

Exhibit A

Exhibit A

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23 ~~IN THE~~ UNITED STATES DISTRICT COURT
24 ~~FOR THE~~ DISTRICT OF ARIZONA

25 MANUEL ~~de~~ DE JESUS ORTEGA)
26 MELENDRES, JESSICA)
27 QUITUGUA RODRIGUEZ, DAVID)
28 RODRIGUEZ, VELIA MERAZ,)
MANUEL NIETO, JR., on behalf of)
himself themselves and all others)
similarly situated, and SOMOS)
AMERICA,)

Plaintiffs,

v.

vs.

JOSEPH M. ARPAIO, in his individual)
and official capacity as Sheriff of)
Maricopa County, Arizona, JOHN)
DOES 1-10 in their individual and)
official capacities as sheriff's deputies)
for the County of Maricopa, and)
MARICOPA COUNTY SHERIFF'S)
OFFICE, and MARICOPA COUNTY,)

Case No.)
No. CV 07-02513-PHX-MHM)

FIRST AMENDED COMPLAINT

(Class Action)

1. Violation of Equal Protection under the U.S. Constitution
2. Violation of Unreasonable Search and Seizure under U.S. Constitution
3. Violation of Due Process under U.S. Constitution
4. Violation of Right to Travel under U.S. Constitution
5. Violation of Due Process under Arizona Constitution
6. Violation of Right to Privacy under Arizona Constitution
7. Violation of Race Discrimination in Federally Funded Programs Assigned

ARIZONA,

Defendants.

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)

to the Hon. Mary H. Murguial

Additional Attorneys:

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***Pro Hac Vice Application to be filed**

-Plaintiff,

Plaintiffs Manuel de Jesus Ortega Melendres (~~“Plaintiff” or “Mr. Ortega”~~), Jessica Quitugua Rodriguez, David Rodriguez, Velia Meraz, Manuel Nieto, Jr., on behalf of ~~himself~~themselves and all others similarly situated, ~~by and through his attorneys, Ballard Spahr Andrews & Ingersoll, LLP, alleges upon information and belief, except as to his own actions, the investigation of his counsel, and the facts that are a matter of public record, as follows:~~ and Somos America (collectively, “Plaintiffs”) allege as follows:

NATURE OF THE CASE

PRELIMINARY STATEMENT

1. This is a class action to enforce the Fourth and Fourteenth Amendments to the United States Constitution; Title VI of the Civil Rights Act of 1964; and Article II, § 8 of the Arizona Constitution. Plaintiffs seek declaratory and injunctive relief against Defendants Sheriff Joe Arpaio (“Arpaio”), the Maricopa County Sheriff’s Office (“MCSO”) and Maricopa County, Arizona (collectively, “Defendants”).

2. 1. In this civil rights case, Plaintiff seeks to remedy and stop illegal, discriminatory and unauthorized enforcement of federal immigration laws against Hispanic persons in Maricopa County, Arizona. Plaintiff also seeks damages for his unlawful arrest and detention. As described below, Defendants have engaged in a widespread pattern and practice of racial profiling and other racially and ethnically discriminatory treatment in an illegal, improper and unauthorized attempt to “enforce” federal immigration laws against large numbers of Latino persons in Maricopa County without regard for actual citizenship or valid immigration status.

3. Claiming authority under a limited agreement with U.S. Immigration and Customs Enforcement (ICE) that actually prohibits the practices challenged here, Defendants have launched a series of massive so-called “crime suppression sweeps” that show a law enforcement agency operating well

beyond the bounds of the law. During these sweeps, which have shown no signs of abating since Defendants began them in September 2007, large numbers of MCSO officers and volunteer “posse” members under Defendants’ direction and control have targeted Latino persons for investigation of immigration status, using pretextual and unfounded stops, racially motivated questioning, searches and other mistreatment, and often baseless arrests. Defendants’ pattern and practice of racial profiling goes beyond these sweeps to include widespread, day-to-day targeting and mistreatment of persons who appear to be Latino.

4. To curtail Defendants’ illegal conduct, Plaintiffs bring this action as representatives of a class of Latino persons who, as a result of racial profiling, have been or will be stopped, detained, interrogated or searched by Arpaio and his agents in moving or parked vehicles in Maricopa County. The moment Plaintiffs and those they represent were stopped by Defendants, they became the victims of “an all too familiar set of circumstances – an intrusive law enforcement stop and seizure of innocent persons on the basis of suspicions rooted principally in the race of the ‘suspects.’” *Washington v. Lambert*, 98 F.3d 1181, 1182 (9th Cir. 1996). Plaintiffs seek judicial relief to enjoin Defendants’ unlawful racial profiling and the attendant racially motivated mistreatment and constitutional injuries that Plaintiffs and the class will otherwise continue to endure.

JURISDICTION AND VENUE

5. ~~2-~~This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. This Court has authority to grant declaratory, and injunctive, ~~and monetary~~ relief pursuant to 28 U.S.C. §§ 1343, ~~2201,~~2201 and 2202, and to award attorneys’ fees under ~~28~~42 U.S.C. §§ 1988 ~~and 2412.~~(b).

6. ~~3-~~Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

7. ~~4.~~ Plaintiff Manuel de Jesus Ortega Melendres, ~~a Hispanic male, (“Mr. Ortega”)~~ is a citizen and resident of ~~Sonora, Mexico.~~ At the time of the events ~~that are the subject of~~underlying this lawsuit, Mr. Ortega possessed a valid Visa issued by the United States Department of State and a valid Permit issued by the United States Department of Homeland Security. Mr. Ortega he was lawfully present in the United States. He is of Latino descent and, by physical appearance, is a person of color. He is a retired school teacher.

8. Plaintiffs David and Jessica Rodriguez, husband and wife, are U.S. citizens and residents of Maricopa County. The Rodriguezes are of Latino descent and, by physical appearance, are persons of color.

9. Plaintiffs Velia Meraz and Manuel Nieto, Jr., siblings, are U.S. citizens and residents of Maricopa County. They are of Latino descent and, by physical appearance, are persons of color. They work for their family-owned business in Phoenix.

10. Plaintiff Somos America/We Are America is a community-based non-profit membership organization, comprised of grassroots organizations, community and religious leaders, labor unions, students and others, established in March 2006 to mobilize for equal rights for immigrant communities in Arizona and for comprehensive immigration reform. Somos America’s organizational mission includes seeking to combat racial discrimination directed at Latinos. Plaintiff Somos America and its members have been injured by the pattern and practice of Defendants alleged in this Complaint.

11. Upon information and belief, because of their race, color and/or ethnicity, Somos America members have been unlawfully targeted, stopped, questioned and/or detained by Defendants, and those they direct and control, as a result of Defendants’ policy and practice of profiling and targeting persons whom they believe to be of Latino descent to determine their immigration status. As a result of Defendants’ policy and practice and failure to provide adequate training

and supervision, Defendants' agents have pretextually, with racial motivation and without adequate cause stopped vehicles driven or ridden in by Somos America members and have subjected occupants to discriminatory, unreasonable and burdensome questioning and other differential treatment without individualized suspicion or any evidence of criminal activity. Several individual members have reported to Somos that they have been stopped while driving in Maricopa County by MCSO officers without good cause and subjected to the mistreatment described herein.

12. Because of Defendants' policies and pattern and practice of racially profiling persons in Maricopa County whom they believe to be of Latino descent, Somos America has experienced an increase in various requests for assistance from persons who have been negatively impacted by Defendants' actions. In response, Somos America and its members have participated in monitoring Defendants' pattern and practice and assisting persons who have been unlawfully racially profiled by Defendants. Somos America is concerned that it will not be able to meet adequately this increased demand for assistance. Already its limited sources have been, and continue to be, diverted and drained as a result of Defendants' policies and practices and the harm they cause.

