

SETTLEMENT AGREEMENT

United States District Court, District of Arizona, #CIV 01-01463 PCT-JAT

(United States Court of Appeals for the Ninth Circuit, #03-15915)

I. INTRODUCTION

This Settlement Agreement ("Agreement") is made and entered into by and between Veronica Arnold, Tonya Arrington, Anthony Dorsett, Vincent Edwards, Barrington Folkes, Jim Lee, Jesus Sagrero, Raul Salazar, Gregory Stephen, Frank Vilas, the Plaintiff Class as defined below, (hereinafter "Plaintiffs"), and the Arizona Department of Public Safety ("DPS" or "Agency"), Governor Janet Napolitano, DPS Director Dennis Garrett, DPS Lt. Colonel William Reutter, DPS Ofc. John Adams, DPS Sgt. Jeff Brownlee, DPS Ofc. Casey Kasun, DPS Ofc. Howard McDonald, and DPS Ofc. Steven Shroufe (hereinafter "Defendants").

WHEREAS, on August 6, 2001, Plaintiffs filed a class action complaint alleging that DPS engaged in a continuing pattern and practice of race-based traffic stops, detentions and searches of non-Caucasian motorists;

WHEREAS, Plaintiffs' claims were brought pursuant to the Fourth and Fourteenth Amendments to the Constitution of the United States; 42 U.S.C. §1983, and Title VI of the Civil Rights Act of 1964, 42 C.F.R. §§ 42.101 et. seq;

WHEREAS, Plaintiffs' class action was brought pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure ("FRCP"), on behalf of themselves and all other persons similarly situated. Each individual class

representative is a non-Caucasian person who has been stopped, detained, and/or searched by one or more DPS officers while traveling in a vehicle on a street or highway in Arizona. Thus, each is a member of the Plaintiff class;

WHEREAS, Defendants deny all allegations against them; and

WHEREAS the parties have given careful consideration to all of the legal and factual issues raised by Plaintiffs' complaint and, without any admission of liability or fault, enter into this Settlement Agreement with the intent to fully, finally and fairly resolve all of Plaintiffs' claims, and have agreed to settle all claims that were or could have been asserted by Plaintiffs in this lawsuit, except those claims which are identified herein and exempted from the coverage of this Settlement Agreement;

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties to this suit agree as follows:

II. SCOPE OF AGREEMENT

A. Remand to United States District Court

This Settlement Agreement is subject to all required class action settlement approval procedures under Rules 23(b)(2) and 23(e), FRCP. The Agreement will be submitted for review and approval per Rule 23 to the Honorable James A. Teilborg, United States District Judge, District of Arizona.

Upon the execution of this Agreement by counsel for the parties, a stipulation will be filed with the Ninth Circuit Court of Appeals to dismiss the

pending appeal without prejudice to its reinstatement, so that jurisdiction may be re-vested in the District Court and the matter remanded for review and approval of the settlement. The parties will follow the procedures set forth in Paragraphs 45 and 46 of Appendix A of the General Orders of the Ninth Circuit. If the Settlement Agreement is subsequently accepted and approved by the District Court, the dismissal of the Plaintiffs' appeal will become a dismissal with prejudice as provided in Paragraphs 45 and 46 of Appendix A of the General Orders of the Ninth Circuit.

Upon remand, the parties will petition the District Court to enter an order suspending the judgment of dismissal it previously entered in this matter on April 14, 2003, in order that the Court may proceed with its review of this Agreement pursuant to Rule 23, FRCP. If the Agreement is subsequently accepted and approved by the District Court, the lawsuit will then be dismissed in the manner specified in Paragraph II(B), below, and dismissal of Plaintiffs' appeal with prejudice will occur pursuant to Paragraphs 45 and 46 of Appendix A of the General Orders of the Ninth Circuit. If this Agreement is not accepted and approved by the District Court, the Court will enter an order reinstating its previous judgment of dismissal entered on April 14, 2003, and the Plaintiffs may proceed to take appropriate steps to reactivate their pending appeal.

