisions. (Doc. 700 at Tr. 57.)

198. The MCSO generally had no regulations or policies governing the use of video cameras. (Doc. 1017 at Tr. 52, 81, 102.) The MCSO never issued instructions about how to handle recordings or other evidence, nor did it issue any instruction forbidding deputies to keep recordings or items of evidence in their homes. (*Id.* at Tr. 80–81.)

199. Nor were there systems in place within the HSU to track, collect, review, or store those videos. (Doc.

1043 at Tr. 883:8–13.)

200. In addition to video recording devices, the MCSO issued audio recording devices to almost every deputy. (Doc. 700 at 63, 65; *see e.g.*, Ex. 154 at MELC098111, MELC098113, MELC098085, MELC098083, MELC098126, MELC098064, MELC098104.)

201. Prior to May 2014, there was no department-wide policy that governed the collection and cataloguing of recordings made with such devices. (*See* Doc. 700 at Tr. 63:18–25.)

202. A number of HSU deputies used their digital audio recorders to record interviews from passengers in traffic stops, which were downloaded to CDs. (Ex. 154 at MELC098111, MELC098085, MELC098076–77.)

203. Sheriff Arpaio testified that he was never asked to look for recordings before trial. (Doc. 1027 at Tr. 607–08.)

204. Although Chief Trombi directly supervised all of the MCSO's patrol operations including those of the HSU, he testified that no one ever asked him to look for videos, documents, or anything else that might be responsive to Plaintiffs' discovery requests. (Doc. 1017 at Tr. 100–01, 148.)

205. Moreover, Chief Trombi testified he was not aware at the time that the HSU had binders containing video recordings of traffic stops. (Doc. 1017 at Tr. 101.)

206. Sergeant Palmer testified that prior to May 2014,

although he knew that recordings existed, nobody had ever asked him to gather them. (Doc. 1017 at Tr. 229.)

207. Sergeant Trowbridge likewise testified that he received no request to gather videos at any time from 2009 through 2013. (Doc. 1051 at Tr. 458.) He was not asked to gather any videos until May 2014.

208. The MCSO produced no videos to Plaintiffs prior to trial in July and August 2012. (Doc. 1417 at Tr. 1620.)

209. After trial, "[i]n June of 2014, HSU and CEU personnel went back to [former HSU offices] to clear out any remaining equip[ment], case files, [etcetera]." (Ex. 43 at MELC104078.) In addition to finding "many boxes containing detective's copies of cases," they also found "loose CDs." (*Id.*) The 1451 CDs principally contained audio interviews of persons detained from human smuggling loads and a few videotapes of traffic stops conducted by Deputy Armendariz. (*Id.* at MELC104079.)

210. Several months later, the MCSO conducted an additional search of former HSU offices. In that search, investigators found, among other things, 578 compact discs. (Doc. 1633 at 3.)

***24** 211. An additional CD was found a few days later in the Roeser Building. (Doc. 1633 at 3.) These discoveries subsequently became the partial subject of IA #2015-018 discussed below.

212. It is not clear to the Court whether such recordings have yet been provided to Plaintiffs.

213. In the spring of 2014, the Phoenix Police Department responded to a call concerning Deputy Charley Armendariz, who was a significant MCSO witness in the underlying trial.

214. On May 1, 2014, a search was conducted of Deputy Armendariz's home.

215. In addition to confiscated property, *see infra* Part II.C, the MCSO also discovered in Deputy Armendariz's possession thousands of video clips of traffic stops that Armendariz had conducted during the period relating to the Plaintiffs' claims. (Doc. 700 at 50.)

216. By the May 14, 2014 court hearing on the matter, the MCSO had reviewed some of the Armendariz videos which revealed what the MCSO characterized as "problematic" activity by Deputy Armendariz during traffic stops. (Doc. 700 at 91.)

217. In that hearing, the MCSO also acknowledged that other officers made recordings which were not regulated, tracked, or kept by the MCSO. The MCSO did not disclose the HSU's practice of recording stops until after the Armendariz videos came to light. Thus, the MCSO had produced none of the video and audio recordings that were responsive to Plaintiffs' discovery requests.

1. The MSCO Violated the Court's May 14, 2014 Order to Quietly Gather Recordings Responsive to Plaintiff's Discovery Requests.

218. At the hearing, the Court discussed the possibility that recordings made by officers other than Deputy

Armendariz might also reveal problematic activity, and that other officers would be unlikely to turn in such recordings if that were the case. The Court discussed the need to maximize the MCSO's ability to retrieve such recordings and to develop a plan for how that might effectively be done. (Doc. 700 at Tr. 59–63.)

219. The Court issued instructions that the MCSO was to formulate, with the Monitor's approval, a plan to quietly gather responsive recordings made by the officers. (Doc. 700 at Tr. 59–63.)

220. The Court also discussed whether the MCSO should assign the investigation of the issues arising from these materials to a separate agency or a third party in light of the potential conflict of interests arising from the discovery of this material. (Doc. 1027 at Tr. 636–37; Doc. 1043 at Tr. 971–72.)

221. The MCSO declined to refer any follow-up investigations to a third party and chose instead to conduct its own investigations. The MCSO acknowledged that its internal investigations arising from these matters would be closely reviewed by the Court and its court-appointed Monitor. (Doc. 1017 at Tr. 14–15; Doc. 1027 at Tr. 636–37.)

222. Sheriff Arpaio agreed that he would cooperate fully with the Monitor and not withhold any information from him. (Doc. 1027 at Tr. 575.) Chief Deputy Sheridan did the same. (Doc. 1043 at Tr. 826–27.)

223. The MCSO violated the Court's orders that same day. That afternoon, the MCSO scheduled a meeting with the Monitor to arrive at an agreed upon plan to

collect the outstanding video recordings. Prior to that meeting but after the Court hearing, Sheriff Arpaio and Chief Deputy Sheridan held a meeting with their lawyers in Arpaio's office. (Doc. 1043 at Tr. 828–29.) Without consultation with the Monitor, Sheridan directed Chief Trombi to send an email to 27 MCSO division and bureau commanders directing them to gather video recordings from their personnel. (*Id.* at Tr. 830, 856–59; Doc. 1027 at Tr. 610; Doc. 803 at Tr. 59:20–22; Ex. 38.)

***25** 224. In the following meeting with the Monitor Team that afternoon, the MCSO agreed on a plan in which the MCSO internal affairs officers would individually identify and question—without advance warning—those officers most likely to have videos relevant to this lawsuit and require them to turn in the recordings. (Doc. 1043 at Tr. 840–41, 934–35). Chief Deputy Sheridan did not tell the Monitor Team that he had already directed Chief Trombi to send the mass email to MCSO commanders. (*Id.* at Tr. 840:21–24.) To the extent that Sheridan represented to the Monitor Team that the MCSO had not yet taken steps to collect the videos, Sheridan's statement to the Monitor Team was inaccurate. (Doc. 1017 at Tr. 116:6–9.)

225. As a result of Chief Trombi's email, any officers who might also have recorded themselves in problematic activities were informed in advance that the MCSO was collecting such recordings. Thus, the approach agreed upon between the MCSO and the Monitor was not possible. (Doc. 1043 at Tr. 840:18–20.)

226. Immediately after this meeting, Chief Deputy Sheridan met again with Chief Trombi and attorney

Ms. Christine Stutz. (Doc. 1043 at Tr. 844:13–16, 856:7–13.) During this meeting, Trombi told Sheridan that he had already sent the email, per Sheridan's instructions. (*Id.* at Tr. 847:12–17; Doc. 1017 at Tr. 115.)

227. Chief Deputy Sheridan called the Monitor after this meeting, around 5:15 in the evening. (Doc. 1043 at Tr. 848:16–20.) In that telephone call, Sheridan made the false statement to the Monitor that Chief Trombi sent the email without his knowledge. (*Id.* at Tr. 848:24–849:2.)

228. Chief Deputy Sheridan testified at the evidentiary hearing that his statement to the Monitor was not a false statement, even though he knew when he called the Monitor that he had ordered Chief Trombi to send out the email and that Trombi had done so. (Doc. 1043 at Tr. 849–51.) Sheridan maintained, "[J]ust because I told him to send an e-mail doesn't mean that I knew he had already sent it." (*Id.* at Tr. 850:4–5.) Sheridan denied that his statement could be fairly understood to mean that he was not the one who directed Trombi to send the email. (*Id.* at Tr. 850:15–25.)

229. This attempted explanation seeks to twist the meaning of words beyond their reasonable usage. Chief Deputy Sheridan was intentionally untruthful to the Monitor.

230. Chief Deputy Sheridan wrote a letter that same night, May 14, 2014, to the Monitor. (Doc. 1043 at Tr. 853:20–23.) In that letter, Sheridan again intentionally and untruthfully stated that neither he nor Chief Trombi remembered who directed Trombi to

send the email, and that Trombi stated it was a collective decision of all parties. (*See id.* at Tr. 853:20–855:9, 856:14–20.)

231. In the hearing, Chief Deputy Sheridan similarly testified that "his best recollection at the time" was that it was a collective decision of all parties. (Doc. 1043 at Tr. 855:15.) He gave this testimony even while acknowledging that at five o'clock that afternoon Chief Trombi and Ms. Stutz reminded him that he had issued the order. Again, this explanation is neither credible nor persuasive.

232. Chief Trombi himself testified that Chief Deputy Sheridan's statements to the Monitor regarding who issued the directive are not accurate. (Doc. 1017 at Tr. 114–16.)

233. Sheriff Arpaio did not discipline Chief Deputy Sheridan or Chief Trombi for violating the Court's May 14, 2014 orders. (Doc. 1027 at Tr. 633:17–19, 635:19–22.).

234. Nevertheless, at some point, the MCSO did conduct an internal affairs investigation into the matter. Sheriff Arpaio delegated to Chief Olson, Chief Deputy Sheridan's subordinate, the responsibility of making the disciplinary decision. (Doc. 1458 at Tr. 2559.)

***26** 235. Chief Deputy Sheridan admits that his instruction to Chief Trombi violated the Court's orders. (Doc. 1043 at Tr. 830, 841.)

236. Sheriff Arpaio admits he was part of the decision to have Chief Trombi send out the email and he did not

object to Chief Deputy Sheridan giving the instruction. (Doc. 1027 at Tr. 575–76.)

237. Both Sheriff Arpaio and Chief Deputy Sheridan have admitted that they are in civil contempt for the violation of that order.

238. The Court so finds.

2. The MCSO Destroyed Many Responsive Recordings.

239. The day after the May 14 hearing, Sergeant Mike Reese of the Internal Affairs Division took possession of all of the remaining binders in HSU custody that contained DVDs of video recordings of traffic stops. (Ex. 44 at MELC004764; *see, e.g.*, Ex. 154 at MELC098106, MELC098071, MELC098087.)

240. Because the MCSO could not "take back" the memorandum sent out by Chief Trombi, the MCSO proceeded to attempt to collect the videotapes in the survey method that Chief Deputy Sheridan had directed Trombi to initiate.

241. The MCSO command staff sent several follow-up emails to patrol division and posse members that threatened disciplinary action for non-compliance with Chief Trombi's collection efforts. (Doc. 1043 at Tr. 873–74.)

242. As of March 20, 2015, ten months later, the MCSO still had not received responses from all personnel directed to respond regarding video recordings. (Doc. 1043 at Tr. 874–75, 881; *see also* Doc. 755 at 6 n.2.)

243. Those video clips that the MCSO turned over to the Plaintiffs during the discovery process leading up to the evidentiary hearing were compiled and set forth in Exhibit 214.

244. The results of the Trombi survey demonstrate that many recordings were made and destroyed during the period of the preservation order.

245. The Court further finds for the reasons below that many responsive recordings were destroyed both intentionally and otherwise by MCSO officers.

246. When Lieutenant Sousa received the May 2014 direction from Chief Trombi requiring him to turn over all of his recordings involving interactions with the general public, he submitted approximately 20 HSU stops which were still on his laptop. He is certain that he participated in "far more" stops than that. (Doc. 1027 at Tr. 697–98; *see also* Ex. 164.)

247. Lieutenant Sousa is aware of persons within the MCSO who did not comply with Chief Trombi's directive at all. (Doc. 1027 at Tr. 695–96.)

248. Lieutenant Sousa concluded that it is unlikely that all outstanding videos were collected. (Doc. 1027 at Tr. 697.)

249. Sergeant Palmer stated that he frequently destroyed video recordings he made of his HSU interactions with the public. (Doc. 1017 at Tr. 196; Ex. 176 ("I did not record traffic stops routinely from beginning to end, and I did not routinely impound or otherwise administratively retain recorded traffic stops that did not somehow present themselves as

being significant, either stemming from a legal matter or an anticipated complaint."); Ex. 154 at MELC098109 (noting his deletion of "multiple videos of traffic stops based on personal subjective reasoning").)

250. Others did the same. (*See, e.g.*, Ex. 154 at MELC098129 (Deputy Templeton: "I would delete the unnecessary audio/video files directly from the Scorpion body camera."); Ex. 154 at MELC098126 (Deputy Silva: "These recordings did not contain any evidentiary value so I did not copy any of the footage to CD/DVD and place into the HSU files.").)

***27** 251. Further, rather than making DVDs of all of their recordings, other HSU personnel downloaded the recordings to their own flash drives or external hard drives, or they left the recordings on the recording devices when they returned the devices to the HSU. (Ex. 154 at MELC098076–77, MELC098128, MELC098120.)

252. Further, not counting the over 4300 video clips retrieved from Deputy Armendariz's garage, (Doc. 1465 at Tr. 1425, 1429), and the over 2000 video clips still in the binders in the HSU, the Trombi survey method was relatively unproductive, resulting in 2163 video clips for the entire remaining MCSO during the relevant period. (Doc. 755 at 2–3, 6.)

253. Chief Trombi's email survey method provided advanced warning that videos would be collected and thus resulted in the destruction of problematic videos.

254. When the MCSO sought to retrieve recordings through the Trombi survey, many HSU officers

claimed that despite the directive to record their traffic stops whenever possible, they did not record their stops. (Doc. 1027 at Tr. 702–03; Ex. 154 at MELC098111 (Quintero, very few recordings), MELC098106 (Ochoa, very few recordings), MELC098095 (Martinez, two recordings, one in 2009 and one in 2013), MELC098085 (Komorowski, no recordings), MELC098092 (Madrid, no recordings), MELC098058 (Brockman, no recordings).)

255. The Court does not find it credible that all of these HSU deputies made or kept very few recordings (or none) despite the directive that they must record their stops whenever possible.

256. Because its initial review of the Armendariz videotapes indicated "problematic" activity, the MCSO reviewed the video clips to determine whether they contained evidence of problematic activity by MCSO employees. If they did, the initial reviewers referred the video clips to a secondary review by MCSO lieutenants to determine whether an internal affairs investigation should be initiated.

257. As of October 2014, the review of the 2163 video clips provided by the entire MCSO in response to the Trombi survey resulted in the referral of only 30 video clips for secondary review and resulted in only six IA investigations. (Doc. 755 at 6.)

258. By way of comparison, the review of the approximately 6700 video clips received from Deputy Armendariz or the HSU resulted in the referral of 370 video clips for secondary review and ultimately resulted in 33 IA investigations. Thus, proportionally, the review of the video clips from the Trombi survey

resulted in about one-fourth as many referrals to secondary review, and about one-half as many IA investigations, as did the review of the Armendariz/HSU video clips. (*See* Doc. 755 at 3.) This suggests to the Court that the officers might have been selective about the clips they turned in or might have simply declined to turn in responsive clips.

259. The Court finds that at least some officers declined to submit some or all of their responsive video clips out of fear or belief that the clips would reveal problematic conduct.

B. The MCSO Failed to Produce Documents

260. Although prior to trial, Defendants did turn over numerous documents to Plaintiffs, Defendants did not request documents from some of the persons most likely to have them.

261. As has been noted above, Sheriff Arpaio, Chief Trombi, Lieutenant Jakowinicz, and Sergeant Trowbridge all testified that they were not asked to search for responsive documents prior to trial. (Doc. 1017 at Tr. 100–01, 148; Doc. 1051 at Tr. 391:12–19, 446, 458, 461; Doc. 1027 at Tr. 607–08.)

***28** 262. On their June 2014 return to the HSU's former offices at Enforcement Support, the MCSO found, in addition to IDs and audio recordings, "many boxes containing detective's copies of cases." (Ex. 43 at MELC104078.)

263. In November 2014, Chief Deputy Sheridan again instructed HSU deputies to search former HSU offices. After that search, Mr. Casey informed the Court that

new evidentiary items that were likely responsive to Plaintiffs' pretrial discovery requests, including an additional 22 boxes of reports, had been located in the old HSU offices.[9](Doc. 788 at 2.)

264. The MCSO's discoveries in November resulted in IA #2015-018 through IA #2015-021, *see infra* Part III.B.4.

265. Mr. Casey provided Plaintiffs with the incident reports found in the 22 boxes. There were 124 reports that Plaintiffs were not given prior to trial. (Ex. 215.)

266. On February 12, 2015, the Court issued an order requiring Defendants to provide additional discovery in this matter. All responsive documents were due by February 27, 2015. (Doc. 881.)

267. Captain Skinner testified that he issued internal orders within the MCSO to comply with the Court's February 2015 discovery orders.

268. Lieutenant Sousa, however, testified that, apparently despite these orders, he was not asked to search for any of the ordered discovery.

269. Captain Skinner and attorney Ms. Michele Iafrate searched for Lieutenant Sousa's documents the day before Sousa's re-opened deposition took place in mid-April 2015. (Doc. 1027 at Tr. 704–05.) Even then, Sousa does not believe that anyone searched the desktop computer he used at the HSU, even though he believes that documents would likely be there, as well as in the buffalo drive that Iafrate copied. (*Id.* at Tr. 705.)

270. Sergeant Palmer was not asked to search for documents responsive to the Court's February 2015 order until April 7, 2015. (Doc. 1017 at Tr. 199.) Palmer's documents were finally searched on April 13 by two members of the MCSO Court Compliance Unit. (*Id.*) They searched his current computer but not the computer he used while he worked at the HSU. (*Id.* at 200–01.)

271. Sergeant Palmer believes that while he was at the HSU he might have had other documents that would have been responsive to the Court's discovery order, but there is no indication that the computer that he used at the time was searched. (Doc. 1017 at Tr. 200–01.)

272. Sergeant Trowbridge was not instructed to search his own files prior to his first deposition in this case. (Doc. 1021 at Tr. 446.) After his first deposition, Captain Skinner and Ms. Iafrate searched his emails. (*Id.*)

273. Lieutenant Jakowinicz was not asked to search his emails or documents for materials related to these evidentiary hearings prior to his first deposition. (Doc. 1051 at Tr. 391:12–19.)

274. During his third deposition, Lieutenant Jakowinicz testified that there were additional emails that related to the evidentiary hearing that had not yet been turned over to defense counsel. (Doc. 1051 at Tr. 392.)

***29** 275. Further, as of the first day of the evidentiary hearing, Maricopa County had not yet produced additional responsive documents that were ordered by

the Court in February. (Doc. 1017 at Tr. 20–27.)

C. The MCSO Failed to Produce Personal Property Seized from Members of the Plaintiff Class.

1. Personal Property of Plaintiff Class Members Found in the Possession of MCSO Officers Led to the Court's February 2015 Discovery Order.

276. During the relevant period, MCSO officers routinely took "trophies" of their arrests of unauthorized aliens, including IDs, license plates, and other kinds of personal property. (Doc. 1417 at Tr. 1546–47.)

277. Although these materials resulted from HSU operations, none of the materials were provided to Plaintiffs prior to trial.

278. The Armendariz search uncovered more than 1600 items including approximately 500 drivers' licenses, "tons" of license plates, weapons, illegal drugs both in MCSO evidence bags and otherwise including methamphetamine, marijuana, LSD, heroin, and oxycodone, a black purse with items in it, vehicle registrations, cell phones, wallets, a scale, drug paraphernalia, thumb drives, memory cards, currency, and other items of personal property. (Ex. 2874A; *see also* Doc. 1043 at Tr. 973–74; Doc. 1417 at 1549; Doc. 1556 at Tr. 3245.) All of these items were apparently taken from people during HSU stops. (Doc. 1556 at Tr. 3246.) With the very few exceptions noted below, these items have never been the subject of any administrative investigations.

279. On May 23, 2014, shortly after the administrative investigation into the Armendariz materials began, Detective Frei raised with Captain Bailey 111 IDs, which eventually became the partial subject of IA#2015-018, *see infra* Part III.B.4.a. (Ex. 1000 at MELC028133–57; Doc. 1498 at Tr. 3853–57.)

280. The MCSO found Mexican identification cards and a Mexican passport (in addition to the case files and 1451 CDs discussed *supra* ¶ 209). (Ex. 43 at MELC104079.)

281. Cisco Perez, an HSU deputy terminated for untruthfulness, made generalized allegations in his subsequent state unemployment hearing. These allegations included that HSU officers commonly "pocketed" shirts, flags, statues, drug paraphernalia, and on at least one occasion a 62 inch flat screen television "for training purposes" during their operations with the approval of their supervisors. (Ex. 2006 at MELC011163.)

282. An August report, drafted by Sergeant Tennyson of the Profession Standards Bureau (PSB), determined that no criminal charges should result from the Cisco Perez's allegations, *see infra* Part III.B.1. (Doc. 1043 at Tr. 988–93; Doc. 1466 at Tr. 2819–24; Doc. 1467 at Tr. 3123–24, 3199; Ex. 2841.) The August report nevertheless noted that many different forms of identification were found in the HSU's offices, that "[s]everal deputies recalled seeing license plates at the Enforcement Support Building (former home base of the MCSO Human Smuggling Unit,)" and that some officers had also collected religious statuettes, clothing, and other articles from HSU operations. (Ex. 2006.)

283. On September 12, 2014, the MCSO opened up an administrative investigation on the property that was discovered in the HSU offices. The investigation extended to "supervisors who appeared to have knowledge of detectives keeping property within their work space." (Doc. 786 at 7–8.) This property subsequently became the subject of IA #2014-541, *see infra* Part III.B.2.

***30** 284. On November 4, Sergeant Tennyson, who was at Enforcement Support at the time, was provided with four identification cards and other items. (Doc. 1466 at 2942–43; Ex. 2025; Ex. 2026.) Those items subsequently became the subject of IA #2015-022, *see infra* Part III.B.4.c.

285. On November 5, another deputy found 53 IDs while cleaning the MCSO's offices, (Doc. 803 at 47–50), as well as 35 license plates that subsequently became the partial subject of IA #2015-018. (Doc. 848 at 2–3.)

286. The November 5 search also revealed a report indicating that $260 was secured from an arrestee but the funds were not placed in the inmate account nor were they placed in Property and Evidence. (Doc. 848 at 4–5.) This discovery subsequently became the subject of IA #2015-021, *see infra* Part III.B.4.b.

287. In November 2014, during their second trip to the HSU's old offices, the investigators found two purses that contained several identification cards, a $5 bill and several other items. The owners had been arrested during an HSU raid and deported. (Doc. 848 at 3–4.) The purses subsequently became the subjects of IA #2015-019 and IA#2015-020.

288. On December 9, 2014, the MCSO notified the Court that it had located an additional 44 drivers' licenses/identification cards. (Doc. 827.) This discovery subsequently became the subject of IA #2014-874. (Doc. 848 at 5.)

289. In early February 2015, the Court issued an order requiring the MCSO to produce additional discovery and documents, including any IDs that might have been taken from members of the Plaintiff class, by February 27, 2015. (*See* Doc. 881.)

290. On April 17, 2015, the MCSO put out a department-wide "Briefing Board" newsletter (No. 15-04) which implemented protocols for the seizure of revoked driver's licenses, suspended license plates, and license plates displayed in violation of state criminal law. (*See* Ex. 2065.) It eliminated the existence of district or division collection boxes for such materials. (*Id.* at MELC225058.) The Briefing Board further instructed anyone encountering driver's licenses, identifications, or license plates in their duties to immediately impound such items, document the circumstances in which they were encountered in a memorandum, and forward the memorandum to the Court Implementation Division, which would forward it to the PSB. (*Id.*)

291. The MCSO began receiving more collections of IDs and license plates.

292. They include: IA #2015-0393 (involving 44 IDs and 2 license plates begun in May, 2015); IA #2015-0475 (involving 42 IDs and begun in June, 2105); IA #2015-483 (involving 5 IDs and begun in June, 2015);

IA #2015-0511 (involving 1459 IDs and begun on July 28, 2015); IA #2015-0644 (involving 65 IDs and begun in August 2015); IA #2015-0682 (involving 46 IDs and begun in September 2015); IA #2015-683 (involving 3 IDs and begun in September 2015); IA #2015-0882 (involving 1 ID and begun in November 2015); IA#2016-0003 (license plate begun in January 2016). (Doc. 1625.)

293. Collections of IDs and license plates, apparently from the relevant period, that are found in MCSO facilities but that were not placed in Property and Evidence continue to come to light.

294. The MCSO identified none of these items for Plaintiffs prior to the underlying trial. (*See, e.g.*, Doc. 1027 at Tr. 691.)

2. The MCSO Attempted to Conceal the 1459 Knapp IDs from the Court.

***31** 295. In early July, Sergeant Knapp attempted to place 1459 IDs in the MCSO Property and Evidence department for destruction. (Doc. 1498 at Tr. 3857–58.)

296. A supervisor in the Property and Evidence department refused to take the IDs and reported them to Lieutenant Seagraves. (Doc. 1455 at Tr. 2166; *see also* Doc. 1498 at Tr. 3858–59.) That same day, Seagraves emailed Captain Bailey to inform him about the Knapp IDs and cc'd Ms. Iafrate. (Doc. 1455 at Tr. 2167.)

297. Captain Bailey testified that he learned about the Knapp IDs on July 7, when Sergeant Bone and Lieutenant Kratzer came to his office to inform him.

(Doc. 1498 at Tr. 3858–59.) Bailey ensured that the IDs were secured in the PSB's offices. (*Id.* at Tr. 3860.) The PSB assigned IA #2015-511 to the case. (Doc. 1455 at Tr. 2167; Doc. 1498 at Tr. 3861, 3931; Doc. 1465 at Tr. 1375:18–25; *see also* Doc. 1498 at Tr. 3869–70.)

298. On the same day, Captain Bailey discussed the matter several times with Chief Deputy Sheridan. (Doc. 1498 at Tr. 3861–62.) Captain Bailey proposed that Sergeant Knapp should be interviewed, and Chief Deputy Sheridan agreed. (*Id.* at Tr. 3862.)

299. The PSB interviewed Sergeant Knapp that week. (Doc. 1498 at Tr. 3864, 3920–21.) Knapp indicated that he had been collecting these IDs since about 2006 from the destruction bin in the Property and Evidence room. (*Id.* at Tr. 3864–65.)

300. The MCSO approximates that 30% of the 1459 Knapp IDs are of Hispanic persons. (Doc. 1465 at Tr. 1353, 1357–58.) Captain Bailey believes the identifications were brought into the agency as a result of traffic stops or some other law enforcement action. (Doc. 1498 at Tr. 3864.) The MCSO asserts that the IDs appear to contain a mixture of valid and invalid IDs. (*Id.* at Tr. 3863.)

301. After receiving Sergeant Knapp's report of how he obtained the IDs, Chief Deputy Sheridan instructed Captain Bailey to suspend the IA investigation. (Doc. 1498 at Tr. 3865, 3935.)

302. Chief Deputy Sheridan testified that he suspended the IA investigation to try to find out more information about the IDs and to determine whether he had to disclose the identifications without raising

unnecessary alarm. (Doc. 1465 at Tr. 1363–64.)

303. He testified that he thought that either the dates of collection or the fact that they had been pulled from the destruction bin in Property and Evidence might take the documents out of the Court's orders, so he consulted with Ms. Iafrate about the matter. (Doc. 1465 at Tr. 1349–50; *see also* Doc. 1498 at Tr. 3865.)

304. Chief Deputy Sheridan testified that Ms. Iafrate was also very upset about the discovery of the identifications and their potential ramifications. (Doc. 1465 at Tr. 1351, 1363–64). He asked Iafrate to determine whether the facts pertaining to the IDs provided a basis to not disclose them. (*Id.* at 1350.)

a. July 17, 2015 "Rehearsal Meeting"

305. Approximately a week later, on Friday, July 17, the PSB staff held a "rehearsal meeting" to prepare for a July 20 meeting with the Monitor Team. (Doc. 1498 at Tr. 3866–67.)

306. Ms. Iafrate holds rehearsal meetings to help the PSB prepare for meetings with the Monitor Team by telling PSB members how they can respond to various possible questions from the Monitor Team. (Doc. 1465 at Tr. 1360.)

***32** 307. Chief Deputy Sheridan, Captain Bailey, Lieutenant Seagraves, Lieutenant Kratzer, Sergeant Sparman, Sergeant Bone, Sergeant Bocchino, Ms. Loren Sanchez, and Ms. Iafrate attended the meeting. (Doc. 1498 at Tr. 3867.)

308. Captain Bailey testified that he and the others

present at the meeting, including Ms. Iafrate, discussed the Knapp IDs. (Doc. 1498 at Tr. 3933.) Because the MCSO had previously disclosed to the Monitor other collections of recently discovered IDs, the MCSO anticipated that the Monitor Team might ask if any additional IDs had been discovered.

309. Lieutenant Seagraves testified that during the rehearsal meeting, Seagraves inquired, "If we're asked about any [IDs or licenses not yet disclosed to the Monitor Team], what would be the response?" (Doc. 1455 at Tr. 2169.)

310. Ms. Iafrate indicated that she planned to research whether the Knapp IDs fell within the parameters of the Court order. She advised the PSB not to disclose the existence of the IDs to the Monitor Team in the meantime. (Doc. 1498 at Tr. 3868; Doc. 1455 at Tr. 2169; Doc. 1465 at Tr. 1355.) Iafrate told Captain Bailey not to disclose the IDs to the Monitor until he heard back from her, (Doc. 1498 at Tr. 3868), and told Chief Deputy Sheridan it would be premature to disclose the identifications to the Monitor. (Doc. 1465 at Tr. 1355–56.)

311. After the rehearsal meeting, Chief Deputy Sheridan had a second meeting with Captain Bailey and Ms. Iafrate in the same conference room. (Doc. 1498 at Tr. 3867–68.) At this meeting, Bailey told Iafrate that an IA number had been assigned to the Knapp ID case. (*Id.* at Tr. 3868.)

312. Captain Bailey testified that he did not specifically speak to Ms. Iafrate about what he should do if the Monitor asked a question that would require the disclosure of the Knapp IDs. (Doc. 1498 at Tr. 3868,

3871.)

313. Chief Deputy Sheridan, on the other hand, testified that Captain Bailey asked Ms. Iafrate what he should do if the Monitor inquired about whether new IDs were found. Sheridan testified that Iafrate told Bailey "something to the effect of, if [the Monitor] asks specifically about the 1500 IDs, go ahead, tell him." (Doc. 1465 at Tr. 1357.)

b. July 20, 2015 Meeting

314. On July 20, the PSB met with the court-appointed Monitor Team. (Doc. 1498 at Tr. 3868–69.)

315. Lieutenant Seagraves testified that at that meeting, the Monitor Team asked about whether any new identifications had been found. Captain Bailey responded that there were none found. (Doc. 1455 at Tr. 2171.)

316. According to Captain Bailey, the Monitor Team asked a more specific question—whether there were "any other pending investigations regarding identifications." (Doc. 1498 at Tr. 3936.) It was to this question that Bailey testified he answered no. (*Id.* at Tr. 3869, 3935–37.)

317. Captain Bailey testified that Ms. Iafrate in fact instructed him to answer no. (*Id.* at Tr. 3936 ("I was asked the question, and I just glanced at [Iafrate], and she looked at me and said no.").)

318. Lieutenant Seagraves also testified that "at that moment in time, based on legal advice, [the Knapp IDs] were not disclosed." (Doc. 1455 at Tr. 2174.)

c. The Aftermath

319. Chief Deputy Sheridan and Captain Bailey's testimony differed as to what happened thereafter.

***33** 320. Chief Deputy Sheridan testified that approximately two days after the discussion, Captain Bailey came to see him. Bailey was upset because the Monitors asked Lieutenant Swingle the same question they had asked Bailey, and Swingle reported the discovery of the 1459 IDs to the Monitors. (Doc. 1465 at Tr. 1359.) Bailey was concerned with how the discrepancy would look—that Bailey's negative answer would make it look like he was trying to conceal the existence of the 1459 IDs. (*Id.*)

321. Chief Deputy Sheridan saw no problem with Captain Bailey's answer. (Doc. 1465 at Tr. 1359–61.) Sheridan told Bailey that it was okay so long as he had done what Ms. Iafrate had told him to do. (*Id.* at Tr. 1359:23–24).

322. Captain Bailey has no recollection of discussing the matter with Chief Deputy Sheridan during that week. (Doc. 1498 at Tr. 3875:11–24.)

323. The investigation into the IDs was not reactivated until after Captain Molina assumed control of the PSB in late August because Chief Deputy Sheridan continued to await the advice of Ms. Iafrate. (Doc. 1465 at Tr. 1368.)

324. When the Court subsequently became aware of the IDs and the MCSO's responses to the Monitor Team concerning them, the Court ordered the U.S.

Marshall to take custody of the IDs. (Doc. 1465 at Tr. 1377.)

d. The Court Finds that Chief Deputy Sheridan "Suspended" the Knapp IDs Investigation in a Bad Faith Attempt to Avoid His Obligation Under the Court's Orders to Disclose the Existence of the 1459 IDs.

325. On the night the Court ordered the U.S. Marshalls to take custody of the IDs, Chief Deputy Sheridan told the press that the IDs had never been disclosed by the MCSO because nobody had ever asked for those IDs. (Doc. 1465 at Tr. 1378.) In his testimony during the evidentiary hearing, he was confronted with this statement and he indicated that he stands by it. (*Id.*)

326. Chief Deputy Sheridan's statement to the press was a knowing misstatement of fact. His reassertion of that statement during the evidentiary hearing was also a knowing misstatement of fact.

327. Since the inception of this case, the Court has ordered the MCSO to provide the Monitor access to all information and documents that the Monitor sought relating to MCSO operations. (Doc. 606 at ¶ 145 ("Defendants shall ensure that the Monitor has timely, full and direct access to all personnel, documents, [and] facilities...that the Monitor reasonably deems necessary to carry out its duties."), ¶ 148 ("Upon [request from the Monitor or Plaintiffs], the Defendants shall provide in a timely manner copies (electronic, where readily available) of the requested documents.").)

328. The Court has specified that if the MCSO claimed a privilege justifying its refusal to turn over any document, it needed to notify the Monitor, so that the Monitor and/or Plaintiffs could challenge the invocation of the privilege. (Doc. 606 at ¶ 146.) The Court would then decide whether the documents needed to be disclosed.

329. This was not the course the MCSO pursued. The MCSO claims no privilege regarding the IDs. Nor did the MCSO identify the existence of the 1459 Knapp IDs to the Court to determine whether the MCSO had the right to withhold them from the Monitor and Plaintiffs.

330. To the extent there is a discrepancy in the testimony, the Court finds that in the July 20 meeting between the PSB staff and the Monitor Team, the Monitor Team asked if any further IDs had been found. The MCSO thus violated the Court's orders when Captain Bailey responded that no further IDs had been found, and no member of the MCSO disclosed the existence of the Knapp IDs during the meeting. The MCSO did so with the intention of concealing the existence of the IDs from the Monitor, the Parties, and the Court.

***34** 331. Even if, however, the Monitor Team had not asked whether any additional IDs had been found, but rather had asked only the unusually specific question that Captain Bailey testified that they asked (whether any further investigations regarding IDs were pending), it would not have changed the duplicity of Bailey's answer for a number of reasons.

332. The Court's November 20, 2014 order states:

"When MCSO undertakes a new investigation that relates to (a) the MCSO's compliance with its discovery and/or disclosure obligations in this case, [or] (b) the MCSO's compliance with the resulting orders of the Court in this case...it is ordered to lodge under seal with the Court and to provide the Monitor written notice specifically identifying the subjects and targets under inquiry and specifically referencing the administrative number assigned to the investigation."[10] (Doc. 795 at 18:16–22.)

333. First, Defendants were under the obligation to disclose any investigation once it was "undertaken." Defendants do not, and cannot dispute that an investigation was undertaken. As such, the obligation to disclose the Knapp IDs investigation arose at the time that the investigation was first initiated. Chief Deputy Sheridan was wrong when he testified that there is "no time period" or mandate that the MCSO must respond to the Court's order "immediately upon discovering" responsive documents or items. (Doc. 1465 at Tr. 1363.) The Court's November 20, 2014 order explicitly states that the time period is "when MCSO undertakes a new investigation." (Doc. 795 at 18:16.) The Knapp IDs investigation was undertaken on or before July 7. (Doc. 1498 at Tr. 3858– 59.) By the July 20 meeting with the Monitor Team, the MCSO had already been in violation of the Court's order for nearly two weeks.

334. Second, the Court's order requires the Defendants to disclose *any* investigation that relates to the MCSO's compliance with discovery/disclosure obligations or this Court's orders. (Doc. 795 at 18:16–22.) Whether an investigation is "official," *i.e.*, has an IA number, or unofficial, *i.e.*, conducted by Chief

Deputy Sheridan while the "official" investigation is "suspended," it is still an investigation. Thus, Sheridan's suspension of the IA investigation to pursue *his own investigation* in no way altered his obligation to disclose that the Knapp IDs were being investigated.

335. Third, a "suspended" investigation is still "pending," in that (at least in theory) it eventually will be resumed and resolved. Captain Bailey testified that they fully intended to resume the investigation "when the time was appropriate." (Doc. 1498 at Tr. 3923; *see also id.* at Tr. 3938 ("I expected that we would investigate these when I was told to proceed with the investigation as we had a number of other times.").) If this testimony could be credited, then the answer to whether there were any "pending investigations" should have been yes.

336. Fourth, even if the "suspension" was intended to end the investigation indefinitely, Defendants were obligated to report *both* the initiation and the closure of the investigation. (Doc. 795 at 18–19 ("The MCSO will similarly inform the Court when it closes such an investigation without action, when it closes an investigation with adverse action to the employee, if the adverse action is appealed, and if so, when the appeal is abandoned, terminated or dismissed, or the matter is otherwise terminated.").) To the extent the Defendants are attempting to assert that "suspending" the investigation renders it no longer "pending," this too amounts to closing the investigation.

***35** 337. Furthermore, Chief Deputy Sheridan also testified (inconsistently) that he did not suspend the IA investigation into the Knapp IDs, but rather

suspended only a part of it. (Doc. 1465 at 1364–67.) He testified that his intention to suspend only part of the investigation explained his statement to Chief Anders during his interview with the Monitor Team after the concealment of the 1459 IDs was discovered. (*Id.* at 1374–75.) In that interview, Sheridan stated that the IA investigation into the Knapp IDs had never been suspended but had always been open. (*Id.* at 1373–74.)

338. Chief Deputy Sheridan explained at the evidentiary hearing that in suspending the investigation into the Knapp IDs, he was attempting to avoid "another Charley Armendariz situation" involving thousands of personnel hours. (Doc. 1465 at 1367:8–11.) He did not want Captain Bailey looking into individual IDs and backtracking to try to identify where they came from. (*Id.* at 1366.) He testified that he only intended to suspend that part of the investigation, but he must have miscommunicated that to Bailey. (*Id.* at Tr. 1375–77.) He further testified that he "didn't think [he] needed to qualify [his] answer [that he ordered Bailey to suspend the investigation] until today." (*Id.* at Tr. 1377:11–12.).

339. This explanation is not credible. The Court finds that Chief Deputy Sheridan generated this testimony in an attempt to explain his intentional misstatement of fact to Chief Anders. Sheridan had in fact "suspended" the Knapp IA investigation in whole, in an attempt to avoid the Defendants' obligation to disclose the existence of the 1459 IDs to the Monitor and the Plaintiffs. Sheridan did not have to "suspend" the entire investigation in order to limit the personnel hours spent identifying the source of the IDs; he could have simply ordered that such work not be included in the investigation.

340. Moreover, in addition to the November 20, 2014 order, the Court had ordered the MCSO in February 2015 to disclose "[c]opies of any identification documents seized by MCSO personnel from apparent members of the Plaintiff class." (Doc. 881 at 2.) Chief Deputy Sheridan knew that the Court had entered this order. (Doc. 1465 at Tr. 1380; Doc. 1417 at Tr. 1512.) As of the "rehearsal meeting" on July 17, 2015, Sheridan was "well aware that 30 percent of the 1459 IDs apparently belonged to people who were Hispanic." (Doc. 1417 at 1511.) Sheridan also knew by then that Sergeant Knapp "had gotten all of the 1459 IDs from the destruction bin in the Property and Evidence room," and in order to get into the destruction bin, the IDs must "have been seized by a deputy." (*Id.* at 1511–12.)

341. The Court therefore finds that when Chief Deputy Sheridan "suspended" the IA investigation, he did so in a knowing and bad faith attempt to avoid the Court's order requiring the MCSO to disclose the newly found IDs to the Monitor.

e. The MCSO Knowingly Attempted to Deceive the Monitor Team at the July 20 Meeting.

342. Captain Bailey was aware that the Court had ordered the disclosure of all IDs seized by the MCSO from apparent members of the Plaintiff class. (Doc. 1498 at Tr. 3866, 3872.) He also knew that the Monitor Team would want to know about the IDs. (*Id.* at 3866) Bailey understood that the Court had ordered him to provide complete access to all matters regarding internal affairs investigations and that the MCSO could not unilaterally withhold information from the Monitor. (*Id.* at 3873–75.) The Court finds that

Captain Bailey knew that his answer to the Monitor Team's question on July 20 was untruthful for the reasons explained above.[11]

***36** 343. Captain Bailey nevertheless testified that when he denied to the Monitor the existence of additional IDs (or the existence of additional "pending investigations regarding IDs"), he did so at the instruction of the MCSO's counsel, Ms. Iafrate. (Doc. 1498 at Tr. 3937.)

344. Captain Bailey testified that when Chief Kiyler of the Monitor Team asked the question, Ms. Iafrate, who was sitting to his right, looked at him and, in front of all present, said the word "no." (Doc. 1498 at Tr. 3870–71, 3936–37.) He thus claims that his response to the Monitor Team was following her advice. (*Id.* at 3937.)

345. Nothing about when or whether Ms. Iafrate instructed Captain Bailey to violate the Court's order changes the ultimate fact that those MCSO officers and representatives present at the July 20 meeting knowingly concealed the Knapp IDs in violation of this Court's orders.

346. Neither the dates during which Sergeant Knapp collected the IDs nor his assertion that they all came from the Property and Evidence room removes the identifications from the scope of any of the Court's three orders which required their immediate disclosure. The orders were written in plain terms that lawyers or non-lawyers could understand. Therefore, especially with the imminence of the resumption of the hearings, the MCSO was not justified in indefinitely delaying disclosure pending an interpretation of the Court's plain language in any of the three orders that

all required disclosure. Thus, Captain Bailey, as a representative of the MCSO, was not justified in answering "no" to the Monitor Team's question at the July 20 meeting, regardless of whether his answer was at Ms. Iafrate's suggestion.

347. Ms. Iafrate represents the MCSO in this case. She was aware of the Court's orders requiring the MCSO to disclose to the Monitor all materials sought, and specifically the orders requiring the MCSO to disclose when it undertook investigations relating to the existence of IDs. Iafrate had demonstrated her knowledge of the order requiring disclosure of IDs, and her ability to comply with it, by previously disclosing to the Court additional IDs found in the custody of the MCSO.[12] (*See, e.g.*, Doc. 827.) Iafrate was also aware of the Court's February 2015 discovery order and the Court's supplemental injunctive order. Iafrate also knew that a large percentage of the 1459 Knapp IDs were of Hispanic persons and that the IDs had been obtained from the destruction bin in Property and Evidence during periods that were subject to Plaintiffs' preservation order and discovery requests. (Doc. 1465 at Tr. 1350-51, 1357-58.) She was also aware that the PSB had actually assigned an IA number to an investigation regarding the IDs. (Doc. 1498 at Tr. 3868.)

***37** 348. When Captain Bailey answered "no" to the Monitor's question pertaining to identifications, regardless of the phrasing of the question, he knowingly violated the orders of the Court. Chief Deputy Sheridan, Captain Bailey, and Ms. Iafrate violated the specific and direct orders of this Court without a justifiable basis for doing so.

3. Sheriff Arpaio Knowingly Attempted to Conceal 50 Hard Drives of Montgomery Information.

349. In April 2015, the Court asked questions eliciting testimony that the MCSO had received communications and information from a confidential informant who then lived in the Seattle area named Dennis Montgomery.

350. Mr. Montgomery had purported to conduct certain inquiries involving this Court for Sheriff Arpaio. In doing so, Montgomery purported to use a vast number of files that had been illegally harvested by the CIA from American citizens. (Ex. 2726 at MELC1292695.)

351. On April 23, 2015, Sheriff Arpaio testified that the MCSO and Mr. Montgomery exchanged communications and materials. The Court ordered that Arpaio personally order the MCSO to preserve and disclose such information:

> THE COURT:...I want you to direct your people to put a hold on it immediately and preserve it. And that includes any documentation or numbers that would relate to Mr. Montgomery's confidential status. You understand that?
> [ARPAIO]: Your Honor, are you referring to this investigation with the monitors and —
> THE COURT: No, no. I'm referring to the investigation that Mr. Montgomery was undertaking with Mr. Mackiewicz, Mr. Anglin, Mr. Zullo, anybody else from your staff, anybody else from the MCSO, or

> anyone else from the posse. I want all records that in any way relate to it, all electronic data or anything else, or the financing, funding of that operation, all phone records, e-mails, reports, I want it all preserved. And I think I will send the monitor to begin taking possession of those records and we'll do it confidentially, imminently. But I don't want in the interim any of those records lost inadvertently or otherwise. You understand what I'm saying?
> [ARPAIO]: Yes.
> THE COURT: And you'll so direct your people?
> [ARPAIO]: Yes.
> THE COURT: All right. Thank you, sir.

(Doc. 1027 at Tr. 659–660; *see also id.* at 653, 656 (directing Arpaio to preserve all documents held by Mr. Zullo); *see generally* Doc. 1027 at Tr. 631–32 (Arpaio acknowledging that the Court had informed him that he could not escape liability for non-compliance by delegation); *see also* Doc. 700 at Tr. 71.)

352. One of the reasons the Court entered such a direct order was the MCSO's poor record of "spoliation of evidence and non-compliance with orders relating to document discovery." (Doc. 1046 at 2.)

353. At the time that the Court issued Sheriff Arpaio the order, Arpaio knew that Mr. Montgomery had given the MCSO 50 hard drives that Montgomery claimed to be the master database of records he had supposedly purloined from the CIA. (Doc. 1458 at Tr. 2561–62.)

354. Despite the Court's order that he personally direct compliance with the Court's preservation order, Sheriff Arpaio subsequently testified that he "wasn't personally involved." (Doc. 1458 at Tr. 2561–63.) He

does not recall having any discussion with anyone about the order, but he hoped that it would be carried out. (*Id.* at Tr. 2563–64.)

355. Sheriff Arpaio personally did nothing to implement the Court's order, and the MCSO did not produce the 50 hard drives that Mr. Montgomery had given to the MCSO.

***38** 356. The Court did not discover the existence of the hard drives from the Defendants. Rather, during the same July 2015 site visit in which the Monitor discovered the existence of the 1459 Knapp IDs that the MCSO was attempting to conceal, the Monitor also discovered that Sheriff Arpaio was storing 50 hard drives that the MCSO had received from Mr. Montgomery in its Property and Evidence department. The Monitor further discovered that the hard drives were associated with a DR number—DR14-00750.

357. In addition to the 50 hard drives, the MCSO also failed to produce a report from two former NSA computer specialists, Thomas Drake and Kirk Wiebe, whom the MCSO had engaged to inspect the hard drives in November 2014. In that report, Drake and Wiebe advised the MCSO that the contents of Mr. Montgomery's purported master database were fraudulent, and did not result from any CIA harvest of information. (Ex. 2531 ("We have found that he is a complete and total FRAUD.").) Detective Mackiewicz forwarded the email and accompanying memorandum to Chief Deputy Sheridan. (*See id.*) Sheridan received the memorandum and shared it with Sheriff Arpaio.

358. The memorandum was not produced until the Court raised a question subsequent to the discovery of

the 50 hard drives about whether all of the Montgomery documents had been provided. (*See* Doc. 1310 at Tr. 16–17.)

359. There were many reasons Sheriff Arpaio would not have wanted the hard drives and their fraudulent nature disclosed.

360. First, Mr. Montgomery committed a fraud on the MCSO. (Doc. 1417 at Tr. 1562-64; Doc. 1457 at Tr. 2455.) Having paid large sums of money to Montgomery for his investigations, the MCSO was a victim of that fraud. Disclosure could therefore bring embarrassment to Sheriff Arpaio and the MCSO.

361. Second, Sheriff Arpaio and Mr. Montgomery shared the same attorney and had shared this attorney since at least November 2014.

362. Third, Sheriff Arpaio testified that the MCSO continued to engage Mr. Montgomery as a confidential source up through and including the time of the hearing, despite Arpaio's repudiation of the substance of Montgomery's reports, and despite the overwhelming evidence of Montgomery's fraud.

363. These are all powerful motivations to avoid disclosure of the fraudulent hard drives.

364. Sheriff Arpaio did not follow the order of the Court that he personally direct the preservation and disclosure of all the Montgomery documents. By failing to do so, he violated the Court's direct order. Moreover, to the extent that Arpaio's testimony attempts to suggest that his violation of the order arose from negligence rather than an intention to conceal, the

Court does not find that suggestion credible.