13. Defendant Joseph M. Arpaio is the Sheriff of Maricopa County, Arizona, and is sued in his official capacity. He is the final decisionmaker for Maricopa County in the area of law enforcement, and is responsible for setting and implementing the policies and practices of the MCSO, including but not limited to creating and regulating department policies regarding the stops and arrests and related treatment of individuals in motor vehicles in Maricopa County.

14. Defendant Arpaio, on behalf of the MCSO and with the Maricopa County Board of Supervisors, is responsible for entering into a Memorandum of Agreement (MOA) with U.S. Immigrations and Customs Enforcement (ICE) that

purports to authorize enforcement of federal immigration laws by specially nominated and cross-trained MCSO Sheriff's deputies. Defendant Arpaio, in his role as Sheriff, is responsible for implementation and administration of the MOA. He is also responsible for directing MCSO immigration enforcement activity that is legally unauthorized and conducted pursuant to his policy and practice of racial profiling.

15. Upon information and belief, Arpaio participated in the authorization, planning and supervision of the actions of the MCSO employees involved in the events described in this Complaint. Upon information and belief, Arpaio is also responsible for recruiting, training, supervising and managing members of the MCSO's volunteer "posse" that have carried out Defendants' policies and practices and have participated in the events described herein without adequate selection processes, proper authority, or adequate training and supervision.

16. Upon information and belief, Arpaio is also responsible for the institution of a telephonic "hotline" used to generate and pursue "tips" about suspected immigration violations notwithstanding the complexity of immigration law, the general lack of training, knowledge, and experience among the public in immigration law, and the unfortunate reality that such a hotline invites individuals to equate race with immigration status and allows some to pursue personal grievances by way of a hotline complaint. Arpaio established and has overseen an "Illegal Immigration and Interdiction" unit, known as the "Triple I Unit," to pursue hotline tips and other immigration enforcement activities carried out in the manner described herein.

17. Upon information and belief, Arpaio failed to train MCSO personnel and volunteers adequately and to promulgate appropriate policies to prevent the unlawful stops of Plaintiffs and class members based on impermissible racial profiling and arbitrary and unreasonable stops and seizures.

Arpaio has also failed to develop criteria to avoid the abuse of the unchecked discretion he has afforded MCSO personnel, and has established, implemented and enforced illegal and unconstitutional policies and practices that have caused the unlawful treatment of Plaintiffs and class members by MCSO Deputies and other personnel and “posse” members.

18. Defendant MCSO is a law enforcement agency in Maricopa County. Upon information and belief, MCSO programs and activities receive financial assistance through federal grants and other contributions from the U.S. Department of Justice (“DOJ”) and other federal agencies. As a recipient of federal financial assistance, MCSO is legally required to provide and conduct its programs and activities in a racially and ethnically non-discriminatory manner.

19. 5. Defendant Maricopa County, Arizona, is a political subdivision of the State of Arizona that can sue and be sued in its own name. Upon information and belief, Maricopa County receives federal funds. programs and activities receive federal financial assistance. The County is therefore legally required to conduct its programs and activities in a racially and ethnically non-discriminatory manner. By both its action and inaction, Defendant Maricopa County has agreed with, accepted, acquiesced in, and sanctioned Defendant Arpaio’s focus on supposed enforcement of federal civil immigration laws at the expense of pursuit of criminal conduct and has done the same with regard to Defendants’ policy and practice of employing illegal and improper racial profiling and other discriminatory treatment of Plaintiffs and other Latino persons in Maricopa County. In fact, the Chair of the Maricopa County Board of Supervisors has praised as good law enforcement these policies and practices of Defendant Arpaio in the face of large-scale criticism that they specifically target Latinos.

6. Defendant Joseph M. Arpaio (“Arpaio”) was at all relevant times the Sheriff of Maricopa County, Arizona, acting within the scope of his employment as Sheriff. He is responsible for, among other things, the implementation of the policies

~~and/or practices of Maricopa County, including but not limited to, the control, supervision, operation and administration of the Maricopa County Sheriff's Office.~~

~~7. Defendants John Does 1-10 were at all times relevant to this complaint, employed, duly appointed, and acting as sworn officers of the Maricopa County Sheriff's Office, and were at all times acting under color of law and pursuant to the policies and/or usages of the County of Maricopa and the State of Arizona. Said Defendants are sued individually and in their official capacities as sheriff's deputies. Defendants are hereinafter referred to collectively as "Defendants."~~

FACTS

GENERAL ALLEGATIONS

Limits on Defendants' Authority to Perform Immigration Functions

20. In or around January 2007, Defendants Maricopa County and Arpaio entered into an MOA with ICE that provided for a maximum of 160 nominated, trained and certified personnel of the MCSO to perform certain immigration enforcement functions in limited circumstances. (A true copy of the MOA is attached hereto as Exhibit A.)

21. Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g) authorizes the Secretary of the U.S. Department of Homeland Security, of which ICE is a part, to enter into MOAs with state and local law enforcement agencies to train and permit designated officers to perform certain immigration enforcement functions. Under such agreements, the designated state and local officers are to be trained and supervised by appropriate ICE officers.

22. According to ICE, "[t]he 287(g) program is designed to enable state and local law enforcement personnel, incidental to a lawful arrest and during the course of their normal duties, to question and detain individuals for potential removal from the United States, if these individuals are identified as undocumented illegal aliens and they are suspected of committing a state crime."
Fact Sheet, Section 287(g) of the Immigration and Nationality Act (September 24,

2007), at <http://www.ice.gov/pi/news/factsheets/factsheet287gprogoover.htm>. (A true copy of the Fact Sheet is attached hereto as Exhibit B.)

23. ICE has made clear that “[t]he 287(g) program is not designed to allow state and local agencies to perform random street operations,” and “is not designed to impact issues such as excessive occupancy and day laborer activities.” *Id.* ICE guidelines state, “Police can only use 287(g) authority when people are taken into custody as a result of violating state or local criminal law. Police cannot randomly ask for a person’s immigration status or conduct immigration raids,” and “[officers may only] use their authority when dealing with someone who is suspected of a state crime that is more than a traffic offense.” *Id.* (emphases added).

24. Part I of the MOA provides that “the exercise of the immigration enforcement authority granted under this MOA to participating LEA [Law Enforcement Agency] personnel shall occur only as provided in this MOA.” Part V provides that the immigration enforcement authority granted to Defendants is “subject to the limitations contained in this MOA.” (Ex. A.)

25. Part XV of the MOA provides in part that “[p]articipating LEA personnel who perform certain federal immigration enforcement functions are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice ‘Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies’ dated June 2003.” (Ex. A.)

26. The DOJ Guidance states: “‘Racial profiling’ at its core concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement investigative procedures.” It notes that “[r]acial profiling in law enforcement is not merely wrong, but also ineffective.” (A true copy of the DOJ Guidance is attached hereto as Exhibit C.)

27. The DOJ Guidance directs that “[i]n making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law

enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description.” (Ex. C (emphases added).)

28. Arpaio has utilized deputies trained under the MOA – and, on information and belief has also used other MCSO deputies and other personnel and volunteers who are not specially nominated and cross-trained to perform immigration duties – on and/or in support of his “Triple I Unit.” In doing so (and in other ways), he has violated the applicable ICE guidelines as to what a 287(g) agreement may allow.

29. In short, Defendants’ authority to enforce federal immigration law is constrained and limited by the U.S. and Arizona Constitutions, federal and state law, and the MOA. Defendants have grossly exceeded these limits by devising and implementing an invidious and unconstitutional custom, policy and practice of racial profiling toward Latino persons in Maricopa County and an unconstitutional policy and practice of stopping Latino drivers and passengers, pretextually and without individualized suspicion or cause, and of subjecting them to different, burdensome, stigmatizing and injurious treatment once stopped. Consequently, Defendants have violated the constitutional and civil rights of Plaintiffs and countless other Latino members of the Maricopa County community.