All elements of this Agreement, including, but not limited to, the provisions set forth below involving class certification and the scope of the Plaintiff Class, are contingent upon the acceptance and approval of the Settlement Agreement by the District Court. No party will be considered to

have waived, or be estopped to assert, any legal position, objection, claim or defense in this litigation as a result of his/her/its participation in this Settlement Agreement or the negotiations that preceded it.

B. Stipulated Order of Dismissal

By this Agreement the parties intend to terminate this litigation. If the settlement is approved by the District Court, the proceeding will be dismissed in full with prejudice by stipulated order ("Stipulated Order of Dismissal") pursuant to Federal Rules of Civil Procedure ("F.R.C.P.") 41(a)(2). Damages claims of unnamed individual class members only will be exempted from the stipulated order as provided in Paragraph II(E), below.

C. Class Definition

The proposed Plaintiff Class consists of all non-Caucasian persons who have been or will be stopped, detained and/or searched by an officer or officers of DPS while traveling in a vehicle on a street or highway within Arizona between January 1, 1997, and the date which is three calendar years after the effective date of this Agreement. The class is for injunctive relief; no subclasses or damages claims remain. If the settlement is accepted and approved by the District Court, the Court will contemporaneously certify the Plaintiff Class under Rule 23(b)(2), FRCP.

D. No Admissions

By entering into this Agreement the Defendants do not admit to any violations of, or failure to comply with, any Federal or State constitutional provisions, statutes, regulations or other laws. This Agreement is not, and

shall not be construed as or deemed to be, an admission by Defendants of any wrongdoing by DPS, by any individual Defendant, or by any other state officer, official or employee. Likewise, this Agreement is not and shall not be deemed to be an admission by Plaintiffs that no wrongdoing was engaged in by the Defendants, nor that Defendants complied with applicable laws and constitutional provisions.

...

...

The parties acknowledge that this Agreement represents a compromise of disputed claims, and the matters set forth in this document are not to be construed in any respect as an admission of liability by any party.

E. Nature of Relief

If the Settlement Agreement is accepted and approved by the District Court, the Plaintiff Class will be certified pursuant to Rule 23(b)(2), FRCP. This Agreement shall be deemed to extend to all claims of the individual named Plaintiffs, and to the injunctive and declaratory claims of the Plaintiff Class. As of the effective date of the Agreement, all damages claims of the individual named Plaintiffs shall be dismissed with prejudice.

This Agreement has no impact on or prejudicial effect as to damages claims of unnamed individual class members. However, the applicable statutes of limitation on any such damages claims shall not be deemed to have been tolled while this lawsuit and/or appeal have been pending.

None of the provisions of this Agreement shall be construed in such a

manner as to require any Defendant, or any agency, officer or official of the State of Arizona, to engage in any conduct that violates the United States or Arizona Constitutions, or any federal or state law. Any provision of this Agreement which is in conflict with the United States or Arizona Constitutions or any federal or state law is null and void and shall have no effect. Such invalidity of one or more provisions of the Agreement shall not affect the remaining provisions or the enforceability thereof. In the event any provision of this Agreement is determined to be in conflict with the United States or Arizona Constitutions or any federal or state law, the parties' representatives will promptly convene to draft alternative language that carries out the original intent of the Agreement, if it is possible to do so in a manner that conforms with existing law.

F. Effective Date

The effective date of this Agreement shall be the date on which the Court directs dismissal of the Complaint (hereinafter "Effective Date") pursuant to the Stipulated Order of Dismissal provided for in Paragraph II(B), above.

G. Enforceable and Full Agreement

This Agreement is legally enforceable by the parties, and constitutes the full and complete expression of the Agreement between them. There are no collateral written or oral agreements between the parties, and the parties are not relying on any statements, representations or promises except as set forth herein. This Agreement cannot be modified or amended except in writing, signed by the parties' legal representatives.