D. The Defendants' Failures Were in Bad Faith.

365. On October 2, 2013, this Court entered its initial injunctive relief specifying the corrective action that the MCSO would have to undertake to remediate its violations of the rights of the Plaintiff class. (Doc. 606.)

366. In that same month, Sheriff Arpaio took several actions demonstrating his defiance of that order.

367. On October 18, 2013, Sheriff Arpaio and Chief Deputy Sheridan began misstating the contents of this Court's order to their own officers in training sessions and maligning the order as unconstitutional, "ludicrous," and "crap." (Doc. 656 at 5–16; Doc. 662 at Tr. 25–27). These misstatements served as the genesis for additional misstatements regarding the Court's order made to the public at large, both in newspaper editorials and in community meetings. (Doc. 662 at Tr. 30; Doc. 1017 at Tr. 91.)

***39** 368. For example, part of the Court's order required the MCSO to engage in community outreach. (Doc. 606.) In October, Sheriff Arpaio and an accompanying sergeant pulled over two automobiles, each of which contained four Hispanic occupants. Arpaio stated that turning on the flashing lights of the patrol car and effecting traffic stops of cars containing Hispanic occupants constituted the "community outreach" ordered by the Court.[13] (Doc. 1027 at Tr. 579–83, 606–07, 619–20; Ex. 193A; Ex. 193B; Ex. 193C.)

369. It was also in October 2013 that the MCSO

launched the "Seattle" investigation involving Mr. Montgomery. (Doc. 1455 at Tr. 2055–57; Ex. 2962 at Zullo_000803.)

1. The MCSO's "Seattle" Investigation Involving Mr. Montgomery Demonstrates Sheriff Arpaio's Many Intentional Misstatements Under Oath and His Attitude of Hostility Toward the Court's Orders.

370. The Seattle investigation was conducted under the direct supervision of Sheriff Arpaio. Arpaio consulted daily with Posseman Zullo over the phone or in person regarding the investigation. (Ex. 2079 at MELC199518 (Zullo telling Sergeant Anglin in December "in this thing he calls me almost every day wanting updates."); Doc. 1455 at Tr. 2061–63; *see also* Doc. 1389 at Tr. 1264–65; Doc. 1457 at Tr. 2359.) The lead detective, Detective Mackiewicz, reported directly to Arpaio during this operation. It is unusual for a detective to be supervised directly by Arpaio. (Doc. 1498 at Tr. 3877.)

371. In an initial session with Mr. Montgomery in Seattle, Posseman Zullo directed Montgomery to search his CIA database for "Murray Snow" (the name of this Court). (Doc. 1495 at Tr. 3689–92, 3713–14.) After researching such information, Montgomery prepared a timeline. (Doc. 1498 at Tr. 3733–35.) Sheriff Arpaio received the initial timeline on November 5, 2013, and showed it to and discussed it with Chief Deputy Sheridan. (Doc. 1455 at Tr. 2067, 2273; *see* Ex. 2074A; Doc. 1457 at Tr. 2263.) Arpaio was given various updated versions of the timeline and an accompanying schematic graph. (Doc. 1457 at Tr. 2326–27; *see, e.g.*, Ex. 2072.)

372. The timeline reveals a conspiracy theory suggesting an elaborate scheme to undermine Sheriff Arpaio. The scheme involves many parties, including this Court, Attorney General Eric Holder, Deputy Attorney General Lanny Breuer, United States, former Arizona United States Attorney Dennis Burke, this Court's former law clerk John Gray, Covington & Burling (the law firm representing the Plaintiff class), Senator Jon Kyl, former MCSO Chief Brian Sands, and the United States Department of Justice. (Ex. 2072.)

373. The conspiracy was largely concocted by Mr. Montgomery, but Sheriff Arpaio played a role in creating it. For example, Arpaio maintained a page of notes with three typewritten entries, which he acknowledges he may have typed in November 2013, and additional notes in his handwriting. (Doc. 1457 at Tr. 2303–04.) The third entry refers to an article in *The Arizona Republic* that indicated that now retired Senator Kyl had begun working for the Covington & Burling law firm. The note then asserts (incorrectly) in Arpaio's handwriting that "Snow's wife works there." (Ex. 2074B.) Arpaio further goes on to note that Kyl nominated the undersigned for a federal judgeship, and that the undersigned was confirmed by the U.S. Senate with Kyl on the ***40** judiciary committee in June 2008. Arpaio wrote at the top of the page the incorrect statement that this Court's sister-in-law works for Covington & Burling.[14] Montgomery began to find purported evidence of Kyl's involvement in the conspiracy only after Arpaio made these connections in the notes he drafted.

374. Sheriff Arpaio testified that he continued to

receive updates of this timeline through the early part of 2014. (Doc. 1457 at Tr. 2574–76.) He reviewed the updated timelines and schematics with Chief Deputy Sheridan and discussed with him the fact that the documents implicated the Court into the overall scheme involving the Department of Justice, wiretaps, and communications. (*Id.* at Tr. 2576–78.) Arpaio understood that the document alleged that this Court authorized the placement of a wiretap on Arpaio's cell phone. (*Id.* at Tr. 2577–78.) These documents stayed in the MCSO's files. (*Id.* at Tr. 2581.)

375. Others at the MCSO, including the attorneys, expressed their belief that the information provided by Mr. Montgomery was not credible. Sheriff Arpaio held at least one meeting with his lawyers and various members of his staff at which these timelines were discussed and one of the graphs depicted in Exhibit 2072 was shown. Captain Bailey told Arpaio that he did not think the graph "was anything." Arpaio responded "you don't know." (Doc. 1498 at Tr. 3882.) Bailey responded that he knew that there was no evidence to validate what was in the graph. Bailey had the impression that all four attorneys in the room shared his view that the information was not credible. (*Id.* at 3883–84.) Mr. Casey similarly testified that all of the attorneys present believed that the allegations were "hogwash" and that he stated this to Arpaio. (Doc. 1417 at Tr. 1727.)

376. Nevertheless, the investigation continued.

377. In early January 2015, the MCSO was representing to third parties that "[Dennis Montgomery] is continuing to work with the Sheriff's office at this time." (*See* Doc. 1558 at Tr. 4362.) Further,

despite the analysis revealing that the hard drive data was invalid, Posseman Zullo stated that the MCSO was "unable to determine whether any evidence has been in fact manipulated by [M]ontgomery." (Ex. 2969A.) Sheriff Arpaio acknowledged that his people were still working with Mr. Montgomery in January 2015. (Doc. 1457 at 2387.) In fact, the MCSO kept the Montgomery investigation open throughout the hearing. (Doc. 1465 at Tr. 1307–09, 1335; *see also* Doc. 1457 at Tr. 2407, 2421–22; *see* Ex. 2858.)

378. Nevertheless, on April 23, 2015, the third day of the hearing, Sheriff Arpaio testified that not only had the MCSO never been involved in investigating this Court but that he was not aware that the Court or any of the Court's activities had ever been investigated by anyone. (Doc. 1083, Ex. 1.) He reaffirmed this statement three weeks after his initial testimony in a statement made under penalty of perjury filed with the Court. (*Id.*, Ex. 1 ¶¶ 5, 7 (Sheriff Arpaio stating: "Judge Snow asked if I was aware of anyone investigating him. I responded, 'No[,]'...[a]t no time was an investigation initiated against Judge Snow or any of his family members.").) These statements, made while Arpaio was under oath, constitute deliberate misstatements of fact made in bad faith.

***41** 379. In his October testimony, Sheriff Arpaio attempted to explain his earlier testimony by asserting that he simply did not think of Mr. Montgomery's timelines when he was asked the questions. (Doc. 1457 at Tr. 2457.) In light of the extent of Arpaio's personal participation in the Montgomery investigation, this testimony is not credible. Arpaio further testified that what Montgomery was doing for him could not be called an "investigation." (Doc. 1458 at Tr. 2580.) This

testimony is also not credible.

380. Sheriff Arpaio also asserted that any mention of the Court by him, Mr. Montgomery, Posseman Zullo, or other assigned MCSO personnel would have been because Montgomery identified the Court as a victim of the CIA's illegitimate harvest of financial information. There is no credible evidence to confirm such a claim, and much, including the content of the timelines themselves, disproves it. Only 40 people were ever specifically identified by Montgomery and investigated by the MCSO as potential victims of the CIA's harvest. The Court was not among them. Further, the investigation of those forty people produced nothing sufficient to suggest the truth of Montgomery's allegations.

381. Sheriff Arpaio also testified that he understood Mr. Montgomery's allegations involving the Court, but that he never believed them and that he and Chief Deputy Sheridan advised the investigators to not investigate the Court. (Doc. 1457 at Tr. 2577–79.) The evidence demonstrates that at some point, Sheridan expressed reluctance to investigate this Court. (Doc. 1389 at 1265–68; Ex. 2256.) Nevertheless, although Sheridan instructed Sergeant Anglin not to investigate this Court, Sheridan later removed Anglin from the Montgomery operations, (Doc. 1465 at Tr. 1331), and returned Posseman Zullo to his role. At that point, the investigation into this Court resumed. (Ex. 2960.) There is no credible indication that Arpaio was part of the decision to temporarily suspend the investigation, and in light of ample evidence of Arpaio's enthusiasm for and participation in the investigation, the Court does not find the suggestion credible.

2. Chief Deputy Sheridan Also Knowingly Made Misstatements of Fact Under Oath About the Montgomery Investigation.

382. In his April testimony, Chief Deputy Sheridan testified that the MCSO was not investigating this Court. Further, he testified that the MCSO had received nothing from Mr. Montgomery that would suggest that there was any collusion between this Court and the Department of Justice. (Doc. 1043 at Tr. 1003.)

383. In his September testimony, Chief Deputy Sheridan testified that Mr. Montgomery suggested investigating the Court only after the MCSO threatened to stop paying him to investigate other matters, and that the MCSO rejected Montgomery's invitation to investigate the Court. (Doc. 1465 at Tr. 1299–1300, 1464–65; *see also* Doc. 1417 at Tr. 1564.)

384. In fact, although the MCSO did make confidential informant payments to Montgomery, they did not begin making such payments until after Montgomery had provided them with false material alleging the involvement of this Court in a conspiracy with the U.S. Department of Justice. (Doc. 1498 at Tr. 3721–23; Ex. 2085 at page 2; Ex. 2906; Ex. 2907; Ex. 2908; Ex. 2909; Ex. 2910; Ex. 2911; Ex. 2912; Ex. 2913; Ex. 2914; Ex. 2915.) Sheridan would have been aware of this, as he authorized such payments. (Doc. 1465 at Tr. 1318–20.) Further, Sheridan was fully aware that the MCSO accepted Montgomery's invitation to pursue such an investigation.[15] (Doc. 1457 at Tr. 2263–64, 2576–78, 2582.)

***42** 385. The Court finds that Chief Deputy Sheridan's testimony, made under oath, constitutes deliberate misstatements of fact made in bad faith.

386. The MCSO's discovery abuses and deliberate misstatements of fact to the Court harmed the Plaintiff class and require remedial action.[16]

III.

THE MCSO FAILED TO CONDUCT ADEQUATE INTERNAL INVESTIGATIONS.

387. "It is the policy of [the MCSO] to ensure that all complaints of employee misconduct or wrongdoing are investigated fairly and impartially, and in accordance with state and federal law, to determine the validity of the complaint." (Ex. 2881 at MELC1306916.)

388. Further, when complaints are determined valid, "[i]t is the policy of [the MCSO] to impose fair and equitable discipline as necessary." (Ex. 2001 at MELC416242.)

389. Sheriff Arpaio and MCSO policy delegates to Chief Deputy Sheridan all authority regarding internal affairs investigations within the MCSO. The Captain of the PSB reports directly to Sheridan, and Sheridan is very involved in the operation of the PSB. (Doc. 1043 at Tr. 976.)

390. Generally there are two types of PSB investigations—administrative investigations and criminal investigations. (Doc. 1043 at Tr. 975.)

391. An administrative investigation is focused on whether the subject of the investigation violated state civil law, federal civil law, or departmental policy. Some procedures regulating such investigations are set forth under state law.

392. The more serious administrative investigations are conducted by the PSB—the MCSO's Internal Affairs Division. More minor complaints are investigated by lieutenants and sergeants assigned to the MCSO's divisions and districts. In theory the policies and practices between the PSB and the divisions and districts are the same. (Doc. 1389 at Tr. 1155–57.)

393. The measure of administrative discipline is determined by the application of a discipline matrix that is set forth in MCSO policy. (Ex. 2001 at MELC416252–59.) The application of the matrix is strictly defined. (Doc. 1465 at Tr. 1419 ("[The disciplinary matrix] is very – when I say strict, what it does is people know there's not much leeway in the system."); *see also* Doc. 1389 at Tr. 1214.) MCSO policy specifies that management level employees are subjected to a more exacting disciplinary matrix. (*See, e.g.*, Ex. 2001 at MELC416243 ("[R]egular status exempt employees typically hold a management position, and, therefore, are held to a higher standard.").)

394. After the entry of a preliminary finding sustaining a violation, but prior to any final determination, an officer who is the principal of a PSB investigation has the right to a predetermination hearing if a form of major discipline—a suspension of any length, a demotion, or a termination—is noticed as

the possible penalty. A predetermination hearing basically allows the principle to present new evidence and argument. (Doc. 1495 at Tr. 3495–96.) The PSB investigator is not part of the predetermination hearing, nor does the presiding officer generally ask questions.[17] (Doc. 1389 at Tr. 1147.) The investigating PSB officer has no formal opportunity to attend the predetermination hearing or to rebut the information supplied by the investigative principal, nor does the policy require that the principal put forth such information earlier so that it might be addressed by the MCSO. (Doc. 1467 at Tr. 3181.).

***43** 395. If minor discipline is imposed, the principal then has the right to file a grievance. Anything above a written reprimand is considered major discipline. (Doc. 1495 at Tr. 3495.)

396. At the conclusion of each administrative investigation, findings are made as to each alleged policy violation "based on the facts of the investigation." (Doc. 2881 at MELC1306932.)

397. As noted above, Sheriff Arpaio designates to Chief Deputy Sheridan the authority to make all findings in internal affairs investigations. (Doc. 1467 at Tr. 3150.) Sheridan typically delegates that authority to others. (*Id.* at Tr. 3150.)

398. Findings concerning some violations, *i.e.*, truthfulness, are only made upon the authorization of the Chief Deputy or his designee. (Ex. 2881 at MELC1306924.)

399. The PSB also investigates all allegations against MCSO officers that allege a violation of state or federal

criminal law. (Doc. 1389 at Tr. 1132–35.) All constitutional rights apply to the officer being investigated in a criminal investigation.

400. By policy and practice, Chief Deputy Sheridan must authorize all criminal investigations. (Doc. 1043 at Tr. 975–76; Doc. 1456 at Tr. 2215–16; *see also* Ex. 2881 at MELC1306924–25, MELC1306920.)

A. The MCSO's Investigations Arising from Video Review Were Fundamentally Flawed.

401. On September 12 and September 19, 2014, the MCSO opened up numerous investigations resulting from its initial review of problematic video clips.

402. Two of the investigations, IA #2014-543 and IA #2014-542, were ultimately investigated by Special Investigator Vogel, an independent special investigator appointed by the MCSO. The MCSO, however, designated Chief Olson of the MCSO to make the disciplinary determination.

403. The PSB itself conducted five of the investigations that it also opened on this date, IA #2014-544 through IA #2014-548, that resulted from the video review.[18](Doc. 786.)

404. The week after, on September 19, 2014, the MCSO opened 31 investigations, IA #2014-562 through IA #2014-592, that were conducted by the various divisions to which the subjects of the investigations were assigned. (*See* Doc. 786.)

1. The Vogel/Olson Investigations (IA #2014-543 and IA #2014-542)

405. The PSB initiated IA #2014-543 to investigate the MCSO command staff's failure to implement the Court's preliminary injunction.

406. The PSB initiated IA #2014-542 to investigate the MCSO's supervisory failures with respect to Deputy Armendariz.

407. Nevertheless, Captain Bailey, the new head of the PSB, had supervised Deputy Armendariz for eight months while Bailey was the Captain of the Special Investigations Division ("SID")—the Division in which the HSU was located.

408. Further, while Captain Bailey was head of the SID, members of the SID were taking the personal property of detainees—such as drivers licenses—which would subsequently be the subject of investigation. Bailey thus was a possible subject of the investigation.

409. The Court noted this conflict at the October 28, 2014 hearing. (Doc. 776 at Tr. 47–48; Doc. 780 at Tr. 92–94, 96; *see also* Doc. 1043 at Tr. 979–81.)

***44** 410. Accordingly, Chief Deputy Sheridan contacted Special Investigator Vogel in late October 2014 and hired him as the MCSO's special investigator to assume the investigation in IA #2014-542 that potentially involved Captain Bailey. (Doc. 1417 at Tr. 981; Doc. 1556 at Tr. 3291–93; Doc. 1389 at Tr. 1227–28; Ex. 2226.)

411. However, Special Investigator Vogel and Captain Bailey knew each other well. On a full-time basis from

1998–2001, they had served together on a federal task force. (Doc. 1467 at Tr. 3191; Ex. 2218 at MELC-IA011234.) Further, in 2013, Vogel, as a private investigator, had been hired by the *Melendres* defense team to conduct other investigations pertaining to this Court.

412. Shortly thereafter, it became apparent that Chief Deputy Sheridan and others would themselves be the subject of investigation in IA #2014-543 for their failure to implement this Court's preliminary injunction. (Doc. 1389 at Tr. 1226–27; Doc. 786 at 11.)

413. The MCSO thus reported to the Court on November 20 that it had also asked Special Investigator Vogel to assume responsibility for IA #2014-543. (Doc. 804 at Tr. 68–69; *see also* Ex. 2226; Ex. 2219 at MELC209728.)

414. On December 18, 2014, Special Investigator Vogel requested and received a retention letter from Lee Ann Bohn of the MCSO that specified that he was to "conduct or complete" three specific administrative investigations on behalf of the MCSO "due to potential conflicts of interest involving certain MCSO personnel." (*See* Doc. 1556 at Tr. 3287–88, 3339–40; Ex. 2223.) Those investigations were IA #2014-542, IA #2014-543, and IA #2014-874—an investigation into 44 driver's licenses related to a 2013 undercover investigation that also involved Captain Bailey. (*See* Ex. 2223.)

415. In February 2014, Special Investigator Vogel further clarified his role with Ms. Iafrate. She informed him that he would do the initial investigation but would not make any final determinations regarding discipline. (Doc. 1556 at Tr. 3345–47; Ex.

2225 ("You are to conduct the investigation and make findings of the evidence. Neither MCSO nor me should direct you or guide you in any way. Once you complete your investigation, the final conclusion regarding whether policy violations exist will be up to someone other than you.").)

416. Special Investigator Vogel thus conducted factual investigations, and to the extent it was warranted by his investigations, made generalized allegations of violations against appropriate principals. (*See* Doc. 1495 at Tr. 3489, 3491–92, 3547–48.)

417. Special Investigator Vogel delivered his report on IA #2014-542 to the MCSO on March 28, 2015. (Ex. 2218 at MELC-IA011214–303.)

418. He delivered his report to the MCSO on IA #2014-543 on April 6, 2015. (Ex. 2237.)

419. He delivered his supplemental report on IA #2014-543 on April 8, 2015. (Ex. 2239.)

420. Around the time Special Investigator Vogel submitted his reports, Sheriff Arpaio told Chief Deputy Sheridan that he should name Chief Olson as Arpaio's designated officer to make findings as to the existence of violations and to determine discipline, if any, in IA #2014-542 and IA #2014-543. (Doc. 1495 at Tr. 3619–20, 3627.) Sheridan did so.

421. Special Investigator Vogel was thereafter introduced to Chief Olson. (Doc. 1556 at Tr. 3342, 3369–71.) Olson and Tiffani Shaw identified MCSO policies which may have been violated by the conduct identified in Vogel's allegations as supported by his

report. Vogel assisted them in this process. (Doc. 1495 at Tr. 3490, 3492, 3638; Doc. 1556 at Tr. 3296–98, 3349–51; Ex. 2240.)

***45** 422. Chief Olson then made his own preliminary findings of violations based on Special Investigator Vogel's report. (Doc. 1495 at Tr. 3493–94.)

423. After providing the predetermination or name clearing hearings specified by MCSO policy, Chief Olson also made the final determinations as to whether there were any violations and whether to impose any final discipline. (Doc. 1495 at Tr. 3493; Doc. 1556 at Tr. 3338–39.)

a. The MCSO Did Not Appropriately Assist Special Investigator Vogel's Investigation into IA #2014-543

424. In January 2015, during the course of his investigation of IA #2014-543, Special Investigator Vogel requested the metadata pertaining to the December 23, 2011 email sent by Mr. Casey to Chief Deputy Sheridan and others to determine whether the email had been received and opened by the recipients. (Doc. 1556 at 3306–07.) The metadata was not provided and was ultimately determined to be too expensive to provide in a cost-effective manner because the files were corrupted. (*Id.* at Tr. 3307–09, 3368, 3390; Ex. 2221 at MELC210499–526.)

425. That same month, Special Investigator Vogel also asked to review Mr. Casey's billing records related to this matter to determine if those records demonstrated dissemination to and knowledge of the Court's order to MCSO personnel. (Doc. 1556 at Tr. 3311–12, 3364–65.)

426. Special Investigator Vogel made numerous in-person and telephonic requests without getting the records. (Doc. 1556 at Tr. 3364.)

427. Special Investigator Vogel did not receive Mr. Casey's billing records until mid-March 2015. (Doc. 1556 at Tr. 3314.) And due to the compressed timeline in which he had to complete his investigation, this was after he had conducted his interviews of Sheriff Arpaio and Chief Deputy Sheridan. (*Id.* at Tr. 3315–16, 3330–31.)

428. On February 23, 2015, Special Investigator Vogel interviewed Chief Deputy Sheridan and discovered, among other things, the existence of Sergeant Palmer's training scenarios. (Doc. 1556 at Tr. 3308–09.)

429. On March 2, Special Investigator Vogel formally requested Sergeant Palmer's training scenarios from Chief Deputy Sheridan. (Doc. 1556 at Tr. 3309; Ex. 2228.) Vogel made several follow-up email requests for the scenarios. (*See, e.g.*, Ex. 2232.)

430. Special Investigator Vogel received Sergeant Palmer's training scenarios on March 23, 2015—again, too late to be of use in his interviews. (Doc. 1556 at Tr. 3310– 11, 3394–95.)

431. The inability to timely recover the metadata, Mr. Casey's billing records, and Sergeant Palmer's training scenarios caused Special Investigator Vogel difficulty in timely completing his investigations. (Doc. 1556 at Tr. 3309–11; *see also* Ex. 2237; Ex. 2239.)

432. Special Investigator Vogel also requested that

Sheriff Arpaio be considered when determining the existence of possible policy violations, but was told by Chief Olson that he could not do so. (Doc. 1495 at Tr. 3579–80, 3640–41; Doc. 1556 at 3352–56; *see also* Ex. 2242.) Arpaio, however, could have agreed to allow himself to be the subject of the investigation.

433. Special Investigator Vogel's report in IA #2014-543 related to six persons: Chief Deputy Sheridan, Chief Sousa, Chief MacIntyre, Lieutenant Jakowinicz, Lieutenant Sousa, and Sergeant Trowbridge. Chief Olson did not identify any initial allegations of violation against Jakowinicz. (Ex. 2219 at MELC209781.) Olson also did not preliminarily sustain charges against Trowbridge, and found the charges against MacIntyre to be unfounded.

***46** 434. Chief Olson preliminarily sustained allegations of misconduct against Chief Deputy Sheridan, Chief Trombi, and Lieutenant Sousa.

1) Chief Deputy Sheridan

435. On April 21, 2015, the day that the evidentiary hearings began, Chief Olson preliminarily sustained four allegations of misconduct against Chief Deputy Sheridan. They included: (1) that Sheridan failed to have the appropriate oversight and control of information affecting units under his command, (2) that Sheridan failed to ensure the proper dissemination and interpretation of the December 23, 2011 Court order, (3) that Sheridan failed to ensure the proper development of training regarding the December 23, 2011 Court order, and (4) that Sheridan failed to comply with the December 23, 2011 Court order, which is a lawful order. (Ex. 2219 at

MELC209729–31, MELC209735–43.)

436. During his name clearing hearing, Chief Deputy Sheridan presented for an hour and fifteen minutes to Chief Olson without Olson ever asking any substantive questions. (Doc. 1389 at Tr. 1233–34; Ex. 2857A.)

437. After the name clearing hearing, on May 12, 2015, Chief Olson reversed his finding on all four charges that he had preliminary sustained against Chief Deputy Sheridan. (Ex. 2219 MELC209729–43.)

438. Chief Olson made no attempt to provide a written justification for changing his decision, (Doc. 1495 at Tr. 3532), and no such explanation is required by MCSO policy.

439. There are a number of problems with Chief Olson's decision with respect to Chief Deputy Sheridan.

440. First, Sheriff Arpaio and Chief Deputy Sheridan created a structural conflict of interest when they appointed Chief Olson, Chief Deputy Sheridan's direct subordinate, to make a disciplinary ruling concerning him.

441. To avoid this structural impropriety, MCSO policy generally requires that when investigations are conducted outside of the PSB the "investigation shall be investigated by personnel of higher grade or rank than the involved employee...." (Ex. 2881 at MELC1306919.)

442. Nevertheless, Chief Olson reports directly to Chief Deputy Sheridan and has done so for many years.

(Doc. 1495 at Tr. 3485–86, 3560–61.) Sheridan remained Olson's commanding officer both during and after his participation in these internal affairs investigations. (*Id.* at Tr. 3575, 3630.)

443. Chief Olson acknowledged that not only is it important that a disciplinary proceeding be unbiased, (Doc. 1495 at Tr. 3667), but it is equally important that there be no appearance of bias in an internal affairs investigation. (Doc 1495 at Tr. 3488.)

444. Chief Olson testified that there is no impropriety or appearance of impropriety in this case because, in the past, he imposed discipline on Chief Henderschott, who was his superior, when Olson was assigned by Sheriff Arpaio to make a disciplinary determination as to Henderschott.

445. An important distinction is that Chief Henderschott was on leave and/or had already resigned when Chief Olson disciplined him.

446. At any event, simply because Sheriff Arpaio has before appointed a subordinate to rule on the discipline of a direct superior does not somehow eradicate the creation of a structural conflict when he does so again.

***47** 447. Second, Chief Olson actually was demonstrably biased and partial. Olson testified that he based his determination to reverse his preliminary findings on his personal opinion of Chief Deputy Sheridan, which he arrived at due to the years that they had worked together. "I do know Jerry Sheridan very well. I know his character. I know he — I've worked for him for many years. I know he strives to do

the right thing. I had a decision to make, and I based it on everything that I knew. And one of the things I knew is that Jerry Sheridan tries to do the right thing." (Doc. 1495 at Tr. 3681; *see also* Doc. 1495 at Tr. 3663 (Olson believed Sheridan because he has worked with him on projects for 20-plus years and Sheridan has never lied to him), 3557–58, 3635, 3662–64 (Olson testified that: "[Sheridan] didn't know about the [preliminary injunction]. I believe that. I believe that in my heart. He did not know about that court order.").)

448. Moreover, Chief Olson's reliance on his personal relationship with Chief Deputy Sheridan and/or his beliefs regarding Sheridan's character in reaching a disciplinary conclusion demonstrates actual partiality and otherwise violates MCSO policy on internal investigations. (Ex. 2881 at MELC1306932 ("[F]indings for each Policy Violation will be based on the facts of the investigation.").)

449. Third, it is improper to assign an individual to make a disciplinary decision as to his friend. Chief Olson considers Chief Deputy Sheridan a friend. (Doc. 1495 at Tr. 3589, 3621.) They have socialized together. (*Id.* at Tr. 3630.) They have a very good working relationship. (*See id.* at Tr. 3631.)[19]

450. Fourth, Chief Olson brought false factual predeterminations to the decision-making process. Olson testified that "[a] lot of what [Sheridan] presented at that name clearing hearing I knew to be fact because I was there." (Doc. 1495 at Tr. 3670.) For example, he notes "I attended the same staff meetings that the other executive chiefs sat in on. For all those years, those court orders [preliminary injunction] weren't talked about at the staff meetings. I never

heard of the 2011 order prior to getting involved in this, and I sat in those executive staff meetings." (*Id.* at Tr. 3663.) Yet, despite Chief Olson's testimony, Chief MacIntyre testified that it was at just such a meeting that he explained the details of the preliminary injunction at length to make sure that Sheriff Arpaio, Chief Deputy Sheridan, and the other chiefs understood them. (Doc. 1422 at Tr. 1878:23–25, 1879; Ex. 2219 at MELC209814–16.) He gave the explanation twice. (Doc. 1422 at Tr. 1880; Ex. 2219 at MELC209815.) He said it slowly and enunciated it. (Doc. 1422 at Tr. 1879–81; Ex. 2219 at MELC209815.)

451. Fifth, Chief Olson was not able to consider the facts that subsequently came out that discredit Chief Deputy Sheridan's assertions to him. The MCSO failed to timely provide Special Investigator Vogel the information he requested during his investigation, causing that information to not be discussed in his report. Certain information was discovered prior to the evidentiary hearing by Plaintiffs and not necessarily presented to Chief Olson. Special Investigator Vogel never had a follow-up opportunity to respond to matters raised in Chief Deputy Sheridan's name clearing hearing, since such opportunities are not provided.

***48** 452. Sixth, when Chief Olson did not sustain the charges against Chief Deputy Sheridan, because he believed that Sheridan never knew about the injunction, he did not take into account the nature of all the charges. For example, Olson preliminarily sustained allegation number one, which averred that Sheridan failed to exercise the appropriate oversight and control over information affecting units under his command. The violation of this policy does not require

that Sheridan knowingly violated the Court order. A lack of appropriate knowledge pertaining to those under his command virtually constitutes the charge of failing to have "appropriate...control of information affecting units under his command."

453. Chief Deputy Sheridan himself has consistently admitted that it was his responsibility to know about the preliminary injunction and to train the deputies about it. (*See* Ex. 2219 at MELC209815.)

454. Moreover, in the excerpts submitted at the name clearing hearing, Chief Deputy Sheridan admitted under oath that it was his responsibility as the Chief Deputy to communicate the requirements of the preliminary injunction to the MCSO. (Ex. 2219 at MELC209933 ("Q: Do you know why the instructions from the preliminary injunction were never communicated to the MCSO? ... A: No. Q: Who should have communicated those instructions?...A: It would have been my responsibility as Chief Deputy.").)

455. Discipline should have been imposed. That it was not demonstrates that Chief Olson did not impartially approach his assignment with respect to Chief Deputy Sheridan.

2) Chief Trombi

456. The same four violations that were asserted and preliminarily sustained against Chief Deputy Sheridan were also asserted and preliminarily sustained against Chief Trombi. (Ex. 2219 MELC209763–71.)

457. After the predetermination hearing, Chief Olson

reversed his preliminary findings and vacated all sustained findings against Chief Trombi. (Ex. 2219 at MELC209910–15.)

458. He did so because he determined that Chief Trombi was not aware of the order. (Doc. 1495 at Tr. 3578–79.)

459. In the record available to Chief Olson, however, Lieutenant Sousa expressed that he had no doubt that Chief Trombi knew about the orders because Trombi was copied on the training scenarios. (Ex. 2219 at MELC209807–08.) Sousa subsequently testified that he is sure that he discussed the matter with Trombi. (Doc. 1027 at Tr. 761–62.)

460. Chief Sands similarly indicated to Special Investigator Vogel that he told Chief Trombi to read the order. (Ex. 2219 at MELC209800.)

461. Chief Olson was aware that Chief Trombi acknowledged that he received at least part of the training scenarios and that he had command responsibility for the HSU.

462. Chief Olson himself, in exonerating Lieutenant Sousa, faults Chief Trombi (and others) for not taking appropriate action to inform Sousa about the content of the order in light of Sousa's inquiry to him. (Doc. 1495 at Tr. 3654–55 ("[Lieutenant Sousa] e-mailed Brian Sands; he e-mailed Dave Trombi; he e-mailed Tim Casey; he asked for scenarios on training to be written. He e-mailed those to his bosses. Didn't get any response from—from Dave Trombi, from Brian Sands, from Tim Casey. He was just kind of left hanging out there.").)

463. Chief Olson nevertheless determined that despite all of the evidence above, Chief Trombi was not aware of the order. (Doc. 1495 at Tr. 3578–79.) The Court finds that Chief Olson did not come to this conclusion in good faith.

464. Moreover, as with Chief Deputy Sheridan, even assuming Chief Olson came to his conclusion in good faith, Chief Trombi's lack of knowledge of information that pertained to those under his command virtually constitutes one of the charges against him. The charge is failing to have "appropriate...control of information affecting units under his command."

***49** 465. In Special Investigator Vogel's report, Chief Trombi himself admitted that it was his responsibility to know about the preliminary injunction and to train the deputies about it, but that he was "negligent" in not informing himself of the order. (Ex. 2219 at MELC209801–03.)

466. Therefore some measure of discipline should have been imposed.

3) Lieutenant Sousa

467. The same four violations were asserted against Lieutenant Sousa, but only one—that Sousa failed to ensure the proper dissemination and interpretation of the December 23, 2011 Court order—was preliminarily sustained by Chief Olson.

468. It is not clear on what basis Chief Olson chose not to preliminarily sustain the other asserted violations.

469. Chief Olson reversed that finding after the predetermination hearing. (Ex. 2219 at MELC209885–88.)

470. Chief Olson testified that he vacated the finding because Lieutenant Sousa emailed his supervisors to try to find out the meaning of the Court order, but he received no response. Furthermore, Olson testified that generally a decision to disseminate an order would have come from someone much higher in the command structure. (Doc. 1495 at Tr. 3654–55.)

471. As the Court has set forth at some length above, however, Lieutenant Sousa did not do all he should reasonably have done to ascertain the meaning of the Court's preliminary injunction. He imposed interpretations on the order that were consistent with the MCSO's existing practices even though those practices violated the plain terms of the preliminary injunction.

472. Further, as he himself testified, he thought training concerning the order needed to be disseminated. Even given that he made some efforts to initiate training, he undertook no efforts to see it through during the three and a half months that he remained the lieutenant in charge of the HSU. He had the order and he did not disseminate it.

473. Chief Olson's reasons for exonerating Lieutenant Sousa are not sufficient.

4) Lieutenant Jakowinicz

474. In making his determination to assert no violations against Lieutenant Jakowinicz, Chief

Olson's understanding was that Jakowinicz was not contacted in any way about Sergeant Palmer's training scenarios. (Doc. 1495 at Tr. 3554–55.) This is simply inaccurate. He did have such information.

475. Lieutenant Jakowinicz received this email when he was still with the training division in preparation for his transfer to the HSU. (Doc. 1051 at Tr. 373:8–22; Ex. 189.)

476. Lieutenant Jakowinicz replaced Lieutenant Sousa as head of the HSU in April 2012. (Doc. 1051 at Tr. 362:24–25.) He remained with the HSU until May 2013, when the unit was subsumed into the Special Investigations Division. (*Id.* at Tr. 363:10–17.)

477. Lieutenant Jakowinicz did not follow up with Sergeant Palmer, Mr. Casey, or Chief Sands about finishing the training scenarios after he took over the HSU. (Doc. 1051 at Tr. 419:17–420:15.)

478. Lieutenant Jakowinicz does not recall whether the training scenarios developed by Sergeant Palmer and Lieutenant Sousa were ever conducted while he was at the HSU. (Doc. 1051 at Tr. 374:1–375:6, 375:14–16.)

479. Chief Olson would have known this if Sergeant Palmer's scenarios would have been timely provided to Special Investigator Vogel.

5) Sergeant Trowbridge

480. Special Investigator Vogel alleged that "Sgt. Trowbridge admitted to reading and knowing about the December 23, 2011, Court order. He failed to

discuss the order with Lt. Jakowinicz when Lt. Jakowinicz was transferred into HSU." (Ex. 2219 at MELC209773.)

***50** 481. Although a policy was identified which this behavior violated, Chief Olson did not preliminarily sustain this allegation as to Sergeant Trowbridge. (Ex. 2219 at MELC209774.) It is not clear what basis Olson had for failing to do so.

6) The Investigation Into IA #2014-543 Is Insufficient.

482. Sheriff Arpaio acknowledged that "it's a pretty big deal" to not comply with this Court's preliminary injunction for 17 months. (Doc. 1027 at Tr. 628.) Arpaio's failure in this respect has resulted in extensive injury to members of the Plaintiff class by the entire MCSO.

483. Yet, as a result of Chief Olson's decisions, no internal discipline has resulted.

484. Sheriff Arpaio testified that when he designated Chief Olson to determine discipline in these two matters he knew that Chief Deputy Sheridan was Olson's superior, but he did not think that there was a conflict. (Doc. 1455 at Tr. 2027–29.)

485. This testimony is not credible. Sheriff Arpaio was aware of the necessity of employing Special Investigator Vogel with respect to IA #2014-543 because at least two high ranking members of MCSO leadership, including Chief Deputy Sheridan, were principals in several investigations including this one.

486. Sheriff Arpaio himself was interviewed by Special Investigator Vogel, and Vogel filed a supplemental report indicating that Arpaio should also be included in the disciplinary proceeding.

487. To the extent that Sheriff Arpaio obtained any degree of impartiality in the investigation of his command staff by appointing Special Investigator Vogel to conduct the investigation in IA #2014-543, he scuttled that impartiality by appointing Chief Olson to make the final disciplinary determination in this case.

488. The Court finds that as a matter of fact, Sheriff Arpaio achieved what he desired in appointing Chief Olson to the position—a biased decision-maker who imposed no discipline on anyone for the MCSO's 17 month violation of this Court's orders.

489. The assignment of Chief Olson to make the disciplinary decision in IA #2014-543 in light of his partiality, his failure to acceptably perform that function, and his dismissal of all of the charges without individually considering them, constitutes unacceptable internal affairs practices. These practices both violate and threaten continued violations of the rights of the Plaintiff class that this Court's orders have sought to vindicate.

490. IA #2014-543 is invalid.

b. The MCSO Improperly Investigated IA #2014-542.

491. On May 5, 2015, Chief Olson made preliminary findings of violations against five officers for their failure to supervise Deputy Armendariz: Chief Trombi,

Lieutenant Sousa, Lieutenant Jakowinicz, Sergeant Trowbridge, and Sergeant Madrid.

1) Chief Trombi

492. Chief Olson ultimately sustained preliminary findings against Chief Trombi on three separate charges. (*See* Ex. 2218 at MELC-IA011167.)

493. First, he preliminarily found that Chief Trombi was aware of a domestic violence incident involving Deputy Armendariz which Trombi did not have investigated. (Ex. 2218 at MELC-IA011170–72.)

494. Second, he preliminarily found that Chief Trombi was aware of: (1) a pattern of citizen complaints against Deputy Armendariz, (2) that Armendariz became "borderline insubordinate" with his sergeant and lieutenant (3) that Armendariz's sergeant and lieutenant recommended his transfer from the unit, and yet Trombi exercised his discretion and did not transfer Armendariz, failed to recognize the need for intervention, and took no action in the form of reassigning Armendariz or mandating training. (Ex. 2218 at MELC-IA011173–75.)

***51** 495. Third, he preliminary sustained findings against Chief Trombi arising from Sergeant Trowbridge's investigation of Deputy Armendariz in connection with the ticketing of State Representative Mesnard in violation of MCSO policy. Trowbridge investigated the matter and recommended that a written reprimand be issued to Armendariz. The investigation and recommendation were forwarded on to Lieutenant Jakowinicz and subsequently to Trombi, but no action was taken by Trombi.

496. Chief Olson's May 18, 2015 final determinations confirmed all of the preliminary findings of violation against Chief Trombi. (Ex. 2218 at MELC-IA011170–77.)

497. A week-long suspension was imposed on Chief Trombi that he apparently did not appeal.

498. There are at least three problems with the disciplinary process as it relates to Chief Trombi.

499. First, although Chief Trombi did accept the discipline of a week-long suspension, he was also, during the course of the investigation, promoted by Sheriff Arpaio and Chief Deputy Sheridan from Deputy Chief to Executive Chief. (Doc. 1017 at 87–89; Doc. 1389 at Tr. 1139; Doc. 1494 at Tr. 3503–04.) Chief Olson also determined that Trombi's discipline did not make him ineligible for a pay increase, (Ex. 2219 at MELC209915), and in fact, Trombi received a pay increase in conjunction with his promotion. (Doc. 1495 at Tr. 3503–04.)

500. There is no policy preventing a promotion for someone under investigation within the MCSO.

501. Further the discipline imposed on Chief Trombi was significantly less than that mandated by the appropriate application of the disciplinary matrix.

502. The discipline mandated by the disciplinary matrix results from a combination of the number of past offenses together with the level of seriousness of each offense. (Ex. 2001 at MELC416243.) The matrix is used precisely so that it can take into account

repeated and separate instances of misconduct in assessing and arriving at a uniform and appropriate level of progressive discipline. (Ex. 2001 at MELC416243–44 ("The number of times an employee has received prior discipline, regardless of the Category, shall be considered when determining where an employee shall be placed within the Matrixes.").)

503. Although each of the three sustained allegations involved Chief Trombi's supervisory failures as they related to Deputy Armendariz, they did not all occur simultaneously.

504. Allegation #1 involved Chief Trombi's failure "to complete his supervisor [sic] duty and ensure an investigation into the [domestic violence] matter...." (Ex. 2218 at MELC-IA11170.) This failure is appropriately categorized as a Category 2 offense under the matrix: a "[f]ailure by a supervisor to identify or investigate...actual or alleged incidents of misconduct, or violations of written instructions or rules." (Ex. 2001 at MELC416255.)

505. Allegation #2 involved Chief Trombi's failure "to recognize the need for intervention" resulting in him taking no action "in the form or reassigning Deputy Armendariz or mandating training." This failure is appropriately categorized as a Category 3 offense under the Matrix: a "[f]ailure to take corrective action when warranted."[20] (Ex. 2001 at MELC416256.)

506. Similarly, allegation #3 involved Chief Trombi's failure "to take any action" or to "notify his chain of command" with respect to the State Representative Mesnard citation. (Ex. 2218 at MELC-IA011176.) This

too is appropriately categorized as a Category 3 offense. (Ex. 2001 at MELC416256.)

***52** 507. For a third violation of either a category two or three offense committed by an exempt employee, the presumptive discipline specified by the disciplinary matrix is a range between an 80-hour suspension and dismissal. (Ex. 2001 at MELC416253.) Chief Trombi was only advised of a possible maximum punishment of one week without pay for several separate incidents that violated MCSO policies and/or civil law.

508. It is an inappropriate manipulation of the MCSO's disciplinary policy to consolidate separate instances of misconduct and to treat them as a single instance for purposes of applying the disciplinary matrix. (Ex. 2001 at MELC416243.)

509. Pursuant to MCSO policy, any departure from the presumptive ranges of discipline set forth by the matrix "shall be justified in writing in the Pre-Determination Hearing Notice and the Notice of Disciplinary Action letter as applicable." (Ex. 2001 at MELC416243.) Further, "[d]iscipline which deviates from the Discipline Matrixes must be approved by the Sheriff, or his designee." (*Id.* at MELC416244.)

510. Yet, this practice appears to be consistent with a special MCSO policy promulgated by Sheriff Arpaio that applied only to investigations that arose out of the *Melendres* case. According to this *Melendres*-only policy, investigators were not to apply the MCSO disciplinary matrix. In all such investigations, multiple independent violations of MCSO policies counted as only one violation for purposes of applying the disciplinary matrix. (Doc. 1455 at Tr. 2135; Doc.

1556 at Tr. 3272–74; Ex. 2010 at MELC288485.)

511. The standard disclaimer placed on disciplinary notice forms stated:

> Please be advised that MCSO has ongoing investigations relating to the *Melendres* litigation. If you become a principal in one of those investigations, and you receive a sustained policy violation on any such related matter, this reprimand shall be considered with that misconduct as one offense for purposes of the disciplinary matrix (not as a separate offense) and your discipline may be adjusted accordingly.

(Ex. 2008 at MELC724587; Ex. 2010 at MELC288485.)

512. Of course, the *Melendres*-only policy categorically departs from the MCSO policy of treating all types of misconduct uniformly. As is not surprising, a great number of the investigations that arose out of the *Melendres* case involved misconduct that harmed members of the Plaintiff class. As a result of this special policy, the MCSO generally treated misconduct that harmed members of the Plaintiff class less seriously than the uniform level of discipline that MCSO policy otherwise requires.

513. Pursuant to MCSO policy, such a deviation from the disciplinary matrix required approval from Sheriff Arpaio or his designee. (Ex. 2001 at MELC416244.)

514. The MCSO offered no adequate rational reason at the hearing, and the Court cannot devise any, to treat

independent violations of the MCSO's policies as a single act of misconduct.

515. This discriminatory policy violates the MCSO policy that requires fairness, equity and uniformity in discipline in all such investigations.

516. Second, when Chief Olson made his disciplinary decisions, he believed that Chief Sands, not Chief Trombi, was principally responsible for the supervisory misconduct at the HSU, including the decision not to transfer Deputy Armendariz out of the HSU. Because Sands was not a principal in IA #2014-542, Olson could not directly address his culpability, but he did not believe others should be held responsible for what he viewed as Sands's decisions. (Doc. 1495 at Tr. 3535–47.)

***53** 517. This assumption—at least as it relates to refusing the transfer of Deputy Armendariz—was false. Chief Olson obtained that impression from what Chief Trombi told Special Investigator Vogel during his interview.[21] (*See* Doc. 1495 at Tr. 3537.)

518. According to Special Investigator Vogel's report, Chief Trombi told Vogel that when he received the request to transfer Deputy Armendariz out of the HSU, he asked Chief Sands whether Sands would give permission for him to do so. Trombi told Vogel that Sands had supposedly stated "something to the effect of 'not now' or 'it's not a good time,' " and that Trombi "felt that Chief Sands did not want to elaborate on why it wasn't a good time to move [Armendariz]." (Ex. 2218 at MELC-IA011258–59) Trombi told Vogel that Sands's input provided the basis for his decision not to transfer Armendariz out of the HSU. (Ex. 2218 at

MELC-IA011258–59; *see also* Doc. 1495 at Tr. 3537.)

519. Despite these apparent statements to Special Investigator Vogel, Chief Trombi admitted in his testimony under oath at the hearing that he alone decided not to transfer Deputy Armendariz out of the HSU. He testified that he did not seek the approval of Chief Sands to keep Armendariz at the HSU, (Doc. 1017 at Tr. 87), nor did he consult with either Sheriff Arpaio or Chief Deputy Sheridan. (*Id.* at Tr. 154; *see also id.* at Tr. 85, 117-18; Doc. 1051 at Tr. 396-97; Ex. 119.)

520. Even though Chief Olson later acknowledged that Chief Trombi had some responsibility for this decision, he wrongfully placed the principal blame on Chief Sands based on Special Investigator Vogel's interview with Trombi. (Doc. 1495 at Tr. 3535–47.)

521. Thus, Chief Trombi's misstatement taints the discipline he received.

2) Lieutenant Sousa

522. On May 5, Chief Olson ultimately sustained preliminary findings against Lieutenant Sousa on two separate charges. (Ex. 2218 MELC-IA011180–81.)

523. Allegation #1 was that Lieutenant Sousa, who was made aware of a citizen complaint involving the possible theft by Deputy Armendariz of $300, forwarded it on to Sergeant Madrid for action, but failed to ensure that proper action was taken on the complaint.[22] (Ex. 2218 at MELC-IA01182.)

524. Allegation #2 was that Lieutenant Sousa failed to

meet his supervisory responsibilities in failing to offer or mandate training for Deputy Armendariz after a clear pattern of behavior was recognized. (Ex. 2218 at MELC-IA011184.)

***54** 525. Lieutenant Sousa provided a memorandum to Chief Olson which set forth his position regarding that discipline. (*See* Ex. 2898.)

526. After the predetermination hearing, on May 17, 2015, Chief Olson sustained Allegation #1, and reversed his preliminary finding sustaining Allegation #2. Nevertheless, he reduced the noticed discipline to a written reprimand. (Doc. 1495 at Tr. 3507–09; Ex. 2895.)

527. Lieutenant Sousa filed an employee grievance as it pertained to the written reprimand. (*See* Doc. 1495 at Tr. 3512–14.)

528. Lieutenant Sousa provided a detailed grievance memorandum to Chief Rodriguez in which he laid out the problematic behaviors caused by his superiors—most especially Sheriff Arpaio, Chief Sands, and Chief Trombi. (Ex. 2559B at MELCIA0132648 ("The root cause of all the issues in Human Smuggling was the Sheriff's drive to enforce the illegal immigration issues that was giving him so much media attention. In addition, the lack of sergeants and the Chief's failures to assign more supervisors to adequately address all the demands on this unit by the Sheriff.").)

529. Chief Rodriguez rescinded the written reprimand because the MCSO had no method of tracking the original complaint registered against Deputy Armendariz, and because Lieutenant Sousa did not

remember ever dealing with the matter. (Doc. 1495 at Tr. 3512, 3652.)

530. As a result, Lieutenant Sousa was not disciplined for any violations in IA #2014-542.

531. There are several problems with respect to this investigation and the resulting grievance decision with respect to Lieutenant Sousa.