Defendants’ Racial Profiling and Immigration “Sweeps”

30. Specifically, Defendants have adopted an unlawful, racially-biased policy of stopping, detaining, questioning and/or searching persons in vehicles in Maricopa County who are or appear to be Latino to interrogate them about their perceived immigration status based on nothing more than their race, color and/or ethnicity. Defendants have implemented this policy in Maricopa County in part through a series of so-called “crime suppression sweeps” that target persons who appear to be Latino for stops, questioning, arrests and other differential

treatment that is not based on a constitutionally acceptable level of cause or suspicion and that is in any event racially motivated.

31. However, as exemplified by the stops of several Plaintiffs described below, this racially-motivated and biased policy of targeting persons who appear to be Latino for immigration enforcement through pretextual and unfounded stops, interrogation, and arrests also applies and is followed as a general matter by MCSO personnel and is not limited to when “sweeps” are being conducted. Persons who appear to be Latino, when driving or riding in a car, are at risk of being stopped and subjected to burdensome, time-consuming, harassing and stigmatizing interrogation, searches and other mistreatment that may culminate in an arrest and further detention. These stops and interrogations are frequently unsupported by reasonable suspicion or probable cause, and in any event, are pretextual and racially motivated.

32. Indeed, upon information and belief, Caucasian drivers and passengers involved in the same or similar acts or alleged violations are treated differently and their vehicles stopped at much lower rates than similarly situated Latino drivers and passengers pursuant to MCSO policy and practice. Further, Caucasian drivers and passengers are treated differently and less intrusively and detained for shorter periods of time after their vehicles are stopped by MCSO personnel than Latino drivers and passengers after being stopped. Latino occupants are also treated differently and more intrusively by MCSO than Caucasian occupants of the same vehicle.

33. Defendants’ pattern and practice of racial profiling is evidenced by numerous statements of Arpaio. For example, Arpaio has claimed that physical appearance alone is sufficient to question an individual regarding their immigration status. See Howard Witt, “Does Crackdown Cross Line? Arizona Efforts Stir Racial Profiling Claims,” *Chicago Tribune*, May 26, 2008.

34. At a press conference last year, he described his operations as a “pure program” designed “to go after illegals, not the crime first.” See Richard Ruelas, “Arpaio Stays Silent on Real ICE Plan,” *The Arizona Republic*, March 2, 2007, at B10. Arpaio’s practice is to “go after illegals You go after them, and you lock them up.” *Id.* Arpaio and Maricopa County do not have legal authority under federal or state law or the MOA to engage in such conduct, let alone to do so in a discriminatory manner.

35. Defendants have targeted specific areas of Maricopa County that have high Latino populations or large numbers of Latino day laborers for pretextual “crime suppression operations.” On information and belief, large numbers of MCSO deputies and hundreds of volunteer “posse” members, assisted by members of motorcycle clubs such as the “American Freedom Riders,” have been concentrated in such areas during these “sweeps.” See, e.g., Press Release, Maricopa County Sheriff’s Office, “Sheriff’s Operation in Guadalupe Returns: Arpaio Disregards Mayor Jimenez’s Request to Leave Town” (April 4, 2008), at http://www.mcso.org/include/pr_pdf/Guadalupe%202008.pdf.

36. Defendants’ sweeps were launched in September 2007, have continued through the present time, and show no signs of abating.

37. On or about September 27, 2007, Arpaio and MCSO initiated a “crime suppression operation” in Cave Creek, Arizona, to investigate and arrest persons deemed by them to be “illegal” immigrants and to disrupt a “day labor” center in the parking lot of a local church where persons who are predominantly Latino gather. Acting under color of law and Arpaio’s orders, several MCSO officers detained, questioned and arrested at least nine Latino individuals because they allegedly were undocumented immigrants. In the case of at least one vehicle that MCSO officers stopped after it left the church parking lot, MCSO officers let the Caucasian driver leave and did not issue a citation to him, but they

questioned, detained and arrested the Latino passengers in the Caucasian driver's vehicle. See Press Release, Maricopa County Sheriff's Office, "Sheriff's Office Not Waiting for Loitering and Soliciting Ordinance to Take Effect" (September 27, 2007), at http://www.mcso.org/include/pr_pdf/CC.pdf. Upon information and belief, the officers did not have reasonable suspicion or probable cause to believe that any driver stopped or passenger questioned had committed a violation of Arizona or federal law, and in any event, used a traffic violation to investigate the immigration status of all Latino occupants.

38. On October 4, 2007, Arpaio and MCSO initiated another "crime suppression operation" in Queen Creek, Arizona. Again, at least 16 Latino individuals were detained, questioned and arrested on suspicion of being undocumented immigrants. See Press Release, Maricopa County Sheriff's Office, "Sheriff Arpaio Goes After Day Laborers" (October 4, 2007), at http://www.mcso.org/include/pr_pdf/Queen%20Creek%20Day%20Laborers.pdf. Upon information and belief, the officers did not have reasonable suspicion or probable cause to believe that any driver stopped or passenger questioned had committed a violation of Arizona or federal law, and in any event, used a traffic violation to investigate the immigration status of all Latino occupants. Upon information and belief, there were other persons who appeared to be Latino beyond the number arrested who were also subject to pretextual, racially motivated stops and questioning aimed at investigating them for immigration enforcement.

39. For several months beginning in October 2007, Defendants Arpaio and MCSO targeted the intersection of 34th Street and Thomas Road in central Phoenix because of the presence of day laborers near Pruitt's Furniture Store. See, e.g., Press Release, Maricopa County Sheriff's Office, "Arpaio Intensifies Presence at Pro-Illegal Immigration Protests at Pruitt's" (December 5, 2007), at http://www.mcso.org/include/pr_pdf/Arrests%20120507.pdf. Upon information

and belief, MCSO did not engage in these activities at the invitation or request of the City of Phoenix Police Department, which has jurisdiction over this area. Upon information and belief, MCSO officers engaged in racial profiling and targeted Latino individuals during this operation. These officers stopped and questioned Latino drivers and passengers prior to having adequate cause or suspicion that they were involved in criminal acts, and in any event, for racially motivated reasons, singled them out for investigation and enforcement and subjected them to different treatment.

40. On December 5, 2007, Defendant Arpaio announced that he was increasing the number of MCSO deputies patrolling the Pruitt's parking area. *Id.* Arpaio announced that he was acting in response to protests by members of the Latino community about the policies of the MCSO and the Pruitt's owner. During the operation at Pruitt's, Arpaio and his officers stopped, detained, questioned and arrested Latino persons in the vicinity of the store. Upon information and belief, the officers did not have reasonable suspicion or probable cause to believe that those stopped had committed a violation of Arizona or federal law prior to making the stop, and in any event, for racially motivated reasons, singled them out for investigation and enforcement and subjected them to different treatment. In an apparent effort to suppress the Pruitt store protesters' exercise of their First Amendment rights, Arpaio announced that he would continue to patrol the area until the protests ended. *Id.*

41. On or about January 18, 2008, Arpaio and MCSO conducted a "crime suppression operation" between 16th and 40th Streets and McDowell and Indian School Roads in Phoenix. See Press Release, Maricopa County Sheriff's Office, "Sheriff Mobilizes Posse in Central Phoenix" (January 18, 2008), at http://www.mcso.org/include/pr_pdf/Sheriff%20Mobilizes%20Posse%20in%20Central%20Phoenix.pdf. Upon information and belief, MCSO did not engage in these activities at the invitation or request of the Phoenix Police Department,

which has jurisdiction over this area. Upon information and belief, MCSO officers engaged in racial profiling and targeted Latino individuals during this operation. To justify the massive use of MCSO resources in the area bounded by 16th and 40th Streets and Indian School and McDowell Roads in Phoenix, Defendant Arpaio stated: “I anticipate that many illegal immigrants will be arrested as the central Phoenix neighborhood remains a popular spot for day laborers.” *Id.* Such day laborers are predominantly Latino, but are by no means exclusively noncitizens, let alone all undocumented.