H. Duration of Agreement

This Agreement shall terminate three (3) years after the effective date of the Agreement. If it is specifically provided herein that a particular provision of the Agreement shall extend longer than three years, that provision will be enforceable by the parties for the duration of the time period indicated.

I. Future Lawsuits

Plaintiffs acknowledge that the terms of this Agreement affect statewide policies and practices of the DPS. Plaintiffs agree that as long as DPS complies with the terms of this Agreement, neither they nor their representative, while the Agreement is in effect, will initiate or participate in any new suit or action against DPS seeking relief as to the policies and practices complained of in the Complaint and/or which are covered by this Agreement, except that unnamed individual class members may pursue damages claims as provided in Paragraph II(E), above. Subject to the terms and conditions of this Agreement, the dismissal with prejudice of the Complaint in this action shall have res judicata effect on the Plaintiffs as required by applicable law.

J. Representatives for Implementation and Enforcement

For purposes of the implementation and enforcement of this Agreement, the representatives of the parties shall be:

Plaintiffs: The American Civil Liberties Union of Arizona ("ACLU"), or attorneys acting under its direction.

Defendants: The Arizona Attorney General's Office, or contract attorneys acting under its direction.

III. DPS POLICIES AND PROCEDURES

A. Prohibition of Racial Profiling

For purposes of interpretation, implementation and enforcement of this Agreement, "racial profiling" is defined as the reliance on race, skin color, and/or ethnicity as an indication of criminality, reasonable suspicion or probable cause, except when part of a description of a suspect, and said description is timely, reliable and geographically relevant.

DPS will maintain its present policy that the intentional practice of racial profiling is wrong and will not be tolerated. DPS General Order 4.2.30 will identify racial profiling to be a form of racially biased policing, which is prohibited by General Order 4.2.30. The text of General Order 4.2.30, which is attached to this Agreement as an exhibit, has been accepted and agreed to by the parties. This version of General Order 4.2.30 will be officially implemented by DPS on or before the effective date of this Agreement.

B. Traffic Stop Procedures

General Order 4.2.30 will provide: "An officer shall not detain a vehicle or its occupants for investigative purposes longer than is reasonably necessary to accomplish the purpose of the traffic stop, unless reasonable suspicion or probable cause of criminal activity exists. An officer cannot detain a vehicle or its occupants for the sole purpose of allowing time for the arrival or use of a drug detection canine unless reasonable suspicion or probable cause of criminal activity exists. This subsection is not intended to prevent an officer from requesting that the owner or driver of a vehicle voluntarily consent to a

search of the vehicle or to the use of a drug detection canine.”

General Order 4.2.30 will require that DPS officers introduce themselves by name to all persons stopped. If a person requests further identifying information from the officer during the course of a traffic stop, the officer will provide his or her rank, badge number and supervisor’s name.

C. Consent Searches

DPS officers will use a written consent form whenever a search is requested during a traffic stop. Officers shall not have the discretion to decline to use a written consent form because the officer deems the use of the form to be inconvenient or time consuming.

The written consent form in Spanish and English is attached hereto, and shall be utilized by the requesting DPS officer with a duplicate copy given to the person involved after being filled out and signed. The officer shall enter the information and sign the form if the person involved declines to sign. DPS’ copy of completed consent forms shall be kept by DPS for a minimum of one year. General Order 4.2.30 shall be modified to include the above requirements.

D. Videotaping of Traffic Stops

As to all patrol vehicles with vehicle-based video systems, DPS will adopt procedures which provide that the video and audio components of the vehicle’s video system will be activated once a traffic stop has begun, and are to be left in operation throughout the duration of the traffic stop. This will be the policy

regardless of whether the video system is automatically or manually activated. Videotapes or discs from patrol car video systems will be preserved for at least one year. DPS' written policies concerning patrol car video systems will be added to or amended as necessary to incorporate these requirements.