532. With respect to Allegation #1, in reducing Lieutenant Sousa's discipline from major to minor discipline, Chief Olson incorrectly categorized Sousa's offense.

533. In initially noticing the proposed discipline, Chief Olson correctly placed Lieutenant Sousa's violation as a Category 2 violation of the disciplinary matrix: 2(C) ("[f]ailure by a supervisor to ensure employees perform required duties"), 2(D) ("[f]ailure by a supervisor to identify or investigate...actual or alleged incidents of misconduct or violation of written instructions or rules"), or 2(F) ("[f]ailure to exercise proper supervision over assigned employee."). (Ex. 2001 at MELC416255.)

534. Then, however, when he decided to impose a written reprimand rather than suspension, he inappropriately changed the violation to a Category 1 violation. (Doc. 1495 at Tr. 3508–09; *see* Ex. 2559F at MELC-IAO13680.)

535. Chief Olson testified that it was appropriate for him to make the sustained violation fit any category on the disciplinary matrix he wanted it to. (Doc. 1495 at Tr. 3511 ("You can make this fit however — however

you want to. It's my decision where they fit.").)

536. This is an improper application of the MCSO disciplinary matrix, and it reflects a belief that the disciplinary decision-maker may manipulate the matrix so as to render it meaningless. Under the correct application of the policy, the level of misconduct dictates the discipline rather than the discipline dictating the level of misconduct. Chief Deputy Sheridan's testimony confirms that the standards for correctly applying the disciplinary matrix are not flexible. (Doc. 1389 at Tr. 1214; Doc. 1465 at Tr. 1419.)

***55** 537. Chief Olson's arbitrary manipulation of the disciplinary matrix categories contradicts one of the supposed principle benefits of the disciplinary matrix, which is to make discipline uniform and equitable. (Doc. 1495 at Tr. 3603; Ex. 2001 at MELC416243.) It further lessened the potential discipline to be faced by Lieutenant Sousa.[23] (Doc. 1495 at Tr. 3511.)

538. Second, although Chief Olson offered no justification for reversing his preliminary finding against Lieutenant Sousa on allegation #2—that he failed to offer or mandate training for Deputy Armendariz after a clear pattern of behavior was recognized—he did offer justifications for that decision at the evidentiary hearing that were, for the most part, not credible.

539. Chief Olson testified that he did not think it was Lieutenant Sousa's responsibility to ensure that Deputy Armendariz's annual training was up to date. (Doc. 1495 at Tr. 3506.) Olson thought that this was more in line with the supervisory responsibility of a

sergeant, not a lieutenant. (*Id.* at Tr. 3649.)

540. Nevertheless, this is a mischaracterization of allegation #2. The allegation did not have to do with whether Lieutenant Sousa ensured that Deputy Armendariz had completed his required annual training. It had to do with failing to mandate special training for Armendariz in light of his "clear pattern" of problematic behavior. Chief Olson testified that he did not think that such an issue was raised, when in fact, it was the very basis of the allegation. (Doc. 1495 at Tr. 3507.)

541. Later in his testimony, Chief Olson incorrectly testified that the report revealed that either Lieutenant Sousa or Sergeant Trowbridge had attempted to get Deputy Armendariz additional training to handle some of his problems, but this effort was frustrated by the direction to not transfer Armendariz out of the HSU.

542. Such testimony does not make sense. Even to the extent that Lieutenant Sousa was not responsible for the failure to transfer Deputy Armendariz out of the HSU, that did not obviate the need for additional training whether or not the transfer was approved.

543. More to the point and contrary to Chief Olson's testimony, the report reveals that Lieutenant Sousa himself did not believe that he ever required Deputy Armendariz to attend any training in reference to his citizen complaint issues. (*See* Doc. 1495 at 3543; Ex. 2559F at MELC-IA013682.)

544. Finally, on cross examination, Chief Olson testified that Lieutenant Sousa's predetermination

submission and presentation caused him to better appreciate Sousa's position as a lieutenant in charge of the HSU. This understanding affected his final decision as to whether discipline should be meted out to Sousa on allegation #2. (Doc. 1495 at Tr. 3649–51; *see also* Ex. 2898; Ex. 2559F.) Olson testified that he did not think that Sousa's failures were intentional or negligent, and he confirmed that Sousa was not given the tools to succeed by the MCSO. (Doc. 1495 at Tr. 3653.)

***56** 545. Lieutenant Sousa did submit evidence from which Chief Olson could have concluded that Sousa had unworkable demands placed on him at the HSU by Sheriff Arpaio and his supervisors. Sousa stated in his predetermination hearing statement, for example:

> I was ordered to deal with an impossible situation, under demanding circumstances from the two Chiefs I had to directly report too [sic]. Chief Trombi and Chief Sands did not exercise any discretion when it came to facilitating the Sheriff's demands for more activity nor did they consider the ramifications of transferring in personnel that did not belong in the Unit....This situation is an institutional failure that is identifying and punishing lower level supervisors for the failures of leadership at the uppermost levels of command in this Office to include Sheriff Arpaio and his need for media attention at all costs.

(Ex. 2898 at MELCIA013693.)

546. Nevertheless, because of the MCSO's predetermination hearing structure, Special Investigator Vogel was never able to respond to Lieutenant Sousa's assertions. For example, there is material in Special Investigator Vogel's report that seems to suggest that Sousa loosely supervised Deputy Armendariz because of the number of arrests of unauthorized aliens he was producing. (*See, e.g.*, Ex. 2218 at MELC-IA011271 ("The only reason [Sands] knew that Deputy Armendariz was arresting a lot of people was because Lt. Sousa told him about his activity. Lt. Sousa was impressed with Deputy Armendariz's performance.").) Further, as Plaintiffs pointed out, although Sousa said he was constantly raising concerns about Armendariz with his supervisors, he gave him positive personnel evaluations during the relevant period. (Doc. 1458 at Tr. 2640–42.)

547. It may be appropriate to excuse Lieutenant Sousa from discipline to the extent he could not adequately supervise his deputies due to the unreasonable demands placed upon him by MCSO command staff. Nevertheless, to the extent that Sousa did not adequately discipline his deputies because they produced a large number of HSU arrests, that would demand a different result.

548. The ability of Chief Olson to make such an unexplained decision without providing the PSB investigator with a chance to respond is a flaw in MCSO policy that allows for the manipulation of results.

549. If Chief Olson in fact accepted the above

explanation and determined that it justified relieving Lieutenant Sousa from what were otherwise acts of misconduct, it would still require the report of such supervisory lapses on the part of Sousa's leaders as separate acts of misconduct. (*See, e.g.*, Ex. 2001 at MELC416255.) It is not apparent that Olson did so.

550. Finally, Chief Rodriguez vacated the written reprimand that survived against Lieutenant Sousa because the MCSO had no method of tracking the complaint registered against Deputy Armendariz, and because Sousa did not remember ever dealing with the matter. (Doc. 1495 at Tr. 3652.)

551. Even accepting that the MCSO had no system by which to track complaints registered against MCSO officers, (*see* Doc. 1556 at Tr. 3301), there is no doubt here that a complaint was made. Moreover, whether a tracking system exists is irrelevant to Lieutenant Sousa's failure to fulfill his supervisory responsibilities by ensuring that a complaint of theft made against one of his officers is investigated and concluded.

3) Lieutenant Jakowinicz

***57** 552. Chief Olson sustained preliminary findings against Lieutenant Jakowinicz for: (1) failing to properly supervise Sergeant Trowbridge and ensure that a proper and timely investigation occurred into an incident involving marijuana found in Deputy Armendariz's police vehicle on or about May 29, 2012, (Ex. 2218 at MELC-IA011198–99), and (2) failing to meet his supervisory responsibilities by not offering or mandating training to Armendariz. (Ex. 2218 at MELC-IA011202–03.)

553. Chief Olson's final findings reversed each of the preliminary findings sustained against Lieutenant Jakowinicz without stating any reasons for the reversal.

554. Lieutenant Jakowinicz did not participate in a predetermination hearing, (Doc. 1495 at Tr. 3529), and Chief Olson never spoke to him regarding the preliminarily sustained findings.

555. At the hearing, Chief Olson testified that he did not recall why he reversed all of his preliminary findings against Lieutenant Jakowinicz, but he did so after "research and reading," although he does not recall what that research and reading was. (Doc. 1495 at Tr. 3529–30.)

556. Chief Olson gave his testimony just months after making these decisions. In light of the facts of this case, such a lack of explanation is wholly insufficient to establish that Olson conducted an adequate disciplinary evaluation with respect to Lieutenant Jakowinicz.

4) Sergeant Trowbridge

557. Chief Olson sustained preliminary findings against Sergeant Trowbridge for: (1) failing to insure an investigation into the marijuana found in Deputy Armendariz's police vehicle on or about May 29, 2012, (Ex. 2218 at MELC-IA011189–90), and (2) failing to meet his supervisory responsibilities by not offering or mandating training in the area of interpersonal communication and officer safety to Armendariz. (Ex. 2218 at MELC-IA011193–94.)

558. Chief Olson's final findings reversed each of the preliminary findings sustained against Sergeant Trowbridge without stating any reasons for the reversal.

559. At the evidentiary hearing, Chief Olson acknowledged that when Sergeant Trowbridge became aware of the marijuana, he never filled out any paperwork or initiated any inquiry concerning it. (Doc. 1495 at Tr. 3528.) Olson admitted that the matter was not handled properly. (*Id.* at Tr. 3540 ("I don't — don't know why it wasn't handled properly, but I don't feel that he had a suspicion that it wouldn't be, so I overturned it."); *see also id.* at Tr. 3547, 3527 ("I thought that [Trowbridge] thought that it was already being taken care of.").)

560. This is a wholly insufficient basis on which to find no violation of departmental policy.

561. This is especially the case when quantities of marijuana had been found stored in Deputy Armendariz's garage, and there were similar investigations involving Sergeant Trowbridge's supervision of Armendariz's confiscation of marijuana. (*See, e.g.*, Doc. 833 at 2–3 (IA #2014-817).)

562. Under such circumstances, the reversal of sustained preliminary findings is inadequate where it is merely based on Chief Olson's belief that Sergeant Trowbridge thought that Deputy Armendariz was going to appropriately resolve the matter.

563. Regarding allegations #2 and #3 against Sergeant Trowbridge, Chief Olson found that Trowbridge was

making significant efforts to appropriately supervise Deputy Armendariz, but he was receiving little to no support from the command staff in this respect.

564. Sergeant Trowbridge and Lieutenant Jakowinicz attempted to have Deputy Armendariz reassigned, but this was thwarted by Chief Trombi.

***58** 565. While Sergeant Trowbridge did not mandate courses for Deputy Armendariz or look at any trainings offered by the Arizona Peace Officer Standards, (Doc. 1495 at Tr. 3544), there was evidence from which Chief Olson could have found that Trowbridge discussed additional training with Armendariz.

566. As was the case with Lieutenant Sousa, considering the lack of support that Sergeant Trowbridge was getting from his command staff on this question, the Court can see a plausible basis as to why Chief Olson may have determined that the real fault for Trowbridge's supervisory lapses was Chief Trombi.

567. If this was the determination, it should have been factored into the discipline provided to Chief Trombi. As the Court has previously noted, Trombi was promoted during this investigation, and the discipline he received is less than that indicated by the disciplinary matrix.

5) IA #2014-542 Is Insufficient.

568. There is no dispute that the MCSO's supervisory failures were extremely serious.

569. As the MCSO admitted at the hearing, supervisory failures pertaining to Deputy Armendariz revealed systemic supervision problems within the MCSO. (Doc. 1467 at Tr. 3192–93.)

570. Chief Olson's decision, coupled with Chief Rodriguez's grievance decision, resulted, with a single exception, in the imposition of no discipline on anyone at the MCSO for their serious, repeated, and significant supervisory failures with respect to Deputy Armendariz. The one exception was the week-long suspension for Chief Trombi coupled with a promotion and a raise.

571. In both dismissing and minimizing discipline, Chief Olson miscategorized offenses and grouped separate acts of misconduct into a single act for purposes of determining discipline. He also engaged in bias and favoritism.

572. The assignment of Chief Olson to make the disciplinary decision in IA #2014-542, his performance of that function, and the MCSO's *Melendres*-only policy, all constitute unacceptable internal affairs practices.

573. IA #2014-542 is invalid.

c. The MCSO Manipulated the Timing of the Four Major Investigations

574. At the time Special Investigator Vogel and Chief Olson conducted IA #2014-543 and IA #2014-542, Arizona statute and MCSO policy required that an employer make a good faith effort to complete all internal investigations within 120 working days. (This

statute was amended during the investigations to provide for 180 calendar days to conduct an investigation.) MCSO policy provides that an appeals board "may dismiss the discipline if it determines that the Office did not make a good faith effort to complete the investigation within 120 business [now 180 calendar] days." (*See* Ex. 2881 at MELC1306926–27; A.R.S. § 38-1110 (2015).)

575. Chief Deputy Sheridan testified that as a result of this statute and MCSO policy, if an administrative investigation exceeds the time limit, the discipline imposed will just be overturned on appeal.

576. As a result, he testified that "if an administrative investigation goes too long you just don't impose discipline. Or you don't impose — impose serious discipline" because it will just be overturned on appeal.[24] (Doc. 1043 at Tr. 977–78.)

***59** 577. It is for this reason that Captain Bailey testified that the MCSO always kept very aware in internal affairs investigations of the 180 day time limit. (Doc. 1505 at Tr. 3978.)

578. There was testimony during the hearing, however, that Chief Deputy Sheridan has manipulated the timing on investigations so he has a self-created justification for imposing no discipline, or only minor discipline. (*See* Doc. 1017 at Tr. 214–16.)

579. In that light, Chief Sheridan identified four major IA investigations in this case: IA #2014-221, IA #2014-541, IA #2014-542, IA #2014-543. (Doc. 1389 at Tr. 1135–37.) In none of them, including IA #2015-543, in which he was a principal, was the disciplinary decision

timely completed.

580. IA #2014-542 was officially opened on September 12, 2014, as was IA #2014-543. It is not clear when each principal was added to the investigation pursuant to the terms of the statute.

581. Special Investigator Vogel delivered the report on IA #2014-542 on March 28, 2014. Yet, Chief Olson did not make his preliminary findings on the case until either May 4 or May 5, 2015. He made his final findings with respect to all principals on either May 17 or May 18. (Ex. 2218 at MELC-IA11170–213.) Nevertheless, the final findings were not transmitted to each principal until a month later on June 17, 2015. (Ex. 2943a.)

582. Special Investigator Vogel delivered the report on IA #2014-543 on April 6, 2015. Chief Olson made his preliminary findings as to the various principals on the case on either April 21 or April 22. He made his final findings as to all principals on either May 12 or May 14. Nevertheless, the final findings did not become "final" until June 6, 2015. (Ex. 2943a.)

583. These unexplained gaps in processing the cases, when the MCSO is always very cognizant of the timing, demonstrate the MCSO's manipulation of these investigations to provide the principals with multiple defenses.

2. Other PSB Investigations That Resulted from Video Review Were Problematic.

584. On September 12, 2014, the PSB opened IA #2014-544 through IA #2014-548. The PSB conducted

the investigations in these cases.

585. With the exception of one case,[25] each of these investigations involved policy, conduct, or professionalism violations on the part of one or more MCSO officers who were present during stops made by Deputy Armendariz. (*See, e.g.*, Doc. 1498 at Tr. 3824, 3828–30.)

586. The vehicle occupants in most of these stops appeared to be members of the Plaintiff class. (*See, e.g.*, Doc. 1498 at Tr. 3815, 3830, 3835–36)

587. Plaintiffs assert that the investigations into the misconduct demonstrate a lack of training or focus in the PSB investigations.

588. First, in several of the investigations, the PSB investigators used leading exculpatory questions when interviewing their subjects. (Doc. 1556 at Tr. 3443–47; Ex. 2063 at MELC160145, MELC160147, MELC160149; Doc. 1498 at Tr. 3825–28; Ex. 2772 at MELC158616–23.)

589. Second, in one of the investigations, the discipline administered by the PSB was insufficient in light of the subject's previous discipline meted out in other *Melendres* investigations. In IA #2014-545, Deputy Gonzalez was issued a written reprimand on February 14, 2015, for his failure to provide a basis for a traffic stop. Nevertheless, the previous week, on February 4, Gonzalez had received two written reprimands—one documented in IA #2014-563 (failure to inform of reason for a stop) and another one in IA #2014-575 (using profanity towards driver on a stop). Because of the previous discipline, appropriate application of the

disciplinary matrix would have resulted in more serious discipline.

***60** 590. Third, in one of the investigations, PSB investigators assumed exonerating facts in their conclusions that were unsupported by the video recordings. (Doc. 1556 at Tr. 3439–40; Doc. 1498 at Tr. 3819; Ex. 2063 at MECL160124, MELC160135.) In IA #2014-544, Deputy Armendariz reported that he stopped a vehicle and that both passengers stated that they were in the United States illegally. Sergeant Fax assumed that the detainees' statement was made spontaneously rather than as a result of being questioned, but it is apparent from the report that Armendariz questioned them. (Doc. 1498 at Tr. 3819.)

591. Fourth, one of the investigations demonstrates an instance in which the PSB investigated a lesser charge (inappropriate language) than the charge originally referred to the PSB by the reviewing lieutenants (no basis for the stop). (Doc. 1498 at Tr. 3828–32; *compare* Ex. 2104 at MELC160768 *with id.* at MELC160792 (Sergeant Bocchino's investigation in IA #2014-547).)

3. Investigations Handled by Divisions Demonstrate a Lack of Training and Consistency

592. Each division of the MCSO has officers—sometimes lieutenants—assigned to conduct internal affairs investigations of complaints involving matters of minor discipline. (Doc. 1467 at Tr. 3162, 3184.)

593. Those persons are selected at the discretion of the division commanders. The PSB has no say in such selection and there are no criteria promulgated for

purposes of aiding in such selection. (Doc. 1467 at Tr. 3182.)

594. The PSB does not yet offer systematic training to division personnel designated to conduct internal affairs investigations. (Doc. 1467 at Tr. 3182–83; Doc. 1505 at Tr. 4026.)

595. However, every month the PSB administrative staff generates a list of the IA investigative numbers that are still active within each division or district. The commander of each division or district is sent this list. (Doc. 1467 at Tr. 3988–89.) The commander of the PSB is sent a similar list for open investigations assigned to the PSB. (*Id.* at 4000.) Other than sending the list, however, the PSB does not oversee the substance of investigations done on the division side. (*Id.* at Tr. 4027.)

596. Each division had different interpretations of policies and procedures governing internal affairs investigations. (Doc. 1467 at Tr. 3166.)

597. On December 4, 2014, the MCSO notified the Court that it opened IA #2014-451—a PSB investigation into the adequacy of a division investigation of a different complaint (IA #2014-142, which involved Deputy Armendariz's misconduct during a traffic stop).

598. The incident at issue in IA #2014-142 occurred on March 12, 2014, but the responsible division did not complete the investigation and submit it to the PSB until August 1, 2014. (Ex. 2767 at MELC158128.)

599. Despite the fact that the investigating officer had

spent some eight hours in training to conduct such investigations, the investigation of Deputy Armendariz was poorly conducted in that (1) it was untimely, (2) there was a failure to conduct necessary interviews, (3) there was a failure to record interviews or otherwise document evidence, and (4) there was a failure to give adequate notices or *Garrity* warnings. (Ex. 2767 at MELC158128, MELC158130; Doc. 1556 at Tr. 3425–29.)

600. This division investigation initially resulted in a finding of "not sustained" against Deputy Armendariz, whereas a finding of "sustained" should have been and eventually was made. (Ex. 2767 at MELC158130–32.)

601. On January 26, 2015, the PSB issued a written reprimand to the two officers responsible for the poorly conducted division investigation. (Ex. 2943a at MELC1404203a.)

B. MCSO Investigations Arising from Found Personal Property.

***61** 602. In addition to the PSB investigations that began as the result of the MCSO's videotape reviews, the PSB also began several investigations resulting from items of personal property that were not accounted for and that were found in the custody of the MCSO.

1. The MCSO Carried Out a Bad Faith Criminal Investigation into the Allegations Raised by Cisco Perez (IA #2014-295).

603. Cisco Perez made the allegations, *see supra* ¶ 281, above in a state unemployment hearing that the

MCSO investigated as IA #2014-295.[26] (*See* Ex. 2748.)

604. Chief Deputy Sheridan and Captain Bailey agreed that there should be a criminal investigation opened with respect to the Cisco Perez allegations. (*See* Doc. 1556 at Tr. 3236; Doc. 1505 at 4012-13; Doc. 1389 at Tr. 1128; Doc. 1456 at 2215.)

605. They also decided to suspend the ongoing Deputy Armendariz administrative investigation pending the completion of the Cisco Perez criminal investigation. (Doc. 1467 at Tr. 3119–20; Ex. 2004; Doc. 755 at 10; Doc. 795-1 at 30.)

a. The MCSO Improperly Bifurcated the Cisco Perez Allegations and the Armendariz Search.

606. Cisco Perez alleged that HSU officers were taking property during HSU operations in a manner that violated policy or law; the many items of property in Deputy Armendariz's garage amply demonstrated as much. The Armendariz matter, therefore, provided an abundance of evidence to support the Perez allegations, evidence that was otherwise relatively sparse. Unlike the Armendariz search, which yielded existing and potentially traceable evidence of misappropriation of items of value, the Cisco Perez allegations referenced no specific property other than a large screen TV.

607. The Armendariz matter should have been considered as part of the evidence—indeed, the *bulk* of the evidence—when assessing the validity of the Cisco Perez allegations.

608. By largely disregarding the Armendariz evidence in the Cisco Perez criminal investigation, the PSB and

the assigned criminal investigator, Sergeant Tennyson, could investigate the otherwise largely unsupported Cisco Perez allegations without taking into account the corroborating physical evidence of "pocketing" that the items in Deputy Armendariz's garage provided.[27]

b. Sergeant Tennyson's Investigative Practices and Techniques Undermine the Veracity of His Investigations and Reports.

609. On August 28, 2014, Sergeant Tennyson wrote a report addressed to Captain Bailey in which he closed out any criminal investigation relating to the Cisco Perez allegations. (Doc. 1556 at Tr. 3237–39; Ex. 2006 at MELC011165.)

***62** 610. On November 20, 2014, three weeks after the Court held a hearing on the August report, Sergeant Tennyson wrote a follow-up memorandum addressed directly to Chief Deputy Sheridan that recommended closing any criminal investigation as it pertained to the items of personal property found in Deputy Armendariz's garage. (Ex. 1001.)

611. In addressing the November memorandum directly to Chief Deputy Sheridan, Sergeant Tennyson skipped several levels of the normal chain of command. (Doc. 1556 at Tr. 3249.)

612. Chief Deputy Sheridan does not think that this is odd because he had frequent conversations with Sergeant Tennyson about this investigation. (Doc. 1389 at Tr. 1181.) Further, he was in close contact with all PSB operations. (*Id.* at Tr. 1128.)

613. Sergeant Tennyson began his interviews in

regard to the Cisco Perez investigation on June 16, 2014. (Ex. 2006 at MELC011163.) He conducted 45 interviews in a three week period. (*Id.*) His plan was to "speak briefly with everybody at HSU and get this thing done[.]" (Ex. 2031 at MELC227066.)

614. Chief Deputy Sheridan stayed very close to the investigation and had frequent contact and communication with Sergeant Tennyson. (Doc. 1389 at Tr. 1180–81.)

615. Aside from prioritizing the investigation into the Cisco Perez allegations, which had no physical evidence, over the investigation into the Armendariz search, which yielded a great deal of actual (often traceable) property, there were other considerable deficiencies in Sergeant Tennyson's investigations.

1) Sergeant Tennyson Adopted the HSU's False Assertion that Deputies Used Identifications for Fraud Training Purposes.

616. Sergeant Tennyson notes in his August report that the deputies had recovered "many different forms of identification[,]" (Ex. 2006 at MELC011163), religious statuettes, "homemade booties," and other items of little value for training purposes. Further, he acknowledged that Sergeant Trowbridge indicated that he kept license plates from load vehicles as trophies on his HSU office wall, with each license plate representing a load vehicle arrest. (*Id.* at MELC011164.)

617. Nevertheless, Sergeant Tennyson concludes that "some identifications were fraudulent and many were recovered without being able to identify its true owner."

(Ex. 2006 at MELC011163.)

618. In doing so, he apparently credited the false statements originally asserted by HSU personnel right after the Deputy Armendariz administrative investigation began that the recovered IDs were used in formal training courses in which participants had to provide fraudulent IDs.

619. For example, as early as May 23, 2014, Detective Frei[28] authored a memorandum sent to Captain Bailey when he was the Captain over the Special Investigations Division which included the HSU. This was immediately prior to Bailey's transfer to the PSB. (Ex. 1000 at MELC028132.)

620. In the memo, Detective Frei requested that Captain Bailey direct him as to what he should do with the numerous personal IDs he had gathered over the last five years in the course of his law enforcement activities and the law enforcement activities of other deputies.

621. The memorandum claimed that the IDs in his possession came from detectives who had reason to believe that the identifications were fraudulent. He stated that "[t]he identifications were used for training purposes only, as most of the Criminal Employment Unit is certified in document examination or has had some training in forged/fraudulent/questioned documents." (Ex. 1000 at MELC028132.)

***63** 622. Despite Detective Frei's representation that the IDs were fraudulent, Captain Bailey could not recall that the MCSO had ever attempted to determine whether this was accurate. (Doc. 1505 at Tr. 4048–49.)

623. Moreover, there is no reason to assume the identifications are fraudulent. (Doc. 1505 at Tr. 4048–49.) Almost all of the identifications attached to Detective Frei's memorandum are issued to members of the Plaintiff class, (*see, e.g.*, Ex. 1000 at MELC028133-59), and many of them were issued by foreign governments—predominantly Mexico or its states. (*See id.*) Chief Deputy Sheridan, when asked about these IDs, acknowledged that it would not make sense for someone asserting a legal right to be in the United States to create a fraudulent Mexican identification. (Doc. 1043 at Tr. 985.)

624. Further, as the MCSO would later admit, contrary to the assertions of Detective Frei, no one in the Criminal Employment Unit had formal training in forged/fraudulent/questioned documents. In fact, no one in the MCSO in general had such training. (Doc. 1417 at Tr. 1546–47.)

625. Detective Frei submitted the memorandum and the attached IDs to Property and Evidence for destruction. (Ex. 1000 at MELC028131.) At that time, the memorandum came to the attention of the Monitor Team and was not destroyed. (Doc. 1043 at Tr. 985.)

626. The memorandum to Captain Bailey has apparently never been the subject of an MCSO internal affairs investigation. (Doc. 1417 at Tr. 1546; Doc. 1505 at Tr. 4047.)

627. Nevertheless, as of May 2014, the same false explanation set forth by Detective Frei seems to have been generally adopted by other HSU officers in an attempt to offer a legitimate explanation for the many

IDs in the possession of HSU deputies that in fact had been taken as souvenirs of arrests. (Doc. 1417 at Tr. 1547.)

628. When in early June, the HSU returned to its former offices in the Enforcement Support building, some of the things they found there were Mexican IDs and a Mexican passport or passports.

629. These IDs belong to members of the Plaintiff class.

630. When Sergeant Powe questioned Deputy Cosme and Deputy Joya about the presence of the identifications, they offered the same false explanation "that they attended courses designed to help them identify fraudulent Mexican IDs and Fraudulent Foreign Identifications." (Ex. 43 at MELC104079.) They "explained...that they were instructed to confiscate fraudulent IDs found during the course of their duties, but because they were not Arizona State Identification, they were not able to use them to charge the subject with a crime." (*Id.*) However, as the MCSO now admits, contrary to the statements of Detective Frei, Deputy Cosme, and Deputy Joya, HSU and CEU members did not receive training to help them identify fraudulent Mexican IDs and fraudulent foreign identifications. (Doc. 1417 at Tr. 1546–47.) Nor is there any evidence that HSU or CEU members were "instructed to confiscate fraudulent IDs found during the course of their duties" without submitting them to Property and Evidence.

631. Nor was any evidence offered at trial to establish that the IDs referred to by Deputy Cosme and Deputy Joya are fraudulent.

632. Sergeant Powe, however, apparently accepted these statements at face value. In a June 6 memorandum to Lieutenant Jakowinicz regarding the explanation of Deputy Cosme and Deputy Joya, Sergeant Powe noted that this information might be helpful to the HSU in responding to the ongoing internal affairs investigation into such matters.[29] (Ex. 43 at MELC104079.)

***64** 633. How these identifications came to be left in the former HSU offices has not been the subject of an internal affairs investigation identified to the Court, although the documents have apparently been preserved in a departmental report.

634. In the Cisco Perez investigation, there is no reason why Sergeant Tennyson would not have had access to the IDs to determine whether they were fraudulent. Detective Frei presumably still had his 111 IDs that he subsequently turned in the following November. Sergeant Powe had preserved in a Departmental report the Mexican IDs found in the HSU's initial return to its HSU offices in Enforcement Support. (DR#14-013242; Ex. 43 at MELC104079.) Sergeant Tennyson also knew of, and had access to, the approximately 500 identifications found in Deputy Armendariz's garage, although given their storage in the garage, Tennyson could not have reasonably believed that they were being used for training purposes.

635. At any rate, the MCSO now acknowledges that many of those IDs are not fraudulent. (Doc. 1505 at Tr. 4048.)

636. Although Sergeant Tennyson noted in his report

that some of the IDs were fraudulent, he never discussed those identifications that were *not* fraudulent, and what basis the HSU members would have had for seizing/keeping them.[30]

637. Additionally, the leading questions Sergeant Tennyson posed in his interviews demonstrated that he had already concluded that the IDs were fraudulent and that he was attempting to lead those he interviewed to the same conclusion. (*See, e.g.*, Ex. 2028 at MELC226810 ("I was told by some of the guys that there'd be times when fro-or fraudulent ID's were, um—were acquired and used for training. Is—did you recall anything like that?"); Ex. 2029 at MELC227806 ("As far as the um identification, I spoke with a ton of guys and some mentioned that some of the IDs were taken and used as training aids. Does that sound familiar to you?").)

638. Third, he concluded that the MCSO deputies attended "training classes put on by outside agencies, namely DPS, where students were asked to provide discarded fraudulent identification for training aids." (Ex. 2006 at MELC011164.) As has been demonstrated above, although this was a popular explanation engineered by HSU staff, there is no truth to it.

639. As to the seized license plates, even though there was no suggestion that they were fraudulent, or that they were used in training, this did not prevent Sergeant Tennyson from suggesting such a connection. (*See, e.g.*, Ex. 2028 at MELC226806 ("[I]t seems to be a common theme that the license plates were taken and some of them were posted on walls inside the – the, um – the offices – and keep in mind Cisco – Cisco mentions that after he – he says – he – these items

were pocketed, he does follow-up with yeah, we used them for training. Now, uh, is that a pross – is that a, uh – a protocol or something you guys did on a regular basis?").)

***65** 640. Fourth, citing Deputy Gandara, Sergeant Tennyson concluded that when IDs were kept for training aids, "first the cards were processed as found property." (Ex. 2006 at MELC011164.) That is also not true. With the apparent exception of those IDs involved in IA #2014-874 and those IDs collected by Sergeant Knapp, the Court is not aware that any of the IDs subsequently located by the MCSO were checked into and processed as property. It is notable that even Gandara was later disciplined for not processing confiscated items as property. (*See, e.g.*, IA #2015-022.) Yet, in Sergeant Tennyson's rush to arrive at an exonerating conclusion, he apparently made no effort to confirm the truth of Gandara's statement before determining that it was accurate.

2) Sergeant Tennyson Failed to Investigate or Follow Up on Identifiable and Traceable Property Found in Deputy Armendariz's Garage.

641. In his August report, Sergeant Tennyson did not discuss or disclose any of the personal property found in Deputy Armendariz's garage that had obvious value and was traceable to victims, which casts a different light on the minimal items for which he did account.

642. To the extent that he was, at the time, trying to assume that all of the property in Deputy Armendariz's garage came from Armendariz, he was disabused of that notion before writing his November

memorandum to Chief Deputy Sheridan.

643. In between receiving Mr. Manning's email in early October, *see infra* ¶¶ 679–83, and writing the November 20 memorandum to Chief Sheridan, Sergeant Tennyson received further verification that Deputy Armendariz was not the only MCSO source of seized property recovered from Armendariz's home.

644. In October, Sergeant Tennyson received nine CDs containing information demonstrating that the IDs of persons found in Deputy Armendariz's garage were attributable to law enforcement activity of MCSO officers other than Armendariz.[31] (Ex. 1001 at 1 ("The identification cards associated with the information on the CDs mentioned above were discovered to have been obtained during HSU operations by Detectives **other than Armendariz**.") (emphasis in original); *see also* IA #2014-774 through IA #2014-783; Doc. 814 at 4–13.)

645. By that same time, Sergeant Tennyson was able to identify an additional seven IDs from Deputy Armendariz's garage belonging to persons who had encounters with HSU officers other than Armendariz. (Ex. 2025; Ex. 2026.) Three of these persons were identified as having encounters with "C. Perez S 1346." (Ex. 2026.) To the extent that "C. Perez" is Cisco Perez, this demonstrates that some of the property that Perez "pocketed" found its way to Armendariz's garage. This property thus provides considerable support for the validity of Perez's original allegation that HSU members were in the habit of pocketing things. Armendariz's garage served as a depository of the pocketed property. This connection was never noted by Tennyson.

646. Sergeant Tennyson dropped any further investigations into the IDs once he determined that they belonged to individuals who had been transferred to ICE. (Ex. 2025.) He did so because he concluded that it was impossible to locate persons who had been deported. Tennyson admitted that no additional efforts were made to locate these individuals. (Doc. 1466 at Tr. 2942–44; *see also* Ex. 2025.) He further testified that he is not aware of any such efforts made by the MCSO. (*See* Doc. 1466 at Tr. 2893, 2904–05; Doc. 1467 at Tr. 3135–36; *see also* Ex. 1001.) These IDs were not fraudulent. Tennyson relied on the identities provided by them in confirming, through MCSO records, that the persons identified by the cards were transferred to immigration authorities, and then through immigration records that the persons were ultimately deported. (*See, e.g.*, Ex. 1001; *see also* Ex. 2025; Ex. 2026.) Further, based on their names and their deportations, these persons are members of the Plaintiff class.

***66** 647. The fact that the victims of the MCSO's misappropriations were deported (or otherwise could not be located) does not negate the importance of at least administrative investigations into the misappropriations. Where property could be connected to deputies, the investigations should not have been dropped, regardless of whether the owners of the property could be located.

3) The MCSO Imposed No Discipline on HSU Members Who Seized Personal Property from Plaintiff Class Members and Stored It in Deputy Armendariz's Garage.

648. In his November report, Sergeant Tennyson noted that Deputy Armendariz alleged, just prior to his suicide in May, that a female detention officer coworker in the HSU removed items from HSU offices and placed them in Armendariz's garage once she "got word of an upcoming inspection by the Internal Affairs Division." (Ex. 1001 at 3.)

649. Sergeant Tennyson's memorandum dismissed this allegation because Tennyson had identified and interviewed the relevant detention officer, Raphaelita Montoya, and she "denied delivering anything to the Armendariz residence." He further noted that Deputy Armendariz is a "pack rat." (Ex. 1001 at 3.)

650. However, Officer Montoya subsequently admitted that she did in fact clear contraband from HSU offices and take it to Deputy Armendariz's garage. (Ex. 2841 at MELC1396996 ("At a later date the same female Detention Officer admitted to Detectives during an audio/video taped post polygraph interview she did drop some items off at the Armendariz residence. She also helped Armendariz load several items which may have included the identification cards into his work vehicle when HSU was relocated to a new facility."); see also Doc. 1556 at Tr. 246–47.)

651. Officer Montoya made this admission after declining to submit to a polygraph examination.[32] (Doc. 1466 at Tr. 2901–03.) This is an independent violation of MCSO policy.

652. The MCSO now admits that there were items found in Deputy Armendariz's garage that came from MCSO operations in which Armendariz took no part. (Doc. 1556 at Tr. 3246–47.)

653. Even after Officer Montoya confessed as much, there was no further investigation or reassessment of her involvement, or that of anyone else, in the possible mishandling or theft of property in either an administrative or a criminal investigation. (Doc. 1466 at Tr. 2901–03.) By the time of her confession, Montoya had already received findings of "not sustained" in two administrative cases: IA #2014-541 and IA #2015-021. (Doc. 1389 at Tr. 1205; Doc. 1556 at Tr. 3270–71; see also Ex. 2010, Ex. 2887, Ex. 2943.)

654. Despite this, and despite Sergeant Tennyson's acknowledgment in a previous memorandum to Chief Deputy Sheridan that the loads Officer Montoya took over to Deputy Armendariz's home may have included IDs, (see, e.g., Ex. 2841 at MELC1396996), Tennyson testified to this Court that no one at the PSB was yet able to answer how the additional IDs in Armendariz's garage deriving from stops that Armendariz did not execute came to be there. (Doc. 1466 at Tr. 2890–91; Doc. 1556 at Tr. 3246–47.) In light of the facts set forth above, Tennyson's expressed mystification (and that of anybody else at the MCSO) is neither genuine nor credible.

4) The MCSO's Defense of Sergeant Tennyson's August Report Is Not Persuasive.

655. After Sergeant Tennyson presented his August report to the MCSO and the Monitor, the Monitor filed with the Court its written evaluation of the MCSO's investigative efforts.

***67** 656. The Monitor was critical of a number of aspects of Sergeant Tennyson's investigation: the

PSB's lack of an investigation plan, Tennyson's minimal interview questions, his leading questions, his apologetic tone, and his failure to follow-up when interview subjects mentioned topics pertinent to the investigation.[33]

657. On October 21, 2014, Defendants filed their response to the Monitor's report. (Doc. 755.)

658. The Court held a hearing on the Monitor's report on October 28, 2014. In that hearing, at which Chief Deputy Sheridan was present, (Doc. 776 at Tr. 3), the Court noted its concerns with Sergeant Tennyson's investigation. (*Id.* at Tr. 49–52; *see* IA #2014-0295; *see also* Doc. 804 at Tr. 71–72; Doc. 795 at 6–7.)

659. The Court also noted, despite not being made aware of Mr. Manning's email conclusions, *see infra* ¶¶ 679–83, that the materials found in Deputy Armendariz's garage had value and in many cases—*e.g.*, credit cards—could be tracked to identifiable victims. (Doc. 776 at Tr. 45; Doc. 780 at Tr. 86–90.) The Court reaffirmed that a criminal investigation ought not to be foreclosed as to the personal property and items of value found in there. (Doc. 776 at Tr. 45; Doc. 780 at 86–90.)

i. At the Evidentiary Hearing, the MCSO Defended Its Flawed Investigative Techniques

660. In their testimony, Chief Deputy Sheridan, Captain Bailey, and to some extent Sergeant Tennyson all sought to defend the probity, propriety, and competence of Tennyson's investigation and his two resulting memoranda.

661. Chief Deputy Sheridan did not discuss the Monitor's criticisms of Sergeant Tennyson's investigation with Tennyson because Sheridan does not agree with them. (Doc. 1389 at Tr. 1198–99.)

662. Captain Bailey was aware of the Monitor's criticisms of Sergeant Tennyson's investigation and for the most part disagreed with them. (Doc. 1556 at Tr. 3250; Doc. 1505 at Tr. 4013–14, 4038–39.) He had no problem with Tennyson's leading questions, (Doc. 1556 at Tr. 3253), his lack of investigative plan, (*id.* at Tr. 3252), his failure to prepare in advance a comprehensive set of questions, (Doc. 1498 at Tr. 3812), or his failure to follow up on information pertinent to the investigation that emerged during Tennyson's interviews. (Doc. 1556 at Tr. 3254–55.)

663. Captain Bailey did not agree with the Monitor's criticism that Sergeant Tennyson was being controlled nor that he was investigating just enough to make the investigation appear credible. (Doc. 1556 at Tr. 3254.)

664. Captain Bailey did agree with some of the Monitor's criticisms. For example, he tacitly agreed with the Monitor's criticisms regarding Sergeant Tennyson's failure to Mirandize people, so he talked to him about that. (Doc. 1556 at Tr. 3255–57.) He talked to Tennyson about the need to use rooms in which the interviews could be recorded. (*Id.* at Tr. 3258.) He also mentioned to Tennyson that he did not need to be apologetic. (*Id.* at Tr. 3259.) Bailey further believed that the language in the November memorandum's conclusion that lauds the HSU, the unit Tennyson was investigating, was unnecessary.[34] (*Id.* at Tr. 3249–50.)

***68** 665. Nevertheless, Captain Bailey stands by

Sergeant Tennyson's investigation into the Cisco Perez allegations and does not believe that it raises any issues or concerns. (Doc. 1556 at Tr. 3240.)

666. At the hearing, Sergeant Tennyson defended his leading questions by testifying that such questions are a matter of his own style and were an effort to get more information from the subjects of his interviews. (*See* Doc. 1467 at Tr. 3011–12.)

667. However, his leading questions incorporated the assumption that the identifications were fraudulent and that they were used for training purposes. Thus, the answers that Sergeant Tennyson's leading questions suggested were not only false, they were the very answers which fit with Tennyson's, Chief Deputy Sheridan's, and Bailey's acknowledged view of the appropriate result in this case. They also covered up what are at least pervasive violations of MCSO policy if not criminal conduct. To the extent then that at the evidentiary hearing he suggested that his leading questions were merely a matter of his own style and were not problematic, the Court finds that testimony not credible.

668. To the extent that Captain Bailey and Chief Deputy Sheridan determined that such questions were not problematic, it reflects their own lack of good faith in directing the investigation and/or in testifying about it.

669. The Court also finds not credible Sergeant Tennyson's assertion that when he failed to give proper *Miranda* warnings, he did so as a matter of strategy. (Doc. 1466 at Tr. 2925–28.) To the extent that Tennyson's purposeful failure would have produced

any information in the criminal interviews, it would have been inadmissible as would any information to which it led.

ii. Sergeant Tennyson Controverts the Facts When He Attempts to Blame the Monitor Team and Raise Other Excuses for the Insufficiency of His Investigations.

670. To at least some extent, Sergeant Tennyson himself acknowledges that his investigation "lacked...vigor." (Ex. 2849 at MELC1397098 ("It has been said in open court the MCSO Professional Standards Bureau lacked skill and vigor while investigating the alleged widespread criminal activity of the MCSO Human Smuggling Division. This is partially true."); Ex. 2841 at MELC1396978 ("I must agree with those critical of my actions, including Judge Snow, who suggested this investigation was handled without vigor. Unfortunately, the investigative parameters were strongly influenced and in my opinion the results were reflective.").)

671. According to Sergeant Tennyson, the reason for his "lack of vigor" is that the Monitor Team insisted that the investigation be a criminal as opposed to an administrative one, which allegedly crippled his investigation. Further, he testified that the Monitor Team dictated every question that he asked which deprived him of the ability to develop his own strategy. (Doc. 1466 at Tr. 2919.)

672. Neither one of these assertions is accurate or credible.

673. As stated above, Chief Deputy Sheridan and/or

Captain Bailey decided that the Cisco Perez investigation should be a criminal one; thus, regardless of which of the two actually made the decision, it is clear that the Monitor did not make it.

***69** 674. Sergeant Tennyson's testimony is also inaccurate when he asserts that the Monitors directed every question that he asked. It is true that after observing his initial cursory interviews, the Monitors did tell him that his interviews were insufficient and suggested a list of baseline questions. (Doc. 1466 at Tr. 2919; *see also* Doc. 1498 at Tr. 3811–12; Doc. 795, Ex. 1 at 31–32; Ex. 2841 at MELC1396974–76.) Tennyson accepted some of their suggestions and rejected others. In fact, Tennyson agreed that he received the questions on June 23 and that he responded on June 24 with his own list of questions which incorporated many but not all of the Monitor's suggested questions. (Doc. 1467 at Tr. 3130–33; Ex. 2841 at MELC1396974–76.)

675. The bottom line is, although the Monitor Team did make suggestions, it did not make the decisions pertaining to the investigation. Those were left in the hands of the MCSO, and the MCSO exercised its independence in making those decisions. It now seeks to throw up dust to mask its own inadequacies by blaming the Monitor.

676. Sergeant Tennyson also defended MCSO practice by testifying that other local police agencies also have collection bins in which they deposit fraudulent or invalid identifications without the necessity of turning them in to their Property and Evidence departments. (Doc. 1467 at Tr. 3070–72.) Nevertheless, those police agencies only do so for expired or invalid IDs. Sergeant

Tennyson never asked those police agencies whether they deposited valid IDs into their collection bins as was the habit of the MCSO. (Doc. 1467 at Tr. 3105–06.)

677. Finally, Sergeant Tennyson defends his memorandum because, he states, he could not establish that any HSU officer had the intent to steal. (Doc. 1466 at Tr. 2932– 33; Doc. 1467 at Tr. 3074–77.)

678. Even assuming that he in fact arrived at such a conclusion, he does not mention it or explain it in the memorandum itself. And, if this was his conclusion, it would require at least a minimal amount of explanation in light of Sergeant Trowbridge's honesty in avowing that he and others took license plates as "trophies" of their HSU arrests and hung them on HSU office walls.

iii. The MCSO Failed to Provide MCAO Attorney Keith Manning with Sufficient Information, and Therefore the MCSO Cannot Justifiably Rely on His Advice.

679. Shortly before the October hearing, but after the closure of the Cisco Perez investigation, Sergeant Tennyson provided an attorney from the Maricopa County Attorney's Office (MCAO), Keith Manning, with his August 28 memorandum. Mr. Manning opined, based on his reading of Tennyson's memorandum, that criminal prosecutions would not have been viable because the MCSO had not attributed any value to the items involved in the investigation, and further, the investigation did not identify any actual victims of such thefts. (Ex. 1001 at 3.)

680. In light of the minimal amount of property that Sergeant Tennyson discussed in his August memorandum, the Court can understand how Mr. Manning would have doubts about the practicability of bringing criminal charges. This is especially true if he believed that the property was being innocently used by the MCSO for training purposes, that the property had no value, and that no victims could be identified.

681. It seems inconceivable to the Court, however, that Mr. Manning would have engaged in the same analysis if he had been aware that the items included money, drugs, credit cards, bank cards, cell phones, purses, wallets, weapons, memory cards, and other items. Further, despite what was stated in Sergeant Tennyson's memo, the items were not being used for formalized training purposes, and no effort was made to identify victims who were no longer in the country.

***70** 682. Chief Deputy Sheridan was present in Court during the October hearing when the Court, in expressing the view that the criminal investigations should remain open as a possibility, emphasized the valuable nature of some of the property found in Deputy Armendariz's garage as well as its traceability. (Doc. 776 at Tr. 45; Doc. 780 at 86–90.)

683. Thus, in applying Mr. Manning's analysis concerning the Cisco Perez investigation property to the Armendariz investigation property, Chief Deputy Sheridan was already aware of the relevant distinctions. Yet he made no attempt to account for them, because Sergeant Tennyson's November memorandum provided the result Sheridan had sought from the beginning.

5) From the Outset, Chief Deputy Sheridan, Captain Bailey, and Sergeant Tennyson Predetermined that Neither the Cisco Perez Allegations nor the Property Found in Deputy Armendariz's Garage Supported Pursuing a Criminal Investigation.

684. Even though Chief Deputy Sheridan ordered that the Cisco Perez allegations be criminally investigated, he testified that from the beginning he did not think that there was a basis to pursue a criminal investigation. He did not believe that the word of a mentally-ill officer (Deputy Armendariz) or a discredited officer (Perez) provided any probable cause to investigate HSU members for pocketing items. (Doc. 1389 at Tr. 1161–62, 1185–88; *see also* Ex. 1001 at 3.)

685. He felt compassion and empathy for the members of the HSU being investigated for events that he did not believe had occurred. (Doc. 1389 at Tr. 1185–88.)

686. He initiated the investigation merely because he believed that if he did not, Plaintiffs would try to suggest that he was not adequately conducting his internal investigations. (Doc. 1389 at Tr. 1188.)

687. Although Captain Bailey recommended and subsequently ordered the criminal investigation, and further ordered that every HSU and former HSU member be interviewed, he also thought that innocent officers were being treated unfairly to the extent that the allegations resulted in their treatment as suspects. (Doc. 1556 at Tr. 3250–52.)

688. Like Chief Deputy Sheridan and Captain Bailey,

Sergeant Tennyson thought from the outset that there was no basis for a criminal investigation or for interviewing all of the HSU deputies. (Doc. 1466 at Tr. 2815, 2907–08; Doc. 1467 at 3078–80.)

689. Therefore, upon his receipt of Sergeant Tennyson's November memorandum, Chief Deputy Sheridan closed any further criminal investigation into the materials located in Deputy Armendariz's garage based on faulty and insufficient reasoning.

6) IA #2014-295 Is Therefore Void

690. In short, Sergeant Tennyson's investigation ended up being what he and Chief Deputy Sheridan intended it to be: a perfunctory whitewash. His leading questions further propagated a fiction invented by HSU officers in an attempt to explain the unauthorized personal property in their possession, and he failed to adequately investigate the allegation that HSU officers other than Deputy Armendariz contributed to the items of personal property found at his home. Tennyson's failure to fairly investigate the pervasive seizure of these items of personal property in the criminal investigation also resulted in the MCSO not fairly addressing them in the following administrative investigation.