42. In late March 2008, Arpaio and MCSO conducted a “crime suppression operation” at Cave Creek and Bell Roads in Phoenix because of the existence of the Macehueli Day Labor Center, which is run by one of the leaders of the Pruitt’s protests, Salvador Reza. See Press Release, Maricopa County Sheriff’s Office, “Bell Road Crime Suppression Patrols” (March 28, 2008), at http://www.mcso.org/include/pr_pdf/Bell%20Operations%2032808.pdf. Upon information and belief, MCSO did not engage in these activities at the invitation or request of the Phoenix Police Department, which has jurisdiction over this area. Upon information and belief, MCSO officers engaged in racial profiling and targeted Latino individuals during this operation. Defendant Arpaio praised as “patriotic” the private groups, including the American Freedom Riders, that on information and belief, had been harassing all Latino persons entering and leaving this legal center. Upon information and belief, Arpaio was aware of the anti-immigrant reputation of the American Freedom Riders and the public use of racial epithets by their members.

43. Between April 3 and April 6, 2008, Arpaio and MCSO conducted a “crime suppression operation” in the Town of Guadalupe, Arizona. See Press Release, Maricopa County Sheriff’s Office, “Sheriff’s Crime Suppression Operation Moves to Guadalupe” (April 3, 2008), at http://www.mcso.org/include/pr_pdf/Guadalupe

%20Operation.pdf. Upon information and belief, MCSO officers engaged in racial profiling, targeting individuals who appeared to them to be Latino during this operation.

44. As MCSO is the law enforcement agency for the Town of Guadalupe, Arpaio was aware that nearly all of the residents of Guadalupe are of Latino and/or Native American descent. In response to the criticism of his tactics and allegations of racial profiling by the Mayor of Guadalupe, Rebecca Jimenez, Arpaio publicly labeled her “a supporter of illegal immigration.” See Press Release, Maricopa County Sheriff’s Office, “Sheriff’s Operation in Guadalupe Returns: Arpaio Disregards Mayor Jimenez’s Request to Leave Town” (April 4, 2008), at http://www.mcso.org/include/pr_pdf/Guadalupe%202008.pdf.

45. On April 4, 2008, after the commencement of the MCSO sweep in the Town of Guadalupe, Phoenix Mayor Phil Gordon formally requested that U.S. Attorney General Michael Mukasey launch a Justice Department investigation into the “discriminatory harassment, improper stops, searches and arrests” of Latino persons in Maricopa County by the MCSO. (A copy of Mayor Gordon’s letter is attached as Exhibit D.)

46. On or about May 7, 2008, Arpaio and MCSO conducted a “crime suppression operation” in Fountain Hills, Arizona. See Press Release, Maricopa County Sheriff’s Office, “Mesa Drop House” (May 8, 2008) at http://www.mcso.org/include/pr_pdf/mesa%20drop%20house%2050808.pdf. Upon information and belief, MCSO officers engaged in racial profiling and targeted Latino individuals during this operation as described above for other sweeps.

47. On or about June 26, 2008, Arpaio and MCSO conducted a “crime suppression operation” in Mesa, Arizona, using nearly 200 deputies and posse members. See Press Release, Maricopa County Sheriff’s Office, “Sheriff’s Crime Suppression/Illegal Immigration Operation Moves Into Mesa” (June 26, 2008) at

http://www.mcso.org/include/pr_pdf/Mesa%20Crime%20Suppression.pdf. Upon information and belief, MCSO did not engage in these activities at the invitation or request of the City of Mesa Police Department, which has jurisdiction over this area. Upon information and belief, MCSO officers engaged in racial profiling and targeted Latino individuals during this operation as described above for other sweeps.

48. On information and belief, the MCSO personnel involved in these “crime suppression sweeps” and in the vehicle stops of Plaintiffs and other Latinos in Maricopa County have targeted, stopped, interrogated, detained or arrested Latino persons based on their race, color and/or ethnicity, pretextually and not because of probable cause or reasonable suspicion that they had committed any crime.

Additional Indicia of Racial Bias

49. In early 2008, Arpaio established a telephone hotline to facilitate MCSO’s unlawful, racially-biased immigration enforcement tactics and its racial profiling of Latinos in Maricopa County. Arpaio was aware that his policy of acting on anonymous citizen “tips” about alleged undocumented immigrants and his invitation for untrained members of the public to participate in his enforcement campaign would result in false, inaccurate, and racially motivated reports about Latino residents. As opposed to law enforcement use of tips from the public which are based on suspected criminal activity and behaviors, a citizen report that an individual is “here illegally” will often be based solely on an individual’s race, color and/or ethnicity. On information and belief, this hotline has been used to further the policies and practices complained of herein and has increased their racially discriminatory impact.

50. Racial profiling in law enforcement operations has been recognized as a serious and recurrent problem by elected officials and associations representing chiefs of police and other law enforcement professionals across the

nation and beyond. Professional safeguards have been developed for law enforcement agencies to monitor and deter racially motivated practices when stopping and questioning the drivers of vehicles and any passengers. These safeguards include: collecting data for every vehicle stop, including data regarding the race of the persons affected, the identity of the officers involved, the reason for the stop and the actions taken; regularly analyzing this data for the agency and for particular units and officers; intervening if the resulting data indicate a problem of racial profiling or racial animus; requiring ongoing training of all personnel in the area of racial bias and sensitivity; disciplining personnel upon documented findings of racially improper actions; video and audio taping of all vehicle stops from start to finish; and making available to the public the results of the agency's monitoring efforts and its internal reviews of racial profiling or race discrimination complaints.

51. On information and belief, Defendants have not adequately implemented, or even begun to implement, the foregoing safeguards. Rather, Arpaio and other Defendants have remained steadfast in their resolve to continue their course. As a result, Plaintiffs and those they seek to represent continue to be at risk for being subjected to pretextual stops, detention, questioning, searches and other mistreatment, without adequate cause or suspicion and because of the color of their skin.

CLASS REPRESENTATIVES

52. Defendants' behavior toward the following Plaintiffs starkly illustrates the unlawful policies, practices and conduct described above.

The Unlawful Stop and Detention of Manuel de Jesus Ortega Melendres

53. 8. On September 6, 2007, Mr. Ortega legally entered the United States at the border station in Nogales, Arizona.

54. 9. Mr. Ortega possesses a ~~United States~~U.S. Visa that is valid through August 23, 2016, and possessed a Permit issued by the ~~United States~~U.S. Department of Homeland Security that was valid through November 1, 2007.

55. 10. On or about September 26, 2007, at 6:15 a.m., Mr. Ortega was a passenger in a vehicle in Cave Creek, Arizona, that was stopped by officers from the Maricopa County Sheriff's Office. The vehicle was being driven by a Caucasian male, but the passengers, including Mr. Ortega, were ~~Hispanic~~Latino men.

56. 11. The officers told the driver that he was being stopped for speeding, but they did not give him a citation or take him into custody.

57. 12. The officers looked at Mr. Ortega sitting in the vehicle and asked him to produce identification.

58. 13. Mr. Ortega showed them the following documents that he had in his wallet: (a) his United States Visa, which has his photograph and fingerprint on it; (b) his Mexican Federal Voter Registration card, which also has his photograph and fingerprint on it; and (c) a copy of the Permit he was given by the ~~United States~~U.S. Department of Homeland Security with a stamp ~~that shows his admission to the United States was valid~~showing its validity through November 1, 2007.

59. 14. Although Mr. Ortega produced identification establishing his legal status ~~in the United States~~, the officers told him to exit the vehicle, ~~which he did~~.

60. 15. After exiting the vehicle, the officers pushed Mr. Ortega against a ~~Sheriff's Department~~police vehicle and roughly patted him down over his entire body ~~in a rough manner~~.

61. 16. The Sheriff's officers then took everything out of Mr. Ortega's pockets, including his wallet and a small bottle of lotion that Mr. Ortega occasionally applies to his face so that his skin does not become dry.

62. 17. The Sheriff's officers, upon removal of the small bottle of lotion from Mr. Ortega's pocket, asked Mr. Ortega in a confrontational manner, "How many times a week ~~to~~do you jack off?"