E. Patrol Car Video Systems

DPS will work toward the goal of having vehicle-based video systems in all of its patrol vehicles throughout the state. DPS will make good faith efforts to accomplish this goal as soon as is reasonably possible, taking into account budgetary constraints. All available sources of funding will be considered in attempting to accomplish this goal. DPS will request at least fifty vehicle-based video systems per year in its proposed budgets submitted to the Governor during the next three fiscal years, unless the situation has progressed to the point that fewer than fifty video systems are needed to actually accomplish the goal of having all patrol vehicles throughout the state equipped with video systems.

Until such time as all patrol cars throughout the state have vehicle-based video systems, DPS will prioritize its assignment of new equipment to areas where drug transportation activities appear to be most prevalent. At the present time, those areas are: Interstate 40 across Northern Arizona, Interstate 17 between Phoenix and Flagstaff, Interstates 8 and 10 across Central and Southern Arizona, and Interstates 19 and 10 between Nogales and Phoenix.

F. Training

Within four months of the effective date of this Agreement, all sworn officers of DPS will be required to have viewed a video in-service training update regarding the Agency's policies on racial profiling and the contents of this Settlement Agreement.

On or before the effective date of the Agreement, training regarding racial profiling will be incorporated into DPS' Advanced Basic Training course for new officers. This training will incorporate the use of the course outline attached hereto, "Racial Profiling Training Outline."

Within one year of the effective date of the Agreement, all DPS Highway Patrol officers and canine unit officers will complete a training course based on the National Highway Traffic Safety Administration's ("NHTSA") guidelines for professional traffic stops. DPS will provide the Plaintiffs' representative with documentation showing that this requirement of the Settlement Agreement has been fulfilled. Once the first year of the Agreement has elapsed, any officer transferring into a Highway Patrol or canine unit assignment will be required to complete the NHTSA-based training course within ninety days of the transfer.

IV. DATA COLLECTION AND ANALYSIS

A. Data Collection Involving Traffic Stops

On or before the effective date of the Agreement, DPS will implement use of new traffic stop forms (traffic citations, warnings and equipment repair orders), which, in addition to their enforcement-related functions, provide for the collection of data relevant to the nature, duration, and grounds for the police officer/citizen contact. The new forms will be capable of being

electronically scanned, so that the information on the forms is recorded and stored in an electronic data bank. Samples of the new traffic stop forms are attached hereto.

The parties agree that DPS' traffic stop forms will provide for the collection of the data described below. For five years from the effective date of the Agreement, DPS will not implement new traffic stop forms or amend such forms in a manner which causes any of the data described below to not be collected, unless the change in question has been consented to by the Plaintiffs' representative. The consent of the Plaintiffs' representative is not required if the change in question is ordered by a court of competent jurisdiction and authority.

Traffic stop forms will provide for the collection of at least the following data:

- (1) Reason for the contact.
- (2) Type of contact (driver, passenger, pedestrian, or other).
- (3) Whether a search was performed.
- (4) Whether a requested search was refused.
- (5) The legal/factual basis for the search. (For example, consent, probable cause, plain view, K-9 alert, etc.)
- (6) Who or what was searched (vehicle, driver, passenger).
- (7) Types of items seized in the search (drugs, weapons, currency, etc.)
- (8) Duration of the stop.
- (9) Direction of travel.
- (10) Race/ethnicity of the person contacted, using the following

categories:

- Native American
- Asian/Pacific Islander
- Black
- Hispanic
- Middle Eastern
- White
- Other or Undetermined.

- (11) Gender of the person contacted.
- (12) Vehicle description (if a vehicle was involved).
- (13) Badge numbers of back-up officers, if any.

For the duration of the Agreement, DPS will, on a semi-annual basis, prepare a computer disc containing the electronic data collected through use of its traffic stop forms during the preceding six months, and will provide that disc, free of charge, to the Plaintiffs' representative.

While this Agreement is in effect, DPS' copies of completed traffic stop forms (traffic citations, warnings and equipment repair orders) will be kept and preserved by DPS for at least three years from the date the form was used. While the Agreement is in effect, electronic data scanned from traffic stop forms will be kept and preserved by DPS for at least five years from the date the electronic data was first created.