691. As a result, although the property in Deputy Armendariz's garage *was not taken into consideration* when determining the outcome of the criminal investigation into the Cisco Perez allegations, that outcome was used to determine that no 'further' criminal investigation into the property found in the Armendariz garage was necessary. Due to this sleight-of-hand circumvention, the PSB never conducted a

criminal investigation to attempt to determine the source of the drugs, currency, weapons, credit cards, bank cards, or other property in Armendariz's home. (Doc. 1389 at Tr. 1171–72.)

***71** 692. The Court finds that Defendants engaged in a cursory and bad faith investigation, and therefore IA #2014-295 is void.

2. The MCSO's Administrative Investigation into the Cisco Perez Allegations (IA #2015-541) Ignores Admitted Wrongdoing and Is Void.

693. IA #2015-541 was the administrative investigation that followed up on the wrongfully held property revealed by the Cisco Perez criminal investigation. (Doc. 1556 at Tr. 3240–41; Doc. 852 at 2 (entry on IA #2014-295).)

694. There are several problems with this investigation.

695. First, the MCSO informed the Court that it would rely on the Cisco Perez investigation in conducting IA #2014-541. (*See, e.g.*, Doc. 786 at 8–9 ("Based on the fact that a criminal inquiry (IA2014-0295) has been conducted on this matter, the majority of the PSB administrative investigation will rely on information from that criminal inquiry.") (emphasis in the original).) It appears to have done so.

696. Thus, the investigators apparently had little concern about whether the IDs, license plates, and other "trophies" that were scattered around MCSO offices were appropriately seized in the first place. They continued to accept and to represent to the Court

that all of the IDs seized were fraudulent and used for training purposes, (*see, e.g.*, Doc. 803 at 49), or that they were all seized by Deputy Armendariz.

697. It would not be until much later, as IDs, license plates, and other property kept proliferating, that the MCSO would finally admit that it had a pervasive problem (not limited to the HSU) with department deputies taking IDs, license plates, and other property when they had no good reason to do so. (Doc. 1043 at Tr. 992–93; Doc. 1417 at Tr. 1546–47, 1554; Doc. 1505 at Tr. 4023–24.)

698. Nevertheless, during the investigation of IA #2014-541, principals were only investigated for property management and/or evidence control issues and not whether the deputies had a basis to seize property in the first place without returning it. (Ex. 2520.)

699. At least two of the persons investigated demonstrate as much. One of the nine principals against whom charges were brought, but no charges were ultimately sustained, was Detective Frei. After the investigation began, Frei attempted to destroy his memorandum to Captain Bailey and the attached IDs. The memorandum came to light and was turned over to the Monitor. In his memorandum, Frei admitted that he had been collecting IDs for five years and that they were "stored in a secure location in [his] MCSO work station." (Ex. 1000 at MELC028132.) The memorandum thus admits to at least a property management violation.

700. Yet no misconduct was sustained against Detective Frei.[35] (Ex. 2520 at MELC229078.)

***72** 701. Of greater concern to the Court is that Detective Frei made no attempt to verify the statement in his memorandum that the IDs are all fraudulent. (*See, e.g.,* Doc. 1505 at 4049 (Bailey does not remember if they ever tried to determine whether the Frei IDs were fraudulent); Doc. 1417 at Tr. 1551–52 (Sheridan has no recollection as to whether any investigation was done with respect to the Frei IDs).) Frei further makes the inaccurate statement that all of the IDs were used for training purposes, and the untruthful statement that most of the Criminal Employment Unit is certified in document examination "or has some training in forged/fraudulent/questioned documents." (Ex. 1000 at MELC028132.) These statements strongly suggest that Frei is seeking to manufacture a semi-legitimate reason that the IDs were taken in the first place when he does not have one.

702. In fact, however, to the extent that the MCSO investigated only whether the IDs had ever been turned into the Property and Evidence room, rather than the question of whether a deputy had an appropriate reason to take the IDs, the PSB failed to investigate whether harm was done to the interests of members of the Plaintiff class.

703. It is, of course, appropriate for the MCSO to conduct investigations for a failure to impound property.[36] "Failure to impound property and evidence to a property custodian" is a violation of MCSO policy. (Ex. 2001 at MELC416255.)

704. The matter of greater concern to the Court, however—a matter about which the Court has

expressed concern since it first heard of the property found in Deputy Armendariz's garage (*see, e.g.*, Doc. 1237 at Tr. 24–25)—is whether MCSO officers routinely seize IDs and other property from members of the Plaintiff class without any legitimate basis for the seizure. An unauthorized keeping of property amounts to a separate violation of MCSO policy. (Ex. 2001 at MELC416255.) Moreover, seizing property or failing to return it without a legitimate basis for doing so unjustly deprives class members of their property, in violation of this Court's orders and in violation of the Constitution.

705. This problem exists throughout the IA property investigations arising in this case.

706. Yet, no charges—even charges for failure to turn in property—were sustained against Detective Frei.

707. What is at least as distressing is that Captain Bailey, the SID Captain to whom Detective Frei wrote the memorandum requesting direction about what to do with the IDs, is the PSB Captain who signed off on the decision to sustain no allegations against Frei for the violations. (Ex. 2520 at MELC229078, *see also* Doc. 1505 at Tr. 4047.) Bailey had an obvious conflict in supervising this investigation—a conflict which the Court pointed out as early as October 2014, and which Chief Deputy Sheridan acknowledged in his April 2015 hearing testimony. (Doc. 1043 at Tr. 985.)

708. Yet, as the evidence demonstrates, Captain Bailey continued to supervise such investigations. (*See* Doc. 1417 at Tr. 1556.)

709. Moreover, Captain Bailey was himself the

principal in such an investigation in which the finding of misconduct was sustained. Captain Bailey received a "coaching" for the violation.[37] (*See* Ex. 2943a at MELC1404207a (IA #2015-0357).)

710. Nonetheless, on June 1, 2015, Captain Bailey sent Detective Frei a memorandum informing him that no discipline against him was sustained in this matter.

***73** 711. This same conflict pervades almost all of the property investigations on which Captain Bailey signed off. The MCSO can make no claim that such investigations were 'impartially' conducted. The Court advised the MCSO multiple times that such investigations were improper. Yet the MCSO persisted in conflict-ridden investigative staffing.

712. A further example of the investigation's obvious flaws is that no charges were sustained against Officer Montoya. Officer Montoya has since admitted to transferring confiscated materials from HSU offices to Deputy Armendariz's garage and, on other occasions, helping him to do so. Even after she confessed to doing so, her investigation was not re-opened.[38] (Doc. 1466 at Tr. 2901–03.)

713. Given her confession, it appears clear that the finding of "not sustained" against Officer Montoya is indefensible.

714. Third, as was the case with IA #2014-542 and IA #2014-543, IA #2014-541 was not completed in a timely fashion.

715. The investigation was opened on September 11, 2014. (Doc. 786 at 8.)

716. On June 1, 2015, nine principals of IA #2014-541 received notice from Captain Bailey that any allegations asserted against them were "not sustained." (Ex. 2520.) Final findings of violation were sustained against the remaining eleven principals and all received the minor discipline of written reprimands. The reprimands were issued on various dates ranging from June 3, 2015 to June 17, 2015. All were well past the time requirement imposed by statute and MCSO policy.

717. As is discussed and amply demonstrated, Chief Deputy Sheridan manipulates the timing on investigations to provide an additional basis for imposing no discipline or only minor discipline. He has done so here. (*See* Doc. 1017 at Tr. 214–15.)

3. Except for a Few Items, the MCSO Lumped All of the Property Found in Deputy Armendariz's Garage into a Single "Umbrella" Investigation that Designated (Deceased) Deputy Armendariz as the Principal and Delayed Completion of that Investigation to Avoid Accountability for Its Inadequate Execution.

718. The MCSO opened individual investigations for only a few items found in Deputy Armendariz's garage, and none of these resulted in discipline.

719. In his September 25, 2015 testimony, Chief Deputy Sheridan testified that the MCSO could connect "all kinds of items" from Deputy Armendariz's garage to other deputies, and that they opened up a separate IA investigation as to each such item. (Doc.

1465 at Tr. 1440 ("[I]f in Charley's garage we had a credit card or something—I know there was a purse, there was all kinds of items—that we were able to attribute to another deputy sheriff having possession of those, we would have a separate IA pulled for that."); *see also* Doc. 1465 at Tr. 1436.)

720. In reality, the MCSO initiated investigations into only 28 of over a thousand items of personal property found at Deputy Armendariz's house—26 driver's licenses (IA #2014-775 through IA #2014-783),[39] one credit card (IA #2014-774), and one license plate (IA #2014-801).[40]

***74** 721. The Court would expect, as Chief Deputy Sheridan's own testimony indicated, that once a department's own incident reports verified the connection between the property owner and the MCSO deputy, the preponderance of the evidence standard would be met and discipline would be imposed. (*See* Doc. 1465 at Tr. 1452:3–10; *see also* Ex. 2881 at MELC1306925; Ex. 2001 at MELC416243.) Yet no such discipline was imposed in any such case arising from the property found in Deputy Armendariz's home when a deputy was matched with an item of personal property found there.

722. Chief Deputy Sheridan acknowledged that there were no separate IA investigations launched as to the various drugs found in Deputy Armendariz's house. Because the drugs were never connected to any particular deputy, the only investigation into these matters occurred in the context of the "catch-all" or "umbrella" Armendariz IA investigation designated as IA# 2014-221. (Doc. 1465 at Tr. 1437:5–10.) Armendariz was the only principal of that

investigation.

723. Chief Sheridan further testified that the weapons, credit cards, bank cards, and money were individually investigated—but he testified that those investigations too may have been only in the context of the umbrella Armendariz investigation. (Doc. 1465 at Tr. 1439–40.)

724. In fact, the MCSO has never opened up any investigation with respect to any of the weapons, credit cards, bank cards (with one exception), cell phones, or CDs they found in Deputy Armendariz's home.

725. The MCSO asserts that they have set forth in IA #2014-221 their attempts to connect these items of property to an MCSO deputy other than Deputy Armendariz. (Doc. 1556 at Tr. 3421-22; Doc 1505 at 4017-18.)

726. The Court finds that these efforts are inadequate because Defendants manipulated the closure of the investigation to cover its deficiencies and avoid accountability for it in the evidentiary hearing. Throughout the course of this evidentiary proceeding, the Court repeatedly addressed Sheriff Arpaio's counsel regarding the MCSO's failures to timely complete the investigations related to the Armendariz search and the Cisco Perez allegations. (*See, e.g.*, Doc. 1017 at Tr. 15–20; Doc. 1051 at Tr. 427–28.)

727. During the April 23, 2015 hearing, the Court addressed Ms. Iafrate and noted: "Initially we were going to have those MCSO internal investigations done in early March. You indicated...in early

March,...that you needed an extension until April 13. April 13 has come and gone. We don't have those investigations completed. Obviously, in setting the supplemental hearing we will want to have them completed well enough in time to do the [Monitor's evaluations]. I would request in the next day or so, if you can, you provide me with an indication of when those investigations will be completed. And I don't just mean 542 and 543. I mean the other investigations that arose from the Armendariz and/or Cisco Perez and related allegations that are related to the subject matter of this lawsuit." (Doc. 1051 at 427–28.)

728. On May 7, 2015, Sheriff Arpaio informed the Court that there were 62 investigations arising from the Armendariz search and the Cisco Perez allegations, that 41 of them were completed, and that 21 remained incomplete. (Doc. 1052 at 2.) Arpaio assured the Court that "[a]ll of the remaining investigations will be completed on or before June 15, 2015." (Doc. 1052 at 2.) On May 8, the Court entered an order requiring Arpaio to specify by investigation number which of those 62 investigations had already been actually closed. (Doc. 1064 at ¶ 9.)

***75** 729. On May 13, in compliance with the May 8 order, Sheriff Arpaio identified IA #2014-221 as one of those investigations that was still open. (Doc. 1076-1 at 2.) Thus, IA #2014-221 was one of those investigations that were to be completed on or before June 15, 2015.

730. The following October, Captain Bailey testified that he had signed off on the completed report of IA #2014-221 in August 2015, which was two months after Sheriff Arpaio represented to the Court that it

would be complete. (Doc. 1505 at Tr. 4045.)

731. In his September 25, 2015 testimony, Chief Deputy Sheridan testified that he had reviewed the completed report of IA #2014-221 within the previous week and "sent it back for some editing, not of content, but of grammar." (Doc. 1465 at Tr. 1437:13–15.) Nevertheless, Sheridan did not sign off on this investigation until November 5, after the hearings were virtually completed. (Doc. 1627, Ex. A.)

732. This delay deprived the Court and the Parties of the opportunity to evaluate the report during the hearings. By November 2015, IA #2014-221 had been open for approximately a year and a half. There is no reason why the MCSO could not have completed the investigation in sufficient time to have its adequacy evaluated by the Parties during the hearing.

733. The Court therefore finds that the completion of the umbrella Armendariz investigation (IA #2014-221) was manipulated to avoid accountability in the evidentiary hearings.

734. Of course, to the extent that the MCSO failed to adequately investigate personal property seized from members of the Plaintiff class, such failure harms the members of the Plaintiff class.

4. The MCSO's Other Administrative Investigations into Personal Property Found Elsewhere Resulted in Minor Discipline, If Any

735. The MCSO initiated a few more administrative investigations involving personal property found

elsewhere.

736. The MCSO opened four separate investigations—IA #2014-018, IA #2014-019, IA #2014-020, and IA #2014-021—related to the property it found upon its second inspection of the HSU's former offices in the Enforcement Support Building.

737. The MCSO also opened up IA #2014-022, which resulted from property handed to Sergeant Tennyson just prior to that second inspection.

a. Although IA #2015-018 Resulted in Minor Discipline, the MCSO's *Melendres*-Only Discipline Policy Clouded the Basis of that Discipline and Ensured that Only Minimal Discipline Would be Imposed; the Investigation Is Invalid.

738. IA #2015-018 involved the discovery of 578 CDs, 462 departmental reports, 35 license plates, 164 IDs, and a passport. In this investigation, the MCSO sustained a finding of minor discipline resulting in a written reprimand to five officers. (Ex. 2943a at MELC1404206a.)

739. With respect to at least some of that property, for example license plates that were not returned to the Motor Vehicle Division, the PSB was able to connect the property with MCSO deputies other than Deputy Armendariz. Of the 35 vehicle plates found, an MCSO CAD database search revealed that 13 of the license plates had some relation to Armendariz. The MCSO connected eight license plates to the law enforcement activities of five other MCSO deputies. One deputy was associated with two of the plates, another deputy,

who testified at trial, was associated with three of the plates, and three other HSU deputies were associated with one license plate each. The MCSO was unable to connect any deputy to 14 of the license plates. (Doc. 803 at Tr. 51–53.) There is no indication that a log scan or any similarly available search was conducted to attribute these 14 plates to any particular MCSO deputy.

***76** 740. Contrary to the testimony of Chief Deputy Sheridan, no separate investigation was launched as to the five deputies who were associated with the license plates that were identified. Moreover, only five deputies in total received any discipline at all for the various property that was investigated as a part of IA #2015-018.

741. Of the 164 IDs in IA #2015-018 that were not turned into Property and Evidence, the MCSO found 53 in the bottom of a box that also contained reports. (Doc. 803 at Tr. 48–50.) These 53 IDs were turned in by one deputy, but had been retained by another. Deputy Gandara apparently had some association with those IDs although it is not apparent whether he found them, or whether he was the deputy who had kept them without turning them in. (Doc. 803 at Tr. 48–50.) Another 111 IDs were apparently those Detective Frei turned in to the property room for destruction together with his memorandum to Captain Bailey seeking advice on what to do with them.

742. On November 20, 2014, Sergeant Fax informed this Court that the MCSO intended to run these 164 IDs through their CAD and JWI databases and that MCSO would potentially run them through log scans in the future. (Doc. 803 at Tr. 48.) While Sergeant Fax

continued to incorrectly assert that the 111 IDs were used for training purposes, he frankly acknowledged that as to the 53 IDs, he did not yet know "what reason they were kept, confiscated, and used for." (Doc. 803 at Tr. 49.)

743. With respect to the 111 IDs, he asserted to the Court that the PSB intended to determine in its investigation from "what investigations [Detective Frei] had those, why he had those for so long, and why there were not put into the property room." (Doc. 803 at Tr. 50.)

744. Nevertheless, as is discussed above, the IDs held by Detective Frei were not investigated to determine who confiscated them and whether they were appropriately seized. No discipline was imposed on Frei for inappropriately keeping such IDs without turning them into property. The failure to even impose discipline on Frei for keeping such IDs in his desk indicates that this investigation was not adequately pursued.

745. While Deputy Gandara did receive discipline in this investigation, it is not apparent for which act or acts of violation he received the discipline. He may have received the reprimand for the IDs, for his failure to turn the license plates over to Motor Vehicles, or for leaving behind the other CDs and departmental reports that were found in the offices and that were the subject of this investigation.

746. The failure to specify which acts of misconduct constituted the basis for an officer's discipline remains a problem with respect to every officer that received discipline under IA #2015-018. And for reasons

previously explained, the investigations were inappropriate to the extent that the PSB lumped together multiple separate acts of misconduct by an officer into one single sustained finding of discipline.

747. For example, as was the case in IA #2014-541 and IA #2014-542, some of the officers who received discipline here also received discipline for separate acts of misconduct in other investigations that arose out of the *Melendres* case. These various separate acts of misconduct were lumped together and treated as a single violation. There should be no discount in the amount of discipline imposed on officers who commit separate acts of misconduct against members of the Plaintiff class.

b. The MCSO Improperly Investigated IA #2014-021.

***77** 748. In this administrative investigation, $260 went missing and the MCSO identified Deputy Cosme as the principal.

749. The money belonged to an apparent member of the Plaintiff class. (Ex. 2887.)

750. Although a criminal investigation was also undertaken in this matter, no criminal charges were ever asserted. (*See* Ex. 2010; Ex. 2887.) The criminal investigation in this case was undertaken by Sergeant Tennyson, who testified at the hearing that he thought there was no crime he could identify prior to the start of the investigation. Tennyson was sympathetic to Deputy Cosme and did not believe that Cosme stole the $260. (Doc. 1466 at Tr. 2935–42.) Tennyson testified that he understood that $260 went missing, yet he also

testified that he could not identify a possible crime at the start of the investigation. This inconsistency further undermines Tennyson's credibility.

751. During Sergeant Tennyson's interview of Deputy Cosme, Tennyson asked Cosme leading questions and made favorable comments during the interview designed to exculpate Cosme and to provide Cosme with testimony with which he could seek to exculpate himself.[41] (*See, e.g.*, Ex. 2010 at MELC288264–65 (suggesting to Cosme that the oversight with the money may have resulted from great demands on the HSU and inadequate staffing); Ex. 2890 at MELC288285 (suggesting that Tennyson has known Cosme for 15 years and that he could not imagine him giving money to somebody Cosme did not trust).)

c. The MCSO Misled the Court as to the Grievance Relief Granted in IA #2015-022.

752. On November 3, 2014, an MCSO sergeant handed Sergeant Tennyson a steno pad, four identification cards issued by foreign governments, one empty CD case, and one CD case that did contain a music CD. (Doc. 803 at Tr. 46.)

753. As a result, the MCSO sustained a finding of minor discipline in the form of a written reprimand against both Deputy Gandara and Deputy Rangel on June 4, 2015. (Ex. 2943a at MELC1404207a.) Neither deputy filed a grievance.

754. Deputy Hechavarria also received a written reprimand, but he filed a grievance as to that reprimand.

755. Upon a second grievance review, Chief Deputy Sheridan reversed Deputy Hechavarria's discipline.

756. In granting the grievance, Chief Deputy Sheridan directed that the preliminary finding, which was originally sustained, be changed to reflect that it had never been sustained. (Ex. 2062 at MELC680471.) While under MCSO policy, Sheridan does have the relatively unfettered authority to rescind discipline, (*see, e.g.*, Ex. 2001 at MELC416246), he does not have the authority to change history in doing so. This is especially true when the Court had previously ordered that the Defendants contemporaneously advise it of disciplinary decisions and of the results of those appeals.

757. As a result of Chief Deputy Sheridan's grievance resolution, the information initially and repeatedly provided to this Court was that the charges against Deputy Hechavarria were not even preliminarily sustained. (*See* Doc. 1420; Doc. 1613; Ex. 2943; Ex. 2943a.) It was not until the Court ordered that Defendants provide it with a detailed list of IA investigations and their outcomes that it became apparent that the violation against Hechavarria in this investigation was both preliminarily and finally sustained and subsequently reversed in a grievance proceeding by Chief Deputy Sheridan. (Doc. 1627.)

***78** 758. The Court finds that in his order granting the grievance, Chief Deputy Sheridan sought to conceal his grant of the grievance.

759. The Court further finds that to the extent that Chief Deputy Sheridan's directive orders the MCSO to change the already established facts of the disciplinary

adjudication, it transcends the authority given to Sheriff Arpaio or his designee by MCSO policy and is an abuse of that authority.

760. There is no requirement within MCSO policy for Sheriff Arpaio or his designee to explain their grievance decisions. Here, in reversing the final discipline imposed by Deputy Hechavarria's superiors, and in reversing an initial grievance brought by Hechavarria, Chief Deputy Sheridan only observed: "I concur with your assessment of the incident as outlined in your Grievance Response." (Ex. 2062 at MELC680471.)

761. The factual allegations, submitted by Deputy Hechavarria in his grievance, and upon which Chief Deputy Sheridan ultimately relied in granting the appeal, may nevertheless provide sufficient good faith basis for reversing the grievance.

762. In his grievance, Deputy Hechavarria alleges that he left the crime scene and booked the defendant before the additional property was discovered and thus was never told of the property. (Ex. 2062 at MELC680475.)

763. The only property identified to this Court as being the subject of the grievance was "four ID cards that appeared to be foreign national cards, one CD case that was empty, [and] one CD case that did contain a music CD." (Doc. 803 at Tr. 46.) If Deputy Hechavarria's story is credited, such property could conceivably be property that was uncovered on the scene after Hechavarria left to book the subject and process what property he then had.

764. In his testimony on this point, however, Chief Deputy Sheridan does not indicate that he undertook any factual inquiry to determine the accuracy of Deputy Hechavarria's story, nor that he gave anyone from the PSB the opportunity to present any evidence refuting Hechavarria's recitation of events before granting the grievance.

5. Personal Property Attributable to the Plaintiff Class in the Possession of the MCSO Continues to Come to Light.

765. Many ID investigations remain open. Identification cards and license plates located in MCSO facilities—but not placed in Property and Evidence—continue to come to light.

C. The MCSO Executed a Fundamentally Flawed Investigation Into the Allegations Raised by Maryann McKessy Regarding Detective Mackiewicz.

1. Ms. McKessy Raised Multiple Allegations, Both Civil and Criminal in Nature, with the MCSO Regarding Detective Mackiewicz.

766. Disclosed materials related to the Seattle investigation, together with the subsequent testimony, demonstrated that in August 2014, Ms. McKessy registered a complaint with the MCSO about Detective Mackiewicz. She had been, for a period of time, one of Mackiewicz's girlfriends—although, apparently unbeknownst to her, Mackiewicz had also been living with a separate girlfriend—a Ms. W.

767. When Ms. McKessy found out about Ms. W., and

Detective Mackiewicz's other relationships, she informed Ms. W. of them. Ms. W. had access to Mackiewicz's payroll information and she apparently reviewed it with McKessy. McKessy took screen shots of some of that information with her cell phone.

***79** 768. Ms. McKessy charged that Detective Mackiewicz was wrongfully profiting from his work in Seattle including billing the County for overtime work not performed and having Mr. Montgomery, a confidential informant to the MCSO, build a computer for Mackiewicz's personal use. McKessy also alleged that Mackiewicz had an inappropriate intimate relationship with a victim of a domestic violence incident that he had investigated. She also alleged that he was a steroid user. (Doc. 1456 at Tr. 2180– 81.)

2. In Addition to Ignoring His Own Conflicts of Interest, Chief Deputy Sheridan Designated the Investigation of Ms. McKessy's Allegations as Criminal and Assigned It to Sergeant Tennyson, Who Is Supervised by Captain Bailey—Both of Whom Are Friends of Detective Mackiewicz.

769. Ms. McKessy made these allegations to Chief Lopez. She also told Lopez that Detective Mackiewicz was protected within the MCSO by his close relationship with Chief Deputy Sheridan and Captain Bailey. (Ex. 2015 at MELC186197.)

770. Chief Lopez sent a memorandum to Chief Deputy Sheridan in which he reported Ms. McKessy's charges along with her concern that Detective Mackiewicz was protected by Sheridan and Captain Bailey. (Ex. 2015.)

771. In fact, Chief Deputy Sheridan and his wife were friends with Detective Mackiewicz and his girlfriend Ms. W. The Sheridans saw them socially. (Doc 1417 at Tr. 1598.)

772. Chief Deputy Sheridan's wife was also involved in business relations with Detective Mackiewicz and with Ms. W. (Doc. 1417 at Tr. 1598, 1604.) The Sheridans received commissions from the real estate purchases Ms. Sheridan coordinated with Mackiewicz and Ms. W. (*Id.* at Tr. 1598; Doc. 1456 at Tr. 2195–96). Ms. Sheridan stood to make $100,000 in commission from home sales she made to Ms. W earlier in 2015. (Doc. 1417 at Tr. 1604.)

773. Chief Deputy Sheridan nevertheless testified that he supervised both the criminal and the administrative investigations that resulted from Ms. McKessy's allegations. (Doc. 1417 at Tr. 1597–98.) In fact, Sheridan must approve all initiations of PSB criminal investigations. (Doc. 1043 at Tr. 975–77; Doc. 1389 at Tr. 1128–29; Doc. 1456 at Tr. 2215–16; *see also* Ex. 2881 at MELC1306925, MELC1306920.)

774. Within a day or so of Chief Lopez's memorandum to Chief Deputy Sheridan, the matter was designated as a criminal investigation and assigned to Sergeant Tennyson. (Doc. 1456 at Tr. 2183; Doc. 1466 at Tr. 2948.) Captain Bailey, as head of the PSB, supervises Tennyson's criminal investigations.

775. Detective Mackiewicz had a personal relationship with each person involved in 'investigating' him or supervising his investigators. Mackiewicz "was very important" to Sheriff Arpaio and his wife for the work he had done in protecting them. (Doc. 1455 at Tr. 2059.)

Chief Deputy Bailey and Mackiewicz were friends. Captain Bailey and Detective Mackiewicz were friends. (Doc. 1498 at Tr. 3877.) Sergeant Tennyson and Detective Mackiewicz were also friends. (Doc. 1467 at Tr. 2978–79; Ex. 2842 at MELC1397034 ("[Y]ou and I have been friends and I think you've seen you know you've seen me go through my hives and knows whatever else."); Ex. 2842 at MELC1397042; *see also* Ex. 2894 (Tennyson gives Mackiewicz advice as a friend concerning the McKessy allegations.).)

3. Sergeant Tennyson and Detective Zebro Subverted the Investigation.

a. Sergeant Tennyson Failed to Investigate or Follow Up on Any of Ms. McKessy's Allegations.

776. Sergeant Tennyson and Detective Zebro met with Ms. McKessy on August 22, 2014. (Ex. 2016 at MELC186198.)

***80** 777. Sergeant Tennyson and Detective Zebro approached the interview assuming that they were dealing with a woman "scorned." (Doc. 1456 at Tr. 2184; Doc. 1467 at Tr. 3099–100.)

778. Ms. McKessy made the same allegations to Sergeant Tennyson and Detective Zebro that she had made to Chief Lopez. (*See* Ex. 2893; *see also* Doc. 1456 at Tr. 2180–85.)

779. She brought her cell phone to her meeting with Sergeant Tennyson to show him Detective Mackiewicz's payroll records of which she had taken a screen shot, but her cell phone died. She also told Tennyson that the information verifying the excessive

overtime came from Ms. W. (*See* Ex. 2893.)

780. Sergeant Tennyson did not attempt to retrieve the documents on Ms. McKessy's cell phone because he found the documents to be of no evidentiary value, even though he had never seen them. (Doc. 1466 at Tr. 2953–54; *see also* Doc. 1456 at Tr. 2184.)

781. Ms. McKessy explained to Sergeant Tennyson that Detective Mackiewicz was protected by Chief Deputy Sheridan, (Ex. 2893 at MELC186212–15), and that he had a good relationship with Captain Bailey; however, Tennyson did not investigate either statement. (Doc. 1466 at Tr. 2954–55.)

782. Sergeant Tennyson testified that he did not do so because the allegation did not amount to a criminal allegation worth evaluating. (Doc. 1466 at Tr. 2955.)

783. While a personal and/or professional relationship may not in and of itself be criminal, it does in this instance give rise to a conflict. To the extent that Sergeant Tennyson professes that it bore no relationship to Tennyson's criminal investigation of Mackiewicz, which was being supervised by Chief Deputy Sheridan, the Court finds that his testimony lacks credibility. His lack of concern demonstrates his own conflict of interest in the investigation of Detective Mackiewicz.

784. Ms. McKessy told Sergeant Tennyson that Detective Mackiewicz had inappropriately accessed some of her text messages through Cathy Woods Enriquez; yet, Tennyson never looked into it. (Doc. 1467 at Tr. 2972–75.)

785. Sergeant Tennyson agreed with Ms. McKessy that what she brought forth did not constitute a sufficient basis on which to go forward with a criminal investigation. In fact, McKessy stated that she did not wish to see Detective Mackiewicz criminally charged. (Ex. 2893 at MELC186259, MELC186261, MELC186264.)

b. Captain Bailey, Sergeant Tennyson, and Detective Zebro Obstructed the Investigation by Divulging Ms. McKessy's Allegations to Detective Mackiewicz.

786. Ms. McKessy requested that Sergeant Tennyson and Detective Zebro not inform Detective Mackiewicz about her complaint. Tennyson told her that "We…will not divulge anything that's been said today." (Doc. 1456 at Tr. 2184–85; Ex. 2893 at MELC186211, MELC186262–63.) They did say however that they were required to document their investigation and interview with her, and even though it would not result in criminal charges, it would be looked at on the administrative side of the PSB. She was told that if an administrative investigation were pursued, Mackiewicz might eventually be informed of her complaint. (Ex. 2893 at MELC186261–64.)

787. Despite this representation to Ms. McKessy, Sergeant Tennyson called Detective Mackiewicz that same day. (Doc. 1456 at Tr. 2185–87.) Mackiewicz was on a plane returning from Seattle. When he arrived in Phoenix, Mackiewicz had Posseman Zullo's wife take him directly to the MCSO's offices to meet with Tennyson, Captain Bailey, and Detective Zebro. (Ex. 2842 at MELC1397036.)

***81** 788. In that meeting, they discussed Ms. McKessy's allegations, (Doc. 1467 at Tr. 2975), and the possibility that she was the snitch Sheriff Arpaio wished to identify who had disclosed the substance of the Seattle investigation to *The New Times*. (*Id.* at Tr. 2987–89; Ex. 2842 at MELC1397035.)

789. They in fact apparently initiated some sort of surveillance on Ms. McKessy to determine if she was in contact with Steve Lemons, the columnist for *The New Times*, who wrote the story about the Seattle investigation. In their phone conversation the next day, in which Sergeant Tennyson continued to discuss with Detective Mackiewicz the details of McKessy's allegations against him, Mackiewicz comments to Tennyson that "[i]f Maryann [McKessy] goes to Lemons we'll know it's her," to which Tennyson responds, "exactly." (Ex. 2894.)

790. Detective Mackiewicz did not know that Ms. McKessy had asserted a complaint against him with the PSB until he heard it in the meeting with Captain Bailey, Sergeant Tennyson, and Detective Zebro. (Ex. 2842 at MELC1397037 ("I didn't know that Maryann pressed the issue with the Office until...you guys called me down and said hey, we just met with Maryann. And I'm like what the fuck? Why did you guys meet with Maryann?").)

791. In that meeting, Captain Bailey advised Detective Mackiewicz not to attempt to contact Ms. W. to learn about her cooperation with Ms. McKessy. Mackiewicz ignored that advice. He reminded Sergeant Tennyson of that in a recorded conversation that occurred a year later: "So against your advice 'cause remember in that meeting I was like I'm gonna confront [Ms. W.] and I

wanna find out what fucking [Ms. W.] told her....And Bailey was like Brian, don't do that. It's not worth it. Let's not stir it up. Well, the first thing I did when I got in the car is I fucking got in [Ms. W.'s] ass and I said I'm about ready to fucking get in trouble here. I wanna know what the fuck is goin' on. And she's like Brian, she called me like two weeks ago telling me that she wanted me to go to Internal affairs together so we could stick it up your ass and I said absolutely not. I'm done. I'm over this. I don't wanna do anything with this. Nothing's going on." (Ex. 2842 at MELC1397037.)

792. The day after Sergeant Tennyson's initial interview with Ms. McKessy, he recorded a telephone exchange with Detective Mackiewicz concerning the matter.

793. In that interview, recorded on August 24, Detective Mackiewicz states to Sergeant Tennyson that Ms. W. had spoken with Chief Deputy Sheridan about the matter—apparently the day before Tennyson had his initial interview with Ms. McKessy. (Ex. 2894).[42]

794. In the recorded conversation, Detective Mackiewicz further asserted that Ms. W. had confessed to him that Ms. McKessy had come to her about six-weeks earlier and told her of Mackiewicz's concurrent relationship with McKessy and possibly others. According to Mackiewicz, when McKessy told Ms. W. this, Ms. W. concluded that even though she and Mackiewicz had been living together, she had no right to believe that they had an exclusive relationship. Thus she was not angry and did not throw Mackiewicz's stuff out on the lawn as McKessy had hoped or expected.

***82** 795. Rather, according to Detective Mackiewicz, Ms. W. confessed to giving Ms. McKessy some of his financial information after she learned of Mackiewicz's multiple relationships. Ms. W. further told Mackiewicz that she had cut off communication with McKessy because she felt that McKessy was trying to drive a wedge in their relationship. (Ex. 2016 at MELC186199.)

796. In that interview, Sergeant Tennyson told Detective Mackiewicz that the matter had only to do with Mackiewicz's personal life and that the MCSO did not want anything to do with it and he should just let the matter go. (Ex. 2894.)

797. Despite Sergeant Tennyson and Detective Zebro's representation to Ms. McKessy that they would document their investigation and it would be referred to the administrative side of the PSB, they shelved their investigation without writing a report.

4. Lieutenant Seagraves Was Removed from the Case After Finding the Investigation into Ms. McKessy's Allegations Deficient.

798. Six months later, in February 2015, Lieutenant Seagraves became the supervisor for Sergeant Tennyson and Detective Zebro.

799. Lieutenant Seagraves required that a report of the investigation into the allegations against Detective Mackiewicz be prepared. (Doc. 1467 at Tr. 2981.)

800. Instead of writing the report himself, Sergeant Tennyson assigned the task to Jennifer Johnson, a

criminal analyst working within the PSB but not an investigator. (Doc. 1467 at Tr. 2979–80; Ex. 2016.)

801. Ms. Johnson's report summarizes the August 22, 2014 interview of Ms. McKessy by Sergeant Tennyson and Detective Zebro, and Tennyson's recorded interview with Detective Mackiewicz the following day. (Ex. 2016.) The report states that Ms. W. refused to cooperate with the investigation and that any information provided by McKessy was not first-hand knowledge.

802. Lieutenant Seagraves refused to sign-off on the investigation because she did not think that the allegations were appropriately investigated. (Doc. 1456 at Tr. 2187–88, 2193.)

803. Her criticisms included that:

a. After the initial investigation, Sergeant Tennyson and Detective Zebro did not attempt to collect the documents brought in by Ms. McKessy on her dead cell phone to support her charges against Detective Mackiewicz. (Doc. 1466 at Tr. 2953–54; Doc. 1456 at Tr. 2184.)

b. Their disclosure of Ms. McKessy's complaint to Detective Mackiewicz was not appropriate even assuming, as Sergeant Tennyson had represented to her, that at some earlier point Ms. W. herself told Mackiewicz that McKessy had approached her. (Doc. 1456 at Tr. 2184–85, 2187.)

c. The report's statement that Ms. W. would not cooperate was an inappropriate statement since Ms. W. herself had never been contacted to confirm as much. (Doc. 1456 at Tr. 2190–91.)

d. The overtime allegation had not been investigated. (Doc. 1456 at Tr. 2191–92.) Captain Bailey told

Lieutenant Seagraves that the overtime allegation had been looked into because Chief Deputy Sheridan had told him so. Seagraves confirmed this with Sheridan in a meeting, but there was still no documentation in the file that the overtime allegation had in fact been investigated. (*Id.* at Tr. 2191–93.) In fact, it had not been investigated.

e. It was inappropriate for Sergeant Tennyson to request Jennifer Johnson to draft the report. (Doc. 1456 at Tr. 2190, 2192–93.)

804. Lieutenant Seagraves took over the direction of the investigation because it had not been adequately conducted. (Doc. 1456 at Tr. 2193, 2218–19.)

***83** 805. In that renewed investigation, Sergeant Tennyson tried to interview Sheriff Arpaio to understand Detective Mackiewicz's work parameters because Mackiewicz was working exclusively with Arpaio at that point. All such requests were denied. (Doc. 1466 at Tr. 2957–59, 2982–85; Ex. 2843.)

806. Lieutenant Seagraves opened additional investigations regarding Detective Mackiewicz that had been disclosed by Ms. McKessy's initial allegations and that had apparently been previously reported to the PSB.

807. Chief Deputy Sheridan signed off on initiating such investigations. For example, on March 30, 2015, he approved a new criminal investigation into Detective Mackiewicz's alleged steroid use. (Doc. 1498 at Tr. 3893–94; Ex. 2799.)

808. Sometime thereafter, Captain Bailey removed the investigation from Lieutenant Seagraves because she

was "hypersensitive." (Doc. 1456 at Tr. 2195.)

5. Chief Deputy Sheridan Ensured that Detective Mackiewicz Received No Discipline.

809. Detective Mackiewicz was placed on administrative leave on August 4, 2015 without receiving notice as to why. (Ex. 2842 at MELC1397033.) He called Sergeant Tennyson and left a message. On August 5, 2015, Tennyson returned Mackiewicz's phone call and at Lieutenant Seagraves direction he recorded part of that telephone call. According to Tennyson, he was unable to record the entire telephone call because the batteries on his device ran out.

810. In that call, in addition to making the statements described above, Detective Mackiewicz referenced the meeting in Captain Bailey's office that took place on the same night that Ms. McKessy had her interview with Sergeant Tennyson. Mackiewicz further referenced an additional communication he had allegedly received from "Jerry" informing him that the investigation of him that had been closed needed be reopened, but he should not worry about it. Mackiewicz stated:

> I'm gonna speak frank with you 'cause I can trust you. But you know when, when I got back and I sat in your when I sat in Bailey's office and you, you, Bailey and Zebro were there, I was under the impression because of not, not because of how it was handled but, um, it was what it was. You, you were, obviously, the Sheriff wanted to find out who the snitch was. We didn't know if it was McKessie [sic] or not blah, blah, blah. Makes all those allegations. And then you

> investigate it. Basically, hey you know what, there's nothin' here. You go ahead and close it out and the next thing you know, I'm getting a call from Jerry saying hey, you know what don't worry about it but we gotta open it back up again. And we're giving it to Sparman because you know we just wanna make sure that everything looks transparent and obviously they don't like Dave. And they're gonna say that you know Dave just (unintel 6:06) it up you know what I mean. And they didn't want that to happen.

(Ex. 2842 at MELC1397035.)[43]

811. During the October hearing, the Court asked Chief Deputy Sheridan whether he ever considered that he should assign out the oversight of the investigations of Detective Mackiewicz since Mackiewicz was a scheduled witness in the contempt proceeding against Sheridan. (Doc. 1417 at Tr. 1597–98.)

***84** 812. Chief Deputy Sheridan answered that when he heard, a week prior to his testimony, that Detective Mackiewicz had made some comments that would result in an administrative investigation into Sheridan, he then assigned the responsibility to supervise the investigation into Mackiewicz over to Chief Trombi; yet, no written record exists of such an assignment. (Doc. 1417 at Tr. 1597–98.)

813. The investigation was subsequently turned over by the MCSO to the Arizona Attorney General and the State Department of Public Safety.

6. The Court Finds that Conflicts, Untruthfulness, Manipulation, and Malfeasance Pervade the MCSO's Investigation of Ms. McKessy's Allegations.

814. In his April 24, 2015 testimony, Chief Deputy Sheridan testified that he did not believe there were any matters referred to the PSB for investigation related to the Seattle investigation. On the resumption of the hearing in the fall, after the MCSO disclosed the investigation into Detective Mackiewicz's overtime records, he acknowledged that his earlier testimony had been incorrect. Nevertheless, based on the evidence, the Court finds that he had intentionally concealed in his April 24 testimony the existence of such investigation.

815. To have not "believed" that there were such investigations on April 24, 2015 would have required Chief Deputy Sheridan to forget that: (1) he had authorized a criminal investigation arising from the Seattle investigation of (2) a social friend from whom (3) he and his wife had financially benefited. Sheridan would also have to forget that (4) he knew that Ms. McKessy alleged that Sheridan's relationship with Detective Mackiewicz would result in Mackiewicz's protection, and (5) after the resumption of the investigation by Lieutenant Seagraves, Sheridan himself had authorized the investigation of additional criminal charges against Mackiewicz, and (6) Sheridan had authorized such an investigation just three-weeks before he offered his April testimony.

816. The Court thus finds that Chief Deputy Sheridan's testimony in this respect is untruthful.

817. Further when Chief Deputy Sheridan testified that he had, a week earlier, turned the management of the investigations into Detective Mackiewicz over to Chief Trombi, his testimony was not credible.

818. Immediately prior to this testimony, Chief Deputy Sheridan testified that he continued to oversee all of the criminal and administrative investigations into Detective Mackiewicz. Only when he was confronted with questions regarding his conflicts in maintaining oversight of the Mackiewicz investigation did he state that he had actually turned it over to Chief Trombi. Furthermore, he acknowledged that there was no record that he had, in fact, reassigned oversight of the investigations to Trombi.

819. Even if it were true that Chief Deputy Sheridan had turned over oversight of the investigation to Chief Trombi a week earlier, Sheridan should have removed himself from all oversight of any investigation into Detective Mackiewicz at its very initial stages. Wholly aside from Ms. McKessy's allegations that Mackiewicz's relationships with Sheridan and Captain Bailey would protect him, Mackiewicz did indeed have such relationships. Moreover, Sheridan knew that Mackiewicz was going to be testifying in his noticed evidentiary hearing. Sheridan also presumably knew for at least a year that Mackiewicz had asserted to Tennyson that Sheridan had discussed the McKessy allegations, even before the McKessy interview itself, with Ms. W.

***85** 820. Chief Deputy Sheridan maintained control of the investigations into Detective Mackiewicz precisely because he wanted to insure that nothing came of

them, both because of his personal and professional relationship with Mackiewicz and because he wished to keep secret the Seattle operation in which Mackiewicz had been working.

821. Thus, Chief Deputy Sheridan designated the investigation as a criminal one and assigned the investigation to Sergeant Tennyson—Detective Mackiewicz's friend. Tennyson was under the supervision of Captain Bailey—also Mackiewicz's friend.

822. Sergeant Tennyson, Captain Bailey, and Detective Zebro subverted any criminal investigation, and demonstrated that they had no intent of performing any legitimate investigation by immediately informing Detective Mackiewicz of Ms. McKessy's allegations.

823. Chief Deputy Sheridan also made an intentional misstatement of fact to Lieutenant Seagraves when he told her that an investigation into the overtime allegations had already been completed when it had not been.

824. Captain Bailey further took steps to subvert any legitimate criminal investigation by removing Lieutenant Seagraves from the investigation

825. At the least, in their management and conduct of the investigations into Detective Mackiewicz, Chief Deputy Sheridan, Captain Bailey, Sergeant Tennyson, Detective Zebro, and Mackiewicz himself violated multiple MCSO policies.[44] (Ex. 2001 at MELC416255–58.)

D. Structural Inadequacies Pervade the MCSO's Internal Investigations.

1. The MCSO Did Not Provide Adequate Training On How to Conduct an Internal Investigation.

826. There is no requirement or practice that the MCSO train PSB officers on conducting internal affairs investigations. (Doc. 1467 at Tr. 3189–90.)

827. Captain Bailey had no training in internal affairs at the time that he took charge of the PSB. (Doc. 1467 at Tr. 3148.) And he never did receive training on IA investigations even while he was in charge of the PSB. (*Id.* at Tr. 3148–49.) He acknowledges that it would have been helpful.

828. Chief Deputy Sheridan has never been trained in IA investigations. (Doc. 1417 at Tr. 1539.)

829. Chief Olson does not appear to have an appropriate understanding of the application of the MCSO disciplinary matrix. (Doc. 1495 at Tr. 3511.)

830. Lieutenant Seagraves received some external training in how to conduct internal investigations in 2004. Yet she received no such training on her return to the PSB. (Doc. 1455 at Tr. 2083–84.)

831. Captain Bailey never had time to discuss things like interview technique with his sergeants. (Doc. 1467 at Tr. 3148.)

832. The failure of such training can be discerned by the way that PSB officers conduct some of their investigations.

833. The MCSO does not contest that PSB officers sometimes used leading questions in their interviews and further acknowledges that, generally speaking, the use of leading questions is not a good interview technique for obtaining unrehearsed responses from an interview subject. (Doc. 1498 at Tr. 3822–23; Doc. 1556 at Tr. 3445–47; *see also* Doc. 1498 at Tr. 3822, 3825–27; Ex. 2063 at MELC160147; Ex. 2772 at 17 of 22.) PSB officers also make assumptions that exonerate MCSO officers. (Doc. 1556 at Tr. 3439–40; Ex. 2063 at MECL160124.)

***86** 834. The training of division personnel in the conduct of PSB investigations was not in place at the time that Captain Bailey left the PSB. (Doc. 1467 at Tr. 3182–83.) As discussed above, many internal affairs cases are not investigated by the PSB. They are, in fact, investigated in the districts or divisions of the MCSO. (*See* Doc. 1505 at Tr. 4029–30; Doc. 1467 at Tr. 3148.) Division sergeants, for example, conduct investigations of complaints within the division, but sergeants are not required to go through any training. (Doc. 1417 at Tr. 1539.) Further, as the MCSO admits, the idea of having division lieutenants accomplish IA investigations has not yet been fully or successfully implemented. (*Id.* at Tr. 1538–39.)

835. There is no guidance on interview techniques in the operations manual. Captain Bailey desired to implement core training classes so that all personnel had the opportunity to learn appropriate investigative skills and techniques; yet, this was never accomplished. (Doc. 1467 at Tr. 3189–90.)

836. Before he left, Captain Bailey was preparing a

one-day instruction course for the PSB, district, and division investigators to try and establish some consistency throughout the office and to foster similar expectations between the districts, divisions, and the PSB on how cases should be handled. (Doc. 1505 at Tr. 3983.)

837. His training was not implemented when he left, and he does not know if it has been implemented since. (Doc. 1505 at Tr. 3983–84.)

2. The MCSO Did Not Adequately Train Its Leaders on How to Supervise Subordinates.

838. The MCSO has no policy in place that requires supervisory personnel such as sergeants, lieutenants, captains, and chiefs to be adequately trained to supervise their staff.

839. There were systemic failures in the quality of supervision and discipline in the Deputy Armendariz chain of command. (Doc. 1467 at Tr. 3192–93.) These failures were not limited to the HSU, but extended to other divisions within the MCSO. (*Id.* at 3193–94.) While some of these failures result directly from the orders of Sheriff Arpaio, and the structures of his administration, others are attributable to a lack of training and a lack of adequate staffing.

840. Lieutenant Sousa, who was the head of the HSU during much of the relevant period, reported to two chiefs—Chief Sands and Chief Trombi—but no captain. This violates the goals of efficient and direct reporting and accountability, and by all accounts was an unusual administrative structure, which was inadequate while it existed.

841. Further, Lieutenant Sousa repeatedly asserted in his predetermination submittals and his grievances that the political pressure brought upon him by Sheriff Arpaio, Chief Sands, and Chief Trombi caused his own supervisory failures. (Ex. 2898 at MELC-IA013693 ("This situation is an institutional failure that is identifying and punishing lower level supervisors for the failures of leadership at the uppermost levels of command in this Office to include Sheriff Arpaio and his need for media attention at all costs."); *see also* Ex. 2898 at MELC-IA013693 ("The root cause of all the issues in Human Smuggling was the lack of sergeants and my Chiefs failures to assign me more supervisors to adequately address the demands that were directly placed on me from the Sheriff's drive to enforce the illegal immigration issue that was giving him so much media attention."); Ex. 2559B at MELC-IA013646 ("The working environment in the Human Smuggling Division for me and my two sergeants was dysfunctional at times, and lacked proper supervision, but not because of the lack of good leaders or supervisors; it was because we had three squads that were extremely busy, but only two had sergeants and one lieutenant and command staff that was only concerned with press releases."); Ex. 2559B at MELC-IA013648 ("They had a duty to provide more supervisors to manage the Division and assist with all the legal issues and constant requests for information, but I was always told the same thing, the Human Smuggling grant would not cover additional sergeants."); Ex. 2559B at MELCIA0132648 ("The root cause of all the issues in Human Smuggling was the Sheriff's drive to enforce the illegal immigration issues that was giving him so much media attention. In addition, the lack of sergeants and the Chief's failures

to assign more supervisors to adequately address all the demands on this unit by the Sheriff.").)

***87** 842. Chief Olson acknowledged that it was "the responsibility of the office to make sure that we have some sort of training in place...." (Doc. 1495 at Tr. 3500.)