63. ~~18.~~ Mr. Ortega was then handcuffed with his arms behind his back. Mr. Ortega had a broken wrist years ago that did not heal correctly. His wrist has a visible deformity and causes him pain. Mr. Ortega asked the Sheriff's officers to please be careful in handcuffing him, but they handled him roughly. The officers kept Mr. Ortega's hands handcuffed behind his back for approximately 40 minutes.

64. ~~19.~~ The officers then put Mr. Ortega in the back of a Sheriff's vehicle and took him to the Sheriff's office in Cave Creek-

~~20.~~ At the Sheriff's office they placed Mr. Ortega in a holding cell where they left him where he was placed in a holding cell for four hours.

65. ~~21.~~ Throughout the time that Mr. Ortega was seized from the vehicle, patted down, handcuffed, transported to the Sheriff's office, placed in the holding cell and left to remain in the holding cell, no one from the Sheriff's office explained anything to him, and no one offered to get a Spanish speaking officer or translator to assist in communicating with him.

66. ~~22.~~ The officers did not advise Mr. Ortega of his Miranda rights.

~~23.~~ The officers did not tell Mr. Ortega that he had the right to speak to an attorney.

~~24.~~ The officers did not tell Mr. Ortega anything about whether he could or should make any statements to them.

67. ~~25.~~ The officers did not give Mr. Ortega any opportunity to make a phone call.

68. ~~26.~~ The officers did not tell Mr. Ortega what crime he allegedly committed, or if he was being charged with any crime.

69. ~~27.~~ The officers did not say anything about what might happen to Mr. Ortega.

70. ~~28.~~ The officers did not give Mr. Ortega any documents regarding his arrest or their putting him in jail.

71. ~~29.~~ After the Sheriff's officers left Mr. Ortega in the jail in Cave Creek for four hours, they placed him in handcuffs again, ~~with his arms behind his back and~~ took him to a Hummer vehicle. ~~A driver and a driver's companion then~~ and drove him to downtown Phoenix. The driver of that vehicle spoke Spanish. Mr. Ortega explained that his wrist was quite painful and asked if he could be handcuffed with his hands in front of him rather than ~~with his hands pulled behind his back~~ him. The driver said that he could not do that.

72. ~~30.~~ The officers drove Mr. Ortega to the U.S. ~~Immigration and Customs Enforcement ("ICE")~~ local ICE office on Central Avenue in downtown Phoenix. They took him inside and removed the handcuffs. Mr. Ortega's hands were swollen, and he was in pain.

73. ~~31.~~ At the ICE office, Mr. Ortega was placed in a holding cell again and left unattended for more than ~~one~~ an hour.

74. ~~32.~~ After ~~waiting in the cell,~~ Mr. Ortega was then taken to an ICE official. ~~He~~ who did not identify himself or give Mr. Ortega any identification. The Sheriff's officers who arrested Mr. Ortega were also present.

75. ~~33.~~ The ICE officer asked Mr. Ortega how he entered the United States. Mr. Ortega told him that he came through legally at the port of entry at Nogales, Arizona. The ICE officer official asked for Mr. Ortega's documents.

~~34.~~ The Sheriff's officers gave Mr. Ortega's Visa and other documents to the ICE official. The ICE official took look He took a quick look at the documents and said, "These documents are good." The ICE official told Mr. Ortega he was free to leave.

~~35.~~ The ICE official told Mr. Ortega he was free to leave.

~~36.~~ Mr. Ortega was in custody from 6:15 a.m. until about 3:00 p.m.

76. ~~37.~~ During the approximately Mr. Ortega had been in custody for about nine hours, During that he was in custody time, Mr. Ortega was never: (a)

given any water, (b) given any food, (c) told his rights, or (d) given the name of any of the officers involved.

77. ~~38.~~ Mr. Ortega also was never given any paperwork, other than a case number, with any information about his: (a) being stopped, (b) being taken into custody by the Sheriff's officers, (c) being held in jail by the ~~Sheriff's~~ Sheriffs officers, (d) being transferred to the ICE office, (e) being held in jail at the ICE office, or (f) his being released from custody.

78. ~~39.~~ After being released ~~in downtown Phoenix~~, Mr. Ortega had to make his own way from downtown Phoenix to Cave Creek.

79. ~~40.~~ Because of Mr. Ortega's experience with the Maricopa County Sheriff's officers he is now afraid.

~~41.~~ Mr. Ortega He is frightened to walk on the street or be seen in public in Maricopa County because he fears that the Sheriff's officers will come and arrest him again because he is ~~Hispanic~~ Latino and does not speak English.

80. ~~42.~~ Mr. Ortega is afraid that the Sheriff's officers will hurt him physically if they pick him up again.

81. ~~43.~~ Mr. Ortega is afraid that he will be thrown in jail without any explanation, without any rights, and without any opportunity to get help even though the federal government of the United States has issued a Visa to him that gives him permission to be here.

Defendants' Limited Authority to Perform Immigration Enforcement Functions

~~44.~~ Pursuant to Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. §1357(g), the Secretary of the U.S. Department of Homeland Security is authorized to enter into agreements with state and local law enforcement agencies to train and permit designated officers to perform certain immigration enforcement

functions. Under such a Memorandum of Agreement (“MOA”), the state and local officers are given training and supervised by appropriate ICE officers.

45. According to ICE, “[t]he 287(g) program is designed to enable state and local law enforcement personnel, incidental to a lawful arrest and during the course of their normal duties, to question and detain individuals for potential removal from the United States, if these individuals are identified as undocumented illegal aliens and they are suspected of committing a state crime.” *Fact Sheet, Section 287(g) of the Immigration and Nationality Act* (September 24, 2007), available at <http://www.ice.gov/pi/news/factsheets/factsheet287gprogoover.htm> (emphasis added)(a true copy of the *Fact Sheet* is attached hereto as Exhibit A).

46. ICE also has made it clear that, “[t]he 287(g) program is not designed to allow state and local agencies to perform random street operations.” The 287(g) program also, “is not designed to impact issues such as excessive occupancy and day laborer activities.” Indeed, “ICE representatives repeatedly emphasized that it is designed to identify individuals for potential removal, who pose a threat to public safety, as a result of an arrest and/or conviction for state crimes.” *Id.* (emphasis added).

47. ICE guidelines specifically direct that, “Police can only use 287(g) authority when people are taken into custody as a result of violating state or local criminal law. Police cannot randomly ask for a person’s immigration status or conduct immigration raids,” and officers may only, “use their authority when dealing with someone who is suspected of a state crime that is more than a traffic offense.” *Id.* (emphasis added).

48. In or around January 2007, Defendants Maricopa County and Arpaio entered into an MOA with ICE which authorized up to a maximum of 160 nominated, trained, and certified personnel of the Maricopa County Sheriff’s Office to perform certain immigration enforcement functions. A true copy of the MOA is attached hereto as Exhibit B.