B. Monitoring of the Data Collection Process

DPS will implement spot checking procedures with the objective of confirming that the data from traffic stop forms is being reliably scanned and electronically recorded. This spot checking will occur at least quarterly, and will involve, but not necessarily be limited to, DPS randomly selecting paper

records and matching information from such records with information from the electronic dataset.

C. Traffic Stop Data Analysis

DPS will develop and implement a plan for review and analysis of its statistical data generated from traffic stops. One objective of the review and analysis will be to check for indicia of possible racial profiling by DPS officers.

The plan for review and analysis of traffic stop data will be designed and carried out by qualified outside consultants with demonstrated technical and analytical background, in consultation with DPS. A Request for Proposals for the consultants' services will be publicly disseminated within ninety days of the effective date of the Agreement. A contract with outside consultants will be finalized as soon as possible thereafter, in accordance with the procedures required by Arizona's laws governing the competitive bidding process. The consultants and DPS will formulate the proposed plan and method for traffic stop data analysis within one year of the effective date of the Agreement. DPS' plan for analysis of traffic stop data will include a comprehensive analysis of at least 12 months worth of traffic stop data that will be completed within 15 months of the effective date of the Agreement, and thereafter each year for at least the next two years.

The results of the three above-described yearly statistical analyses will be provided to the Plaintiffs' representative, free of charge, within 30 days of the completion of each analysis. If DPS chooses to continue to conduct annual comprehensive analyses after the initial three have been concluded, the

Plaintiffs' representative may obtain the results of subsequent analyses pursuant to Arizona's public records laws, and will be charged the same fees for reproduction and delivery of the relevant records as would be charged to members of the general public.

D. Follow-Up To Indicia of Possible Racial Profiling

If DPS' review and analysis of its traffic stop data indicates, under criteria endorsed by DPS' outside consultants, that a particular unit or officer may be engaging in racial profiling, DPS will take reasonable steps to investigate and closely monitor the situation. If DPS concludes that the enforcement activity of the unit or officer in question is inappropriate, it will take corrective and/or disciplinary measures, including, but not necessarily limited to, ordering changes in practice or procedure, requiring additional training, changing duty assignments, and/or disciplinary action against individuals. Records of any instance in which a DPS officer is disciplined for racial profiling, as defined in DPS General Order 4.2.30, shall be provided free of charge to the Plaintiffs' representative within thirty days of the date the discipline is imposed, with the exception of any material that is privileged, private or confidential under state or federal law.

V. CITIZEN COMPLAINTS AND REVIEW

A. Citizen Complaints

DPS will facilitate the ability of any person involved in a traffic stop by DPS to communicate complaints or commendations about DPS personnel or

practices to the Agency. To this end, within ninety days of the effective date of the Agreement, DPS will develop a link to its website that provides information in Spanish and English regarding the Agency's racial profiling policy and the process by which citizens can make complaints or commendations. The website will also provide the informational brochure discussed below in a format that can be downloaded.

Within ninety days of the effective date of the Agreement DPS will publish the attached informational brochure, "An Important Message For You." On the portion of the brochure relating to complaints and commendations, the brochure will include the telephone numbers of DPS and the Arizona Attorney General's Civil Rights Division. DPS will distribute the brochure by the methods it uses to distribute other written material to the public, including, but not necessarily limited to, distribution at DPS district offices, at highway rest stops, at Motor Vehicle Division offices, and at special events such as school assemblies and job fairs. Upon initial publication, DPS will provide the Plaintiffs' representative with one thousand copies of the brochure, free of charge. Thereafter, for the duration of the Agreement, the Plaintiffs' representative may obtain additional copies of the brochure from DPS by paying the printing costs for the number of brochures requested.

On a semi-annual basis for the duration of the Agreement, DPS will provide the Plaintiffs' representative with information concerning all citizen complaints received by the agency of alleged racial profiling. Such information shall be provided to the Plaintiffs' representative free of charge. The

information provided will include the number of complaints made in the preceding six months, the general nature of each complaint, the name of the officer or officers complained of, whether the complaint remains under investigation or has been disposed of, and, if applicable, the disposition of the complaint. The information provided will not include the names or other identifying information relating to complainants. nor any other information or data that is privileged, private or confidential under state or federal law.