843. Yet, Chief Trombi, Chief Olson's equivalent on the enforcement side of the MCSO, and the commander in charge of the entire patrol division, has never received any training on how to supervise deputies. (Doc. 1017 at Tr. 142.) Nor has he ever received any training as to the instances in which it might be appropriate to refer someone in his command to internal affairs for an investigation. (Doc. 1017 at 142, 144; *see also* Ex. 2218 at MELC-IA011256.)

844. Chief Deputy Sheridan acknowledged to Special Investigator Vogel a breakdown in the agency's training of supervisors. (See Ex. 2218 at MELC-IA011245.) Ultimately, many key supervisory personnel have no training in supervising, which, as is evidenced by the supervisory failures of Chief Trombi, resulted in damage to class members. (*See, e.g.*, Ex. 2218 at MELC-IA011228 ("He [Chief Lopez] said he didn't receive any training upon promotion to Sergeant....When he was promoted to lieutenant, he did not receive any additional training."); Ex. 2218 at MELC-IA011248 (Lieutenant Jakowinicz received no supervisory training when he became a sergeant or lieutenant except for a POST class in which he enrolled on his own initiative.); Ex. 2218 at MELC-IA011225–26 (No training given to Sergeant Scott); Doc. 1017 at Tr. 212 (Sergeant Palmer likewise received no such supervisory training).)

845. The MCSO did introduce evidence as to the potential functionality of the Early Intervention System (EIS) and other ameliorative measures which the MCSO is starting to implement as a result of the initial injunctive order entered in this case. (See, e.g., Doc. 1505 at Tr. 4007–08.)

846. Certainly, while the EIS will hopefully be an aid to effective supervision, it is not designed to cure a lack of training in supervision.

847. Nor is there the evidence to suggest that the supervisory training measures required by the Court's previous injunctive order have yet been implemented.

848. Further, it is unclear whether the measures previously recommended by this Court, once implemented, will be adequate to address the supervisory deficiencies that have been identified as a result of the late-disclosed evidence and the resulting investigations.

849. Finally, the apparently uncontested testimony at the hearing was that, in light of the increased workload on sergeants necessary to engage in appropriate supervision and the use of the EIS, the ratio of sergeants to deputies authorized in the Court's previous injunctive order was too permissive. Although circumstances vary, Captain Skinner generally testified that the ratio incorporated in many consent decrees which he had researched suggest one to six or one to eight—upwards of one to ten. This is well below the ratio of one to twelve that this Court had previously authorized. (Doc. 1544 at Tr. 4274-75.)

3. The MCSO's Complaint-Intake Process Is Inadequate

850. Although the MCSO has made some positive policy changes since the *Melendres* order was entered, there remain significant deficiencies in the complaint intake processes.

***88** 851. At trial, several witnesses testified that they had filed complaints against the MCSO or left such complaints on recordings, but never received any response. Nevertheless, the Court initially concluded that the evidence was not sufficient for the Court to find that there was a system-wide problem within the MCSO that pertained to complaint intake and processing.

852. At this point, however, the MCSO has admitted that a significant number of its deputies seized IDs and other personal property as "trophies" and has further admitted that it destroyed much of that property. The admission that the MCSO has destroyed personal property gives rise to the reasonable inference that at least some of the owners of such property would have registered complaints with the MCSO. The absence of complaints relating to the loss of such property in MCSO records gives rise to the reasonable inference that such complaints were not properly transmitted, processed, or investigated.

853. This finding is bolstered by the MCSO's admission that it had no system in place to track these kinds of complaints. (Doc. 1495 at Tr. 3652.) The lack of such a system was offered as a reason why a finding of supervisory failures on the part of Lieutenant Sousa was vacated when it was grieved. (*See* IA #2014-542

(Chief Trombi's failure to take action with respect to the Mesnard complaint).)

854. Further, in his timeline of incidents that related to Deputy Armendariz, Sergeant Fax noted a large number of citizen complaints filed against Armendariz from May 2011 to August 2013 for which no internal affairs number was issued. (Ex. 2760 at MELC011633–46; *see also* Doc. 1467 at Tr. 3198.)

855. MCSO policy, last revised on September 5, 2014, requires that an IA number be issued for any external or internal complaint that is received. (Ex. 2881 at MELC1306918.) It is not apparent whether previous MCSO policy required this, or whether the MCSO has only attempted to follow this policy since the last revision.

856. While, if it is followed it will likely provide some improvements, as Captain Bailey and Chief Deputy Sheridan both acknowledge, the policy has no "fail-safe" that ensures that the officer receiving a complaint will enter it. (Doc. 1556 at Tr. 3268; Doc. 1389 at Tr. 1159–60.)

857. Nor does the MCSO use "testers" to audit the complaint intake system by "putting in a call and posing...as a civilian [making a] complaint to see what happens" in order to determine whether officers routinely enter complaints into the system and assign them IA numbers. (Doc. 1467 at Tr. 3156; Doc. 1505 at Tr. 4028–29.)

858. Despite its policy, therefore, the MCSO has yet to implement a means of detecting officers who do not adequately report complaints of misconduct in which

they are implicated. (Doc. 1467 at Tr. 3161–62.)

859. Nor does the PSB have any mechanism to ensure that a complaint is not miscategorized. (Doc. 1467 at Tr. 3177.) The policy itself does not define certain key terms—for example there is no definition of "racial or bias-based profiling." According to the testimony of Captain Bailey, when a civilian calls in a complaint, the MCSO relies upon the officer receiving the complaint to categorize the complaint and determine whether the complaint could involve the imposition of major discipline against an MCSO employee. (*Id.* at Tr. 3151–52.)

860. If the complaint could involve major discipline, the matter is normally transferred to the PSB for investigation. (Doc. 1467 at Tr. 3152.)

***89** 861. On the other hand, if the complaint likely involves the imposition of only minor discipline, the matter remains within the district or division receiving the complaint for a division investigation of the misconduct. (Doc. 1505 at Tr. 3986.)

862. The division commander or lieutenant charged with investigating internal matters can confer with the PSB captain to determine whether a matter should be referred to the PSB. (Doc. 1505 at Tr. 3987; *see also* Doc. 1467 at Tr. 3151–52.)

863. In making this determination, presumably, the MCSO officers rely on the disciplinary matrix. Such a prediction, of course, depends upon the appropriate application of that matrix.[45]

864. Chief Olson's testimony calls into question the

ability of MCSO division personnel to appropriately apply the disciplinary matrix. As the head of the custody side of the MCSO, Olson testified that he had been the disciplinary decision maker in "thousands or hundreds" of internal affairs investigations. (Doc. 1495 at Tr. 3573.) Yet he testified that alleged misconduct can be made to fit in whatever offense category he deems appropriate. Olson stated that "[y]ou can make [an offense] fit however—however you want to. It's my decision where they fit." (*Id.* at Tr. 3511.) Such arbitrary application of the disciplinary matrix would frustrate the ability of MCSO division personnel, and even the PSB, to accurately determine whether a matter likely involves minor or major discipline.

865. Moreover, appropriate application of the disciplinary matrix is further compromised by the MCSO's *Melendres*-only policy.

866. MCSO policy also does not indicate what should be done when a deputy who is the subject of a complaint is also the deputy who receives the complaint. (Doc. 1467 at Tr. 3178.)

867. The hearing testimony thus demonstrates flaws that remain in MCSO complaint intake and categorization policies and practices. That evidence further demonstrates a lack of training, consistency, and accountability.

4. The MCSO's IA Policies Fail to Address Numerous Issues that Arose in this Case.

868. There is no MCSO policy regarding what to do in the event that Sheriff Arpaio or his designee have a conflict, an appearance of bias, or an interest in an

ongoing IA investigation. There is no policy regarding what to do in the event that a PSB staff member has a conflict of interest or the appearance of impropriety in an ongoing IA investigation. (Doc. 1467 at Tr. 3159–61.) There is finally no MCSO policy concerning conflicts in internal investigations conducted by the districts or divisions of the MCSO. (Doc. 1505 at Tr. 4029.) Sheriff Arpaio has taken advantage of this lack of policy in subverting the appropriate discipline that should be imposed in this case.

869. Captain Bailey testified that despite the absence of any formal policy, when a conflict situation presents itself, Bailey discusses it with Chief Deputy Sheridan and they determine whether another division or another agency should do the investigation. (Doc. 1505 at Tr. 4000–01.) The facts here demonstrate that if they ever did so, they did not do so when they should have.

***90** 870. MCSO policies and practices do not provide the MCSO investigating officer with the chance to address matters raised for the first-time by the investigative principal in the predetermination or name-hearing clearing. That is a flaw in the MCSO IA policy that has been exploited in this case and which needs correction.

871. Pursuant to MCSO policy, no officer needs to provide an explanation in writing for any of his decisions relating to discipline or grievances.

872. Sheriff Arpaio, or his designee, may rescind disciplinary action imposed at the district, division, or the PSB level at his or her own discretion. He or she need not offer any reason for doing so. (Doc. 1556 at Tr.

3233–34; Ex. 2001 at MELC416246.)

873. There is no MCSO policy prohibiting the promotion of an officer who is under investigation for misconduct.

874. Chief Deputy Sheridan, in granting a grievance, has directed that the historical adjudicatory facts of an underlying IA investigation be changed. This led to misleading statements being filed with the Court. To the extent that the MCSO claims such grievance authority pursuant to policy, that policy is flawed.

875. All of these policies and practices were used by the Defendants to avoid appropriate accountability for their treatment of members of the Plaintiff class.

IV.

POTENTIAL REMEDIES

876. The Court makes the following additional findings relating to appropriate remedies:

A. Count One

877. The purpose of civil contempt is to coerce compliance with a court order or to compensate another party for the harm caused by the contemnor. *Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC*, 478 U.S. 421, 443 (1986).

878. Plaintiffs do not assert that Defendants remain in violation of the Court's preliminary injunction through the continued engagement in unlawful detention practices against members of the Plaintiff class. There

is, therefore, no need to use the Court's contempt power to coerce Defendants to comply with the preliminary injunction.

879. As is noted above, however, there are at least hundreds of members of the Plaintiff class who have been injured by the Contemnors' past failures to take reasonable steps to implement this Court's preliminary injunction.

880. Although the Parties had previously indicated that they would provide the Court with a proposed method for compensating members of the Plaintiff class who were willing to surrender their individual claims months ago, they have not done so.

881. The Court welcomes the Parties' input on proposed remedies designed to compensate members of the Plaintiff class who have suffered harm as a result of the Defendants' violation of the Court's preliminary injunction. While the Court will consider class-wide remedies as to which the Parties have substantial agreement, it reminds the Parties of the concerns it has previously expressed in this regard to the extent that such matters may better be raised in a separate procedure or procedures.

B. Count Two

882. When the Court ruled for the Plaintiffs after the trial in this case, the parties resolved between themselves many of the issues pertaining to the appropriate measure of injunctive relief to be entered by this Court. (*See, e.g.*, Doc. 592.) The Court held a hearing to make decisions about the issues that the Parties could not resolve.

883. Among the matters in dispute were provisions, proposed by Plaintiffs, "revising the internal affairs division of the MCSO and the investigation and resolution of complaints." (*See, e.g.*, Doc. 603 at Tr. 7.) At the hearing, the Court questioned Plaintiffs on the sufficiency of the evidence presented at trial to support such relief. (Doc. 603 at Tr. 89–91.) After such questioning, the Court denied much of the relief sought by the Plaintiffs. (*Compare* Doc. 592-1 *with* Doc. 606.)

***91** 884. Unknown at the time to the Plaintiffs and to this Court, the MCSO had deprived the Plaintiffs of considerable evidence of misconduct towards members of the Plaintiff class.

885. Had the Defendants disclosed such evidence in a timely manner, as was their duty, the Plaintiffs would have been able to evaluate that evidence and pursue additional discovery concerning it. Plaintiffs would have been able to demonstrate that, among other things, the MCSO routinely confiscated the personal property of members of the Plaintiff class without justification. They would have also been able to demonstrate the MCSO's inadequate, bad faith, and discriminatory internal investigation policies and practices as well as additional harms. The Court would have been able to timely evaluate that evidence in fashioning the appropriate injunctive relief for the Plaintiffs.

886. As it pertains to the adequacy of the MCSO's investigations into its own misconduct, the Court need not speculate about what that evidence might have been. The MCSO convened IA investigations resulting

from the late-revealed evidence after it was disclosed. When the MCSO did so, the Defendants and several non-party contemnors were fully advised and aware that the adequacy and good faith of their investigations would be subject to evaluation by the Parties and the Court. (Doc. 700 at Tr. 93–94; Doc. 1027 at Tr. 636–37; Doc. 1043 at Tr. 863, 972, 978–79.) That evidence was the focus of a lion's share of the evidentiary hearings, and is explained in detail in these findings.

887. These after-the-fact investigations serve to adequately demonstrate the flawed disciplinary course that the MCSO would have pursued had it timely investigated the acts of misconduct revealed by the late-disclosed evidence. Yet, even more tellingly, they also demonstrate the Defendants' ongoing, unfair, and inequitable treatment of members of the Plaintiff class.

888. Members of the Plaintiff class constitute the overwhelming majority of the victims of the multiple acts of misconduct that were the subjects of virtually all the flawed investigations. For example, those who suffered due to Sheriff Arpaio's failure to implement the preliminary injunction were all members of the Plaintiff class. The great majority of the identifiable confiscated personal property found in Deputy Armendariz's garage, attached to Detective Frei's memorandum, and elsewhere within the HSU and the MCSO, for which adequate discipline was never imposed, came from members of the Plaintiff class. The supervisory failures within the HSU disproportionately affected members of the Plaintiff class. The *Melendres*-only policy, by definition, applies only to investigations arising from this lawsuit which was brought to vindicate the rights of members of the

Plaintiff class. When new evidence came forth of 1459 seized IDs, Chief Deputy Sheridan and Captain Bailey attempted to conceal them because a large number of them belonged to members of the Plaintiff class.

889. An effective and honest internal affairs policy is a necessary element of the MCSO's self-regulation. Thus, MCSO disciplinary policy calls for the administration of "fair and impartial" investigations and the imposition of "fair and equitable" discipline. The Plaintiffs brought this suit for the vindication of their constitutional rights. Although the Defendants are no longer detaining members of the Plaintiff class without authorization, they are manipulating the operation of their disciplinary processes to minimize or altogether avoid imposing fair and equitable internal discipline for misconduct committed against members of the Plaintiff class. As is demonstrated above, the internal affairs and PSB operations of the MCSO are under the control of Sheriff Arpaio and his designees including Chief Deputy Sheridan. They have directed this manipulation to avoid accountability for themselves, their protégés, and those who have implemented their flawed policies at the cost of fairness to members of the Plaintiff class. Further, they continue to attempt to conceal additional past mistreatment of the Plaintiff class as it comes to light in order to avoid responsibility for it.[46]

***92** 890. Had the Court withheld evidence and the information to which it led been presented at trial, the Court would have entered injunctive relief much broader in scope.

891. When evidence is discovered after trial, Federal Rules of Civil Procedure 59 and/or 60 authorize

various, *but not exclusive*, remedies. The Court has recourse to inherent and other authority when it is necessary to provide an adequate remedy. *See, e.g.*, *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991).

892. However, because Plaintiffs had already sought an Order to Show Cause on what became Counts One and Three, the Parties agreed, as a matter of expediency, to pursue any relief for the withholding of discovery in the same evidentiary hearings that would be necessitated by the Order to Show Cause. (*See, e.g.*, Doc. 858 at 14–20.)

893. The Court subsequently included the withholding of discovery as a separate count in the Order to Show Cause but indicated in that order that its ability to provide a remedy for Plaintiffs might also spring from its inherent powers. (Doc. 880 at 18.) It had so advised the Parties prior to the issuance of the Order to Show Cause and throughout this hearing. (*See. e, g.*, Doc. 858 at Tr. 18–19; Doc. 1575 at Tr. 14.) The Parties have previously acknowledged that the Court has the inherent authority both to make Plaintiffs whole for Defendants' failure to provide requested discovery and to enforce its own orders. (Doc. 1027 at Tr. 626–27; Doc. 1097 at Tr. 55.)

894. The Court wishes to explore with the Parties several elements that may make up any part of the appropriate relief to which the Plaintiff class may be entitled for the deficiencies identified above.

895. First, the Court must determine whether Plaintiffs are entitled to the entry of relief designed to correct the Defendants' misconduct revealed by the disclosure of the additional discovery after trial. Such

relief would include the revision or creation of policies and practices that would prevent future misconduct or administrative deficits discussed in these findings. These topics include but are not limited to the areas of personnel supervision, supervisory structure, staffing and training, IA investigations, MCSO disciplinary policies, MCSO policies related to complaint intake, tracking, and accountability, and any necessary training and staffing measures designed to implement these corrective measures.

896. Second, the Court must determine whether the Plaintiffs are entitled to revisions to or the creation of new IA policies and practices that would prevent IA abuses of the type discussed in this Order as well as any necessary training and staffing measures designed to implement such corrective measures. Such needed policies or specifications include, but are not limited to, policies regarding: conflicts, bias and appearance of impropriety, hearing procedures that are fair to the principal and the MCSO, the requirement of some explanation when overturning initial or final sustained discipline, and specification of the extent of grievance authority.

897. With respect to necessary remedial changes in MCSO policy, the Court invites the Parties comments about proceeding in the following way:

***93** 898. The Court has found various flaws in MCSO policies—*e.g.*, the failure of the disciplinary policy to contain any provisions concerning conflicts of interest or the inability of the PSB to address evidence first presented by the principal at a name-clearing hearing. As a result, MCSO grievance policy will likely have to be revised.

899. Yet, it has also found flaws the MCSO has exploited in this action that, while requiring correction, may not require the re-writing of MCSO policy. The Court may find expert testimony to be helpful in these areas.

900. To the extent that the Parties wish to provide expert testimony on such questions, the Court is not persuaded that such testimony should prevent it from issuing its order that certain policies in general be revised (with an effective date for their revision) so as to avoid further delay in the implementation of other necessary remedial relief. The Court proposes that during the period prior to the deadline set by the Court for the promulgation of new policies, the Plaintiffs' expert could prepare and present to the Defendants what (s)he believes to be the indicated policy changes in light of the deficiencies discussed in this Order. To the extent Defendants could not agree to such proposed changes, they can provide contrary expert testimony. As to the issues on which the Parties could not agree, the Court could then hold a hearing in which it could review the specific contested provisions and make its rulings regarding which policy changes must be implemented in light of the facts it has found above. That would prevent the balance of the Court's remedial orders from being postponed pending the implementation of necessary policy changes.

901. Although again the Court does not wish to foreclose the Parties from suggesting additional or different remedies based on the factual findings on or prior to the May 31, 2016 hearing, the Court would like to further explore possible remedies that would include the following elements:

902. Relief that would ensure that the Plaintiff class has appropriate access to information that has been sought pursuant to applicable law.

903. The invalidation of past investigations, disciplinary decisions, and/or grievance decisions found to be insufficient, invalid, or void in these findings, and the initiation of new investigations and/or disciplinary processes for some or all of those decisions. The vesting in an independent authority to conduct such investigations and to impose such discipline where appropriate.

904. The initiation of additional IA investigations into new or previously uninvestigated violations, or alleged violations that are identified in these findings of fact that relate to: harm or potential harm to members of the Plaintiff class, the integrity of MCSO IA investigations, the untruthfulness of MCSO command staff, the witnesses in this lawsuit or evidentiary hearings, and the MCSO's compliance with its own policies. The vesting in an independent authority to conduct such investigations and to impose such discipline where appropriate.

905. With respect to IA investigations that arise hereafter which relate to the interests of the Plaintiff class, the vesting of final approval of MCSO internal investigations and disciplinary decisions with the Monitor or other appropriate authority, and ultimately, where appropriate, with the Court.

***94** 906. The suspension of any authority of Sheriff Arpaio, or his designee(s), to invalidate in any way the discipline imposed by the independent authority

designated by the Court to make disciplinary decisions with respect to any of the investigations and/or disciplinary decisions listed above.

907. If such authority is imposed, the Court invites the Parties to suggest what investigations should be reopened, what new investigations should be initiated, and how those investigations should proceed. It further invites the Parties to address the condition or conditions that would result in the return of all investigative and disciplinary authority to Sheriff Arpaio and/or his designee.

908. The Court must determine whether an award of attorney's fees is merited.

C. Count Three

909. In this count of contempt, Sheriff Arpaio and Chief Deputy Sheridan disobeyed an order of the Court. As it pertains to the relief to which the Parties are entitled, this conduct is only one of a number of acts described above in which Arpaio and Sheridan have demonstrated their disregard for the interests of the Plaintiff class, and their disrespect for the orders of this Court that are designed to protect those interests.

910. Although the Court again invites the Parties to comment on what relief they deem appropriate for this act of contempt, the Court does not view this act as giving rise to any relief separate from that which would be appropriate for the other misconduct set forth herein.

911. The Court has set a hearing for May 31, 2016, in which the Parties will be able to discuss with the Court

the above matters pertaining to relief.

912. Prior to the hearing, the Parties are invited, if they wish to do so, to file a brief addressing the matters set forth above, their views of the appropriate relief, or any other matters which they desire to bring to the attention of the Court. The briefs shall be filed **no later than noon on May 27, 2016**. The Court will then hold the hearing with the Parties having exchanged such memoranda if they wish to file any.

IT IS HEREBY ORDERED THAT:

1. Sheriff Arpaio, Chief Deputy Sheridan, Chief Sands, and Lieutenant Sousa are in civil contempt on Count One of the Order to Show Cause.

2. Sheriff Arpaio is in civil contempt on Count Two of the Order to Show Cause.

3. Sheriff Arpaio and Chief Deputy Sheridan are in civil contempt on Count Three of the Order to Show Cause.

4. Counsel for Plaintiff class and counsel for Defendants may each file a 30-page memorandum, if they wish to do so, no later than **noon on May 27, 2016**.

5. Counsel for Chief Sands and counsel for the County may each file a 10-page memorandum, if they wish to do so, no later than **noon on May 27, 2016**.

6. The Department of Justice may file a 20-page memorandum, if they wish to do so, no later than **noon on May 27, 2016**.

7. The Court will further discuss the appropriate relief to be entered in a hearing set for **May 31, 2016 at 9:00 a.m.** in Courtroom 602, Sandra Day O'Connor U.S. Federal Courthouse, 401 W. Washington St., Phoenix, Arizona 85003-2151. It will shortly thereafter enter any applicable orders and determine if it will refer any matters for criminal contempt.

Dated this 13th day of May, 2016.

APPENDIX E

2016 WL 3996453
No. PHX–CV–07–02513–GMS.

In the United States District Court
For the District of Arizona

Manuel de Jesus Ortega MELENDRES, et al., Plaintiffs,

v.

Joseph M. ARPAIO, et al., Defendants.

SECOND AMENDED[1] SECOND SUPPLEMENTAL PERMANENT INJUNCTION/JUDGEMENT ORDER

Honorable G. Murray Snow, United States District Judge

***1**[3] This Court held 21 days of evidentiary hearings in April, September, October, and November of 2015. At issue were three charges of civil contempt raised against Sheriff Joseph Arpaio and various other alleged non-party contemnors. Also at issue was the relief necessary to compensate the Plaintiff class for the Defendants' acts of misconduct in, among other things, failing to provide requested discovery materials prior to the underlying trial in this matter.

On May 13, 2016, the Court issued detailed Findings of Fact. (Findings of Fact, Doc. 1677.) The Court found

[3] Interlineated page number designations are from the Westlaw version of the document.

that Sheriff Arpaio and his command staff knowingly failed to implement the Court's preliminary injunction, resulting in harm to many Plaintiff class members who were detained in violation of their constitutional rights. (Doc. 1677 at ¶¶ 1–164.) The Court also found that Defendants failed to disclose thousands of relevant items of requested discovery they were legally obligated to disclose, and, after the post-trial disclosure of additional evidence, deliberately violated court orders, thereby impeding the litigation, harming the Plaintiff class, and resulting in a trial that did not completely address—and remedies that did not fully repair—the MCSO's violations of Plaintiffs' constitutional rights. (*Id.* at ¶¶ 165–217, 239–94.) The contempt hearing further established that after Defendants disclosed to the Court extensive MCSO misconduct, including its failure to provide additional evidence pursuant to Defendants' discovery obligations, the Court allowed Defendants at their insistence to seek to investigate and discipline that misconduct and to disclose newfound evidence. (*Id.* at ¶¶ 220–22.) Nevertheless, instead of forthrightly meeting their responsibilities, Defendants continued to intentionally withhold relevant evidence during the course of their ensuing investigation and the eventual contempt hearing. (*Id.* at ¶¶ 218–386.) Further, in investigating the misconduct with respect to members of the Plaintiff class, Sheriff Arpaio and the MCSO manipulated all aspects of the internal affairs process to minimize or entirely avoid imposing discipline on MCSO deputies and command staff whose actions violated the rights of the Plaintiff class. (*Id.* at ¶¶ 387–875.)

The facts of this case are particularly egregious and extraordinary. The MCSO's constitutional violations

are broad in scope, involve its highest ranking command staff, and flow into its management of internal affairs investigations. Thus the necessary remedies—tailored to the violations at issue—must reach that far.

The parties have briefed and argued before the Court the sources and scope of the Court's authority to issue remedies in light of the Findings of Fact, including Defendants' concerns regarding federalism and due process. *See, e.g.*, Plaintiff's Memorandum on Remedies for Civil Contempt (Doc. 1684); United States' Memorandum in Response to Findings of Fact (Doc. 1685); Defendants' Responsive Memorandum to Court's Findings of Fact (Doc. 1687); Parties' Joint Memorandum Re: Internal Investigations (Doc. 1715); Plaintiffs' Response to Defendant Arpaio's Briefing Re: Internal Affairs (Doc. 1720); United States' Response to Defendant Arpaio's Positions Re: Internal Investigations (Doc. 1721); Defendant Arpaio's Reply in Support of Briefing Re: Internal Affairs Investigations and Discipline (Doc. 1729). The Court therefore prefaces its remedial order with an analysis of these issues.

I. SOURCES OF THE COURT'S AUTHORITY TO FASHION REMEDIES

***2** Had the Court had access to the evidence withheld by the MCSO and the evidence to which it led, the Court would have entered injunctive relief much broader in scope. (Doc. 1677 at ¶ 890). Although this bad faith failure to produce evidence gave rise to various remedies, the Parties agreed to pursue any relief for the Defendants' withholding of discovery in the same evidentiary hearings that would be

necessitated by the Court's Order to Show Cause for contempt. (*See id.* at ¶¶ 891–93).

A principal purpose of the hearing was, therefore, to provide the Plaintiff class the relief it would have had, to the extent possible, had Defendants complied with their discovery obligations prior to trial.

The Court derives authority to fashion remedies in this instance from multiple sources, including the Court's broad and flexible equitable powers to remedy past wrongs, *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 12-16 (1971), the Court's equitable authority to modify its injunctions in light of changed circumstances, *United States v. Swift & Co.*, 286 U.S. 106, 114-15 (1932), and the Court's authority to impose remedial sanctions for civil contempt, *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827-29 (1994).

A. Broad Remedial Powers

In "cases involving the framing of equitable remedies to repair the denial of a constitutional right[,] [t]he task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." *Swann*, 402 U.S. at 15-16. Federal courts focus on three factors when applying equitable principles. *Milliken v. Bradley,* 433 U.S. 267, 281 (1977). First, "with any equity case, the nature of the violation determines the scope of the remedy." *Swann*, 402 U.S. at 16. "The remedy must therefore be related to the condition alleged to offend the Constitution." *Milliken,* 433 U.S. at 281 (internal quotation marks omitted). "Second, the decree must indeed be remedial in nature, that is, it must be designed as nearly as

possible to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." *Id.* "Third, the federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution." *Id.* However, if the authorities "fail in their affirmative obligations...judicial authority may be invoked." *Id.* (quoting *Swann*, 402 U.S. at 15). "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann*, 402 U.S. at 15.

"[I]njunctive relief must be tailored to remedy the specific harm alleged." *Melendres v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015) (quotation omitted), *cert. denied sub nom.Maricopa Cty., Ariz. v. Melendres*, 136 S. Ct. 799, 193 L.Ed. 2d 711 (2016). "Nevertheless, the district court has broad discretion in fashioning a remedy [and] is permitted to order 'relief that the Constitution would not of its own force initially require if such relief is necessary to remedy a constitutional violation.' " *Id.* (quoting *Toussaint v. McCarthy,* 801 F.2d 1080, 1087 (9th Cir. 1986)). "Therefore, an injunction exceeds the scope of a district court's power only if it is 'aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation.' " *Id.* (quoting *Milliken,* 433 U.S. at 282).

***3** Moreover, "the enjoined party's 'history of noncompliance with prior orders can justify greater court involvement than is ordinarily permitted.' " *Id.* (quoting *Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000)). When faced with "repetitive failures to comply with orders[,]" a district court is " 'justified in entering

a comprehensive order to insure against the risk of inadequate compliance.' " *Sharp*, 233 F.3d at 1173 (quoting *Hutto v. Finney,* 437 U.S. 678, 687 (1978)).

Here, as in *Sharp*, the Court orders remedies which are necessary to cure the MCSO's constitutional violations, in light of the MCSO's history of noncompliance. *See id.* at 1173. To the extent that the Court orders reforms of the MCSO's policies and practices, these reforms are necessary "to insure against the risk of inadequate compliance," *id.* (quoting *Hutto,* 437 U.S. at 687), because absent such reforms, there is no way to determine whether policies or practices that insulated those who violated the constitutional rights of the Plaintiff class from investigation and discipline would continue to do so. Further, the reforms are aimed at eliminating a condition that flows from the MCSO's violation of the constitutional rights at issue—namely, the tacit authorization and condonation that the MCSO conveys to its deputies when police misconduct related to members of the Plaintiff class is exempted from the normal internal affairs system and is treated with special leniency or is entirely swept under the rug.[2]

"Members of the Plaintiff class constituted the overwhelming majority of the victims of the multiple acts of misconduct that were the subject of virtually all of the flawed investigations" summarized in the Court's Findings of Fact. (Findings of Fact, Doc. 1677 at ¶ 888.) So long as individuals within the MCSO can disobey the Court's orders with impunity, the rights of the Plaintiff class are not secure. "[T]he ability to effectively investigate and discipline officers...is essential to correcting the underlying constitutional violations found in this case, and thus to the final

resolution of this long-standing litigation." *Madrid v. Woodford*, No. C90-3094 TEH, 2004 WL 2623924, at *8–9 (N.D. Cal. Nov. 17, 2004). The Court's orders in this case have required implementation of new policies. A system that effectively ensures compliance with the Court's orders requires five "interrelated components," each of which "builds upon and reinforces the others": written policies, training, supervision, investigation, and officer discipline. *Madrid v. Gomez*, 889 F. Supp. 1146, 1181 (N.D. Cal. 1995). "[A] meaningful disciplinary system is essential, for if there are no sanctions imposed for misconduct, [an organization's]...policies and procedures become a dead letter." *Id.*

***4** Defendants continue to "manipulate[e] the operation of their disciplinary processes to minimize or altogether avoid imposing fair and equitable internal discipline for misconduct committed against members of the Plaintiff class." (Findings of Fact, Doc. 1677 at ¶ 889.) In light of Defendants' repeated violations of the Court's orders and their continued attempts "to conceal additional past mistreatment of the Plaintiff class as it comes to light in order to avoid responsibility for it," (*id.*,) the Court has the authority to mandate reforms of the MCSO's internal affairs system in order to ensure the MCSO's continued compliance with the Court's permanent injunction (Doc. 606) and to coerce the MCSO's compliance with the Court's previous orders, as well as with orders the Court may enter in the future as the need arises.

B. Equitable Authority to Modify Injunctions

"A continuing decree of injunction directed to events to come is subject always to adaptation as events may

shape the need." *Swift*, 286 U.S. at 114. "The source of the power to modify is of course the fact that an injunction often requires continuing supervision by the issuing court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained that equitable relief." *Sys. Fed'n No. 91, Ry. Emp. Dep't, AFL-CIO v. Wright*, 364 U.S. 642, 647 (1961). A modification is appropriate when a court, faced with new facts, must make a change "to effectuate...the basic purpose of the original" injunction. *Chrysler Corp. v. United States*, 316 U.S. 556, 562 (1942) (holding a modification making a consent decree more onerous for the enjoined entity to be reasonable where it effectuates the purpose of the original consent decree).

Before the Court entered its injunction, Plaintiffs requested provisions "revising the internal affairs division of the MCSO and the investigation and resolution of complaints." (*See, e.g.*, Doc. 603 at Tr. 7.) The Court denied much of the relief sought. (Findings of Fact, Doc. 1677 at ¶ 883.) Neither Plaintiffs nor the Court knew that "the MCSO had deprived the Plaintiffs of considerable evidence of misconduct towards members of the Plaintiff class." (*Id.* at ¶ 884.) Had Defendants disclosed such evidence, Plaintiffs could have demonstrated "the MCSO's inadequate, bad faith, and discriminatory internal investigation policies and practices as well as additional harms." (*Id.* at ¶ 885.) Because Defendants failed to disclose that evidence, the Court was unable "to timely evaluate that evidence in fashioning the appropriate injunctive relief for the Plaintiffs." (*Id.*)

"Had the evidence that Defendants withheld from the Court and the information to which it led been

presented at trial, the Court would have entered injunctive relief much broader in scope." (*Id.* at ¶ 890.) It is incumbent upon the Court now, equipped as it is with additional facts, to amend the injunction and grant the relief that would have been appropriate at the time of the original injunction had the MCSO disclosed such evidence in a timely manner, as was their duty.

C. Civil Contempt Authority

"[A] contempt sanction is considered civil if it is remedial, and for the benefit of the complainant." *Bagwell*, 512 U.S. at 827. A contempt sanction is "civil and remedial if it either 'coerce[s] the defendant into compliance with the court's order, [or]...compensate[s] the complainant for losses sustained.' "[3] *Id.* at 829 (quoting *United States v. Mine Workers,* 330 U.S. 258, 303–304 (1947)).

***5** Ensuring that the MCSO has a functional system of investigating officer misconduct and imposing discipline is a remedial measure designed to coerce the MCSO into compliance with the Court's orders. (Findings of Fact, Doc. 1677 at ¶¶ 888–89.) The MCSO must have in place an effective means of imposing discipline upon its own officers in order to ensure that officers do not feel at liberty to disregard MCSO's policies. To the extent that such policies are in place to protect the rights of the Plaintiff class, an effective disciplinary system is an essential component of Plaintiffs' protection. The MCSO's flawed investigations "demonstrate the Defendants' ongoing, unfair, and inequitable treatment of members of the Plaintiff class." (Findings of Fact, Doc. 1677 at ¶ 887.)

II. FEDERALISM

"[A]ppropriate consideration must be given to principles of federalism in determining the availability and scope of equitable relief." *Rizzo v. Goode,* 423 U.S. 362, 379 (1976). Federalism concerns "are highly contextual and must be evaluated on a case-by-case basis." *Stone v. City & Cty. of S.F.*, 968 F.2d 850, 860 (9th Cir. 1992), *as amended on denial of reh'g* (Aug. 25, 1992).

"Where federal constitutional rights have been traduced,...principles of restraint, including comity, separation of powers and pragmatic caution dissolve." *Id.* (citation omitted). "Nonetheless, federal courts should always seek to minimize interference with legitimate state activities in tailoring remedies." *Id.* at 861. "In employing their broad equitable powers, federal courts should 'exercise the least possible power adequate to the end proposed.' " *Id.* (quoting *Spallone v. United States*, 493 U.S. 265, 280 (1990)). However, "when the least intrusive measures fail to rectify the problems, more intrusive measures are justifiable." *Id.*

"Federal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights." *Id.* "[O]therwise valid state laws or court orders cannot stand in the way of a federal court's remedial scheme if the action is essential to enforce the scheme." *Id.* at 862.

Defendants cite *Rizzo*, a case in which the Supreme Court held that a district court departed from the principles that govern injunctive relief, including principles of federalism, when it "injected itself by

injunctive decree into the internal disciplinary affairs of [a] state agency." (Doc. 1715 at 12 (quoting *Rizzo*, 423 U.S. at 380).) The facts of *Rizzo*, however, are diametrically opposed to the facts of the case at hand. In *Rizzo*, the district court had found an unrelated assortment of constitutional violations committed by a few individual rank and file police officers, a problem which the court indicated was "fairly typical of those afflicting police departments in major urban areas." *Id.* at 375. The district court also found that "the responsible authorities [*i.e.*, command staff] had played no affirmative part in depriving any members of the two respondent classes of any constitutional rights." *Id.* at 377. Thus, the Supreme Court held that when the district court attempted to fashion "prophylactic procedures...designed to minimize [isolated constitutional violations] on the part of a handful of its employees" without evidence of any unconstitutional plan or policy promulgated by the responsible authorities, the remedy ordered by the district court was "quite at odds with the settled rule that in federal equity cases the nature of the violation determines the scope of the remedy," and moreover, "important considerations of federalism" weighed against the unnecessary intrusion into state affairs. *Id.* at 378 (internal quotation omitted).

The *Rizzo* Court distinguished cases in which the district court found "the pattern of police misconduct upon which liability and injunctive relief were grounded was the adoption and enforcement of deliberate policies by the defendants," or a "persistent pattern" that "flowed from an intentional, concerted, and indeed conspiratorial effort" to deprive a class of its constitutional rights. *Id.* at 373–75 (citing *Hague v. CIO*, 307 U.S. 496 (1939) and *Allee v. Medrano*, 416

U.S. 802 (1974)).

***6** Here, the Court found the presence of those exact distinguishing characteristics. In the underlying case, the Court determined that the Defendants were systematically violating the Fourth and Fourteenth Amendment rights of the Plaintiff class in several different respects including the adoption of unconstitutional policies. *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 826–27 (D. Ariz. 2013), *adhered to,* No. CV-07-02513-PHX-GMS, 2013 WL 5498218 (D. Ariz. Oct. 2, 2013), *aff'd in part, vacated in part,* 784 F.3d 1254 (9th Cir. 2015), and *aff'd,* 784 F.3d 1254 (9th Cir. 2015) ("*Melendres* 2013 FOF"). The MCSO continued to adhere to these policies after the Court ruled in 2011 that they violated Plaintiffs' constitutional rights. *See, e.g., id.* at 825 ("The LEAR policy, however, remains in force."); *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 994 (D. Ariz. 2011), *aff'd sub nom. Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012).

Moreover, and more recently, the Court found in its May 2016 Findings of Fact that "Defendants intentionally failed to implement the Court's preliminary injunction..., failed to disclose thousands of relevant items of requested discovery they were legally obligated to disclose, and, after the post-trial disclosure of additional evidence, deliberately violated court orders and thereby prevented a full recovery of relevant evidence." (Findings of Fact, Doc. 1677 at 1-2.) "To escape accountability..., Defendants, or their proxies, named disciplinary officers who were biased in their favor and had conflicts, Defendants remained in control of investigations in which they themselves had conflicts, Defendants promulgated special inequitable disciplinary policies pertaining only to

Melendres-related internal investigations, Defendants delayed investigations so as to justify the imposition of lesser or no discipline, Defendants misapplied their own disciplinary policies, and Defendants asserted intentional misstatements of fact to their own investigators and to the court-appointed Monitor." *Id.* at 2. The Court found that Defendants were "manipulating the operation of their disciplinary processes to minimize or altogether avoid imposing fair and equitable internal discipline for misconduct committed against members of the Plaintiff class. *Id.* at ¶ 889.

Under the facts of this case, the Court has fashioned remedies which account for and balance the need to respect the prerogatives of state officials with the need to prevent them from exercising their discretion in a way that violates Plaintiffs' constitutional rights and the need to provide a remedy for the past deprivation of those rights. The Court previously fashioned less intrusive remedies, but those remedies were not effective due to Defendants' deliberate failures and manipulations. (*See, e.g.*, *id.* at ¶¶ 365–69.) The Court must do what is necessary to achieve the end goal of "restoring the victims of discriminatory conduct to the position they would have occupied in the absence of that conduct" and eventually restoring authority to MCSO command staff, once there is a "system that is operating in compliance with the Constitution." *Missouri v. Jenkins*, 515 U.S. 70, 89 (1995). Here, the scope of Defendants' constitutional violation is broad; the violation permeates the internal affairs investigatory processes, which have been manipulated to provide impunity to those who violate the rights of the Plaintiff class.[4](*See* Findings of Fact, Doc. 1677 ¶¶ 387–765.) The remedy, as is determined by the scope

and nature of the violation, must reach as far as the violation flows. *Jenkins*, 515 U.S. at 98;*Milliken,* 433 U.S. at 282. "[W]here, as here, a constitutional violation has been found, the remedy does not 'exceed' the violation if the remedy is tailored to cure the condition that offends the Constitution." *Milliken,* 433 U.S. at 282 (internal quotation marks omitted).

***7** As such, "there is no merit to [Defendants'] claims that the relief ordered here violates the Tenth Amendment and general principles of federalism." *Id.* at 291. "The Tenth Amendment's reservation of nondelegated powers to the States is not implicated by a federal-court judgment enforcing the express prohibitions of unlawful state conduct enacted by the Fourteenth Amendment." *Id.*

There is also no merit to Defendants' prospective argument that the *Rooker-Feldman* doctrine prevents the Court from reviewing a decision of a merit commission or state court regarding the discipline of an MCSO employee whose conduct has been investigated pursuant to this Court's remedial scheme.

"*Rooker–Feldman*...is a narrow doctrine, confined to cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Lance v. Dennis*, 546 U.S. 459, 464 (2006) (internal quotation omitted). "The doctrine has no application to judicial review of executive action, including determinations made by a state administrative agency." *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002). Moreover, "the rule has long stood that a state court judgment

entered in a case that falls within the federal courts' exclusive jurisdiction is subject to collateral attack in the federal courts." *In re Gruntz*, 202 F.3d 1074, 1079 (9th Cir. 2000).

The Court has had exclusive jurisdiction over this case for nine years. To the extent that the Court has ordered remedies that will result in internal affairs investigations of individuals at the MCSO, those investigations stem from this case. The Court has the jurisdiction to see that its orders are followed and that the Plaintiffs' rights are vindicated. *Rooker-Feldman* is inapplicable.

III. DUE PROCESS

A. The Arizona Police Officer's Bill of Rights

Arizona has codified a police officer's "bill of rights." A.R.S. §§ 38-1101–1115. Pursuant to this Arizona law, "[a]n employer shall make a good faith effort to complete any investigation of employee misconduct within one hundred eighty calendar days after the employer receives notice of the allegation by a person authorized by the employer to initiate an investigation of the misconduct." *Id.* § 38-1110(A). "If the employer exceeds the one hundred eighty calendar day limit, the employer shall provide the employee with a written explanation containing the reasons the investigation continued beyond one hundred eighty calendar days." *Id.* "On an appeal of discipline by the employee, a hearing officer, administrative law judge or appeals board may dismiss the discipline if it is determined that the employer did not make a good faith effort to complete the investigation within one hundred eighty calendar days." *Id.* § 38-1110(C).

Defendants argue that this state law "creates federally protected constitutional rights because that statutory scheme contains 'particularized standards or criteria' to create a property interest." (Doc. 1729 at 7) (quoting *Allen v. City of Beverly Hills*, 911 F.2d 367, 369-70 (9th Cir. 1990).) Defendants quoted *Allen* for the proposition that "[p]roperty interests...are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." 911 F.2d at 369-70.

***8** However, Defendants failed to note that the next paragraph in the *Allen* opinion clarifies that "[w]hether an expectation of entitlement is sufficient to create a property interest will depend largely upon the extent to which the statute contains mandatory language that restricts the discretion of the [decisionmaker]." *Id.* at 370 (internal quotation omitted). The Arizona statute at issue here does not contain mandatory language, as it merely provides that the administrative law judge or appeals board "may" dismiss the discipline, as an exercise of its discretion. A.R.S. § 38-1110.

Moreover, in *Allen*, the plaintiff of a § 1983 action claimed that "his layoff constituted a deprivation of a constitutionally protected property interest without due process of law." *Allen*, 911 F.2d at 369. Even if the plaintiff in that case had successfully made a case that he had a constitutionally protected property right in continued employment (he did not), his constitutional rights could be violated only if he were deprived of such an interest *without due process of law*. Thus, *Allen*

does not stand for the proposition that state law can affect what due process itself entails.

Here, the Parties do not dispute that MCSO employees have a property interest in their jobs. Rather, Defendants suggest that the Arizona statute changes what constitutes the due process to which the property interest holder is entitled. That proposition was squarely rejected in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). In *Loudermill*, the Supreme Court stated in no uncertain terms that the answer to the question of "what process is due...is not to be found in [an] Ohio statute." *Id.* Nor is it to be found in an Arizona statute. Rather, due process is a matter of settled constitutional law. Due process requires "a hearing prior to the discharge of an employee who has a constitutionally protected property interest in his employment." *Id.* at 542. MCSO employees will not be denied that.

Thus, the requirement under Arizona law that employers must make a good faith effort to complete investigations within 180 days is not incorporated into the constitutional guarantee of due process. Moreover, where the MCSO deliberately ensured that 180 days passed in order to protect certain employees from *Melendres*-related discipline, dismissing that discipline would impede the vindication of Plaintiffs' constitutional rights. That cannot stand. *Swann,* 402 U.S. at 45 ("[S]tate policy must give way when it operates to hinder vindication of federal constitutional guarantees.").

B. Reliance on the Court's Findings of Fact

Any employee subject to an investigation will have a

hearing, at which he or she can present evidence and raise a defense. On the other hand, a great deal of evidence was set forth during the 21 days of evidentiary hearings, some of which may be relevant to a given investigation, and this evidence need not be disregarded.

IV. GC-17, MCSO'S PRINCIPAL DISCIPLINARY POLICY, APPLIES TO ALL EMPLOYEES

Sheriff Arpaio is the appointing authority over certified employees in the MCSO, and he has unique disciplinary authority over all deputies within the MCSO, according to state law. *See Hounshell v. White*, 220 Ariz. 1, 202 P.3d 466 (App. 2008). The MCSO's principal disciplinary policy, GC-17, applies to all employees and sets out disciplinary matrices that apply to virtually all employees. There is, generally speaking, a disciplinary matrix for regular employees (non-exempt regular status employees) and a slightly more demanding disciplinary matrix for management employees (exempt regular status employees). The disciplinary matrix is slightly more demanding for management employees because, as MCSO policy makes clear, management employees should typically be held to a higher standard of conduct. (Ex. 2001 at MELC416243.) Nevertheless, even for those employees subject to a disciplinary matrix, Sheriff Arpaio, and his designee, Chief Deputy Sheridan, have the authority to ignore the matrix and impose whatever discipline they deem appropriate.

***9** Chief Deputy Sheridan is the highest level management employee within the MCSO. As an employee, he is clearly subject to departmental policy and discipline, and he has previously been a principal

or a person of interest in the disciplinary process. Chief Deputy Sheridan is, however, an unclassified employee. Thus, although he is subject to GC-17, there is no specific disciplinary matrix that applies to him. Defendants argue that because there is no specific disciplinary matrix that applies to him, the Court should take greater care, due to federalism concerns, in subjecting his misconduct to evaluation (or re-evaluation) and to potential discipline than it takes with respect to other MCSO employees.

Nevertheless, as the Findings of Fact make clear, Sheriff Arpaio and Chief Deputy Sheridan are the authors of the manipulation and misconduct that has prevented the fair, uniform, and appropriate application of discipline on MCSO employees as that misconduct pertains to the members of the Plaintiff class. Sheriff Arpaio, as an elected official of Maricopa County, however, is not subject to any MCSO disciplinary policy. He is also, of course, an official who is elected by the people of Arizona. Neither of these factors is true with respect to Chief Deputy Sheridan. To the extent that Sheriff Arpaio and Chief Deputy Sheridan have manipulated the Internal Affairs process at the MCSO to ensure that many employees—including Chief Deputy Sheridan—were disciplined in a relatively lenient manner or not at all for violating the rights of the Plaintiff class, a remedy is necessary and within the scope of the Court's authority, as the condition flows from the constitutional violation at issue in this case. *See Milliken,* 433 U.S. at 282.

Pursuant to state law, Chief Deputy Sheridan can be disciplined. His discipline is at the discretion of Sheriff Arpaio. In light of Sheriff Arpaio's manipulations in this case, the discretion granted to the sheriff by state

law does not prevent the Court from ordering that appropriate discipline be imposed, as failure to do so would be an undue impediment of the remedies to which the Plaintiff class is entitled as a result of the deprivation of their constitutional rights.

Due to Sheriff Arpaio and Chief Deputy Sheridan's manipulation of the disciplinary process, the Court has fashioned a remedy in which an independent internal affairs investigator, and an independent disciplinary authority, both nominated by the parties, shall make and review disciplinary decisions for all employees pertaining to the misconduct discussed in the findings of fact. Those independent authorities are experienced in police discipline and shall have the authority, independent from the Court, to decide discipline. The Independent Authorities shall apply the disciplinary matrices, but have the authority to disregard the disciplinary matrices in cases in which they provide appropriate justification for doing so. They shall have the authority to determine the appropriate discipline for Chief Deputy Sheridan. In doing so they shall approximate MCSO policy as closely as possible. Because Chief Deputy Sheridan is the highest level management employee within the MCSO, they shall thus apply categories of misconduct and presumptive levels of discipline to him that are no less exacting than those set forth in the disciplinary matrix for exempt regular status employees of the MCSO, in order that Sheridan be "held to a higher standard." (*Id.*; Ex. 2001 at MELC416243.)