~~49. Part I of the MOA provides that, “the exercise of the immigration enforcement authority granted under this MOA to participating LEA [Law Enforcement Agency] personnel shall occur only as provided in this MOA.” Part V of the MOA specifically provides that the immigration enforcement authority granted to Defendants is, “subject to the limitations contained in this MOA.”~~

~~50. Part XV of the MOA provides as follows:~~

~~Participating LEA personnel who perform certain federal immigration enforcement functions are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice “Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies” dated June 2003.~~

~~Participating LEA personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the LEA as needed.~~

~~51. The U.S. Department of Justice Guidance Regarding the Use of Race By Federal Law Enforcement (“DOJ Guidance”) to which Defendants are bound specifically states that, “[r]acial profiling’ at its core concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement investigative procedures,” and that, “[r]acial profiling in law enforcement is not merely wrong, but also ineffective.” A true copy of the DOJ Guidance is attached hereto as Exhibit C.~~

~~52. The DOJ Guidance directs that, “[i]n making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description.”~~

~~53. Defendants’ authority to enforce federal immigration law is constrained and limited by the U.S. Constitution, federal law and the MOA.~~

~~54. Notwithstanding those profound limits on Defendants’ authority, Defendants, acting under and pursuant to Arpaio’s policies, practices, philosophies and~~

~~directives, have grossly exceeded the limits of their lawful authority and in so doing they have egregiously trampled the constitutional and civil rights of Ortega and countless other Hispanic and Latino members of the Maricopa County community.~~

~~55.— By their actions described above and as set forth in more detail below, Defendants have devised and implemented an invidious and unconstitutional custom, policy and practice of racial profiling toward Hispanic and Latino persons in Maricopa County.~~

Defendants' Racial Profiling and Abuse of Authority

~~56.— In or about July, 2007, Arpaio established a dedicated hotline for people to call the Maricopa County Sheriff's Office with information about alleged unauthorized aliens. Arpaio and Maricopa County do not have legal authority under federal law or the MOA to establish and operate that hotline.~~

~~57.— Arpaio established and implemented a "Triple I" Unit (Illegal Immigration and Interdiction) to investigate tips received on his illegal immigration hotline. Arpaio and Maricopa County do not have legal authority under federal law or the MOA to operate the Triple I Unit.~~

~~58.— On September 27, 2007, Arpaio ordered his Triple I Unit to go to Cave Creek, Arizona, to investigate and arrest illegal immigrants. Acting under color of law and Arpaio's orders, several Maricopa County Sheriff's officers detained, questioned and arrested at least nine Hispanic individuals allegedly because they were illegal immigrants. Upon information and belief, those officers did not have probable cause to believe that any of those detained, questioned or arrested had committed a violation of Arizona state law. Those arrested were transported directly to jail, not to an ICE facility.~~

~~59.— On October 4, 2007, Arpaio ordered his Triple I Unit to go to Queen Creek, Arizona, for an operation similar to that conducted in Cave Creek. Again, at least 16 Hispanic individuals were detained, questioned and arrested on suspicion of being illegal immigrants. Upon information and belief, the arresting officers did not~~

~~have probable cause to believe that any of those detained, questioned or arrested had committed a violation of Arizona state law. Those arrested were transported directly to jail, not to an ICE facility.~~

60. — ~~Recently, Arpaio entered into an agreement with the Maricopa County Attorney's Office to jointly investigate possible violations of Arizona's new employer sanctions law, A.R.S. Section 23-212. According to Arpaio, his Triple I Unit will be used to enforce that law. Maricopa County Attorney Andrew Thomas sought the agreement with Arpaio because he has, "a proven track record of enforcing immigration laws and not caving in to political correctness." The constitutionality and validity of Arizona's new employer sanctions law is the subject of other cases pending in this court.~~

61. — ~~At a recent press conference, Arpaio clearly and emphatically outlined his overzealous, illegal and unconstitutional policies and philosophies. He described his operation as a "pure program." One designed, "to go after illegals, not the crime first." His practice is to "go after illegals... go after 'em and lock 'em up." Arpaio and Maricopa County do not have legal authority under federal law or the MOA to engage in that conduct.~~

62. — ~~On December 8, 2007, Sheriff's officers followed, questioned and detained a Hispanic male in Cave Creek. He was merely walking on the sidewalk. He was followed by officers in a patrol car. The officers stopped the car, approached the man and detained him for questioning without probable cause or other lawful basis. The officers asked him for identification and his social security card. They questioned him at length about his citizenship status and his residence. He is a U.S. citizen.~~

63. — ~~For the past several weeks, Arpaio and his officers have detained, questioned and arrested Hispanic protesters demonstrating in the vicinity of Pruitt's Home Furnishings in east Phoenix. Upon information and belief, the arresting officers did not have probable cause to believe that any of those detained, questioned or arrested had committed a violation of Arizona state law.~~

~~64. In a blatant affront to the Pruitt store protesters First Amendment rights, Arpaio has announced that he will continue to harass and arrest those protesters until and unless they stop their protests.~~

~~65. Defendants' conduct violates the Constitution and laws of the United States, the MOA and the DOJ Guidance. As such, it must be stopped.~~

The Unlawful Stop and Detention of David and Jessica Rodriguez

82. On or about December 2, 2007, Mr. and Mrs. Rodriguez, along with their two young children, visited Lake Bartlett.

83. As they were leaving the preserve, while driving on a paved road, they saw a sign that read, "Road Damaged." They could then see that the road ahead was washed out by recent rains. Two Sheriff's vehicles were parked on the opposite side of the wash-out.

84. Like the motorcycle rider behind him, Mr. Rodriguez decided to turn around and head the other way.

85. The two Sheriff's vehicles followed. The deputies stopped Mr. Rodriguez, the motorcycle (now in front of them) and another sedan.

86. The deputies let the motorcycle and sedan go in short order, without visibly exchanging any documentation.

87. When Deputy Matthew Ratcliffe approached Mr. Rodriguez, however, Deputy Ratcliffe asked for a social security card, driver's license, vehicle registration and proof of insurance.

88. Mrs. Rodriguez asked Deputy Ratcliffe why he needed to see a social security card, to which he responded, "standard procedure."

89. Deputy Ratcliffe then asked Mr. Rodriguez whether he had seen the "Road Closed" sign. Mr. Rodriguez explained that he had seen only a "Road Damaged" sign. The Rodriguezes later discovered that there was a "Road Closed" sign, but on a part of the paved road that they had not traveled.

90. Deputy Ratcliffe took down Mr. Rodriguez's information and returned to his vehicle.

91. While they waited, the Rodriguezes watched another deputy pull over several other vehicles, and from all appearances, the other drivers were being given only warnings.

92. When Deputy Ratcliffe returned, Mrs. Rodriguez asked if they could be given a warning like everyone else. He said no.

93. Mrs. Rodriguez told Deputy Ratcliffe that this was selective enforcement. She said that this looked like racial profiling.

94. Deputy Ratcliffe became visibly angry and gave them a citation for failure to obey a traffic control device.

95. Deputy Ratcliffe returned to his vehicle, turned on his siren and yelled over the loud speaker "you're free to go."

96. As Mr. Rodriguez drove to the exit of the preserve, he finally saw the "Road Closed" sign. He pulled over and waited on the side of the road. Mr. Rodriguez was able to stop and speak with several drivers he had seen pulled over by Sheriff's deputies. Not one of them had been asked for a social security card, and not one of them had been given a citation. The other drivers were all Caucasian.

97. The next day, Mrs. Rodriguez filed a formal complaint with the MCSO. To date, she has not received a formal response.

The Unlawful Stop and Detention of Velia Meraz and Manuel Nieto, Jr.

98. On or about March 28, 2008, a little before 3:00 p.m., Ms. Meraz and Mr. Nieto drove down the block from their family business, Manuel's Auto Repair, to the Quick Stop at the corner of N. Cave Creek and E. Nisbet Roads.

99. They had the windows down, and Ms. Meraz was singing along to Spanish music.

100. Pulling into the Quick Stop, they noticed a Sheriff's vehicle behind one of the vehicles at the pumps. The officer, Deputy Alberto Armendariz, was speaking with two Latino-looking men in handcuffs.

101. As soon as Mr. Nieto parked the car, Deputy Armendariz yelled over to them that they should leave. Ms. Meraz asked why.

102. Leaving the two handcuffed gentlemen, Deputy Armendariz approached Ms. Meraz and accused them of disturbing the peace. Ms. Meraz explained that she was just singing to her music.

103. Deputy Armendariz repeated that they had better leave before he arrested them for disorderly conduct. Ms. Meraz said that they would leave, but asked the deputy for his badge number.

104. The Deputy then starting speaking into his radio, evidently calling for additional officers.

105. As Mr. Nieto and Ms. Meraz pulled out of the Quick Stop, they noticed a motorcycle officer coming down Cave Creek Road.