B. Citizen's Advisory Board

Within ninety days of the effective date of this Agreement, a nine-member citizens' advisory board will be created by executive order of the Governor, and the members thereof appointed by the Governor. The title of the board will be the "Citizen's Traffic Stop Advisory Board". All members of the Board must meet the legal qualifications for membership on a state board or commission, as set forth in A.R.S. §38-201. Board members will be named by the Governor as follows: four persons from the membership of the Governor's African-American and Latino Advisory Committees, three persons from at least six names forwarded by a committee convened by the Plaintiffs' representative, and two persons from the public at large. The chairperson of the board will be designated by the Governor, but no person employed by a law enforcement agency or as a prosecutor shall be eligible to be chairperson. The Chairperson shall be responsible for convening meetings of the Board that shall occur no less than three times per year.

Except as otherwise provided in this Section, persons employed in law enforcement or otherwise employed or working in the criminal justice system are eligible to be members of the Board; however, persons employed by DPS are not eligible to be members, and no more than two persons employed in law enforcement or as a prosecutor may be members at any one time. No person who has served as an attorney or expert in this lawsuit for any of the parties is eligible to be a member of the Board. If a person otherwise eligible for appointment is, at the time his or her appointment could be made, involved as a party, attorney, or expert in any civil or criminal case involving claims of racial profiling, such person shall be ineligible for appointment at that time.

The Citizens' Traffic Stop Advisory Board shall function for at least five years from the effective date of the Agreement. Thereafter, the continued existence of the Board is at the discretion of the Governor. Any vacancies shall be filled within sixty days by the Governor from the same membership category as the departing Board member. In the event of a vacancy involving a member originally nominated by the Plaintiffs' representative, the Governor shall choose the replacement member from two candidates nominated by the Plaintiffs' representative. No more than one of the two persons nominated as a replacement member can have been previously nominated for the Board by the Plaintiffs' representative.

The Citizens' Traffic Stop Advisory Board will review DPS' practices, policies and procedures relating to racial profiling, traffic stops, traffic stop data collection and analysis, and vehicle searches, including the requirements

of this Agreement. The Board may recommend to the DPS Director and Governor any proposed changes or improvements in DPS policies and practices that the Board approves by majority vote of the membership. The Board shall have access to any DPS records, data, statistics or reports the Board deems necessary to make informed assessments and recommendations, with the exception of any such material that is privileged, private or confidential under state or federal law. The Board may receive and consider input from citizens, community groups, law enforcement and the parties' representatives pertaining to potential or perceived race-based vehicle stops and/or vehicle searches by DPS personnel, and to related DPS policies and procedures.

VI. IMPLEMENTATION

A. Public Statement

The parties will use their best efforts to reach agreement on the text of a joint press release to announce this Settlement Agreement at the time it is accepted and approved by the District Court. The issuance of a joint press release will not preclude any party from issuing separate statements to the media about the Agreement, its legal and factual background, or other related matters.

B. Mediation

If, during the duration of the Agreement, any dispute arises about compliance or a claim of non-compliance with the terms and conditions of the Agreement, the parties' representatives will make a good faith effort to resolve the problem by means of direct negotiation. If the dispute cannot be resolved

between the parties within sixty days of the complaining party's representative providing written notice of the dispute to the other party's representative, the matter may be submitted by either party to a mutually acceptable mediator for purposes of non-binding mediation.

C. DPS Official Responsible for Implementation

The Assistant Director, Agency Support Division, will oversee and be responsible for DPS implementation and compliance with this Agreement. In the event that there is an administrative reorganization of DPS while the Agreement is in effect, the DPS Director will designate a new person to be responsible for implementation and compliance with the Agreement; any such person must hold a rank no lower than that which is equivalent to an Assistant Director in the present DPS organizational plan.