In light of the above, the following procedures and authorities are hereby ordered. These procedures are numbered consecutively to those set forth in the Court's previous Supplemental Permanent Injunctive

orders, (Doc. 606, 670), which are incorporated herewith.

***10 IT IS HEREBY ORDERED** entering this Second Supplemental Permanent Injunction/Judgement Order as follows**:**

V. ADDITIONAL DEFINITIONS

160. This Second Supplemental Permanent Injunction incorporates all definitions in the Court's first Supplemental Permanent Injunction (Doc. 606 ¶ 1).

161. The following terms and definitions shall also apply to this Order:

162. "Misconduct" means a violation of MCSO policies or procedures; violation of federal, state, or local criminal or applicable civil laws; constitutional violations, whether criminal or civil; violation of administrative rules; and violation of regulations.

a. "Minor misconduct" means misconduct that, if sustained, would result in discipline and/or corrective action less severe than a suspension;

b. "Serious misconduct" means misconduct that, if sustained, would result in discipline of suspension, demotion, or termination;

c. "Misconduct indicating apparent criminal conduct by an employee" means misconduct that a reasonable and trained Supervisor or internal affairs investigator would conclude could result in criminal charges due to the apparent circumstances of the misconduct.

d. "Internal affairs investigator" means any employee who conducts an administrative investigation of misconduct, including investigators assigned to the Professional

Standards Bureau or Supervisors in the employee's Division or Bureau who are assigned to investigate misconduct.

e. "Preponderance of the Evidence" means that the facts alleged are more likely true than not true.

f. "Clear and Convincing Evidence" means that the party must present evidence that leaves one with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This standard of proof is higher than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

g. "Principal" means an employee against whom a complaint of misconduct or wrongdoing has been made and who is a subject of a misconduct investigation.

h. "Tester" means a person who poses as a civilian making a fictitious complaint for assessment purposes.

i. "Class Remedial Matters" means possible misconduct involving members of the Plaintiff class and the MCSO or the remedies to which such class members are entitled as set forth in the Findings of Fact and various supplemental orders of this Court.

VI. MISCONDUCT INVESTIGATIONS, DISCIPLINE, AND GRIEVANCES

163. The Sheriff will ensure that all allegations of employee misconduct, whether internally discovered or based on a civilian complaint, are fully, fairly, and efficiently investigated; that all investigative findings are supported by the appropriate standard of proof and documented in writing; and that all officers who commit misconduct are held accountable

pursuant to a disciplinary system that is fair, consistent, unbiased and provides due process. To achieve these outcomes, the Sheriff shall implement the requirements set out below.

164. All policies, procedures, protocols, training materials, and other material required by this Order are subject to the same process of review and comment by the parties and approval by the Monitor described in Section IV and ¶ 46 of the first Supplemental Permanent Injunction (Doc. 606).

A. Policies Regarding Misconduct Investigations, Discipline, and Grievances

***11** 165. Within one month of the entry of this Order, the Sheriff shall conduct a comprehensive review of all policies, procedures, manuals, and other written directives related to misconduct investigations, employee discipline, and grievances, and shall provide to the Monitor and Plaintiffs new policies and procedures or revise existing policies and procedures. The new or revised policies and procedures that shall be provided shall incorporate all of the requirements of this Order. If there are any provisions as to which the parties do not agree, they will expeditiously confer and attempt to resolve their disagreements. To the extent that the parties cannot agree on any proposed revisions, those matters shall be submitted to the Court for resolution within three months of the date of the entry of this Order. Any party who delays the approval by insisting on provisions that are contrary to this Order is subject to sanction.

166. Such policies shall apply to all misconduct investigations of MCSO personnel.

167. The policies shall include the following

provisions:

a. Conflicts of interest in internal affairs investigations or in those assigned by the MCSO to hold hearings and make disciplinary decisions shall be prohibited. This provision requires the following:

i. No employee who was involved in an incident shall be involved in or review a misconduct investigation arising out of the incident.

ii. No employee who has an external business relationship or close personal relationship with a principal or witness in a misconduct investigation may investigate the misconduct. No such person may make any disciplinary decisions with respect to the misconduct including the determination of any grievance or appeal arising from any discipline.

iii. No employee shall be involved in an investigation, whether criminal or administrative, or make any disciplinary decisions with respect to any persons who are superior in rank and in their chain of command. Thus, investigations of the Chief Deputy's conduct, whether civil or criminal, must be referred to an outside authority. Any outside authority retained by the MCSO must possess the requisite background and level of experience of internal affairs investigators and must be free of any actual or perceived conflicts of interest.

b. If an internal affairs investigator or a commander who is responsible for making disciplinary findings or determining discipline has knowledge of a conflict of interest affecting his or her involvement, he or she should immediately inform the Commander of the Professional Standards Bureau or, if the holder of that office

also suffers from a conflict, the highest-ranking, non-conflicted chief-level officer at MCSO or, if there is no non-conflicted chief-level officer at MCSO, an outside authority. Any outside authority retained by the MCSO must possess the requisite background and level of experience of internal affairs investigators and must be free of any actual or perceived conflicts of interest.

c. Investigations into an employee's alleged untruthfulness can be initiated by the Commander of the Professional Standards Bureau or the Chief Deputy. All decisions not to investigate alleged untruthfulness must be documented in writing.

d. Any MCSO employee who observes or becomes aware of any act of misconduct by another employee shall, as soon as practicable, report the incident to a Supervisor or directly to the Professional Standards Bureau. During any period in which a Monitor is appointed to oversee any operations of the MCSO, any employee may, without retaliation, report acts of alleged misconduct directly to the Monitor.

e. Where an act of misconduct is reported to a Supervisor, the Supervisor shall immediately document and report the information to the Professional Standards Bureau.

f. Failure to report an act of misconduct shall be considered misconduct and may result in disciplinary or corrective action, up to and including termination. The presumptive discipline for a failure to report such allegations may be commensurate with the presumptive discipline for the underlying misconduct.

***12** g. No MCSO employee with a rank lower than Sergeant will conduct an investigation at the District level.

168. All forms of reprisal, discouragement, intimidation, coercion, or adverse action against any person, civilian, or employee because that person reports misconduct, attempts to make or makes a misconduct complaint in good faith, or cooperates with an investigation of misconduct constitute retaliation and are strictly prohibited. This also includes reports of misconduct made directly to the Monitor, during any period in which a Monitor is appointed to oversee any operations of the MCSO.

169. Retaliating against any person who reports or investigates alleged misconduct shall be considered a serious offense and shall result in discipline, up to and including termination.

170. The Sheriff shall investigate all complaints and allegations of misconduct, including third-party and anonymous complaints and allegations. Employees as well as civilians shall be permitted to make misconduct allegations anonymously.

171. The MCSO will not terminate an administrative investigation solely on the basis that the complainant seeks to withdraw the complaint, or is unavailable, unwilling, or unable to cooperate with an investigation, or because the principal resigns or retires to avoid discipline. The MCSO will continue the investigation and reach a finding, where possible, based on the evidence and investigatory procedures and techniques available.

172. Employees are required to provide all relevant evidence and information in their custody and control to internal affairs investigators. Intentionally withholding evidence or information from an internal affairs investigator shall result in discipline.

173. Any employee who is named as a principal in an ongoing investigation of serious misconduct shall be

presumptively ineligible for hire or promotion during the pendency of the investigation. The Sheriff and/or the MCSO shall provide a written justification for hiring or promoting an employee or applicant who is a principal in an ongoing investigation of serious misconduct. This written justification shall be included in the employee's employment file and, during the period that the MCSO is subject to Monitor oversight, provided to the Monitor.

174. Employees' and applicants' disciplinary history shall be considered in all hiring, promotion, and transfer decisions, and this consideration shall be documented. Employees and applicants whose disciplinary history demonstrates multiple sustained allegations of misconduct, or one sustained allegation of a Category 6 or Category 7 offense from MCSO's disciplinary matrices, shall be presumptively ineligible for hire or promotion. MCSO shall provide a written justification for hiring or promoting an employee or applicant who has a history demonstrating multiple sustained allegations of misconduct or a sustained Category 6 or Category 7 offense. This written justification shall be included in the employee's employment file and, during the period that the MCSO is subject to Monitor oversight, provided to the Monitor.

175. As soon as practicable, commanders shall review the disciplinary history of all employees who are transferred to their command.

***13** 176. The quality of investigators' internal affairs investigations and Supervisors' reviews of investigations shall be taken into account in their performance evaluations.

177. There shall be no procedure referred to as a "name-clearing hearing." All pre-disciplinary hearings shall be referred to as "pre-determination

hearings," regardless of the employment status of the principal.

B. Misconduct-Related Training

178. Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will have provided all Supervisors and all personnel assigned to the Professional Standards Bureau with 40 hours of comprehensive training on conducting employee misconduct investigations. This training shall be delivered by a person with subject matter expertise in misconduct investigation who shall be approved by the Monitor. This training will include instruction in:

a. investigative skills, including proper interrogation and interview techniques, gathering and objectively analyzing evidence, and data and case management;

b. the particular challenges of administrative law enforcement misconduct investigations, including identifying alleged misconduct that is not clearly stated in the complaint, or that becomes apparent during the investigation;

c. properly weighing the credibility of civilian witnesses against employees;

d. using objective evidence to resolve inconsistent statements;

e. the proper application of the appropriate standard of proof;

f. report-writing skills;

g. requirements related to the confidentiality of witnesses and/or complainants;

h. considerations in handling anonymous complaints;

i. relevant MCSO rules and policies, including

protocols related to administrative investigations of alleged officer misconduct; and

j. relevant state and federal law, including *Garrity v. New Jersey*, and the requirements of this Court's orders.

179. All Supervisors and all personnel assigned to the Professional Standards Bureau also will receive eight hours of in-service training annually related to conducting misconduct investigations. This training shall be delivered by a person with subject matter expertise in misconduct investigation who shall be approved by the Monitor.

180. Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will provide training that is adequate in quality, quantity, scope, and type, as determined by the Monitor, to all employees on MCSO's new or revised policies related to misconduct investigations, discipline, and grievances. This training shall include instruction on identifying and reporting misconduct, the consequences for failing to report misconduct, and the consequences for retaliating against a person for reporting misconduct or participating in a misconduct investigation.

181. Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will provide training that is adequate in quality, quantity, scope, and type, as determined by the Monitor, to all employees, including dispatchers, to properly handle civilian complaint intake, including how to provide complaint materials and information, and the consequences for failing to take complaints.

***14** 182. Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will provide training that is adequate in

quality, quantity, scope, and type, as determined by the Monitor, to all Supervisors on their obligations when called to a scene by a subordinate to accept a civilian complaint about that subordinate's conduct and on their obligations when they are phoned or emailed directly by a civilian filing a complaint against one of their subordinates.

C. Administrative Investigation Review

183. The Sheriff and the MCSO will conduct objective, comprehensive, and timely administrative investigations of all allegations of employee misconduct. The Sheriff shall put in place and follow the policies set forth below with respect to administrative investigations.

184. All findings will be based on the appropriate standard of proof. These standards will be clearly delineated in policies, training, and procedures, and accompanied by detailed examples to ensure proper application by internal affairs investigators.

185. Upon receipt of any allegation of misconduct, whether internally discovered or based upon a civilian complaint, employees shall immediately notify the Professional Standards Bureau.

186. Effective immediately, the Professional Standards Bureau shall maintain a centralized electronic numbering and tracking system for all allegations of misconduct, whether internally discovered or based upon a civilian complaint. Upon being notified of any allegation of misconduct, the Professional Standards Bureau will promptly assign a unique identifier to the incident. If the allegation was made through a civilian complaint, the unique identifier will be provided to the complainant at the time the complaint is made. The Professional

Standards Bureau's centralized numbering and tracking system will maintain accurate and reliable data regarding the number, nature, and status of all misconduct allegations, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status, if requested, and final disposition of the complaint. The system will be used to determine the status of misconduct investigations, as well as for periodic assessment of compliance with relevant policies and procedures and this Order, including requirements of timeliness of investigations. The system also will be used to monitor and maintain appropriate caseloads for internal affairs investigators.

187. The Professional Standards Bureau shall maintain a complete file of all documents within the MCSO's custody and control relating to any investigations and related disciplinary proceedings, including pre-determination hearings, grievance proceedings, and appeals to the Maricopa County Law Enforcement Merit System Council or a state court.

188. Upon being notified of any allegation of misconduct, the Professional Standards Bureau will make an initial determination of the category of the alleged offense, to be used for the purposes of assigning the administrative investigation to an investigator. After initially categorizing the allegation, the Professional Standards Bureau will promptly assign an internal affairs investigator.

189. The Professional Standards Bureau shall administratively investigate:

a. misconduct allegations of a serious nature, including any allegation that may result in suspension, demotion, or termination; and

b. misconduct indicating apparent criminal

conduct by an employee.

***15** 190. Allegations of employee misconduct that are of a minor nature may be administratively investigated by a trained and qualified Supervisor in the employee's District.

191. If at any point during a misconduct investigation an investigating Supervisor outside of the Professional Standards Bureau believes that the principal may have committed misconduct of a serious or criminal nature, he or she shall immediately notify the Professional Standards Bureau, which shall take over the investigation.

192. The Professional Standards Bureau shall review, at least semi-annually, all investigations assigned outside the Bureau to determine, among the other matters set forth in ¶ 251 below, whether the investigation is properly categorized, whether the investigation is being properly conducted, and whether appropriate findings have been reached.

193. When a single act of alleged misconduct would constitute multiple separate policy violations, all applicable policy violations shall be charged, but the most serious policy violation shall be used for determining the category of the offense. Exoneration on the most serious offense does not preclude discipline as to less serious offenses stemming from the same misconduct.

194. The Commander of the Professional Standards Bureau shall ensure that investigations comply with MCSO policy and all requirements of this Order, including those related to training, investigators' disciplinary backgrounds, and conflicts of interest.

195. Within six months of the entry of this Order, the Professional Standards Bureau shall include sufficient trained personnel to fulfill the requirements of this Order.

196. Where appropriate to ensure the fact and appearance of impartiality, the Commander of the Professional Standards Bureau or the Chief Deputy may refer administrative misconduct investigations to another law enforcement agency or may retain a qualified outside investigator to conduct the investigation. Any outside investigator retained by the MCSO must possess the requisite background and level of experience of Internal Affairs investigators and must be free of any actual or perceived conflicts of interest.

197. The Professional Standards Bureau will be headed by a qualified Commander. The Commander of the Professional Standards Bureau will have ultimate authority within the MCSO for reaching the findings of investigations and preliminarily determining any discipline to be imposed. If the Sheriff declines to designate a qualified Commander of the Professional Standards Bureau, the Court will designate a qualified candidate, which may be a Civilian Director in lieu of a sworn officer.

198. To promote independence and the confidentiality of investigations, the Professional Standards Bureau shall be physically located in a facility that is separate from other MCSO facilities, such as a professional office building or commercial retail space. This facility shall be easily accessible to the public, present a non-intimidating atmosphere, and have sufficient space and personnel for receiving members of the public and for permitting them to file complaints.

199. The MCSO will ensure that the qualifications for service as an internal affairs investigator shall be clearly defined and that anyone tasked with investigating employee misconduct possesses excellent investigative skills, a reputation for

integrity, the ability to write clear reports, and the ability to be fair and objective in determining whether an employee committed misconduct. Employees with a history of multiple sustained misconduct allegations, or one sustained allegation of a Category 6 or Category 7 offense from MCSO's disciplinary matrices, will be presumptively ineligible to conduct misconduct investigations. Employees with a history of conducting deficient investigations will also be presumptively ineligible for these duties.

***16** 200. In each misconduct investigation, investigators shall:

a. conduct investigations in a rigorous and impartial manner designed to determine the facts;

b. approach investigations without prejudging the facts and without permitting any preconceived impression of the principal or any witness to cloud the investigation;

c. identify, collect, and consider all relevant circumstantial, direct, and physical evidence, including any audio or video recordings;

d. make reasonable attempts to locate and interview all witnesses, including civilian witnesses;

e. make reasonable attempts to interview any civilian complainant in person;

f. audio and video record all interviews;

g. when conducting interviews, avoid asking leading questions and questions that may suggest justifications for the alleged misconduct;

h. make credibility determinations, as appropriate; and

i. attempt to resolve material inconsistencies between employee, complainant, and witness statements.

201. There will be no automatic preference for an employee's statement over a non-employee's statement. Internal affairs investigators will not disregard a witness's statement solely because the witness has some connection to either the complainant or the employee or because the witness or complainant has a criminal history, but may consider the witness's criminal history or any adjudicated findings of untruthfulness in evaluating that witness's statement. In conducting the investigation, internal affairs investigators may take into account the record of any witness, complainant, or officer who has been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation.

202. Internal affairs investigators will investigate any evidence of potential misconduct uncovered during the course of the investigation, regardless of whether the potential misconduct was part of the original allegation.

203. If the person involved in the encounter with the MCSO pleads guilty or is found guilty of an offense, internal affairs investigators will not consider that information alone to be determinative of whether an MCSO employee engaged in misconduct, nor will it by itself justify discontinuing the investigation. MCSO training materials and policies on internal investigations will acknowledge explicitly that the fact of a criminal conviction related to the administrative investigation is not determinative of whether an MCSO employee engaged in misconduct and that the mission of an internal affairs investigator is to determine whether any misconduct occurred.

204. Internal affairs investigators will complete

their administrative investigations within 85 calendar days of the initiation of the investigation (60 calendar days if within a Division). Any request for an extension of time must be approved in writing by the Commander of the Professional Standards Bureau. Reasonable requests for extensions of time may be granted.

205. The Professional Standards Bureau shall maintain a database to track all ongoing misconduct cases, and shall generate alerts to the responsible investigator and his or her Supervisor and the Commander of the Professional Standards Bureau when deadlines are not met.

***17** 206. At the conclusion of each investigation, internal affairs investigators will prepare an investigation report. The report will include:

a. a narrative description of the incident;

b. documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report will specifically state this fact. In situations in which witnesses were present but circumstances prevented the internal affairs investigator from determining the identification, phone number, or address of those witnesses, the report will state the reasons why. The report will also include all available identifying information for anyone who refuses to provide a statement;

c. documentation of whether employees were interviewed, and a transcript or recording of those interviews;

d. the names of all other MCSO employees who witnessed the incident;

e. the internal affairs investigator's evaluation of the incident, based on his or her review of the

evidence gathered, including a determination of whether the employee's actions appear to be within MCSO policy, procedure, regulations, orders, or other standards of conduct required of MCSO employees;

f. in cases where the MCSO asserts that material inconsistencies were resolved, explicit credibility findings, including a precise description of the evidence that supports or detracts from the person's credibility;

g. in cases where material inconsistencies must be resolved between complainant, employee, and witness statements, explicit resolution of the inconsistencies, including a precise description of the evidence relied upon to resolve the inconsistencies;

h. an assessment of the incident for policy, training, tactical, or equipment concerns, including any recommendations for how those concerns will be addressed;

i. if a weapon was used, documentation that the employee's certification and training for the weapon were current; and

j. documentation of recommendations for initiation of the disciplinary process; and

k. in the instance of an externally generated complaint, documentation of all contacts and updates with the complainant.

207. In assessing the incident for policy, training, tactical, or equipment concerns, investigation reports will include an assessment of whether:

a. the law enforcement action was in compliance with training and legal standards;

b. the use of different tactics should or could have been employed;

c. the incident indicates a need for additional

training, counseling, or other non-disciplinary corrective actions; and

d. the incident suggests that the MCSO should revise its policies, strategies, tactics, or training.

208. For each allegation of misconduct, internal affairs investigators shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:

a. "Unfounded," where the investigation determines, by clear and convincing evidence, that the allegation was false or not supported by fact;

b. "Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur and justifies a reasonable conclusion of a policy violation;

***18** c. "Not Sustained," where the investigation determines that there is insufficient evidence to prove or disprove the allegation; or

d. "Exonerated," where the investigation determines that the alleged conduct did occur but did not violate MCSO policies, procedures, or training.

209. For investigations carried out by Supervisors outside of the Professional Standards Bureau, the investigator shall forward the completed investigation report through his or her chain of command to his or her Division Commander. The Division Commander must approve the investigation and indicate his or her concurrence with the findings.

210. For investigations carried out by the Professional Standards Bureau, the investigator shall forward the completed investigation report to the Commander.

211. If the Commander—meaning the Commander

of the PSB or the Commander of the Division in which the internal affairs investigation was conducted—determines that the findings of the investigation report are not supported by the appropriate standard of proof, the Commander shall return the investigation to the investigator for correction or additional investigative effort, shall document the inadequacies, and shall include this documentation as an addendum to the original investigation. The investigator's Supervisor shall take appropriate action to address the inadequately supported determination and any investigative deficiencies that led to it. The Commander shall be responsible for the accuracy and completeness of investigation reports prepared by internal affairs investigators under his or her command.

212. Where an internal affairs investigator conducts a deficient misconduct investigation, the investigator shall receive the appropriate corrective and/or disciplinary action. An internal affairs investigator's failure to improve the quality of his or her investigations after corrective and/or disciplinary action is taken shall be grounds for demotion and/or removal from a supervisory position or the Professional Standards Bureau.

213. Investigations of minor misconduct conducted outside of the Professional Standards Bureau must be conducted by a Supervisor and not by line-level deputies. After such investigations, the investigating Supervisor's Commander shall forward the investigation file to the Professional Standards Bureau after he or she finds that the misconduct investigation is complete and the findings are supported by the evidence. The Professional Standards Bureau shall review the misconduct investigation to ensure that it is complete and that

the findings are supported by the evidence. The Professional Standards Bureau shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings. Where the findings of the investigation report are not supported by the appropriate standard of proof, the Professional Standards Bureau shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation.

214. At the discretion of the Commander of the Professional Standards Bureau, a misconduct investigation may be assigned or re-assigned to another Supervisor with the approval of his or her Commander, whether within or outside of the District or Bureau in which the incident occurred, or may be returned to the original Supervisor for further investigation or analysis. This assignment or re-assignment shall be explained in writing.

***19** 215. If, after an investigation conducted outside of the Professional Standards Bureau, an employee's actions are found to violate policy, the investigating Supervisor's Commander shall direct and ensure appropriate discipline and/or corrective action. Where the incident indicates policy, training, tactical, or equipment concerns, the Commander shall also ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

216. If, after an investigation conducted by the Professional Standards Bureau, an employee's actions are found to violate policy, the Commander of the Professional Standards Bureau shall direct and ensure appropriate discipline and/or corrective

action. Where the incident indicates policy, training, tactical, or equipment concerns, the Commander of the Professional Standards Bureau shall also ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

217. The Professional Standards Bureau shall conduct targeted and random reviews of discipline imposed by Commanders for minor misconduct to ensure compliance with MCSO policy and legal standards.

218. The Professional Standards Bureau shall maintain all administrative investigation reports and files after they are completed for record-keeping in accordance with applicable law.

D. Discipline

219. The Sheriff shall ensure that discipline for sustained allegations of misconduct comports with due process, and that discipline is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are identified and consistently applied and documented regardless of the command level of the principal of the investigation.

220. To ensure consistency in the imposition of discipline, the Sheriff shall review the MCSO's current disciplinary matrices and, upon approval of the parties and the Monitor, will amend them as necessary to ensure that they:

a. establish a presumptive range of discipline for each type of violation;

b. increase the presumptive discipline based on an employee's prior violations;

c. set out defined mitigating and aggravating factors;

d. prohibit consideration of the employee's race, gender, gender identity, sexual orientation, national origin, age, or ethnicity;

e. prohibit conflicts, nepotism, or bias of any kind in the administration of discipline;

f. prohibit consideration of the high (or low) profile nature of the incident, including media coverage or other public attention;

g. clearly define forms of discipline and define classes of discipline as used in policies and operations manuals;

h. provide that corrective action such as coaching or training is not considered to be discipline and should not be used as a substitute for discipline where the matrix calls for discipline;

i. provide that the MCSO will not take only non-disciplinary corrective action in cases in which the disciplinary matrices call for the imposition of discipline;

j. provide that the MCSO will consider whether non-disciplinary corrective action is also appropriate in a case where discipline has been imposed;

k. require that any departures from the discipline recommended under the disciplinary matrices be justified in writing and included in the employee's file; and

l. provide a disciplinary matrix for unclassified management level employees that is at least as demanding as the disciplinary matrix for management level employees.

221. The Sheriff shall mandate that each act or omission that results in a sustained misconduct allegation shall be treated as a separate offense for the purposes of imposing discipline.

***20** 222. The Sheriff shall also provide that the

Commander of the Professional Standards Bureau shall make preliminary determinations of the discipline to be imposed in all cases and shall document those determinations in writing, including the presumptive range of discipline for the sustained misconduct allegation, and the employee's disciplinary history.

E. Pre-Determination Hearings

223. If the Commander of the Professional Standards Bureau makes a preliminary determination that serious discipline (defined as suspension, demotion, or termination) should be imposed, a designated member of MCSO's command staff will conduct a pre-determination hearing and will provide the employee with an opportunity to be heard.

224. Pre-determination hearings will be audio and video recorded in their entirety, and the recording shall be maintained with the administrative investigation file.

225. If an employee provides new or additional evidence at a pre-determination hearing, the hearing will be suspended and the matter will be returned to the internal affairs investigator for consideration or further investigation, as necessary. If after any further investigation or consideration of the new or additional evidence, there is no change in the determination of preliminary discipline, the matter will go back to the pre-determination hearing. The Professional Standards Bureau shall initiate a separate misconduct investigation if it appears that the employee intentionally withheld the new or additional evidence during the initial misconduct investigation.

226. If the designated member of MCSO's command staff conducting the pre-determination hearing does not uphold the charges recommended by the Professional Standards Bureau in any respect, or does not impose the Commander of the Professional Standards Bureau's recommended discipline and/or non-disciplinary corrective action, the Sheriff shall require the designated member of MCSO's command staff to set forth in writing his or her justification for doing so. This justification will be appended to the investigation file.

227. The Sheriff shall promulgate MCSO policy which shall provide that the designated member of MCSO's command staff conducting a pre-determination hearing should apply the disciplinary matrix and set forth clear guidelines for the grounds on which a deviation is permitted. The Sheriff shall mandate that the designated member of MCSO's command staff may not consider the following as grounds for mitigation or reducing the level of discipline prescribed by the matrix:

a. his or her personal opinion about the employee's reputation;

b. the employee's past disciplinary history (or lack thereof), except as provided in the disciplinary matrix;

c. whether others were jointly responsible for the misconduct, except that the MCSO disciplinary decision maker may consider the measure of discipline imposed on other employees involved to the extent that discipline on others had been previously imposed and the conduct was similarly culpable.

228. The Sheriff or his designee has the authority to rescind, revoke or alter any disciplinary decision made by either the Commander of the Professional

Standards Bureau or the appointed MCSO disciplinary authority so long as:

a. that decision does not relate to the Sheriff or his designee;

b. the Sheriff or his designee provides a thorough written and reasonable explanation for the grounds of the decision as to each employee involved;

***21** c. the written explanation is placed in the employment files of all employees who were affected by the decision of the Sheriff or his designee; and

d. the written explanation is available to the public upon request.

F. Criminal Misconduct Investigations

229. Whenever an internal affairs investigator or Commander finds evidence of misconduct indicating apparent criminal conduct by an employee, the Sheriff shall require that the internal affairs investigator or Commander immediately notify the Commander of the Professional Standards Bureau. If the administrative misconduct investigation is being conducted by a Supervisor outside of the Professional Standards Bureau, the Sheriff shall require that the Professional Standards Bureau immediately take over the administrative investigation. If the evidence of misconduct pertains to someone who is superior in rank to the Commander of the Professional Standards Bureau and is within the Commander's chain of command, the Sheriff shall require the Commander to provide the evidence directly to what he or she believes is the appropriate prosecuting authority—the Maricopa County Attorney, the Arizona Attorney General, or

the United States Attorney for the District of Arizona—without notifying those in his or her chain of command who may be the subject of a criminal investigation.

230. If a misconduct allegation will be investigated criminally, the Sheriff shall require that the Professional Standards Bureau not compel an interview of the principal pursuant to *Garrity v. New Jersey*, 385 U.S. 493 (1967), until it has first consulted with the criminal investigator and the relevant prosecuting authority. No other part of the administrative investigation shall be held in abeyance unless specifically authorized by the Commander of the Professional Standards Bureau in consultation with the entity conducting the criminal investigation. The Sheriff shall require the Professional Standards Bureau to document in writing all decisions regarding compelling an interview, all decisions to hold any aspect of an administrative investigation in abeyance, and all consultations with the criminal investigator and prosecuting authority.

231. The Sheriff shall require the Professional Standards Bureau to ensure that investigators conducting a criminal investigation do not have access to any statements by the principal that were compelled pursuant to *Garrity*.

232. The Sheriff shall require the Professional Standards Bureau to complete all such administrative investigations regardless of the outcome of any criminal investigation, including cases in which the prosecuting agency declines to prosecute or dismisses the criminal case after the initiation of criminal charges. The Sheriff shall require that all relevant provisions of MCSO policies and procedures and the operations manual for the

Professional Standards Bureau shall remind members of the Bureau that administrative and criminal cases are held to different standards of proof, that the elements of a policy violation differ from those of a criminal offense, and that the purposes of the administrative investigation process differ from those of the criminal investigation process.

***22** 233. If the investigator conducting the criminal investigation decides to close the investigation without referring it to a prosecuting agency, this decision must be documented in writing and provided to the Professional Standards Bureau. The Commander of the Professional Standards Bureau shall separately consider whether to refer the matter to a prosecuting agency and shall document the decision in writing.

234. If the investigator conducting the criminal investigation decides to refer the matter to a prosecuting agency, the Professional Standards Bureau shall review the information provided to the prosecuting agency to ensure that it is of sufficient quality and completeness. The Commander of the Professional Standards Bureau shall direct that the investigator conduct additional investigation when it appears that there is additional relevant evidence that may improve the reliability or credibility of the investigation. Such directions shall be documented in writing and included in the investigatory file.

235. If the prosecuting agency declines to prosecute or dismisses the criminal case after the initiation of criminal charges, the Professional Standards Bureau shall request an explanation for this decision, which shall be documented in writing and appended to the criminal investigation report.

236. The Sheriff shall require the Professional

Standards Bureau to maintain all criminal investigation reports and files after they are completed for record-keeping in accordance with applicable law.

G. Civilian Complaint Intake, Communication, and Tracking

237. Within six months of the entry of this Order, the Monitor, in consultation with the Community Advisory Board, will develop and implement a program to promote awareness throughout the Maricopa County community about the process for filing complaints about the conduct of MCSO employees.

238. The Sheriff shall require the MCSO to accept all civilian complaints, whether submitted verbally or in writing; in person, by phone, by mail, or online; by a complainant, someone acting on the complainant's behalf, or anonymously; and with or without a signature from the complainant. MCSO will document all complaints in writing.

239. In locations clearly visible to members of the public at the reception desk at MCSO headquarters and at all District stations, the Sheriff and the MCSO will post and maintain permanent placards clearly and simply describing the civilian complaint process that is visible to the public at all hours. The placards shall include relevant contact information, including telephone numbers, email addresses, mailing addresses, and Internet sites. The placards shall be in both English and Spanish.

240. The Sheriff shall require all deputies to carry complaint forms in their MCSO vehicles. Upon request, deputies will provide individuals with complaint forms and information about how to file a

complaint, their name and badge number, and the contact information, including telephone number and email address, of their immediate supervising officer. The Sheriff must provide all supervising officers with telephones. Supervising officers must timely respond to such complaints registered by civilians.

241. The Sheriff will ensure that the Professional Standards Bureau facility is easily accessible to members of the public. There shall be a space available for receiving walk-in visitors and personnel who can assist the public with filing complaints and/or answer an individual's questions about the complaint investigation process.

***23** 242. The Sheriff will also make complaint forms widely available at locations around the County including: the websites of MCSO and Maricopa County government; the lobby of MCSO's headquarters; each patrol District; and the Maricopa County government offices. The Sheriff will ask locations, such as public library branches and the offices and gathering places of community groups, to make these materials available.

243. The Sheriff shall establish a free, 24-hour hotline for members of the public to make complaints.

244. The Sheriff shall ensure that the MCSO's complaint form does not contain any language that could reasonably be construed as discouraging the filing of a complaint, such as warnings about the potential criminal consequences for filing false complaints.

245. Within two months of the entry of this Order, complaint forms will be made available, at a minimum, in English and Spanish. The MCSO will make reasonable efforts to ensure that complainants who speak other languages (including sign language)

and have limited English proficiency can file complaints in their preferred language. The fact that a complainant does not speak, read, or write in English, or is deaf or hard of hearing, will not be grounds to decline to accept or investigate a complaint.

246. In the course of investigating a civilian complaint, the Professional Standards Bureau will send periodic written updates to the complainant including:

a. within seven days of receipt of a complaint, the Professional Standards Bureau will send non-anonymous complainants a written notice of receipt, including the tracking number assigned to the complaint and the name of the investigator assigned. The notice will inform the complainant how he or she may contact the Professional Standards Bureau to inquire about the status of a complaint;

b. when the Professional Standards Bureau concludes its investigation, the Bureau will notify the complainant that the investigation has been concluded and inform the complainant of the Bureau's findings as soon as is permitted by law; and

c. in cases where discipline is imposed, the Professional Standards Bureau will notify the complainant of the discipline as soon as is permitted by law.

247. Notwithstanding the above written communications, a complainant and/or his or her representative may contact the Professional Standards Bureau at any time to determine the status of his or her complaint. The Sheriff shall require the MCSO to update the complainant with the status of the investigation.

248. The Professional Standards Bureau will track, as a separate category of complaints, allegations of biased policing, including allegations that a deputy conducted an investigatory stop or arrest based on an individual's demographic category or used a slur based on an individual's actual or perceived race, ethnicity, nationality, or immigration status, sex, sexual orientation, or gender identity. The Professional Standards Bureau will require that complaints of biased policing are captured and tracked appropriately, even if the complainant does not so label the allegation.

249. The Professional Standards Bureau will track, as a separate category of complaints, allegations of unlawful investigatory stops, searches, seizures, or arrests.

250. The Professional Standards Bureau will conduct regular assessments of the types of complaints being received to identify and assess potential problematic patterns and trends.

H. Transparency Measures

***24** 251. The Sheriff shall require the Professional Standards Bureau to produce a semi-annual public report on misconduct investigations, including, at a minimum, the following:

a. summary information, which does not name the specific employees involved, about any sustained allegations that an employee violated conflict-of-interest rules in conducting or reviewing misconduct investigations;

b. aggregate data on complaints received from the public, broken down by district; rank of principal(s); nature of contact (traffic stop, pedestrian stop, call for service, etc.); nature of allegation (rudeness,

bias-based policing, etc.); complainants' demographic information; complaints received from anonymous complainants or third parties; and principals' demographic information;

c. analysis of whether any increase or decrease in the number of civilian complaints received from reporting period to reporting period is attributable to issues in the complaint intake process or other factors;

d. aggregate data on internally-generated misconduct allegations, broken down by similar categories as those for civilian complaints;

e. aggregate data on the processing of misconduct cases, including the number of cases assigned to Supervisors outside of the Professional Standards Bureau versus investigators in the Professional Standards Bureau; the average and median time from the initiation of an investigation to its submission by the investigator to his or her chain of command; the average and median time from the submission of the investigation by the investigator to a final decision regarding discipline, or other final disposition if no discipline is imposed; the number of investigations returned to the original investigator due to conclusions not being supported by the evidence; and the number of investigations returned to the original investigator to conduct additional investigation;

f. aggregate data on the outcomes of misconduct investigations, including the number of sustained, not sustained, exonerated, and unfounded misconduct complaints; the number of misconduct allegations supported by the appropriate standard of proof; the number of sustained allegations resulting in a non-disciplinary outcome, coaching, written reprimand, suspension, demotion, and

termination; the number of cases in which findings were changed after a pre-determination hearing, broken down by initial finding and final finding; the number of cases in which discipline was changed after a pre-determination hearing, broken down by initial discipline and final discipline; the number of cases in which findings were overruled, sustained, or changed by the Maricopa County Law Enforcement Merit System Council, broken down by the finding reached by the MCSO and the finding reached by the Council; and the number of cases in which discipline was altered by the Council, broken down by the discipline imposed by the MCSO and the disciplinary ruling of the Council; and similar information on appeals beyond the Council; and

g. aggregate data on employees with persistent or serious misconduct problems, including the number of employees who have been the subject of more than two misconduct investigations in the previous 12 months, broken down by serious and minor misconduct; the number of employees who have had more than one sustained allegation of minor misconduct in the previous 12 months, broken down by the number of sustained allegations; the number of employees who have had more than one sustained allegation of serious misconduct in the previous 12 months, broken down by the number of sustained allegations; and the number of criminal prosecutions of employees, broken down by criminal charge.

***25** 252. The Sheriff shall require the MCSO to make detailed summaries of completed internal affairs investigations readily available to the public to the full extent permitted under state law, in electronic form on a designated section of its website that is

linked to directly from the MCSO's home page with prominent language that clearly indicates to the public that the link provides information about investigations of misconduct alleged against MCSO employees.

253. The MCSO Bureau of Internal Oversight shall produce a semi-annual public audit report regarding misconduct investigations. This report shall analyze a stratified random sample of misconduct investigations that were completed during the previous six months to identify any procedural irregularities, including any instances in which:

a. complaint notification procedures were not followed;

b. a misconduct complaint was not assigned a unique identifier;

c. investigation assignment protocols were not followed, such as serious or criminal misconduct being investigated outside of the Professional Standards Bureau;

d. deadlines were not met;

e. an investigation was conducted by an employee who had not received required misconduct investigation training;

f. an investigation was conducted by an employee with a history of multiple sustained misconduct allegations, or one sustained allegation of a Category 6 or Category 7 offense from the MCSO's disciplinary matrices;

g. an investigation was conducted by an employee who was named as a principal or witness in any investigation of the underlying incident;

h. an investigation was conducted of a superior officer within the internal affairs investigator's chain of command;

i. any interviews were not recorded;

j. the investigation report was not reviewed by the appropriate personnel;
k. employees were promoted or received a salary increase while named as a principal in an ongoing misconduct investigation absent the required written justification;
l. a final finding was not reached on a misconduct allegation;
m. an employee's disciplinary history was not documented in a disciplinary recommendation; or
n. no written explanation was provided for the imposition of discipline inconsistent with the disciplinary matrix.

I. Testing Program for Civilian Complaint Intake

254. The Sheriff shall initiate a testing program designed to assess civilian complaint intake. Specifically, the testing program shall assess whether employees are providing civilians appropriate and accurate information about the complaint process and whether employees are notifying the Professional Standards Bureau upon the receipt of a civilian complaint.
255. The testing program is not intended to assess investigations of civilian complaints, and the MCSO shall design the testing program in such a way that it does not waste resources investigating fictitious complaints made by testers.
256. The testing program shall assess complaint intake for complaints made in person at MCSO facilities, complaints made telephonically, by mail, and complaints made electronically by email or through MCSO's website. Testers shall not interfere with deputies taking law enforcement action.

Testers shall not attempt to assess complaint intake in the course of traffic stops or other law enforcement action being taken outside of MCSO facilities.

257. The testing program shall include sufficient random and targeted testing to assess the complaint intake process, utilizing surreptitious video and/or audio recording, as permitted by state law, of testers' interactions with MCSO personnel to assess the appropriateness of responses and information provided.

***26** 258. The testing program shall also assess whether employees promptly notify the Professional Standards Bureau of civilian complaints and provide accurate and complete information to the Bureau.

259. MCSO shall not permit current or former employees to serve as testers.

260. The MCSO shall produce an annual report on the testing program. This report shall include, at a minimum:

a. a description of the testing program, including the testing methodology and the number of tests conducted broken down by type (*i.e.*, in-person, telephonic, mail, and electronic);

b. the number and proportion of tests in which employees responded inappropriately to a tester;

c. the number and proportion of tests in which employees provided inaccurate information about the complaint process to a tester;

d. the number and proportion of tests in which employees failed to promptly notify the Professional Standards Bureau of the civilian complaint;

e. the number and proportion of tests in which employees failed to convey accurate information about the complaint to the Professional Standards Bureau;

f. an evaluation of the civilian complaint intake based upon the results of the testing program; and g. a description of any steps to be taken to improve civilian complaint intake as a result of the testing program.

VII. COMMUNITY OUTREACH AND COMMUNITY ADVISORY BOARD

261. The Community Advisory Board may conduct or retain a consultant to conduct a study to identify barriers to the filing of civilian complaints against MCSO personnel.

262. In addition to the administrative support provided for in the Supplemental Permanent Injunction, (Doc. 670 ¶ 117), the Community Advisory Board shall be provided with annual funding to support its activities, including but not limited to funds for appropriate research, outreach advertising and website maintenance, stipends for intern support, professional interpretation and translation, and out-of-pocket costs of the Community Advisory Board members for transportation related to their official responsibilities. The Community Advisory Board shall submit a proposed annual budget to the Monitor, not to exceed $15,000, and upon approval of the annual budget, the County shall deposit that amount into an account established by the Community Advisory Board for that purpose. The Community Advisory Board shall be required to keep detailed records of expenditures which are subject to review.

VIII. SUPERVISION AND STAFFING

263. The following Section of this Order represents additions and amendments to Section X of the first Supplemental Permanent Injunction, Supervision and Evaluations of Officer Performance, and the provisions of this Section override any conflicting provisions in Section X of the first Supplemental Permanent Injunction.

264. The Sheriff shall ensure that all patrol deputies shall be assigned to a primary, clearly identified, first-line supervisor.

265. First-line patrol supervisors shall be responsible for closely and consistently supervising all deputies under their primary command.

266. First-line patrol supervisors shall be assigned as primary supervisor to no more persons than it is possible to effectively supervise. The Sheriff should seek to establish staffing that permits a supervisor to oversee no more than eight deputies, but in no event should a supervisor be responsible for more than ten persons. If the Sheriff determines that assignment complexity, the geographic size of a district, the volume of calls for service, or other circumstances warrant an increase or decrease in the level of supervision for any unit, squad, or shift, it shall explain such reasons in writing, and, during the period that the MCSO is subject to the Monitor, shall provide the Monitor with such explanations. The Monitor shall provide an assessment to the Court as to whether the reduced or increased ratio is appropriate in the circumstances indicated.

***27** 267. Supervisors shall be responsible for close and effective supervision of deputies under their command. Supervisors shall ensure that all deputies under their direct command comply with MCSO policy, federal, state and local law, and this Court's orders.

268. During the term that a Monitor oversees the Sheriff and the MCSO in this action, any transfer of sworn personnel or supervisors in or out of the Professional Standards Bureau, the Bureau of Internal Oversight, and the Court Implementation Division shall require advanced approval from the Monitor. Prior to any transfer into any of these components, the MCSO shall provide the Court, the Monitor, and the parties with advance notice of the transfer and shall produce copies of the individual's résumé and disciplinary history. The Court may order the removal of the heads of these components if doing so is, in the Court's view, necessary to achieve compliance in a timely manner.

IX. DOCUMENT PRESERVATION AND PRODUCTION

269. The Sheriff shall ensure that when the MCSO receives a document preservation notice from a litigant, the MCSO shall promptly communicate that document preservation notice to all personnel who might possibly have responsive documents.

270. The Sheriff shall ensure that when the MCSO receives a request for documents in the course of litigation, it shall:

a. promptly communicate the document request to all personnel who might possibly be in possession of responsive documents;

b. ensure that all existing electronic files, including email files and data stored on networked drives, are sequestered and preserved through a centralized process; and

c. ensure that a thorough and adequate search for documents is conducted, and that each employee who might possibly be in possession of responsive

documents conducts a thorough and adequate search of all relevant physical and electronic files.

271. Within three months of the effective date of this Order, the Sheriff shall ensure that the MCSO Compliance Division promulgates detailed protocols for the preservation and production of documents requested in litigation. Such protocols shall be subject to the approval of the Monitor after a period of comment by the Parties.

272. The Sheriff shall ensure that MCSO policy provides that all employees must comply with document preservation and production requirements and that violators of this policy shall be subject to discipline and potentially other sanctions.

X. ADDITIONAL TRAINING

273. Within two months of the entry of this Order, the Sheriff shall ensure that all employees are briefed and presented with the terms of the Order, along with relevant background information about the Court's May 13, 2016 Findings of Fact, (Doc. 1677), upon which this Order is based.

XI. COMPLAINTS AND MISCONDUCT INVESTIGATIONS RELATING TO MEMBERS OF THE PLAINTIFF CLASS

274. In light of the Court's finding that the MCSO, and in particular Sheriff Arpaio and Chief Deputy Sheridan, willfully and systematically manipulated, misapplied, and subverted MCSO's employee disciplinary policies and internal affairs processes to avoid imposing appropriate discipline on MCSO deputies and command staff for their violations of MCSO policies with respect to members of the

Plaintiff class, the Court further orders as follows:

A. Investigations to be Overseen and/or Conducted by the Monitor

***28** 275. The Monitor is vested with the authority to supervise and direct all of the MCSO's internal affairs investigations pertaining to Class Remedial Matters. The Monitor is free from any liability for such matters as is set forth in ¶ 144 of the Supplemental Permanent Injunction.

276. The Monitor shall have the authority to direct and/or approve all aspects of the intake and investigation of Class Remedial Matters, the assignment of responsibility for such investigations including, if necessary, assignment to his own Monitor team or to other independent sources for investigation, the preliminary and final investigation of complaints and/or the determination of whether they should be criminally or administratively investigated, the determination of responsibility and the imposition of discipline on all matters, and any grievances filed in those matters.

277. This authority is effective immediately and shall remain vested in the Monitor until the MCSO's internal affairs investigations reach the benchmarks set forth in ¶ 288 below. With respect to Class Remedial Matters, the Monitor has plenary authority, except where authority is vested in the Independent Investigative and Disciplinary Authorities separately appointed by the Court, as is further set forth in ¶¶ 296–337 below.

278. The Sheriff shall alert the Monitor in writing to all matters that could be considered Class Remedial Matters, and the Monitor has the authority to independently identify such matters. The Monitor

shall provide an effective level of oversight to provide reasonable assurance that all Class Remedial Matters come to his attention.

279. The Monitor shall have complete authority to conduct whatever review, research, and investigation he deems necessary to determine whether such matters qualify as Class Remedial Matters and whether the MCSO is dealing with such matters in a thorough, fair, consistent, and unbiased manner.

280. The Monitor shall provide written notice to the Court and to the parties when he determines that he has jurisdiction over a Class Remedial Matter. Any party may appeal the Monitor's determination as to whether he has jurisdiction over a Class Remedial Matter to this Court within seven days of the Monitor's notice. During the pendency of any such appeal the Monitor has authority to make orders and initiate and conduct investigations concerning Class Remedial Matters and the Sheriff and the MCSO will fully comply with such action by the Monitor.

281. Subject to the authority of the Monitor, the Sheriff shall ensure that the MCSO receives and processes Class Remedial Matters consistent with: (1) the requirements of this Order and the previous orders of this Court, (2) MCSO policies promulgated pursuant to this Order, and (3) the manner in which, pursuant to policy, the MCSO handles all other complaints and disciplinary matters. The Sheriff will direct that the Professional Standards Bureau and the members of his appointed command staff arrive at a disciplinary decision in each Class Remedial Matter.

282. The Sheriff and/or his appointee may exercise the authority given pursuant to this Order to direct and/or resolve such Class Remedial Matters,

however, the decisions and directives of the Sheriff and/or his designee with respect to Class Remedial Matters may be vacated or overridden in whole or in part by the Monitor. Neither the Sheriff nor the MCSO has any authority, absent further order of this Court, to countermand any directions or decision of the Monitor with respect to Class Remedial Matters by grievance, appeal, briefing board, directive, or otherwise.

***29** 283. The Monitor shall review and approve all disciplinary decisions on Class Remedial Matters.

284. The Sheriff and the MCSO shall expeditiously implement the Monitor's directions, investigations, hearings, and disciplinary decisions. The Sheriff and the MCSO shall also provide any necessary facilities or resources without cost to the Monitor to facilitate the Monitor's directions and/or investigations.

285. Should the Monitor decide to deviate from the Policies set forth in this Order or from the standard application of the disciplinary matrix, the Monitor shall justify the decision in writing and place the written explanation in the affected employee's (or employees') file(s).

286. Should the Monitor believe that a matter should be criminally investigated, he shall follow the procedures set forth in ¶¶ 229–36 above. The Commander of the Professional Standards Bureau shall then either confidentially initiate a Professional Standards Bureau criminal investigation overseen by the Monitor or report the matter directly and confidentially to the appropriate prosecuting agency. To the extent that the matter may involve the Commander of the Professional Standards Bureau as a principal, the Monitor shall report the matter directly and confidentially to the appropriate prosecuting agency. The Monitor shall

then coordinate the administrative investigation with the criminal investigation in the manner set forth in ¶¶ 229–36 above.

287. Any persons receiving discipline for any Class Remedial Matters that have been approved by the Monitor shall maintain any right they may have under Arizona law or MCSO policy to appeal or grieve that decision with the following alterations:

a. When minor discipline is imposed, a grievance may be filed with the Sheriff or his designee consistent with existing MCSO procedure. Nevertheless, the Sheriff or his designee shall immediately transmit the grievance to the Monitor who shall have authority to and shall decide the grievance. If, in resolving the grievance, the Monitor changes the disciplinary decision in any respect, he shall explain his decision in writing.

b. disciplined MCSO employee maintains his or her right to appeal serious discipline to the Maricopa County Law Enforcement Merit System Council to the extent the employee has such a right. The Council may exercise its normal supervisory authority over discipline imposed by the Monitor.