106. Deputy Armendariz waved at the motorcycle officer, directing him to follow Mr. Nieto and Ms. Meraz.

107. Mr. Nieto then saw the motorcycle officer and three other Sheriff's vehicles behind them. The motorcycle officer told Mr. Nieto to pull over and get out of the car.

108. Mr. Nieto quickly dialed 9-1-1 and reported that he was being harassed by Sheriff's officers for no apparent reason.

109. Mr. Nieto's family business was no more than 50 yards away, so he pulled into the parking lot there.

110. The four police vehicles descended on them, blocking off the street and their business. The officers jumped out of their vehicles and raised their weapons.

111. Among the officers were Deputies Douglas Beeks and Cesar Brockman.

112. An officer grabbed Mr. Nieto and pulled him out of the car. He was pressed face first against his car. His arms were twisted behind his back and he was handcuffed.

113. An officer then asked Mr. Nieto if he had a driver's license. He responded that he did.

114. The sound of the commotion drew other people from the repair shop. The officers told them to stay back. The customers were told that they needed to leave or be arrested.

115. Mr. Nieto was petrified that he was going to be arrested in front of his family, neighbors and customers, though he had done nothing wrong.

116. Mr. Nieto's father, who had come out of the shop, called out to the officers that the repair shop was his business, that Mr. Nieto and Ms. Meraz were his children and that they all were U.S. citizens.

117. The officers immediately backed down and lowered their weapons. Mr. Nieto was let out of the handcuffs. The officers asked for his identification and ran it through their computer system. They did not give him any citation.

118. Mr. Nieto asked why the officers had subjected him and his sister to such treatment. He was not given any explanation, nor any apology.

119. Upon information and belief, Mr. Nieto and Ms. Meraz were targeted because they look Latino. Upon information and belief, what happened to them was part of the sweep going on at that time on Cave Creek Road.

CLASS ALLEGATIONS

120. ~~66-~~This is a class action seeking declaratory and injunctive relief under Federal Rule of Civil Procedure 23(b)(2) on behalf of Plaintiff Plaintiffs and all other similarly situated individuals.

121. ~~67.~~—The class ~~which Plaintiff seeks~~that Plaintiffs seek to represent consists of, “~~all individuals of Hispanic descent who reside, are employed, attend school and travel within the borders of~~ all 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.”² This class is so numerous that joinder of all members is impracticable.

122. ~~68.~~—There are questions of law and fact common to all members of the class and all class members have been directly affected by the challenged actions of Defendants. Each putative class member has been or will be subjected to arbitrary, racially-motivated, discriminatory stops, ~~detention~~questioning, detentions, arrests and/or searches conducted by Defendants. Each putative class member has been or will be subjected to stops, detentions, interrogations and/or searches, pretextually, without consent, without any reasonable, articulable suspicion or probable cause that such class member had committed a crime or was engaged in criminal activity or other unlawful activity, and in a manner to which Caucasian drivers and passengers in vehicles in Maricopa County are generally not subjected.

123. ~~69.~~—The claims and defenses of the representative ~~plaintiff~~Plaintiffs are typical of the claims and defenses of the class.

124. ~~70.~~—The representative ~~plaintiff~~Plaintiffs will fairly and adequately protect the interests of the class.

125. ~~71.~~—Defendants in this case have taken actions in violation of the class members’ constitutional rights and/or refused to act in accordance with those rights, which are grounds generally applicable to the class, thereby making appropriate final injunctive relief ~~or~~and corresponding declaratory relief with respect to the class as a whole.

~~72.~~—~~Plaintiff’s counsel is competent and experienced in class action litigation of this type.~~

126. Plaintiffs' counsel is competent and experienced in class action litigation of the type brought here.

REQUISITES FOR RELIEF

127. As a result of the conduct of Defendants described above, Plaintiffs have been denied their constitutional and civil rights. Defendants' policies, practices, conduct and acts alleged herein have resulted and will continue to result in irreparable injury to Plaintiffs, including but not limited to further violations of their constitutional and civil rights. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. Plaintiffs therefore seek injunctive relief restraining Defendants from continuing to engage in and enforce the unlawful and unconstitutional policies, practices, conduct and acts described herein.

FIRST CLAIM FOR RELIEF: EQUAL PROTECTION (Fourteenth Amendment)

128. 73. Plaintiff~~Plaintiffs~~ hereby ~~incorporates~~incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

129. 74. ~~As an Hispanic and a citizen of a foreign country, Mr. Ortega is a member~~Latino persons, Plaintiffs are members of a protected class.

130. 75. ~~As Hispanics and citizens of a foreign country~~Latino persons, those individuals stopped, detained, questioned and arrested by Defendants' Triple I Unit on September 27 and October 4, or searched by MCSO agents during the class period are members of a protected class.

131. 76. ~~Defendants, acting under color of law and in concert with one another, engaged,~~ and continued to engage, in profiling of Mr. Ortega and discriminatory treatment of Plaintiffs and other Hispanic Latino individuals based on their race, color and/or ethnicity.

~~77. Defendants, acting under color of law and in concert with one another, engaged in profiling of Mr. Ortega and other Hispanic individuals based on their national origin.~~

132. ~~78. Defendants did not have~~ **acted pretextually, with racial motivation and without** reasonable suspicion or probable cause to stop, **detain, question, search and/or detain** Mr. Ortega **arrest Plaintiffs** or any of the other Hispanic **Latino** individuals referred to above.

133. ~~79. By purposefully stopping and detaining Mr. Ortega because of his,~~ **detaining, questioning, searching and/or arresting Plaintiffs and subjecting them to different, burdensome and injurious treatment because of their** race, color and/or national origin **ethnicity**, Defendants deprived Mr. Ortega **Plaintiffs and members of the plaintiff class** of the equal protection of the law within the meaning of the Fourteenth Amendment to the ~~United States~~ **U.S.** Constitution. These actions violated Mr. Ortega **Plaintiffs' and class members'** Fourteenth Amendment rights and 42 U.S.C. § 1983.

134. **Defendants, acting under color of law and in concert with one another, exceeded and/or abused the authority granted to them under state and federal law.**

135. ~~80. By their conduct described above, Defendants in general, and Arpaio in particular, have devised and implemented a policy, custom and practice of illegally~~ **stopping, detaining and, questioning Hispanic or searching Latino** individuals ~~solely~~ because of their race, **color** and ~~national origin~~ **or ethnicity**.

136. ~~81. Defendants' actions have caused and will continue to cause Mr. Ortega~~ **Plaintiffs** and other similarly situated individuals to suffer ~~tremendous harm and~~ **public humiliation and additional harms**, and be subjected to unlawful discrimination unless these actions are stopped.

137. ~~82.~~ As a direct, proximate result of Defendants' wrongful conduct, ~~Mr. Ortega has~~ Plaintiffs and class members have suffered and will continue to suffer significant and substantial emotional harm and ~~physical~~ additional injuries.

**SECOND CLAIM FOR RELIEF: UNREASONABLE SEARCH AND SEIZURE
(Fourth and Fourteenth Amendments)**

138. ~~83.~~ ~~Plaintiff~~ Plaintiffs hereby ~~incorporates~~ incorporate by reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

139. ~~84.~~ Pursuant to the Fourth and Fourteenth Amendments to the ~~United States~~ U.S. Constitution, state and local governments are prohibited from conducting unreasonable searches and seizures.

140. ~~85.~~ Defendants, acting under color of law and in concert with one another, stopped, seized, searched ~~and arrested Mr. Ortega,~~ arrested and/or impermissibly extended stops of Plaintiffs, pretextually, for racially motivated reasons and without probable cause or reasonable suspicion that ~~he~~ they had ~~committed any crime~~ violated the law. Such conduct violated the Fourth Amendment guarantee against unreasonable searches and seizures, the Fourteenth Amendment, and 2842 U.S.C. § 1983.