D. New or Changed Policies or Methods Relevant to The Agreement

While the Agreement is in effect, within twenty days of issuance, DPS will provide copies to the Plaintiffs' representative of any new forms, policies, procedures or practices, or additions and/or revisions thereto, which are adopted by DPS to carry out the terms of this Agreement, or which are used or relate to DPS' gathering and analysis of statistical information relating to traffic stops and vehicle searches. Copies of these materials shall be provided to the Plaintiffs' representative free of charge.

E. Records Related to Implementation of This Agreement

All DPS records which address or involve DPS' compliance with and implementation of the Settlement Agreement shall be deemed to be records

that are "reasonably necessary or appropriate to maintain an accurate knowledge of [DPS'] official activities, and of any of their activities which are supported by funds from the state," within the meaning of A.R.S. §39-121.01(B). All such records shall be maintained, cared for and preserved as required by Arizona's public records laws and the regulations adopted to implement said laws.

Unless a preservation requirement is specifically stated herein, this Settlement Agreement shall not be interpreted to require the preservation of any document, record, material, object, data or information for a time period longer than that which is required by Arizona's public records laws and the regulations adopted to implement said laws.

For the duration of this Agreement, DPS will cooperate with and facilitate requests for records made by the Plaintiffs' representative pursuant to Title 39, Chapter 1, Article 2 of Arizona Revised Statutes. Any such request by the Plaintiffs' representative shall be delivered directly to the DPS Assistant Director, Agency Support Division, or to his/her successor designated pursuant to Paragraph VI(C), above. Unless specifically provided otherwise in this Agreement, the Plaintiffs' representative will be charged the same fees for reproduction and delivery of records as would be charged to members of the general public.

F. Meetings

While the Agreement is in effect, the Defendants agree that their representative and the DPS official designated pursuant to Paragraph VI(C),

above, will participate in face-to-face meetings with the Plaintiffs' representative to discuss the steps taken to implement the terms of the Settlement Agreement. Such meetings will be held at the request of Plaintiffs' representative, but may be requested no more frequently than one meeting every six months.

G. Choice of Law

Arizona law shall govern the interpretation of this Agreement.

H. Interpretation

The parties agree that no court, mediator, or other person or body called upon to interpret this Agreement should apply any presumption that particular provisions of the Agreement must be more strictly construed against the party that wrote or contributed the provisions in question, it being agreed that counsel for the parties participated collectively in the negotiation and drafting of the Agreement. The Agreement shall not be construed for or against the position of any party because of the role of that party or his/her/its counsel in preparing the Agreement.

VII. ATTORNEY FEES

In full settlement of all actual and potential claims for attorney fees and costs arising from this litigation and from implementation of this Agreement, Defendants shall pay to Plaintiffs' counsel the amount of \$139,589.78. This amount shall be paid in full, by a check drawn in the manner specified by Plaintiffs. Said payment shall be made no later than thirty (30) days from the effective date of the Agreement. If payment is not made within forty-five (45)

days of the effective date, Plaintiffs shall receive interest at the rate of 10%, calculated from the effective date until the date the payment is made.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement in case number CIV 01-01463 PCT-JAT, United States District Court, District of Arizona, in counterpart originals.

COUNSEL FOR PLAINTIFFS:

LAW OFFICE OF LEE B.
PHILLIPS, P.C.

By: _____
Lee B. Phillips
Date: _____

AMERICAN CIVIL LIBERTIES UNION
OF ARIZONA

By: _____
Daniel J. Pochoda
Date: _____

AMERICAN CIVIL LIBERTIES UNION

By: _____
Reginald T. Shuford
Date: _____

COUNSEL FOR DEFENDANTS:

ATTORNEY GENERAL OF ARIZONA

Terry Goddard
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MANGUM, WALL, STOOPS & WARDEN,
P.L.L.C.

By: _____
Michael H. Hinson
Date: _____

By: _____
Franklin J. Hoover
Date: _____