288. The Monitor's authority over Class Remedial Matters will cease when both:

a. The final decision of the Professional Standards Bureau, the Division, or the Sheriff, or his designee, on Class Remedial Matters has concurred with the Monitor's independent decision on the same record at least 95% of the time for a period of three years.

b. The Court determines that for a period of three continuous years the MCSO has complied with the complaint intake procedures set forth in this Order, conducted appropriate internal affairs procedures, and adequately investigated and adjudicated all matters that come to its attention that should be

investigated no matter how ascertained, has done so consistently, and has fairly applied its disciplinary policies and matrices with respect to all MCSO employees regardless of command level.

***30** 289. To make the determination required by subpart (b), the Court extends the scope of the Monitor's authority to inquire and report on all MCSO internal affairs investigations and not those merely that are related to Class Remedial Matters.

290. This requirement is necessitated by the Court's Findings of Fact that show that the MCSO manipulates internal affairs investigations other than those that have a direct relation to the Plaintiff class. The Court will not return the final authority to the Sheriff to investigate matters pertaining to members of the Plaintiff class until it has assurance that the MCSO uniformly investigates misconduct and applies appropriate, uniform, and fair discipline at all levels of command, whether or not the alleged misconduct directly relates to members of the Plaintiff Class.

291. The Monitor shall report to the Court, on a quarterly basis, whether the MCSO has fairly, adequately, thoroughly, and expeditiously assessed, investigated, disciplined, and made grievance decisions in a manner consistent with this Order during that quarter. This report is to cover all internal affairs matters within the MCSO whether or not the matters are Class Remedial Matters. The report shall also apprise the Court whether the MCSO has yet appropriately investigated and acted upon the misconduct identified in the Court's Findings of Fact, whether or not such matters constitute Class Remedial Matters.

292. To make this assessment, the Monitor is to be given full access to all MCSO internal affairs

investigations or matters that might have been the subject of an internal affairs investigation by the MCSO. In making and reporting his assessment, the Monitor shall take steps to comply with the rights of the principals under investigation in compliance with state law. While the Monitor can assess all internal affairs investigations conducted by the MCSO to evaluate their good faith compliance with this Order, the Monitor does not have authority to direct or participate in the investigations of or make any orders as to matters that do not qualify as Class Remedial Matters.

293. The Monitor shall append to the quarterly reports it currently produces to the Court its findings on the MCSO's overall internal affairs investigations. The parties, should they choose to do so, shall have the right to challenge the Monitor's assessment in the manner provided in the Court's previous order. (Doc. 606 ¶¶ 128, 132.)

B. Investigations to be Conducted by the Independent Investigator and the Independent Disciplinary Authority

294. In its Findings of Fact, (Doc. 1677), the Court identified both: (1) internal affairs investigations already completed by the MCSO that were inadequate or insufficient; (*see, e.g.*, Doc. 1677 at ¶ 903), and (2) misconduct or alleged misconduct that had never been investigated by MCSO that should be or should have been investigated. (*Id.* at ¶ 904.)

295. In light of MCSO's failure to appropriately investigate these matters, the Court appoints an Independent Investigator and an Independent Disciplinary Authority from the candidates set forth by the parties, and vests them with the authority to

investigate and decide discipline in these matters.

1. The Independent Investigator

296. The Independent Investigator shall be Daniel Giaquinto, Esq. He shall have the authority to:

***31** a. investigate and assess the adequacy of the investigations and the discipline imposed and/or the grievance decisions rendered in those investigations that have been completed by the MCSO and that the Court has deemed to be inadequate. These investigations include, but are not limited to, the following:

1. IA #2014-542
2. IA #2014-543
3. IA #2014-295
4. IA #2105-541
5. IA #2015-018
6. IA #2014-021
7. IA#2014-022
8. IA #2014-544
9. IA #2014-545
10. IA #2014-546
11. IA #2014-547
12. IA #2014-548

To the extent that he deems reinvestigation to be appropriate, he shall have the authority to reinvestigate such matters, to make preliminary findings, to prepare a report, and to recommend new discipline to the Independent Disciplinary Authority for final findings and, if appropriate, for the imposition of new or different discipline.

b. investigate and assess whether the Findings of Fact demonstrate in his judgment other acts of misconduct which should be investigated and/or brought to the Independent Disciplinary Authority

for a disciplinary decision.

297. In performing these functions he shall be entitled to the protections set forth in Doc. 606 ¶ 144.

298. In assessing the existence of previously uncharged acts of misconduct that may be revealed by the Findings of Fact, the Independent Investigator does not have authority to investigate acts of misconduct that are not sufficiently related to the rights of the members of the Plaintiff class. While the Independent Investigator should identify such acts of misconduct and report those acts to the Commander of the Professional Standards Bureau, and to the Monitor for purposes of making the Monitor's assessment identified in ¶¶ 291-93 above, the Independent Investigator may not independently investigate those matters absent the authorization and the request of the Sheriff.

299. The Court does not wish to constrain the judgment of the Independent Investigator in identifying any acts of potential misconduct revealed by the Findings of Fact. Nevertheless, without attempting to be exhaustive, the Court provides the following rulings to the Independent Investigator to the extent that the parties have identified uncharged misconduct arising from the Findings of Fact in their previous briefing.

300. The following potential misconduct is not sufficiently related to the rights of the members of the Plaintiff class to justify any independent investigation:

a. Uninvestigated untruthful statements made to the Court under oath by Chief Deputy Sheridan concerning the Montgomery investigation. (Doc. 1677 at ¶ 385).

b. Uninvestigated untruthful statements made to the Court under oath by Chief Deputy Sheridan

concerning the existence of the McKessy investigation. (*Id.* at ¶ 816).

c. Chief Deputy Sheridan's untruthful statements to Lieutenant Seagraves made during the course of an internal investigation of Detective Mackiewicz to the effect that an investigation into the overtime allegations against Detective Mackiewicz had already been completed. (*Id.* at ¶ 823).

d. Other uninvestigated acts of misconduct of Chief Deputy Sheridan, Captain Bailey, Sergeant Tennyson, Detective Zebro, Detective Mackiewicz, or others that occurred during the McKessy investigation. (*Id.* at ¶¶ 766–825).

301. The following potential misconduct is sufficiently related to the rights of the members of the Plaintiff class to justify an independent investigation should the Independent Investigator deem that such an investigation is merited:

***32** a. The mishandling of internal investigations by Chief Deputy Sheridan, and/or Chief Olsen, Captain Bailey, Sergeant Tennyson, and any other employee who the Independent Investigator determines to have played a role in the deficient internal affairs investigations that related to misconduct pertaining to members of the Plaintiff class. Such potential violations include, but are not limited to, the manipulation of timing on investigations to influence discipline, biased decision-making, improper conduct of investigations, and the deliberate or negligent mishandling of investigations, whether criminal or administrative.

b. The knowing misstatements made under oath to the Court by Chief Deputy Sheridan regarding his knowledge of the Court's preliminary injunction. (*Id.* at ¶ 87).

c. The knowing misstatements made under oath to the Court by Chief Deputy Sheridan about his instruction to send out a directive to MCSO commanders regarding the collection of video evidence. (*Id.* at ¶¶ 228–32).

d. The knowing misstatement to the press regarding the 1459 IDs made by Chief Deputy Sheridan on the night the Court ordered those IDs to be transferred to the Court's custody, and Chief Deputy Sheridan's subsequent reaffirmation of those misstatements under oath. (*Id.* at ¶¶ 325–36).

e. The knowing misstatement made under oath by Chief Deputy Sheridan to Chief Anders of the Monitor staff that he did not completely suspend the investigation into the 1459 IDs. (*Id.* at ¶¶ 337–41).

f. Chief Deputy Sheridan's "suspension" of the investigation into the existence of the 1459 IDs in an unsuccessful attempt to avoid the Court's multiple orders requiring their disclosure. (*Id.* at 294–348).

g. Captain Bailey's intentional misstatements of fact to the Monitor regarding the 1459 IDs in an attempt to conceal their existence. (*Id.*)

h. Chief Trombi's misstatement to Special Investigator Vogel under oath that Chief Sands had directed that Deputy Armendariz not be transferred out of the Human Smuggling Unit. (*Id.* at ¶¶ 517, 521).

i. Property that may have been improperly seized or inventoried and that has not been investigated to date. (*See, e.g.*, *id.* at ¶ 720.)

j. The violation of the Court's May 14, 2014 order by Chief Deputy Sheridan.

k. The untruthful statements made by MCSO personnel that they were collecting IDs for use in

formalized training courses. (*Id.* at ¶¶ 630, 638.)

l. Detective Frei's mishandling of property and his attempt to destroy such property. (*Id.* at ¶¶ 699–700.)

302. To the extent that the Independent Investigator identifies other matters that should be investigated or reinvestigated, he shall indicate to the parties and the Monitor, in writing, the subject of such investigation and the likely principals. These designations shall be filed under seal and shall be kept confidential by the parties. To the extent the Court has not already made the determination, the Independent Investigator shall also designate whether or not he believes that such matters are sufficiently related to the rights and remedies to which the members of the Plaintiff class are entitled so as to be within his jurisdiction. Alternatively, he may request the Court to make that designation by written notice filed under seal with the Court and provided to the parties. In the event that the Independent Investigator makes the designation, any party may appeal to the Court the Independent Investigator's designation within seven days of receiving notice of it.

303. To the extent possible, the Independent Investigator shall conduct his investigations in compliance with the best investigative practices and in compliance with the processes and standards set forth in this Order governing the operations of MCSO's Professional Standards Bureau.

***33** 304. In preliminarily determining charges and discipline, the Independent Investigator shall apply the two disciplinary matrices attached to GC-17 to the appropriate MCSO employees. To the extent that an MCSO employee is a non-classified employee, and is thus subject to the MCSO disciplinary policy GC-

17 but not subject to an applicable disciplinary matrix, the Independent Investigator shall apply a level of discipline that is no less than that specified for those classified employees within the MCSO that share similar job functions as the non-classified employee. For example, Chief Deputy Sheridan, who has the highest command position of any employee within the MCSO, but who is an unclassified employee, shall be subject to a level of discipline no less than that indicated by the disciplinary matrix for exempt regular status employees. (*See, e.g.*, Ex. 2001 at MELC416243 (MCSO disciplinary policy establishing that MCSO management employees are subjected to a higher standard of discipline than non-management employees: "Regular status exempt employees typically hold a management position, and therefore, are held to a higher [disciplinary] standard.").)

305. When a single act of alleged misconduct would constitute multiple separate policy violations, all applicable policy violations shall be charged, but the most serious policy violation shall be used for determining the category of offense.

306. In applying the disciplinary matrix to determine the possible range of discipline in new investigations or reinvestigations, the Independent Investigator is obliged to determine the number of prior offenses that have been sustained against the principle. In making this determination, he may rely on the past disciplinary decisions made by the MCSO even if the investigation was deemed inadequate or invalid by this Court. Alternatively, if he deems it appropriate, the Independent Investigator may re-investigate or recalculate whether past separate discipline should or should not have been imposed in determining the possible range of discipline for a

new or reopened offense. To the extent that the Independent Investigator determines that the appropriate categorization of an offense within the disciplinary matrix would require the reassessment of past misconduct which the employee either did not receive but should have, or did receive but should not have, he shall calculate whether the employee would or would not have received past discipline had the MCSO applied the appropriate standard of care for internal affairs operations prevailing in police agencies of MCSO's size. Should that require a determination of liability for alleged misconduct that is not related to the rights of the members of the Plaintiff class, the Independent Investigator may seek guidance from the Court if necessary.

307. The Sheriff and the MCSO's cooperation with such assessments and reinvestigations are required. The Sheriff shall insure that the Independent Investigator and each of the investigators or members of his staff are given timely and complete access to MCSO documents, employees, information, and resources in conducting his assessment and investigations, in making his reports, and in pursuing his other activities under this Order. The Sheriff shall also provide any necessary facilities or resources to hold necessary interviews, provide appropriate notices, and/or conduct hearings.

308. The Independent Investigator should operate as efficiently and expeditiously as possible. He may therefore employ the four persons whose resumes he has submitted to the Court as investigators on his team. He may, if he deems it necessary, engage additional qualified investigators to assist him in timely completing whichever investigations he deems fit. The County will pay his reasonable expenses and the reasonable expenses of his staff, as

well as reasonable lodging, meal, travel, administrative, and other necessary expenses. The Independent Investigator may enter into a contract with the County governing his services if he wishes to do so. Otherwise, he should provide monthly bills for his services to the County, and shall be promptly paid for his services. The Court will resolve any disputes between the Independent Investigator and the County about what is reasonable. Should the Independent Investigator or the County require further orders of the Court in this respect, they may apply to the Court in writing for such an order with a copy to other parties.

***34** 309. The Independent Investigator is authorized to prioritize the investigations in light of what he believes to be their relative gravity and their relative merit. In determining the extent to which additional investigation is necessary or advisable, the Independent Investigator is authorized to refer to any of the work that has preceded his appointment in this matter including but not limited to: (1) the Court's Findings of Fact, (2) the evidence, testimony and statements offered at the evidentiary hearing or in other Court proceedings, (3) the investigative interviews conducted by the MCSO, as well as all materials generated in their underlying reports and hearings, including the reports, interviews and evidence identified by Special Investigator Don Vogel who was the MCSO's investigator in IA #2014-542 and IA #2014-543, the interviews undertaken by the Monitors, as well as the parties' responses to the Monitor's inquiries for documents and the underlying discovery provided in this matter.

310. The Monitor and the parties are directed to promptly comply with the Independent Investigator's requests for information. The Monitor

and the Independent Investigator may communicate to coordinate their investigations. Nevertheless, each is independently responsible for their respective jurisdiction set forth in this Order, and each should make independent decisions within his own delegated responsibility.

311. To the extent that legal questions arise on which the Independent Investigator needs a determination, he can apply to the Court for such a determination after serving the Court and the parties with the request.

312. If any other matters arise on which the Independent Investigator needs to request that the Court enter an order, he may apply to the Court for such an order in writing served to all the parties. In the writing, he should specify the reason for the request and the remedy sought.

313. Except as otherwise indicated in this order, the Independent Investigator has the sole authority to determine whether reinvestigations or new charges arising from the Findings of Fact should or should not be pursued. The Independent Investigator has the right to consider the severity of the misconduct, its apparent merit, the practicality of bringing charges, and the expense of pursuing such charges in making this determination in accord with how such determinations would be made by a responsible internal affairs unit within a police agency of the similar size to the MCSO. Similarly, with the exceptions specified, the Independent Investigator has the authority to reopen investigations, pursue new investigations, make preliminary findings of fact, bring charges against an employee, and recommend to the Independent Disciplinary Authority that a particular level of discipline be imposed.

314. Any decision not to pursue charges shall be explained in writing to the parties.
315. For those charges he brings to the Independent Disciplinary Authority, the Independent Investigator shall prepare thorough reports setting forth the basis for his findings of fact and his recommended discipline.
316. To the extent the Independent Investigator's recommended findings or discipline depart from procedures set forth in this Order, or from the disciplinary matrices, the Independent Investigator shall explain the basis for his recommended departure(s) in writing.
317. Such decisions are not appealable by the parties, and they cannot be countermanded by the Sheriff or the MCSO, with the caveat that the Independent Disciplinary Authority shall make the final decision with respect to liability and discipline for all charges of misconduct brought by the Independent Investigator regardless of whether such preliminary charges are for minor or serious discipline. Nevertheless, the Independent Disciplinary Authority must provide an opportunity to be heard only to those employees who may be subject to a level of discipline that requires such a hearing.
318. To the extent the Independent Disciplinary Authority desires the Independent Investigator's presence at a pre-determination hearing, the Independent Investigator shall be present to participate to the extent directed.
***35** 319. To the extent the Independent Investigator encounters evidence of conduct that he believes should be the subject of a criminal investigation, he shall inform the Commander of the Professional Standards Bureau in compliance with ¶¶ 229–36 above. The Commander of the Professional

Standards Bureau shall then report the matter directly and confidentially to the appropriate prosecuting agency. The Independent Investigator shall then coordinate the administrative investigation with the criminal investigation consistent with the manner set forth in ¶¶ 229–36 above. To the extent that the matter may involve the Commander of the Professional Standards Bureau as a principal, the Independent Investigator shall report the matter directly and confidentially to the appropriate prosecuting agency without discussing it with the Commander of Professional Standards Bureau.

2. The Independent Disciplinary Authority

320. The Independent Disciplinary Authority shall be Daniel Alonso. The Independent Disciplinary Authority shall hold hearings required by law and policy, and make liability and disciplinary determinations with respect to all charges that are brought to him by the Independent Investigator. In performing these functions he shall be entitled to the protections set forth in Doc. 606 ¶ 144.

321. The Independent Disciplinary Authority should operate as efficiently and expeditiously as possible. He may employ associates to the extent that they are necessary in documenting his decisions or holding pre-determination hearings. The County will pay his reasonable expenses and the reasonable expenses of his staff, as well as reasonable lodging, meal, travel, administrative, and other necessary expenses. The Independent Disciplinary Authority may enter into a contract with the County governing his services if he wishes to do so. Otherwise, he should provide monthly bills for his services to the County, and shall

be promptly paid for his services. The Court will resolve any disputes between the Independent Disciplinary Authority and the County about what is reasonable. Should the Independent Disciplinary Authority or the County require further orders of the Court in this respect, they may apply to the Court in writing for such an order with a copy to other parties.

322. The Independent Disciplinary Authority will be the final arbiter of the facts and will decide which acts of misconduct, if any, the sustained facts establish. If the facts establish misconduct, it is the duty of the Independent Disciplinary Authority to determine the level of discipline to be imposed on the employee.

323. Should the Independent Disciplinary Authority or the County require further orders of the Court in this respect, they may apply to the Court in writing for such an order with a copy to other parties.

324. Any legal questions that go beyond the above determinations should be forwarded in writing by the Independent Disciplinary Authority to the Court for determination with copies to other parties.

325. Should he deem minor discipline appropriate, he shall write the written reprimand and direct that it be placed in the employee's file.

326. If the Independent Investigator makes a preliminary determination that serious discipline (defined as suspension, demotion, or termination) should be imposed, the Independent Disciplinary Authority will conduct a pre-determination hearing and will provide the employee with an opportunity to be heard.

327. Consistent with the applicable law, the Independent Disciplinary Authority shall provide notice through the Sheriff's office or otherwise to any employee who has a right to be heard. The Sheriff

shall promptly provide the Independent Disciplinary Authority with the resources, information, and access necessary to provide such notice to MCSO employees and to schedule such hearings in conjunction with the Independent Investigator.

***36** 328. The Sheriff shall ensure that the Independent Disciplinary Authority and the members of his staff are given timely and complete access to MCSO resources, personnel, and facilities. The Sheriff shall provide complete and full access to any other resources to hold necessary interviews, provide appropriate notices, and/or conduct hearings.

329. Pre-determination hearings will be audio and video recorded in their entirety, and the recordings shall be maintained with the administrative investigation file.

330. If an employee provides new or additional evidence at a pre-determination hearing, the hearing will be suspended and the matter will be returned to the Independent Investigator for consideration or further investigation, as necessary. If after any further investigation or consideration of the new or additional evidence, there is no change in the determination of preliminary discipline, the matter will go back to the pre-determination hearing. The Independent Investigator shall initiate a separate misconduct investigation if it appears that the employee intentionally withheld the new or additional evidence during the Independent Investigator's initial misconduct investigation.

331. If the Independent Disciplinary Authority does not uphold the charges recommended by Independent Investigator in any respect, or does not impose the Independent Investigator's recommended discipline and/or non-disciplinary corrective action, the Independent Disciplinary

Authority shall set forth in writing his justification for doing so. This justification will be appended to the investigation file.

332. The Independent Disciplinary Authority should apply the disciplinary matrix, and any decision not to do so shall be justified in writing.

333. The Independent Disciplinary Authority may not consider the following as grounds for mitigation or reducing the level of discipline prescribed by the matrix:

a. his or her personal opinion about the employee's reputation;

b. the employee's past disciplinary history (or lack thereof), except as provided in the disciplinary matrix;

c. whether others were jointly responsible for the misconduct, except that the Independent Disciplinary Authority may consider the measure of discipline imposed on other employees involved to the extent that discipline on others had been previously imposed and the conduct was similarly culpable.

334. The Decisions reached by the Independent Disciplinary Authority shall be final.

335. Except as otherwise specified in this order, no party has the right to appeal the decisions of either the Independent Investigator or the Independent Disciplinary Authority. The Sheriff shall implement those decisions.

336. Neither the Sheriff nor his designee has any authority to rescind, revoke, or alter any disciplinary decision made by either Independent Investigator or the Independent Disciplinary Authority by grievance decision, appeal, directive, or otherwise.

337. Nevertheless, when discipline is imposed by the Independent Disciplinary Authority, the employee

shall maintain his or her appeal rights following the imposition of administrative discipline as specified by Arizona law and MCSO policy with the following exceptions:

a. When minor discipline is imposed, a grievance may be filed with the Sheriff or his designee consistent with existing MCSO procedure. Nevertheless, the Sheriff or his designee shall transmit the grievance to the Monitor who shall have authority to decide the grievance. If in resolving the grievance the Monitor changes the disciplinary decision in any respect, he shall explain his decision in writing.

***37** b. A disciplined MCSO employee maintains his or her right to appeal serious discipline to the Maricopa County Law Enforcement Merit System Council to the extent the employee has such a right. The Council may exercise its normal supervisory authority over discipline imposed by the Independent Disciplinary Authority with one caveat. Arizona law allows the Council the discretion to vacate discipline if it finds that the MCSO did not make a good faith effort to investigate and impose the discipline within 180 days of learning of the misconduct. In the case of any of the disciplinary matters considered by the Independent Disciplinary Authority, the MCSO will not have made that effort. The delay, in fact, will have resulted from MCSO's bad faith effort to avoid the appropriate imposition of discipline on MCSO employees to the detriment of the members of the Plaintiff class. As such, the Council's determination to vacate discipline because it was not timely imposed would only serve to compound the harms imposed by the Defendants and to deprive the members of the Plaintiff class of the

remedies to which they are entitled due to the constitutional violations they have suffered at the hands of the Defendants. As is more fully explained above, such a determination by the Council would constitute an undue impediment to the remedy that the Plaintiff class would have received for the constitutional violations inflicted by the MCSO if the MCSO had complied with its original obligations to this Court. In this rare instance, therefore, the Council may not explicitly or implicitly exercise its discretion to reduce discipline on the basis that the matter was not timely investigated or asserted by the MCSO. If the Plaintiff class believes the Council has done so, it may seek the reversal of such reduction with this Court pursuant to this Order.

Dated this 25th day of July, 2016.

APPENDIX F

2016 WL 4415038
No. PHX–CV–07–02513–GMS. | May 24, 2013.

In the United States District Court
For the District of Arizona

Manuel de Jesus Ortega MELENDRES, on behalf of himself and all others similarly situated; et al., Plaintiffs,

v.

Joseph M. ARPAIO, in his individual and official capacity as Sheriff of Maricopa County, AZ; et al., Defendants.

ORDER RE VICTIM COMPENSATION

Honorable G. Murray Snow, United States District Judge

***1** [4] Pending before the Court is the Parties' Joint Notice of Stipulated Judgment for the Victim Compensation Plan (Doc. 1747). Both parties acknowledge that compensation to the victims of a contempt falls within the legitimate scope of a civil contempt proceeding. Nevertheless, at the outset of the contempt hearings, the Court expressed concern that to the extent that damages were different than compensation, damages might be more appropriately pursued in a class action pursuant to 42 U.S.C. § 1983.

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[4] Interlineated page number designations are from the Westlaw version of the document.

Perhaps as a result, the parties entered negotiations to determine an appropriate alternative procedure by which victims might achieve compensation. In other words, victims would have the right to opt to participate in the compensation procedure or, alternatively assert their rights in a separate § 1983 action or otherwise.

The Joint Notice indicates both the substantial matters on which the parties have reached agreement as to victims' compensation as well as the few remaining areas on which they were unable to reach agreement. In light of their extensive negotiated agreement, the Joint Notice also set forth the separate issues pertaining to the compensation plan on which each desired to preserve appellate rights. The parties also set forth separate forms of the compensation plan, each incorporating their proposals where they could not otherwise agree.[1] They then asked the Court to rule on the provisions of their plan upon which they could not agree in light of the Court's earlier guidance on the questions.

The principle topic on which the parties could not reach agreement was over the rate of compensation to be paid for wrongful incarceration under their compensation plan—with Plaintiffs and Defendants recommending different rates. At a hearing, the Court expressed that Plaintiffs had not set forth a sufficient evidentiary basis on which it could enter an order resolving this disagreement. In a supplemental response, Plaintiffs suggest that the notice be modified to inform potential participants of their right to apply to either the Court or the Plan Administrator for individualized or representative damage hearings to achieve their compensation. They also agreed to a cap

of $10,000 for the duration aspect of the compensation resulting from the detention, without that cap affecting a claimant's ability to receive other damages arising from his or her detention. In response, the County while otherwise objecting to the Plaintiff's proposals, accepted the $10,000 cap.

While the Court wishes to provide a reasonable compensation plan for victim claimants, it cannot conclude that it now has an evidentiary basis to resolve the dispute. Further, the rate offered by the County, (with the increased compensation cap for detention of $10,000 agreed to by the parties in the supplemental briefing) may not be an unreasonable rate for victims who wish to claim it rather than going through the necessary dislocations offered by a regular or class action lawsuit. The method suggested by Plaintiffs is akin to multiple separate claims for damages. The Court declines to take it up, but will enter a compensation order that will provide a method for victims who wish to pursue it to achieve substantial compensation for the Sheriff's contempts consistent with the matters agreed to by all parties. The Plaintiffs also request that the Court enter judgment jointly and severally against the individual non-party contemnors. Nevertheless Plaintiffs provide insufficient legal authority for such a step. Sheriff Arpaio is a defendant in his official capacity only. None of the other non-party contemnors are even a party. Even assuming the Court had the authority to make its judgment against Sheriff Arpaio in his official capacity applicable to him and the others in their personal capacities; it would seem to provide only a symbolic benefit at best. As a practical matter most if not all of the individual contemnors would be unable to shoulder the expense involved even of notice, let

alone payment, of the compensation amounts. Where the County is a willing participant to provide for compensation, payment is guaranteed here for those who opt in to the payment procedure. It is therefore ordered that:

I. Third-Party, Neutral Claims Administrator

***2** A. BrownGreer is designated to serve as a neutral, third-party administrator to manage the Notice and Claims Processing Plan to compensate individuals who suffered injury as a result of any violations by the MCSO of the Court's December 23, 2011 Preliminary Injunction Order.

B. BrownGreer's fees will be paid by Defendants at rates specified in the price list attached to both parties' proposals in Doc. 1747.

II. Eligibility

A. Participation in this scheme for victim compensation is voluntary and is intended as an alternative for eligible individuals to any other means available for obtaining relief for injuries resulting from alleged violations of the Court's Preliminary Injunction. Claimants who submit claims and are determined to be eligible to participate in the plan must waive and extinguish any right they might otherwise have to obtain relief for the same conduct through any other avenue. The rights of any individual who does not participate in the compensation plan will not be affected.

B. Individuals who have submitted a claim regarding the same conduct in another forum and

received a determination, or those who have a pending claim in another forum, are not eligible to participate in this program. If the individual has a pending claim in another forum, he or she must withdraw such a claim in order to participate in this alternative compensation scheme. As with all other individuals who choose to seek remedies through this compensation scheme, those who withdraw a claim pending in another forum in order to submit an application under this scheme will be required to waive and extinguish any right they might otherwise have to obtain relief for the same conduct through any other avenue.

C. Compensation under this program will be available to those asserting that their constitutional rights were violated as a result of detention by MCSO in violation of the Court's Preliminary Injunction from December 23, 2011 to May 24, 2013.

D. Individuals detained in violation of the Court's Preliminary Injunction will be eligible for compensation, including in any operation in which MCSO detained persons when they had no basis to do so under state law and transported them somewhere in a motor vehicle in Maricopa County.

III. Compensation Fund

The Board of Supervisors will create a fund of $500,000 for payment of claims adjudicated in favor of claimants. In the event that amount is exhausted through the payment of claims and is insufficient to provide compensation to all successful claimants, additional claims adjudicated in favor of claimants will

be honored and timely paid by the County through further allocations if necessary. If all claims adjudicated in favor of claimants are fully paid out and there remains an unspent sum in the original or any supplemental allocated funds, such amount will revert to the County.

IV. Notice Plan

A. BrownGreer will be provided with a budget of $200,000 to spend on notice and outreach to potentially eligible individuals about the availability of compensation. BrownGreer will utilize its expertise to determine how monies allocated for notice can most effectively be employed to maximize the likelihood that potential claimants will be reached.

B. The notice plan may include use of radio, digital/online and print advertising, earned media placements, and partnership with non-governmental organizations and embassies. It should target individuals in at least Maricopa County, along the U.S./Mexico Border and in Mexico. Notice will be provided in English and Spanish, with a heavy focus on Spanish-language media and sites.

***3** C. BrownGreer will consult with the Parties in the development of the notice plan and the text of any notices, press releases or scripts developed. The cost for any such services will be paid out of the notice budget provided for in IV.A. above.

D. BrownGreer will develop a claim website for the case, a toll-free phone number and an email

account, to provide information about how to make a claim. The cost for any such services will be paid out of the notice budget provided for in IV.A. above.

E. Individual notice will be provided to any individuals identified by the Parties as potentially eligible for compensation for whom a current address can be found, *i.e.*, through commercially available database services, and other methods. All costs for such services will be paid out of the notice budget provided for in IV.A above.

V. Claims Adjudication Plan

A. Claims must be initiated within 365 days from the first issuance of program notice by BrownGreer through any public media outlet (which will also be the date when BrownGreer will be ready to begin receiving applications).

B. BrownGreer will be provided a sum of $75,000 in start-up fees to implement the claims processing program.

C. All materials must be available in English and Spanish, and any other languages as needed. Language should be calculated to be understandable to individuals who will be making claims.

D. In all cases, it is claimant's burden to establish their entitlement to compensation by a preponderance of the evidence. BrownGreer will be responsible for evaluating the credibility and competency of evidence and witnesses, and determining the appropriate weight to be assigned

to evidence adduced.

E. The Parties recognize that available documentation and testimony may already establish a case that some individuals were subject to violations of the Preliminary Injunction. Thus, a multi-step and multi-track system ensures that the burden on claimants for whom such uncontested evidence exists is reduced and the resources committed to this program are used efficiently.

F. **Claim Initiation Form**. Claimants will first be required to complete a claim initiation form. This form would ask for the following basic information:

1. Contact information: current address and phone number where individual can be reached
2. Identity information: name, name provided to MCSO (if different), DOB and reliable proof of identity
3. Details of encounter: date in the applicable time period or 30-day date range if precise date is unknown, type of encounter (traffic stop, other), and names, address and telephone number of others in vehicle (if known)
4. Approximate length of detention by MCSO. (In cases involving transfer to ICE/CBP, claimant to provide length of detention up until release to ICE/CBP custody)
5. Whether claimant will request compensation for additional harms listed in Section V.J.6.a below (using check boxes)
6. The form will be signed under oath. Claimants will also sign an acknowledgement and agreement that participation in this program, extinguishes all other rights they may have to

pursue claims against Defendants based upon the same conduct by MCSO

7. The form will provide claimants with notice as to their confidentiality rights under the program, including any exceptions to confidentiality, *e.g.*, what and with whom information may be shared and for what purpose

***4** 8. The form will also state that claimants are responsible for any tax reporting responsibilities that arise out of receiving compensation through this mechanism.

G. **Track Determination**. Within 21 days after a Claim Initiation Form is filed, BrownGreer will make a determination as to whether the claimant meets the eligibility requirements for participation in the program and, if so, what Track (A or B) his or her claim will fall under. BrownGreer will send any claimants determined not to be eligible for the program a Notice of Ineligibility, and a follow-up form to eligible claimants and information as appropriate.

1. Counsel for the Parties will agree in advance on the list of prequalified candidates and provide these names and related information to BrownGreer.

2. If BrownGreer determines, based on the information in the claim initiation form, that the person is not eligible to participate in the program, *e.g.*, because s/he was detained outside the eligible period or the conduct complained of is outside the scope of this case, then BrownGreer will inform the individual in writing of his/her ineligibility for participation in this program and that no rights that the individual may have to pursue relief through other avenues

have been extinguished.

H. **Track A**. These individuals are "prequalified" to receive compensation and will be awarded the minimum amount as set forth in Section VI.A, unless they are requesting compensation for additional harms. The information provided in the Claim Initiation Form will be deemed to have met these claimants' burden, except as to any claim for any harm(s) other than for the detention itself. Individuals whose claims would otherwise be assigned to Track A, but who are seeking compensation for any such additional harm(s) shall be assigned to Track B.

1. Prequalified claimants include any person identified in HSU spreadsheets as not arrested or detained on suspicion of conduct in violation of state criminal law, and transferred to ICE/CBP, in the applicable time period, as well as any other individuals that counsel for Parties can agree appear to have been subject to violations of the Preliminary Injunction based on available documentation, including MCSO incident reports, CAD data and records from the U.S. Department of Homeland Security (DHS).
2. BrownGreer will process claims for only those prequalified claimants who complete and submit a Claim Initiation Form.

I. **Track B**. All individuals who do not fit into Track A will be placed in Track B. These individuals must submit additional claim forms and any supporting documentation necessary to gather the information in Section V.J below.

1. Claimants will be provided with contact information for Plaintiffs' counsel, and informed

they may retain other counsel if they desire.

J. **Burden of Proof for Individuals in Track B**.

1. BrownGreer must be persuaded that a claimant has shown an entitlement to some portion or all of the compensation claimed with credible and competent evidence, including that s/he was detained in violation of the Preliminary Injunction, the length of the detention, and the fact, nature, and extent of any additional compensable injury. A claimant's statement, made under oath, shall be considered admissible evidence.

5** 2. ***Establishing a prima facie case of a preliminary injunction violation. In order to establish eligibility for compensation because the claimant was detained in violation of the Preliminary Injunction in the relevant date range and shift the burden to the MCSO to rebut the claimant's prima facie case, the claimant must provide the following information under oath:

a. Identity information: name, name provided to MCSO (if different), DOB and reliable proof of identity

b. Details of encounter: date (or 30-day date range if precise date is unknown), type of encounter (traffic stop, other)

c. Approximate location of encounter with officer(s) (e.g., Highway 89, approximately 3 miles north of Fountain Hills)

d. Reason given by MCSO officer(s) for detention (if any)

e. Evidence that MCSO suspected unlawful presence, *e.g.*, questioning about immigration status, ICE/CBP inquiry or turned over to

ICE/CBP, including details about what happened, *e.g.*, if ICE/CBP came to site of detention or MCSO transferred claimant to ICE/CBP

f. Approximate length of detention by MCSO (in cases involving transfer to ICE/CBP, claimant to provide length of detention up until release to ICE/CBP custody)

g. Whether claimant was arrested

h. Testimony or other evidence that the detaining agency s/he encountered was MCSO (*e.g.*, presence of an MCSO marked patrol vehicle, description of the uniform officer was wearing, etc.)

3. ***Additional buttressing information for Track B claimants*** (helpful, not required, but may be considered in weighing PFC elements to determine whether the required elements have been established)

a. Name/badge number of MCSO officer(s) initiating encounter

b. Physical description of MCSO officer(s) present at the encounter

c. If encounter was initiated as a traffic stop, the name of the driver and/or owner of the vehicle stopped, license plate number of vehicle stopped, and/or description of vehicle (*e.g.*, blue 1999 Chevrolet van)

d. Any documentation pertaining to encounter with MCSO officers and/or the claimant's detention

e. Identification documentation that was provided to MCSO at the time of the encounter, if it still exists

f. Sworn statements of witnesses to the events described by claimant

4. If a claim form is returned to BrownGreer and

appears incomplete, BrownGreer will return the form to the claimant with instructions to correct the deficiency and return the form within 30 days of receipt. If the form remains incomplete at that point, BrownGreer will evaluate it "as is."

5. ***MCSO's Burden to Rebut PFC for Track B Claimants***

a. If claimant meets the PFC threshold, MCSO may come forward with credible, competent evidence that casts doubt on one or more elements of the claim within 60 days of receiving access to a complete file from BrownGreer. Should MCSO require additional time, it may make an application to BrownGreer to have an additional 60 days (up to 120 days total), which BrownGreer will grant provided it is for a reasonable cause (*i.e.*, high volume of claims).

b. Examples of evidence that can satisfy MCSO's burden to come forward with rebuttal evidence include:

i. Attestation that MCSO has no record of the encounter alleged by claimant in cases where the MCSO would otherwise have such records

ii. Testimonial, sworn statements or other evidence that encounter alleged by claimant did not occur

***6** iii. Documentation showing that claimant's encounter with MCSO officers was, in some significant way, other than as represented by claimant

iv. Testimonial or other evidence that the length of detention was not as represented by claimant

c. In any cases where MCSO opts to rebut a case, notice and a copy of what MCSO submits will be provided to the claimant if he or she is not represented by counsel, or any counsel who has

entered an appearance and is representing the claimant with respect to his or her claim. Claimants and, where applicable, his or her counsel will have 60 days to respond, but may request an extension of 60 additional days (up to 120 days total), which BrownGreer will grant provided it is for a reasonable reason.

6. ***Establishing eligibility for compensation for additional injury***

a. BrownGreer will consider evidence of the following additional injuries in determining the final award amount:

i. Damages arising out of physical harm and/or severe emotional distress that was proximately caused by the detention, including, but not limited to –

1. Ongoing physical harm that occurred as a result of detention and pain and suffering, if any, arising directly out of the physical injury sustained by the claimant

2. Medical bills paid or other out of pocket costs that arose as a result of physical/emotional harm caused by detention

3. Severe emotional distress that occurred as a result of detention and associated costs, if the claimant can establish by credible and competent evidence physical manifestation and the need for treatment (*i.e.*, claimant suffered shock or mental anguish manifested by a physical injury)

ii. Lost Property – value of property confiscated and expenses incurred as a result of the confiscation and in trying to get it back

1. Car impounded – loss of time / money in getting car back

2. Money taken

3. Credit/debit cards taken

4. Identification taken – loss of time/money in getting legitimate and lawful identification returned or replaced (not including driver's licenses seized because suspended)
5. Other items
iii. Detention by ICE/CBP is $35 for each segment of 20 minutes. Without affecting a claimant's ability to receive other damages arising from his or her detention, a claimant may not receive more than $10,000 as compensation for the duration of the detention.
iv. Lost wages, foregone employment opportunities or loss of job
1. Dollar amount of wages lost as a result of being detained (must be supported by pertinent documentation, e.g., pay stubs from pre-detention employment)
2. Other costs associated with lost job, *e.g.*, days spent trying to find new job for which claimant can show he or she was legally eligible
v. Other provable harms
1. *E.g.*, if claimant personally incurred and paid legal fees, or lost housing/had to find other housing as a result of detention and associated expenses
b. The absence of documentation of out of pocket costs will not automatically disqualify an individual from receiving compensation for that injury if there is a reasonable explanation for the absence and alternative corroborating evidence, such as affidavits from individuals with direct personal knowledge about the relevant issue (such as treating medical providers) other than the claimant.
***7** c. A Social Security number (or other government identification number) will be

requested of all claimants to process a claim for compensation to permit BrownGreer to ensure claim integrity. Claim forms shall state prominently that a Social Security number is not required in order to receive compensation; however, if a person who has a Social Security Number or Resident Alien Number is requesting compensation for out of pocket medical expenses, that number must be reported to receive that part of the compensation claim. Government identification numbers will be excised from all documents provided to the parties, except in cases where the individual is claiming compensation for out of pocket medical expenses. In such a case, a government identification number will be provided.

d. BrownGreer will be responsible for determining whether any tax documentation is required to be issued in conjunction with paying out claims, and be responsible for issuing such document that may be necessary for Maricopa County as the payor (*i.e.*, 1099s, W2s).

7. ***Interviewing Track B claimants and other witnesses***

a. Either claimant or MCSO may demand the right to have BrownGreer question witnesses in any case in which the credibility and/or bias of one or more witnesses may be in issue. Either party may, but is not required to, submit questions to be asked of the witness(es) in such interviews. Both parties and Plaintiffs' class counsel may be present at such interviews. Claimant will be given notice if he or she or their witness are to be interviewed, and may be represented by Plaintiffs' counsel or their own representative. For witnesses not in Maricopa

County, efforts will be made to accommodate their interview, such as interviews by Skype or other video conference technology.

b. Interviews will be limited to 30 minutes, and both parties may submit questions to BrownGreer to ask, although BrownGreer has the authority to ask additional questions to enable them to determine the veracity of the claims.

VI. Minimum Compensation for Detention

A. Claimants will be awarded a base amount of $500 for detention lasting up to one hour, if the individual is detained past 20 minutes. Claimants will be awarded an additional base amount of $35 for each additional 20 minute segment of detention thereafter (or any portion thereof). Without affecting a claimant's ability to receive other damages arising from his or her detention, a claimant may not receive more than $10,000 as compensation for the duration of the detention.

B. These base amounts are in addition to any compensation that BrownGreer may award for additional injury under Section V.J.6.a.

VII. No Appeal. Any party has the ability to request reconsideration of BrownGreer's decision by BrownGreer, but otherwise has no right of appeal.

VIII. Award Disbursement. Defendants will set up an account to which BrownGreer will have access for the purpose of paying out claims adjudicated in favor of claimants, with at least monthly accounting to the County showing all disbursements made.

***8 IX. Confidentiality.** A protective order shall be sought to maintain the confidentiality of personally identifying information of claimants and other individuals mentioned in or who submit evidence in support of claimants' applications, as well as confidential documents from the U.S. Department of Homeland Security (DHS) and its components. Other information, such as the claim amounts will not be subject to a protective order.

X. Program Reporting. BrownGreer will create an online reporting portal where the parties can access claim tracking and processing information, including processing times, and create downloadable reports. BrownGreer will also be available to directly provide any reports to the Court, if necessary, at no additional cost, other than reasonable travel expenditures.

XI. Attorneys' Fees. If claimant successfully pursues compensation through the use of an attorney on a Track B claim, that attorney will be entitled to fees, not to exceed $750, and not more than the amount the claim award, so long as an MCSO attorney participated in the claims process. MCSO will be considered to have used an attorney in the claims process if it files an objection or otherwise participates in the claims process and: (1) an attorney representing MCSO makes an appearance before BrownGreer; or (2) indicates on the objection/response form to BrownGreer that it used an attorney.

IT IS SO ORDERED.

Dated this 19th day of August, 2016.

APPENDIX G

No. PHX–CV–07–02513–GMS. | May 24, 2013.

In the United States District Court
For the District of Arizona

Manuel de Jesus Ortega MELENDRES, on behalf of himself and all others similarly situated; et al., Plaintiffs,

v.

Joseph M. ARPAIO, in his individual and official capacity as Sheriff of Maricopa County, AZ; et al., Defendants.

ORDER

The Court has been advised by its Clerk's Office that Maricopa County's Motion for Recognition of its Rights as a Party Litigant (Doc. 1272) has not been formally ruled on by the Court.

The Court believes nevertheless that it has ruled on this motion both orally and in practicality as this case has proceeded. As the appropriate jural entity for the Maricopa County Sheriff's Office, Maricopa County is a party to this lawsuit. Sheriff Arpaio, also named as a Defendant in his official capacity since the initiation of this suit, has had separate representation throughout this lawsuit provided by the County. Although there may be no difference, practical or otherwise, between naming Maricopa County as the appropriate jural entity for MCSO and also naming Sheriff Arpaio in his official capacity, Maricopa County has nevertheless retained

separate counsel for the County as an entity in this litigation.

No party has sought to dismiss the County as a separate entity. The Court has rejected any attempt by the County's separate counsel to portray themselves as representing only parts of the County, as they do in their motion, as opposed to representing the County as a whole. The County has nevertheless been allowed to participate and proceed as a separate party, with the exception that, on a few occasions, the Court has upheld relevance objections to some of the County's lines of questioning in light of its status in this suit as the appropriate jural entity for the MCSO.

The Court thus grants the motion in part, but denies it to the extent that the Motion seeks to limit the County for purposes of this lawsuit as being other than the County as a whole sued as the appropriate jural entity against which suits against the MCSO must be brought.

Additionally, the Court has become aware of the need to update its previous order Doc. 1624 filed last week in the following respects.

1. The Court has become aware of Docs. 735, 749 and 755 which informed the Court of the status of investigations prior to its November 20 Order, Doc. 795. It has also become aware of Docs. 1052 and 1076 which, although in response to separate orders of the Court, see, e.g., Tr. 427, 1012-13, and Doc. 1064, also can be viewed as providing information in partial response to its order

Doc. 795 at 9-10. If any party wishes to address the accuracy of the information or otherwise address these documents they may do so at the March 1 hearing.

2. Other Exhibits that may contain statements by Dennis Montgomery included Exs. 2269, 2726, 2917-19, 2923, 2927, 2935, 2938 and 2940. The Court has not yet reviewed the audio files that may contain statements by Montgomery but insofar as the Court can determine those audio files consist of Exs. 2977-80, 2981A and 2981B. The Court will hear whatever specific arguments any party wishes to present about the statements made in these documents.

In preparing its findings of fact the Court may wish to consider affidavits or statements made under penalty of perjury previously filed in this action by Sheriff Joe Arpaio. If any party would like to be heard on such matters, they are invited to address them at the March 1 hearing.

IT IS HEREBY ORDERED that Maricopa County's Motion for Recognition of its Rights as a Party Litigant (Doc. 1272) is granted in part and denied in part as stated above.

Dated this 26th day of February, 2016.

APPENDIX H

No. PHX–CV–07–02513–GMS. | May 24, 2013.

In the United States District Court
For the District of Arizona

Manuel de Jesus Ortega MELENDRES, on behalf of himself and all others similarly situated; et al., Plaintiffs,

v.

Joseph M. ARPAIO, in his individual and official capacity as Sheriff of Maricopa County, AZ; et al., Defendants.

AMENDED ORDER

Previously the parties agreed to a confidential procedure in which Sandi Wilson, Deputy County Manager for Maricopa County, and her attorney reviewed on a monthly and confidential basis the detailed billings of the monitor prior to authorizing payment. The details of that arrangement and the required confidentiality procedures were set forth in the Court's Order (Doc. 696). Recently, Maricopa County has separately re-entered this action to assert rights that it claims to be separate from the interests of Sheriff Arpaio and/or the MCSO. In light of that independent representation which may well encompass Ms. Wilson's interests, the Court is uncomfortable authorizing this continued review without reconsidering the matter with the parties. Therefore, pending reconsideration of this matter with all parties, the procedure set forth under the Order (Doc. 696) is at least temporarily suspended. Maricopa

County is directed to authorize payment of the Monitor's April invoice. Ms. Wilson and her counsel remain under the confidentiality obligations set forth under the Order (Doc. 696) for those reviews that they have conducted to date.

Dated this 8th day of May, 2015.

G. Murray Snow

Honorable G. Murray Snow
United States District Judge

APPENDIX I

815 F.3d 645

United States Court of Appeals for the Ninth Circuit.

Manuel De Jesus Ortega MELENDRES; Jessica Quitugua Rodriguez; David Rodriguez; Velia Meraz; Manuel Nieto, Jr.; Somos America, Plaintiffs–Appellees,
v.
MARICOPA COUNTY, Defendant–Appellant,
and
Joseph M. Arpaio, Defendant.

No. 15–15996.
|
Argued and Submitted Jan. 12, 2016.
|
Filed March 7, 2016.

Appeal from the United States District Court for the District of Arizona, G. Murray Snow, District Judge, Presiding. D.C. No. 2:07–cv–02513–GMS.

Attorneys and Law Firms

***647**[5] Richard K. Walker (argued), Walker & Peskind, PLLC, Scottsdale, AZ, for Defendant–Appellant.

Stanley Young (argued) and Michelle L. Morin, Covington & Burling LLP, Redwood Shores, CA; Cecillia D. Wang, ACLU Foundation Immigrants' Rights Project, San Francisco, CA; Dan Pochoda, ACLU Foundation of Arizona, Phoenix, AZ; Andre

[5] Interlineated page number designations are from the Westlaw version of the document.

Segura, ACLU Foundation Immigrants' Rights Project, New York, NY; Anne Lai, Irvine, CA; Jorge Martin Castillo, Mexican American Legal Defense and Educational Fund, Los Angeles, CA, for Plaintiffs–Appellees.

Before: J. CLIFFORD WALLACE, SUSAN P. GRABER, and MARSHA S. BERZON, Circuit Judges.

OPINION

WALLACE, Senior Circuit Judge:

Last year, we issued an opinion affirming (for the most part) the district court's decision to enter a permanent injunction enjoining Sheriff Joseph M. Arpaio and the Maricopa County Sheriff's Office (MCSO) from conducting racially discriminatory traffic stops. *Melendres v. Arpaio* (*Melendres II*), 784 F.3d 1254, 1267 (9th Cir.2015). In addition to affirming the permanent injunction, we observed that, during the ongoing litigation between the parties, the Arizona Court of Appeals held that MCSO is a non-jural entity, meaning that it cannot be subject to a lawsuit. *Braillard v. Maricopa Cty.,* 224 Ariz. 481, 232 P.3d 1263, 1269 (Ct.App.2010). That decision compelled us to conclude that "it is now clear that MCSO has improperly been named as a party in this action." *Melendres II,* 784 F.3d at 1260. To remedy that problem, we ordered that Maricopa County be substituted in place of MCSO. *Id.* That substitution gave rise to the present appeal by Maricopa County.

Maricopa County appeals from four district court orders entered between December 2011 and April 2014, which are the same orders that Sheriff Arpaio and MCSO appealed from previously in *Melendres II.* A

threshold issue that we must consider is whether we have jurisdiction to hear the appeal, since Maricopa County filed its notice of appeal almost a year after the most recent order from which it appeals. This attempted appeal is in obvious tension with the longstanding rule that a party must file a notice of appeal within thirty days "after entry of the judgment or order appealed from." FED. R. APP. P. 4(a)(1)(A). We conclude that the appeal is untimely under this general rule and, accordingly, we dismiss it for lack of jurisdiction.

I.

The facts of this case may be found in detail in our prior opinions on the matter: *Melendres II,* 784 F.3d at 1258–61; *Melendres v. Arpaio* (*Melendres I*), 695 F.3d 990, 994–96 (9th Cir.2012). Here, we recount only those facts that are essential to ***648** dispose of the issues raised in this attempted appeal.

Plaintiffs filed this class action against Sheriff Arpaio (in his official capacity), Maricopa County, and MCSO, alleging that they violated federal law by racially profiling Latino drivers and passengers and stopping them under the guise of enforcing federal and state immigration laws. All of the parties later stipulated, however, that Plaintiffs would dismiss their claims against Maricopa County. The parties did so because they believed, at that time, that "Defendant Maricopa County is not a necessary party at this juncture for obtaining the complete relief sought." But the stipulation expressly provided that the dismissal was "without prejudice to rejoining Defendant Maricopa County as a Defendant in this lawsuit at a later time if doing so becomes necessary to obtain complete relief." It is important to point out that, at the time the parties

agreed to dismiss Maricopa County, the Arizona Court of Appeals had not yet held that MCSO is a non-jural entity and therefore cannot be sued. It did so about a year after the stipulated dismissal, in *Braillard v. Maricopa County,* 224 Ariz. 481, 232 P.3d 1263, 1269 (Ct.App.2010). Had that decision been issued before Maricopa County's dismissal, the parties may well have decided that Maricopa County was a necessary party.

The case proceeded after Maricopa County's dismissal and, after a bench trial, the district court concluded that Sheriff Arpaio and MCSO acted unconstitutionally and permanently enjoined them from conducting the racially discriminatory conduct. The court later supplemented its permanent injunction order to require that the MCSO take a variety of measures intended to discourage further constitutional violations, such as: appointing an independent monitor to assess and report on MCSO's compliance with the injunction, increasing the training of MCSO employees, improving traffic-stop documentation, and developing an early identification system for racial-profiling problems. An appeal to our court followed, resulting in our decision in *Melendres II*. There, we affirmed the entirety of the district court's permanent injunction orders, except for certain provisions dealing with internal investigations and reports of officer misconduct. *Melendres II,* 784 F.3d at 1267. As to the problematic provisions, we remanded to the district court so that it could tailor them more precisely to the constitutional violations at issue. *Id.*

In this same appeal, MCSO challenged the district court's refusal to dismiss it as a party. It argued that because the Arizona Court of Appeals held in *Braillard,*

that MCSO was a non-jural entity, it could not be sued. 232 P.3d at 1269. We agreed and, accordingly, held that MCSO was improperly named as a party. *Melendres II,* 784 F.3d at 1260. To assure a meaningful remedy for the plaintiffs despite MCSO's dismissal, we ordered that "Maricopa County be substituted as a party in lieu of MCSO." *Id.*

Following the issuance of our decision, Maricopa County filed a petition for panel rehearing or rehearing en banc. After we denied the petition, Maricopa County petitioned the Supreme Court for writ of certiorari. The Court denied the petition without comment. *Maricopa Cty. v. Melendres,* —— U.S. ——, 136 S.Ct. 799, 193 L.Ed.2d 711 (2016).

In addition to using the ordinary avenues for challenging an appellate decision, Maricopa County filed the present appeal on May 15, 2015, which purported to challenge several of the district court's orders. That is the appeal which we address now.

***649** II.

The threshold issue we must consider is whether we are required to dismiss this appeal for lack of jurisdiction.

[1] [2] [3] By statute, for an appeal to be considered timely it must be filed "within thirty days after the entry of ... judgment, order or decree." 28 U.S.C. § 2107(a). The Rules of Appellate Procedure contain this same deadline, providing that: "In a civil case ... the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from." FED. R. APP. P. 4(a)(1)(A). Since Maricopa County is the party seeking

to invoke our jurisdiction, it "has the burden of establishing that jurisdiction exists." *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.,* 557 F.2d 1280, 1285 (9th Cir.1977) (citing *KVOS, Inc. v. Associated Press,* 299 U.S. 269, 278, 57 S.Ct. 197, 81 L.Ed. 183 (1936)). Carrying this burden is no small matter, since "[t]he requirement of a timely notice of appeal is mandatory and jurisdictional," *Munden v. Ultra–Alaska Assocs.,* 849 F.2d 383, 386 (9th Cir.1988) (citing *Browder v. Dir., Dep't of Corr.,* 434 U.S. 257, 264, 98 S.Ct. 556, 54 L.Ed.2d 521 (1978)), meaning that we are not at liberty to overlook a defect with the notice of appeal no matter how compelling an appellant's argument may be. The thirty-day deadline serves an important purpose, which is "to set a definite point of time when litigation shall be at an end, unless within that time the prescribed application has been made; and if it has not, to advise prospective appellees that they are freed of the appellant's demands." *Browder,* 434 U.S. at 264, 98 S.Ct. 556 (quoting *Matton Steamboat Co. v. Murphy,* 319 U.S. 412, 415, 63 S.Ct. 1126, 87 L.Ed. 1483 (1943) (per curiam)).

[4] Rule 4 does provide certain exceptions to and extensions of the thirty-day time requirement, such as cases in which the United States is a party, FED. R.APP. P. 4(a)(1)(B), and cases in which a party files certain post-judgment motions, FED. R.APP. P. 4(a)(4). We do not have authority, however, to create additional exceptions based on our own sense of what is equitable or fair. *See Bowles v. Russell,* 551 U.S. 205, 214, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007) (repudiating the non-statutory "unique circumstances" exception and holding that federal courts have "no authority to create equitable exceptions to jurisdictional requirements").

[5] This legal background compels the conclusion that we must dismiss Maricopa County's appeal as untimely. The district court orders that Maricopa County has challenged in its notice of appeal were issued years ago, between 2011 and 2014. By filing its notice of appeal on May 15, 2015, Maricopa County's appeal does not come close to complying with the thirty-day deadline. The exceptions to the deadline set out in Rule 4 are of no help either and Maricopa County has never argued that any of them applies here. Because the County's notice of appeal is untimely and no exceptions to the deadline apply, it has not carried its burden of invoking our jurisdiction and we must dismiss this appeal.

Maricopa County offers several arguments in support of its assertion that we should consider the merits of its appeal, but none is persuasive. First, it argues that its appeal is timely because its notice of appeal was filed within thirty days after we issued our opinion in *Melendres II*. The novelty of this argument is best illustrated by the fact that Maricopa County offers no supporting authority for it. Nothing in 28 U.S.C. § 2107(a) or Rule 4(a) allows a party to appeal from *an appellate decision* with which it disagrees. Moreover, that the County filed its appeal within thirty ***650** days of our *Melendres II* decision is irrelevant because, under Rule 4(a), an appeal must be filed "within 30 days after entry of the judgment or order appealed from." As the County specified in its notice of appeal, the orders "appealed from" here are the district court's orders entered between 2011 and 2014. Therefore, it makes no difference that the County filed its notice of appeal within thirty days of our *Melendres II* decision.

Second, Maricopa County argues that it would be unfair for us to dismiss its appeal since it became a party only as a result of our *Melendres II* decision and therefore never had a chance to file a timely appeal. Essentially, it argues that it would be unfair to hold it to the thirty-day deadline since it was not actively participating in the case at the time it would have needed to file its appeal. This argument fails for multiple reasons.

For one, there is no unfairness in holding Maricopa County to its earlier stipulation that it would be rejoined "as a Defendant in this lawsuit at a later time if doing so becomes necessary to obtain complete relief." Because of the Arizona Court of Appeals' decision in *Braillard,* it became necessary that the County be rejoined as a defendant. By agreeing to be rejoined in this case should it become necessary, Maricopa County cannot now argue that it was unfair to hold it to its stipulation.

Apart from the stipulation agreement, the position Maricopa County takes in its briefs demonstrates the illusory nature of its claim of unfairness. In its opening brief, the County submits that it "does not object to, or seek any modification of, the prohibitory provisions (i.e., the provisions proscribing certain law enforcement practices the district court found to be unconstitutional) in the district court's injunction orders." Instead, it requests only that we strike down "[a]ll affirmative mandates in the injunctive orders entered by the district court." Yet, in the very same paragraph, it concedes that it is required, by Arizona state statute, "to provide funding for the massive changes the district court has imposed." *See* ARIZ.REV.STAT. § 11–444. Thus, the County has

conceded that even if we had never substituted it in place of MCSO, it would have nonetheless had to bear the financial costs associated with complying with the district court's injunction. Given that concession, there is no argument that our substitution of it into the case in *Melendres II* saddled it with obligations that it would not otherwise have had.

Further, under the Supreme Court's decisions interpreting 42 U.S.C. § 1983, "[i]f the sheriff's actions constitute county 'policy,' then the county is liable for them." *McMillian v. Monroe Cty.,* 520 U.S. 781, 783, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997) (citing *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). Arizona state law makes clear that Sheriff Arpaio's law-enforcement acts constitute Maricopa County policy since he "has final policymaking authority." *Flanders v. Maricopa Cty.,* 203 Ariz. 368, 54 P.3d 837, 847 (Ct.App.2002); *see* Ariz.Rev.Stat. § 11–441(A) (requiring the sheriff to "[p]reserve the peace," "[a]rrest ... all persons who attempt to commit or who have committed a public offense," and "[p]revent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the sheriff").[1]

***651** [6] Maricopa County attempts to sidestep this authority by arguing that Sheriff Arpaio's acts cannot create respondeat superior liability. But under section 1983, "[l]iability is imposed, not on the grounds of *respondeat superior,* but because the agent's status cloaks him with the governmental body's authority." *Flanders,* 54 P.3d at 847 (citing *City of Phoenix v. Yarnell,* 184 Ariz. 310, 909 P.2d 377, 384–85 (1995)). Accordingly, the case law Maricopa County cites holding that it is not liable for the Sheriff's acts under

respondeat superior is inapposite here.

This is not to say, however, that Maricopa County's alleged lack of control over Sheriff Arpaio has no significance. For instance, should the Sheriff fail to comply with the district court's injunction, and thereby make himself and the County subject to contempt proceedings, the County could rely on the degree to which it can control his behavior to potentially avoid any adverse consequences.

At bottom, even if we agreed with Maricopa County that our *Melendres II* opinion worked an injustice by substituting it for MCSO (which we do not), we would still have no authority to entertain this appeal since the Supreme Court has made abundantly clear that federal courts cannot "create equitable exceptions to jurisdictional requirements." *Bowles,* 551 U.S. at 214, 127 S.Ct. 2360.

III.

There is a "point of time when litigation shall be at an end." *Browder,* 434 U.S. at 264, 98 S.Ct. 556 (internal quotation marks omitted). In this case, that point is prescribed by 28 U.S.C. § 2107(a) and Rule 4(a). Because Maricopa County's notice of appeal is untimely under both, we dismiss this appeal for lack of jurisdiction. We have no authority to overlook those provisions, regardless of whatever unfairness the County believes not doing so engenders.

APPEAL DISMISSED.

APPENDIX J

889 F.3d 648

United States Court of Appeals for the Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
COUNTY OF MARICOPA, ARIZONA, Defendant-Appellant,
and
Paul Penzone,* in his official capacity as Sheriff of Maricopa County, Arizona, Defendant.

No. 15-17558
|
Argued and Submitted September 15, 2017 San Francisco, California
|
Filed May 7, 2018

***649**[6] Appeal from the United States District Court for the District of Arizona, Roslyn O. Silver, Senior District Judge, Presiding, D.C. No. 2:12-cv-00981-ROS

Attorneys and Law Firms

Richard K. Walker (argued), Walker & Peskind PLLC, Scottsdale, Arizona, for Defendant-Appellant.

Elizabeth Parr Hecker (argued) and Thomas E.

[6] Interlineated page number designations are from the Westlaw version of the document.

Chandler, Attorneys; Gregory B. Friel, Deputy Assistant Attorney General; Civil Rights Division, United States Department of Justice, Washington, D.C.; for Plaintiff-Appellee.

Before: Ronald M. Gould, Richard C. Tallman, and Paul J. Watford, Circuit Judges.

OPINION

WATFORD, Circuit Judge:

The United States brought this action to halt racially discriminatory policing policies instituted by Joseph Arpaio, the former Sheriff of Maricopa County, Arizona. Under Arpaio's leadership, the Maricopa County Sheriff's Office (MCSO) routinely targeted Latino drivers and passengers for pretextual traffic stops aimed at detecting violations of federal immigration law. Based on that and other unlawful conduct, the United States sued Arpaio, MCSO, and the County of Maricopa under two statutes: Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 34 U.S.C. § 12601 (formerly codified at 42 U.S.C. § 14141).[1] The district court granted summary judgment in favor of the United States on the claims relating to the unlawful traffic stops; the parties settled the remaining claims. Maricopa County is the lone appellant here. Its main contention is that it cannot be held liable for the unlawful traffic-stop policies implemented by Arpaio.

We begin with a summary of the lengthy legal proceedings involving Arpaio's unlawful policing policies. In an earlier class action lawsuit, *Melendres v. Arpaio*, a group of plaintiffs representing a class of Latino drivers and passengers sued Arpaio, MCSO,

and the County of Maricopa under 42 U.S.C. § 1983 and Title VI. They alleged that execution of Arpaio's racially ***650** discriminatory traffic-stop policies violated their rights under the Fourth and Fourteenth Amendments. Following a bench trial, the district court ruled in the plaintiffs' favor and granted broad injunctive relief, which we largely upheld on appeal. *See Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012); *Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015) (*Melendres II*).

While the *Melendres* action was proceeding, the United States filed this suit. Among other things, the United States challenged the legality of the same traffic-stop policies at issue in *Melendres*. The United States named as defendants Arpaio, in his official capacity as Sheriff of Maricopa County; MCSO; and Maricopa County. Early on, the district court dismissed MCSO from the action in light of the Arizona Court of Appeals' decision in *Braillard v. Maricopa County*, 224 Ariz. 481, 232 P.3d 1263 (Ct. App. 2010), which held that MCSO is a non-jural entity that cannot be sued in its own name. *Id.* at 1269.

Throughout the proceedings below, the County argued that it too should be dismissed as a defendant, on two different grounds. First, the County argued that when a sheriff in Arizona adopts policies relating to law-enforcement matters, such as the traffic-stop policies at issue here, he does not act as a policymaker for the county. He instead acts as a policymaker for his own office, or perhaps for the State. The County contended that, because Arpaio's policies were not policies of the County, it could not be held liable for the constitutional violations caused by execution of them. Second, the County argued that, even if Arpaio acted

as a policymaker for the County, neither Title VI nor 34 U.S.C. § 12601 permits a local government to be held liable for the actions of its policymakers.

The district court rejected both of the County's arguments. The court then granted the United States' motion for summary judgment with respect to claims predicated on the traffic-stop policies found unlawful in *Melendres*. The court held that the County was barred by the doctrine of issue preclusion from relitigating the issues decided in the *Melendres* action, which by that point had reached final judgment. The County does not contest that if the *Melendres* findings are binding here, they establish violations of Title VI and § 12601.

On appeal, Maricopa County advances three arguments: (1) Arpaio did not act as a final policymaker for the County; (2) neither Title VI nor § 12601 renders the County liable for the actions of its policymakers; and (3) the County is not bound by the *Melendres* findings. We address each of these arguments in turn.

I

[1]We have already rejected Maricopa County's first argument—that Arpaio was not a final policymaker for the County. In *Melendres v. Maricopa County*, 815 F.3d 645 (9th Cir. 2016) (*Melendres III*), we noted that "Arizona state law makes clear that Sheriff Arpaio's law-enforcement acts constitute Maricopa County policy since he 'has final policymaking authority.' " *Id.* at 650 (quoting *Flanders v. Maricopa County*, 203 Ariz. 368, 54 P.3d 837, 847 (Ct. App. 2002)). Because that determination was arguably *dicta*, we have conducted our own analysis of the issue, and we reach the same

conclusion.

To determine whether Arpaio acted as a final policymaker for the County, we consult Arizona's Constitution and statutes, and the court decisions interpreting them. *See McMillian v. Monroe County*, 520 U.S. 781, 786, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997); *Weiner v. San Diego County*, 210 F.3d 1025, 1029 (9th Cir. 2000). Those ***651** sources confirm that, with respect to law-enforcement matters, sheriffs in Arizona act as final policymakers for their respective counties.

Arizona's Constitution and statutes designate sheriffs as officers of the county. The Arizona Constitution states: "There are hereby created *in and for each organized county of the state* the following officers who shall be elected by the qualified electors thereof: a sheriff, a county attorney, a recorder, a treasurer, an assessor, a superintendent of schools and at least three supervisors...." Ariz. Const. Art. 12, § 3 (emphasis added). The relevant Arizona statute explicitly states that sheriffs are "officers of the county." Ariz. Rev. Stat. § 11-401(A)(1).

Arizona statutes also empower counties to supervise and fund their respective sheriffs. The county board of supervisors may "[s]upervise the official conduct of all county officers," including the sheriff, to ensure that "the officers faithfully perform their duties." Ariz. Rev. Stat. § 11-251(1). The board may also "require any county officer to make reports under oath on any matter connected with the duties of his office," and may remove an officer who neglects or refuses to do so. Ariz. Rev. Stat. § 11-253(A). In addition, the county must pay the sheriff's expenses. Ariz. Rev. Stat. § 11-

444(A); *Braillard*, 232 P.3d at 1269 n.2. As Maricopa County conceded in *Melendres*, those expenses include the costs of complying with any injunctive relief ordered against Arpaio and MCSO. *See Melendres III*, 815 F.3d at 650. A county's financial responsibility for the sheriff's unlawful actions is strong evidence that the sheriff acts on behalf of the county rather than the State. *See McMillian*, 520 U.S. at 789, 117 S.Ct. 1734; *Goldstein v. City of Long Beach*, 715 F.3d 750, 758 (9th Cir. 2013).

The limited guidance Arizona courts have provided on this topic further confirms that sheriffs act as policymakers for their respective counties. Most on point is *Flanders v. Maricopa County*, 203 Ariz. 368, 54 P.3d 837 (Ct. App. 2002), which held that then-Sheriff Arpaio acted as a final policymaker for Maricopa County with respect to jail administration. *Id.* at 847. *Flanders* relied in part on the fact that the statutory provision that specifies a sheriff's powers and duties lists "tak[ing] charge of and keep[ing] the county jail" as one of them. *Id.* (citing Ariz. Rev. Stat. § 11-441(A)(5)). That same provision also lists a wide array of law-enforcement functions that fall within the sheriff's powers and duties. Ariz. Rev. Stat. § 11-441(A)(1)–(3). Maricopa County does not explain why the Sheriff would be a final policymaker for the County with respect to jail administration but not with respect to the law-enforcement functions assigned to him in the same provision.

It is true that sheriffs in Arizona are independently elected and that a county board of supervisors does not exercise complete control over a sheriff's actions. Nonetheless, "the weight of the evidence" strongly supports the conclusion that sheriffs in Arizona act as

final policymakers for their respective counties on law-enforcement matters. *See McMillian*, 520 U.S. at 793, 117 S.Ct. 1734. Because the traffic-stop policies at issue fall within the scope of a sheriff's law-enforcement duties, we conclude that Arpaio acted as a final policymaker for Maricopa County when he instituted those policies.

II

[2]Maricopa County next argues that, even if Arpaio acted as the County's final policymaker, neither Title VI nor 34 U.S.C. § 12601 permits the County to be held liable for his acts. Whether either ***652** statute authorizes policymaker liability is an issue of first impression. We conclude, informed by precedent governing the liability of local governments under 42 U.S.C. § 1983, that both statutes authorize policymaker liability.

The concept of policymaker liability under § 1983 is well developed. Section 1983 imposes liability on any "person" who, while acting under color of law, deprives someone of a right protected by the Constitution or federal law. In *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), the Supreme Court held that the term "person" includes municipalities, which had the effect of creating liability for local governments under § 1983. *See id.* at 690, 98 S.Ct. 2018. But the Court also limited the scope of that liability. It concluded that a local government may not be held vicariously liable for the acts of its employees under the doctrine of *respondeat superior*. *Id.* at 691, 98 S.Ct. 2018. Instead, liability arises only if a local government's own official policy or custom caused the deprivation of federal rights. *Id.* at 694, 98 S.Ct. 2018. As the Court later

explained, this "official policy" requirement is intended to ensure that a municipality's liability "is limited to acts that are, properly speaking, acts 'of the municipality'—that is, acts which the municipality has officially sanctioned or ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

Under policymaker liability, only certain employees of a local government have the power to establish official policy on the government's behalf. The government's legislative body has such power, of course, but so do officials "whose edicts or acts may fairly be said to represent official policy." *Monell*, 436 U.S. at 694, 98 S.Ct. 2018. Such officials are those who exercise "final policymaking authority for the local governmental actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue." *McMillian*, 520 U.S. at 784–85, 117 S.Ct. 1734 (internal quotation marks omitted). In essence, policymaker liability helps determine when an act can properly be deemed a government's own act, such that the government may be held liable for deprivations of federal rights stemming from it.

[3]We think this same concept of policymaker liability applies under both Title VI and § 12601. As to Title VI, the Supreme Court has held that an entity's liability is limited to the entity's own misconduct, as it is under § 1983. *See Davis ex rel. LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629, 640, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999); *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 285, 118 S.Ct. 1989, 141 L.Ed.2d 277 (1998).[2] Thus, while an entity cannot be held vicariously liable on a *respondeat superior* theory, it can be held liable under

Title VI if an official with power to take corrective measures is "deliberately indifferent to known acts" of discrimination. *Davis*, 526 U.S. at 641, 119 S.Ct. 1661. An entity can also be held liable for acts of discrimination that result from its own "official policy." *Gebser*, 524 U.S. at 290, 118 S.Ct. 1989; *see Mansourian v. Regents of the University of California*, 602 F.3d 957, 967 (9th Cir. 2010); *Simpson v. University of Colorado Boulder*, 500 F.3d 1170, 1177–78 (10th Cir. 2007). Because this form of "official policy" liability resembles § 1983 policymaker liability, we think the proper standard for determining which employees have the power to establish an entity's "official policy" ***653** under Title VI is the standard that governs under § 1983.

We reach the same conclusion with respect to § 12601. As relevant here, the statute provides: "It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage 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." 34 U.S.C. § 12601(a).

[4]Section 12601 shares important similarities with § 1983. Section 1983 was enacted to create "a broad remedy for violations of federally protected civil rights." *Monell*, 436 U.S. at 685, 98 S.Ct. 2018. Section 12601 was also enacted as a remedy for violations of federal civil rights, specifically for violations that are systematically perpetrated by local police departments. *See* Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 Geo. Wash. L. Rev. 453, 527–28 (2004). And, like § 1983, § 12601 imposes liability on

local governments. Indeed, the language of § 12601 goes even further than § 1983, making it unlawful for "any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority" to engage in the prohibited conduct. 34 U.S.C. § 12601(a).

We need not decide whether the language of § 12601 imposes liability on the basis of general agency principles, as the United States urges here. It is enough for us to conclude, as we do, that § 12601 at least imposes liability on a governmental authority whose own official policy causes it to engage in "a pattern or practice of conduct by law enforcement officers" that deprives persons of federally protected rights. *Id*. Because of the similarity between § 12601 and § 1983, we again see no reason to create a new standard for determining which officials have the power to establish a governmental authority's official policy. The same standard that governs under § 1983 applies here as well.

In short, Maricopa County is liable for violations of Title VI and § 12601 stemming from its own official policies. As discussed above, when Arpaio adopted the racially discriminatory traffic-stop policies at issue, he acted as a final policymaker for the County. Those policies were therefore the County's own, and the district court correctly held the County liable for the violations of Title VI and § 12601 caused by those policies.

III

[5]Lastly, Maricopa County challenges the district court's application of issue preclusion, which precluded the County from relitigating the lawfulness

of Arpaio's traffic-stop policies. Given the nature of the County's involvement in the *Melendres* action, we conclude that the County is bound by the adverse findings rendered in that action.

The County was originally named as a defendant in the *Melendres* action, along with then-Sheriff Arpaio and MCSO. Early in the litigation, the parties stipulated to dismissal of the County as a named defendant, without prejudice to the County's being rejoined as a defendant later in the litigation if that became necessary to afford the plaintiffs full relief. *Melendres III*, 815 F.3d at 648. In effect, the County agreed to delegate responsibility for defense of the action to Arpaio and MCSO, knowing that it could be bound by the judgment later despite its formal absence as a party.

The case proceeded to trial against Arpaio and MCSO and resulted in judgment against them. On appeal, we concluded that MCSO had been improperly named as a defendant because it could not be sued in its own name following the Arizona Court ***654** of Appeals' intervening decision in *Braillard*. *Melendres II*, 784 F.3d at 1260 (citing *Braillard*, 232 P.3d at 1269). Pursuant to the parties' stipulation, we ordered that the County be rejoined as a defendant in lieu of MCSO. *Id.* We later explained that we did so "[t]o assure a meaningful remedy for the plaintiffs despite MCSO's dismissal." *Melendres III*, 815 F.3d at 648. The County challenged this ruling in a petition for rehearing en banc and a petition for writ of certiorari, both of which were denied. *See id.*

Given this history, the district court properly applied issue preclusion to bar the County from relitigating

the *Melendres* findings. Each of the elements of offensive non-mutual issue preclusion is satisfied: There was a full and fair opportunity to litigate the identical issues in the prior action; the issues were actually litigated in the prior action; the issues were decided in a final judgment; and the County was a party to the prior action. *See Syverson v. International Business Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007). Indeed, the County contests only the last element, arguing that it was not in fact a party to *Melendres*. That is not accurate as a factual matter, because the County was originally named as a defendant in *Melendres* and is now one of the parties bound by the judgment in that action. Moreover, even though the County did not remain a party to *Melendres* throughout the litigation, it effectively agreed to be bound by the judgment in that action. Such an agreement is one of the recognized exceptions to non-party preclusion. *See Taylor v. Sturgell*, 553 U.S. 880, 893, 128 S.Ct. 2161, 171 L.Ed.2d 155 (2008).

AFFIRMED.

APPENDIX K

U.S. Constitution, Article 4 Section 4 Republican Government

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

U.S. Constitution, 10th Amendment Reserved Powers to States

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

42 U.S.C. §1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District

of Columbia shall be considered to be a statute of the District of Columbia.

Constitution of the State of Arizona, Article 4 Section 19

Local or special laws

No local or special laws shall be enacted in any of the following cases, that is to say:

1. Granting divorces.

2. Locating or changing county seats.

3. Changing rules of evidence.

4. Changing the law of descent or succession.

5. Regulating the practice of courts of justice.

6. Limitation of civil actions or giving effect to informal or invalid deeds.

7. Punishment of crimes and misdemeanors.

8. Laying out, opening, altering, or vacating roads, plats, streets, alleys, and public squares.

9. Assessment and collection of taxes.

10. Regulating the rate of interest on money.

11. The conduct of elections.

12. Affecting the estates of deceased persons or of minors.

13. Granting to any corporation, association, or individual, any special or exclusive privileges, immunities, or franchises.

14. Remitting fines, penalties, and forfeitures.

15. Changing names of persons or places.

16. Regulating the jurisdiction and duties of justices of the peace.

17. Incorporation of cities, towns, or villages, or amending their charters.

18. Relinquishing any indebtedness, liability, or obligation to this State.

19. Summoning and empaneling of juries.

20. When a general law can be made applicable.

Constitution of the State of Arizona, Article 12 Section 3

County officers; election; term of office

There are hereby created in and for each organized county of the state the following officers who shall be elected by the qualified electors thereof: a sheriff, a county attorney, a recorder, a treasurer, an assessor, a superintendent of schools and at least three supervisors, each of whom shall be elected and hold his office for a term of four (4) years beginning on the first of January next after his election, which number of supervisors is subject to increase by law. The supervisors shall be nominated and elected from districts as provided by law.

The candidates for these offices elected in the general election of November 3, 1964 shall take office on the first day of January, 1965 and shall serve until the first day of January, 1969.

Constitution of the State of Arizona, Article 12 Section 4

County officers; duties, powers, and qualifications; salaries

The duties, powers, and qualifications of such officers shall be as prescribed by law. The board of supervisors of each county is hereby empowered to fix salaries for all county and precinct officers within such county for whom no compensation is provided by law, and the salaries so fixed shall remain in full force and effect until changed by general law.

Constitution of the State of Arizona, Article 22, Section 17

Compensation of public officers

All State and county officers (except notaries public) and all justices of the peace and constables, whose precinct includes a city or town or part thereof, shall be paid fixed and definite salaries, and they shall receive no fees for their own use.

A.R.S. 1-201 Adoption of common law; exceptions

The common law only so far as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the Constitution of the United States or the constitution or laws of this state, or established customs of the people of this state, is adopted and shall be the rule of decision in all courts of this state.

A.R.S.11-201. Powers of county

A. The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to:

1. Sue and be sued.

2. Purchase and hold lands within its limits.

3. Make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.

4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require.

5. Levy and collect taxes for purposes under its exclusive jurisdiction as are authorized by law.

6. Determine the budgets of all elected and appointed county officers enumerated under section 11-401 by action of the board of supervisors.

B. Except for the purposes of acting as an intermediary in a license transfer or sale, a county shall not own a commercial cable television system or any other pay television system.

C. Section 11-251.05, subsection A, paragraph 1 does not authorize a county to levy and collect taxes for any purposes beyond those otherwise specifically authorized by statute.

A.R.S 11-251. <u>Powers of board</u>

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties and direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax for that purpose as may be authorized by law.

5. Provide for the care and maintenance of the sick of the county, erect and maintain hospitals for that purpose and, in its discretion, provide a farm in connection with the county hospital and adopt ordinances for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control the property, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid for the property.

8. Cause to be erected and furnished a courthouse, jail and hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from the date of sale and on such terms and for such consideration as the board shall prescribe, any property belonging to the county that the board deems advantageous for the county to sell, or that the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems

this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price, which shall not be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county, with unanimous consent of the board and without a public auction, may sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county, with unanimous consent of the board and without public auction, may grant an easement on county property for public purposes to a utility as defined in section 40-491. A county, with unanimous consent of the board and without public auction, may sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated or operating in this state. A county may dispose of surplus equipment and materials that have little or no value or that are unauctionable in any manner authorized by the board.

10. Examine and exhibit the accounts and performance of all officers having the care, management, collection or disbursement of monies belonging to the county or appropriated by law or otherwise for the use and benefit of the county. The working papers and other audit files in an

examination and audit of the accounts and performance of a county officer are not public records and are exempt from title 39, chapter 1. The information contained in the working papers and audit files prepared pursuant to a specific examination or audit is not subject to disclosure, except to the county attorney and the attorney general in connection with an investigation or action taken in the course of their official duties.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer for that purpose and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. With the approval of the department of health services, contract with any qualified person to provide all or part of the health services, funded through the department of health services with federal or state monies, that the board in its discretion extends to residents of the county.

19. Contract for county printing and advertising, and provide books and stationery for county officers.

20. Provide for rebinding county records, or, if necessary, the transcribing of county records.

21. Make and enforce necessary rules and regulations for the government of its body, the preservation of order and the transaction of business.

22. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder and the secretary of state.

23. Establish, maintain and conduct or aid in establishing, maintaining and conducting public aviation fields, purchase, receive by donation or lease any property necessary for that purpose, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all such property. If any such property or part of that property is not needed for these purposes, it shall be sold by the board and the proceeds shall be paid into the general fund of the county.

24. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

25. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

26. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

27. Provide for the reasonable expenses of burial for deceased indigents as provided in section 36-831 and maintain a permanent register of deceased indigents, including name, age and date of death, and when burial occurs, the board shall mark the grave with a permanent marker giving the name, age, and date of birth, if known.

28. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, on such terms as may be agreed on by the board and the secretary of the interior of the United States.

29. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways that pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into before June 26, 1952 are validated and confirmed.

30. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government, including receiving and accepting payment of monies by credit card or debit card, or both. Any fees or costs incurred by the use of the credit or debit card shall be paid by the person tendering payment unless the charging entity determines that the financial benefits of accepting credit cards or debit cards exceeds the additional processing fees.

31. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

32. Budget for funds for foster home care during the school week for children with intellectual disabilities and children with other disabilities who reside within the county and attend a school for students with disabilities in a city or town within such county.

33. Do and perform all acts necessary to enable the county to participate in the economic opportunity act of 1964 (P.L. 88-452; 78 Stat. 508), as amended.

34. Provide a plan or plans for its employees that provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States Code. Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

35. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

36. Subject to the prohibitions, restrictions and limitations as set forth in section 11-812, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

37. Make and enforce necessary ordinances for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

38. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by title 23, chapter 2, article 9. In so providing, the board may

establish salary and wage plans incorporating classifications and conditions prescribed by the federal fair labor standards act.

39. Establish, maintain and operate facilities that provide for physical evaluation, diagnosis and treatment of patients and that do not keep patients overnight as bed patients or treat patients under general anesthesia.

40. Enact ordinances under its police authority prescribing reasonable curfews in the entire unincorporated area or any area less than the entire unincorporated area of the county for minors and fines not to exceed the fine for a petty offense for violation of such ordinances. Nothing in this paragraph shall be construed to require a request from an association or a majority of the residents of an area before the board may enact an ordinance applicable to the entire or any portion of the unincorporated area. An ordinance enacted pursuant to this paragraph shall provide that a minor is not violating a curfew if the minor is accompanied by a parent, a guardian or an adult having supervisorial custody, is on an emergency errand or has been specifically directed to the location on reasonable, legitimate business or some other activity by the parent, guardian or adult having supervisorial custody. If no curfew ordinance is applicable to a particular unincorporated area of the county, the board may adopt a curfew ordinance on the request or petition of either:

(a) A homeowners' association that represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

41. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

42. In addition to the agreements authorized by section 11-651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

43. Make and enforce necessary ordinances not in conflict with the laws of this state to regulate off-road recreational motor vehicles that are operated within the county on public lands without lawful authority or on private lands without the consent of the lawful owner or that generate air pollution. For the purposes of this paragraph, "off-road recreational motor vehicle" means three and four wheel vehicles manufactured for recreational nonhighway all terrain travel.

44. Acquire land for roads, drainage ways and other public purposes by exchange without public auction, except that notice shall be published thirty days before the exchange, listing the property ownership and descriptions.

45. Purchase real property for public purposes, provided that final payment shall be made not later than five years after the date of purchase.

46. Lease-purchase real property and improvements for real property for public purposes, provided that final payment shall be made not later than twenty-five years after the date of purchase. Any increase in the final payment date from fifteen years up to the maximum of twenty-five years shall be made only on unanimous approval by the board of supervisors.

47. Make and enforce ordinances for the protection and disposition of domestic animals subject to inhumane, unhealthful or dangerous conditions or circumstances provided that nothing in this paragraph limits or restricts the authority granted to incorporated cities and towns or counties pursuant to section 13-2910. An ordinance enacted pursuant to this paragraph shall not restrict or limit the authority of the game and fish commission to regulate the taking of wildlife. For the purposes of this paragraph, "domestic animal" means an animal kept as a pet and not primarily for economic purposes.

48. If a part of a parcel of land is to be taken for roads, drainage, flood control or other public purposes and the board and the affected property owner determine that the remainder will be left in such a condition as to give rise to a claim or litigation concerning severance or other damage, acquire the whole parcel by purchase, donation, dedication, exchange, condemnation or other lawful means, and the remainder may be sold or exchanged for other properties needed for any public purpose.

49. Make and enforce necessary rules providing for the reimbursement of travel and subsistence expenses of members of county boards, commissions and advisory committees when acting in the performance of their duties, if the board, commission or advisory committee is authorized or required by federal or state law or county ordinance, and the members serve without compensation.

50. Provide a plan or plans for county employee benefits that allow for participation in a cafeteria plan that meets the requirements of the United States internal revenue code of 1986.

51. Provide for fringe benefits for county employees, including sick leave, personal leave, vacation and holiday pay and jury duty pay.

52. Make and enforce ordinances that are more restrictive than state requirements to reduce or encourage the reduction of carbon monoxide and ozone levels, provided an ordinance does not establish a standard for vehicular emissions, including ordinances to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the county and employees whose place of employment is in unincorporated areas of the county.

53. Make and enforce ordinances to provide for the reimbursement of up to one hundred per cent of the cost to county employees of public bus or van pool transportation to and from their place of employment.

54. Lease for public purposes any real property, improvements for real property and personal property under the same terms and conditions, to the extent applicable, as are specified in sections 11-651 and 11-653 for lease-purchases.

55. Enact ordinances prescribing regulation of alarm systems and providing for civil penalties to reduce the incidence of false alarms at business and residential structures relating to burglary, robbery, fire and other emergencies not within the limits of an incorporated city or town.

56. In addition to paragraph 9 of this section, and notwithstanding section 23-504, sell or dispose of, at no less than fair market value, county personal property that the board deems no longer useful or necessary through a retail outlet or to another government entity if the personal property has a fair market value of no more than one thousand dollars, or by retail sale or private bid, if the personal property

has a fair market value of no more than fifteen thousand dollars. Notice of sales in excess of one thousand dollars shall include a description and sale price of each item and shall be published in a newspaper of general circulation in the county, and for thirty days after notice other bids may be submitted that exceed the sale price by at least five per cent. The county shall select the highest bid received at the end of the thirty day period.

57. Sell services, souvenirs, sundry items or informational publications that are uniquely prepared for use by the public and by employees and license and sell information systems and intellectual property developed from county resources that the county is not obligated to provide as a public record.

58. On unanimous consent of the board of supervisors, license, lease or sell any county property pursuant to paragraphs 56 and 57 of this section at less than fair market value to any other governmental entity, including this state, cities, towns, public improvement districts or other counties within or outside of this state, or for a specific purpose to any charitable, social or benevolent nonprofit organization incorporated or operating in this state.

59. On unanimous consent of the board of supervisors, provide technical assistance and related services to a fire district pursuant to an intergovernmental agreement.

60. Adopt contracting procedures for the operation of a county health system pursuant to section 11-291. Before the adoption of contracting procedures the board shall hold a public hearing. The board shall publish one notification in a newspaper of general circulation in the county seat at least fifteen days before the hearing.

61. Enter into an intergovernmental agreement pursuant to chapter 7, article 3 of this title for a city or town to provide emergency fire or emergency medical services pursuant to section 9-500.23 to a county island as defined in section 11-251.12. The board may charge the owners of record in the county island a fee to cover the cost of an intergovernmental agreement that provides fire and emergency medical services.

62. In counties that employ or have designated an animal control county enforcement agent pursuant to section 11-1005, enter into agreements with foundations or charitable organizations to solicit donations, property or services, excluding enforcement or inspection services, for use by the county enforcement agent solely to perform nonmandated services and to fund capital improvements for county animal control, subject to annual financial and performance audits by an independent party as designated by the county board of supervisors. For the purposes of this paragraph, nonmandated services are limited to low cost spay and neuter services, public education and outreach efforts, pet adoption efforts, care for pets that are victims of cruelty or neglect and support for volunteer programs.

63. Adopt and provide for the enforcement of ordinances prohibiting open fires and campfires on designated lands in the unincorporated areas of the county when a determination of emergency is issued by the county emergency management officer and the board deems it necessary to protect public health and safety on those lands.

64. Fix the amount of license fees to be paid by any person, firm, corporation or association for carrying on any game or amusement business in unincorporated areas of the county and prescribe the method of collection or payment of those fees, for a stated period

in advance, and fix penalties for failure to comply by fine. Nothing in this article shall be construed as authorizing any county to require an occupational license or fee for any activity if state law precludes requiring such a license or fee.

65. Adopt and enforce ordinances for the prevention, abatement and removal of graffiti, providing that any restrictions on the retail display of potential graffiti tools be limited to any of the following, as determined by the retail business:

(a) In a place that is in the line of sight of a cashier or in the line of sight from a work station normally continuously occupied during business hours.

(b) In a manner that makes the product accessible to a patron of the business establishment only with the assistance of an employee of the establishment.

(c) In an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

66. Adopt ordinances and fees related to the implementation of a local stormwater quality program pursuant to title 49, chapter 2, article 11.

A.R.S 11-401 <u>Enumeration of officers</u>

A. The officers of the county are:

1. Sheriff.
2. Recorder.
3. Treasurer.
4. School superintendent.
5. County attorney.
6. Assessor.
7. Supervisors.
8. Clerk of the board of supervisors.
9. Tax collector.

B. The county treasurer shall be ex officio tax collector

A.R.S. 11-409 Deputies and employees; appointment

The county officers enumerated in § 11-401, by and with the consent of, and at salaries fixed by the board, may appoint deputies, stenographers, clerks and assistants necessary to conduct the affairs of their respective offices. The appointments shall be in writing.

A.R.S. 11-441 Powers and duties

A. The sheriff shall:

1. Preserve the peace.

2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense.

3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the sheriff.

4. Attend all courts, except justice and municipal courts, when an element of danger is anticipated and attendance is requested by the presiding judge, and obey lawful orders and directions issued by the judge.

5. Take charge of and keep the county jail, including a county jail under the jurisdiction of a county jail district, and the prisoners in the county jail.

6. Endorse upon all process and notices the year, month, day, hour and minute of reception, and issue to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception.

7. Serve process and notices in the manner prescribed by law and certify under the sheriff's hand upon the

process or notices the manner and time of service, or if the sheriff fails to make service, the reasons for failure, and return them without delay. When returnable to another county, the sheriff may enclose such process or notices in an envelope, addressed to the officer from whom received, and deposit it postage prepaid in the post office. The return of the sheriff is prima facie evidence of the facts stated in the return.

8. Secure, as soon as possible, the home of a deceased person located outside the boundaries of an incorporated city or town if the sheriff is unable to determine or locate the heirs or executor of the deceased person.

B. The sheriff may in the execution of the duties prescribed in subsection A, paragraphs 1 through 4 command the aid of as many inhabitants of the county as the sheriff deems necessary.

C. The sheriff shall conduct or coordinate within the county search or rescue operations involving the life or health of any person, or may assist in such operations in another county at the request of that county's sheriff, and may request assistance from any persons or agencies in the fulfillment of duties under this subsection.

D. The sheriff, in the execution of the duties prescribed in this section, may request the aid of volunteer posse and reserve organizations located in the county.

E. The sheriff may assist in the execution of the duties prescribed in this section in another county at the request of that county's sheriff.

F**.** The sheriff may require any prisoner who is on work release to reimburse the county for reasonable expenses incurred in connection with the release.

G. The board of supervisors of a county bordering the Republic of Mexico may adopt an ordinance pursuant

to chapter 2 of this title allowing the sheriff to prevent the entry from this state into the Republic of Mexico at the border by any resident of this state who is under eighteen years of age if the minor is unaccompanied by a parent or guardian or does not have written consent for entry from a parent or guardian. The authority of the sheriff is only to prevent entry and not to otherwise detain the minor. This subsection shall not be construed to limit the authority of the sheriff pursuant to any other law. A county is not civilly or criminally liable for not adopting an ordinance pursuant to this subsection.

H. Notwithstanding § 13-3112, the sheriff may authorize members of the sheriff's volunteer posse who have received and passed firearms training that is approved by the Arizona peace officer standards and training board to carry a deadly weapon without a permit while on duty.

A.R.S. 11-444 <u>Expenses of sheriff as county charge; expense fund</u>

A. The sheriff shall be allowed actual and necessary expenses incurred by the sheriff in pursuit of criminals, for transacting all civil or criminal business and for service of all process and notices, and such expenses shall be a county charge, except that the allowable expenses of service of process in civil actions shall be as provided in § 11-445.

B. The board shall, at the first regular meeting in each month, set apart from the expense fund of the county a sum sufficient to pay the estimated traveling and other expenses of the sheriff during the month, which shall be not less than the amount paid for the expenses for the preceding month. The sum so set apart shall

thereupon be paid over to the sheriff for the payment of such expenses.

C. At the end of each month the sheriff shall render a full and true account of such expenses, and any balance remaining unexpended shall be paid by the sheriff into the county treasury. If the sum so paid over is insufficient to pay the expenses incurred during the month, the excess shall be allowed and paid as other claims against the county.

A.R.S. 41-1821 Arizona peace officer standards and training board; membership; appointment; term; vacancies; meetings; compensation; acceptance of grants

A. The Arizona peace officer standards and training board is established and consists of thirteen members appointed by the governor. The membership shall include:

1. Two sheriffs, one appointed from a county having a population of two hundred thousand or more persons and the remaining sheriff appointed from a county having a population of less than two hundred thousand persons.

2. Two chiefs of city police, one appointed from a city having a population of sixty thousand or more persons and the remaining chief appointed from a city having a population of less than sixty thousand persons.

3. A college faculty member in public administration or a related field.

4. The attorney general.

5. The director of the department of public safety.

6. The director of the state department of corrections.

7. One member who is employed in administering county or municipal correctional facilities.

8. Two certified law enforcement officers who have knowledge of and experience in representing peace officers in disciplinary cases. One of the certified law enforcement officers must have a rank of officer and the other must have a rank of deputy. One of the appointed officers must be from a county with a population of less than five hundred thousand persons.

9. Two public members.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to § 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The governor shall appoint a chairman from among the members at its first meeting and every year thereafter, except that an ex officio member shall not be appointed chairman. The governor shall not appoint more than one member from the same law enforcement agency. No board member who was qualified when appointed becomes disqualified unless the member ceases to hold the office that qualified the member for appointment.

D. Meetings shall be held at least quarterly or on the call of the chairman or by the written request of five members of the board or by the governor. A vacancy on the board shall occur when a member except an ex officio member is absent without the permission of the chairman from three consecutive meetings. The governor may remove a member except an ex officio member for cause.

E. The term of each regular member is three years unless a member vacates the public office that qualified the member for this appointment.

F. The board members are not eligible to receive per diem but are eligible to receive reimbursement for travel expenses pursuant to title 38, chapter 4, article 2.[1]

G. On behalf of the board, the executive director may seek and accept contributions, grants, gifts, donations, services or other financial assistance from any individual, association, corporation or other organization having an interest in police training, and from the United States of America and any of its agencies or instrumentalities, corporate or otherwise. Only the executive director of the board may seek monies pursuant to this subsection. Such monies shall be deposited in the fund created by § 41-1825.

H. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. No member of the board shall be disqualified from holding any public office or employment nor shall such member forfeit any such office or employment by reason of such member's appointment, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

A.R.S. 41-1822 Powers and duties of board; definition

A. With respect to peace officer training and certification, the board shall:

1. Establish rules for the government and conduct of the board, including meeting times and places and matters to be placed on the agenda of each meeting.

2. Make recommendations, consistent with this article, to the governor, the speaker of the house of representatives and the president of the senate on all matters relating to law enforcement and public safety.

3. Prescribe reasonable minimum qualifications for officers to be appointed to enforce the laws of this state and the political subdivisions of this state and certify officers in compliance with these qualifications. Notwithstanding any other law, the qualifications shall require United States citizenship, shall relate to physical, mental and moral fitness and shall govern the recruitment, appointment and retention of all agents, peace officers and police officers of every political subdivision of this state. The board shall constantly review the qualifications established by this section and may amend the qualifications at any time, subject to the requirements of § 41-1823.

4. Prescribe minimum courses of training and minimum standards for training facilities for law enforcement officers. Only this state and political subdivisions of this state may conduct basic peace officer training. Basic peace officer academies may admit individuals who are not peace officer cadets only if a cadet meets the minimum qualifications established by paragraph 3 of this subsection. Training shall include:

(a) Courses in responding to and reporting all criminal offenses that are motivated by race, color, religion, national origin, sexual orientation, gender or disability.

(b) Training certified by the director of the department of health services with assistance from a representative of the board on the nature of unexplained infant death and the handling of cases involving the unexplained death of an infant.

(c) Medical information on unexplained infant death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigations.

(d) Information on the protocol of investigation in cases of an unexplained infant death, including the importance of a consistent policy of thorough death scene investigation.

(e) The use of the infant death investigation checklist pursuant to § 36-3506.

(f) If an unexplained infant death occurs, the value of timely communication between the medical examiner's office, the department of health services and appropriate social service agencies that address the issue of infant death and bereavement, to achieve a better understanding of these deaths and to connect families to various community and public health support systems to enhance recovery from grief.

5. Recommend curricula for advanced courses and seminars in law enforcement and intelligence training in universities, colleges and community colleges, in conjunction with the governing body of the educational institution.

6. Make inquiries to determine whether this state or political subdivisions of this state are adhering to the standards for recruitment, appointment, retention and training established pursuant to this article. The failure of this state or any political subdivision to adhere to the standards shall be reported at the next regularly scheduled meeting of the board for action deemed appropriate by that body.

7. Employ an executive director and other staff as are necessary to fulfill the powers and duties of the board

in accordance with the requirements of the law enforcement merit system council