141. ~~86.~~ Upon information and belief, Arpaio and the other Defendants, acting under color of law and in concert with one another, have engaged in a custom, practice and policy of stopping, seizing, searching and arresting ~~Hispanic~~ Latino individuals in Maricopa County, pretextually, for racially motivated reasons and without probable cause or reasonable suspicion that they had committed any ~~crimes~~ under Arizona law crime.

~~87.~~ Defendants' actions have caused and will continue to cause Mr. Ortega and other similarly situated individuals to suffer tremendous harm and public humiliation and be subjected to unlawful discrimination unless these actions are stopped.

~~88.— As a direct, proximate result of Defendants’ wrongful conduct, Mr. Ortega has suffered and will continue to suffer significant and substantial emotional and physical injuries.~~

~~**THIRD CLAIM FOR RELIEF:
DUE PROCESS
(Fourteenth Amendment)**~~

~~89.— Plaintiff hereby incorporates by reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.~~

~~90.— Defendants, acting under color of law and in concert with one another, stopped, seized, searched and arrested Mr. Ortega without probable cause or reasonable suspicion that he had committed any crime.~~

~~91.— Defendants, acting under color of law and in concert with one another, unlawfully detained Mr. Ortega without probable cause or reasonable suspicion that he had committed any crime.~~

~~92.— Defendants, acting under color of law and in concert with one another, failed to implement and/or follow proper procedures to determine Mr. Ortega’s legal immigrant status prior to detaining, searching and arresting him.~~

~~93.— Defendants, acting under color of law and in concert with one another, exceeded and/or abused the authority granted to them under federal law through the MOA, the DOJ Guidance and the Section 287(g) program.~~

~~94.— Defendants’ wrongful conduct violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 28 U.S.C. § 1983 in that they denied Mr. Ortega and other similarly situated individuals liberty and freedom without due process of law.~~

~~95.— As members of a suspect class, Mr. Ortega and other similarly situated Hispanic individuals are entitled to be treated fairly, equally and free from discrimination. Defendants’ wrongful conduct deprived Mr. Ortega and other similarly situated individuals of substantive due process in violation of the Due Process Clause of the Fourteenth Amendment in that those Defendants discriminated~~

~~against Mr. Ortega and other similarly situated individuals on the basis of their race and national origin.~~

~~96. Defendants' actions have caused and will continue to cause Mr. Ortega and other similarly situated individuals to suffer tremendous harm and public humiliation and be subjected to unlawful discrimination unless these actions are stopped.~~

~~97. As a direct, proximate result of Defendants' wrongful conduct, Mr. Ortega has suffered and will continue to suffer significant and substantial emotional and physical injuries.~~

~~**FOURTH CLAIM FOR RELIEF
RIGHT TO TRAVEL
(Commerce Clause, Article IV and Fourteenth Amendment)**~~

~~98. Plaintiff hereby incorporates by reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.~~

~~99. Defendants, acting under color of law and in concert with one another, have caused Mr. Ortega and other similarly situated individuals to be penalized and deterred in the exercise of their fundamental right to interstate travel and migration on account of their race and/or national origin. These actions violated those individuals' right to travel, in violation of the Commerce Clause, the Privileges and Immunities Clause of Article IV, the Fourteenth Amendment and 28 U.S.C. § 1983.~~

~~100. Defendants' actions have caused and will continue to cause Mr. Ortega and other similarly situated individuals to suffer tremendous harm and public humiliation and be subjected to unlawful discrimination unless these actions are stopped.~~

~~101. As a direct, proximate result of Defendants' wrongful conduct, Mr. Ortega has suffered and will continue to suffer significant and substantial emotional and physical injuries.~~

**FIFTH CLAIM FOR RELIEF:
VIOLATION OF ARTICLE II, § 4 OF THE ARIZONA CONSTITUTION**

~~102.~~ Plaintiff hereby incorporates by reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

~~103.~~ Article II, § 4 of the Arizona Constitution provides: “No person shall be deprived of life, liberty, or property without due process of law.”

142. ~~104.~~ By their wrongful conduct described above, Defendants, acting under color of law and in concert with one another, have violated rights guaranteed to Mr. Ortega and other similarly situated individuals under Article II, § 4 of the Arizona Constitution exceeded and/or abused the authority granted to them under state and federal law.

143. ~~105.~~ Defendants’ actions have caused and will continue to cause Mr. Ortega Plaintiffs and other similarly situated individuals to suffer ~~tremendous harm~~ and public humiliation and additional harms, and be subjected to unlawful discrimination unless these actions are stopped.

~~106.~~ As a direct, proximate result of Defendants’ wrongful conduct, Mr. Ortega has suffered and will continue to suffer significant and substantial emotional and physical injuries.

**SIXTH~~THIRD~~ CLAIM FOR RELIEF: VIOLATION OF ARTICLE II, § 8 OF
THE
ARIZONA CONSTITUTION ARTICLE II, § 8**

144. ~~107.~~ Plaintiff Plaintiffs hereby ~~incorporates~~ incorporate by reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

145. ~~108.~~ Article II, § 8 of the Arizona Constitution provides: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

146. ~~109.~~ By their wrongful conduct described above, Defendants, acting under color of law and in concert with one another, have violated the rights guaranteed to Mr. Ortega Plaintiffs and other similarly situated individuals under Article II, § 8 of the Arizona Constitution.

~~147.~~ ~~110.~~ Defendants' actions have caused and will continue to cause Mr. Ortega Plaintiffs and other similarly situated individuals to suffer tremendous harm and public humiliation and additional harms, and be subjected to unlawful discrimination unless these actions are stopped.

~~111.~~ As a direct, proximate result of Defendants' wrongful conduct, Mr. Ortega has suffered and will continue to suffer significant and substantial emotional and physical injuries.

~~SEVENTH~~FOURTH CLAIM FOR RELIEF: RACE DISCRIMINATION
IN FEDERALLY FUNDED PROGRAMS
(Defendant County of Defendants MCSO and Maricopa County)

~~148.~~ ~~112.~~ Plaintiff Plaintiffs hereby ~~incorporates~~incorporate by reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

~~149.~~ ~~113.~~ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides:

- i. [N]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

~~150.~~ Defendant MCSO is the law enforcement agency for Maricopa County, Arizona, and receives federal funding and other financial assistance from the Department of Justice and other federal agencies. As a recipient of federal financial assistance, MCSO is required to conduct its activities in a racially non-discriminatory manner pursuant to Title VI of the Civil Rights Act of 1964.

~~151.~~ ~~114.~~ Defendant County of Maricopa is a political subdivision of the State of Arizona and, as a recipient of federal funds, is required to conduct its activities in a racially non-discriminatory manner, pursuant to Title VI of the Civil Rights Act of 1964.

~~152.~~ ~~115.~~ Federal regulations implementing Title VI further provide that no program receiving financial assistance through the U.S. Department of Justice DOJ

shall utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, and/or national origin/ethnicity, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, ~~or national origin.~~ 28 C.F.R. § 42.104(b)(2) and/or ethnicity.

153. ~~116.~~ The methods employed by Arpaio, MCSO and Maricopa County discriminate against individuals based on their race, color, and ~~national origin,~~ or ethnicity as described herein.

154. ~~117.~~ ~~Defendant~~ Defendants MCSO's and Maricopa County's ~~violation~~ violations of 42 U.S.C. § 2000d and its implementing regulations ~~has~~ have caused and will continue to cause ~~Mr. Ortega~~ Plaintiffs and other similarly situated individuals ~~tremendous harm and public humiliation~~ and additional harms in that they will continue to be subjected to unlawful discrimination unless it is stopped.

~~118.~~ As a direct, proximate result of Defendants' wrongful conduct, Mr. Ortega has suffered and will continue to suffer significant and substantial emotional and physical injuries.

DEMAND FOR RELIEF

WHEREFORE, ~~Plaintiff~~Plaintiffs, individually and on behalf of a class of all those similarly situated, respectfully ~~demands~~demand judgment against Defendants awarding the following:

A. ~~A.~~ A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendants have engaged in discrimination based on race, color and ~~national origin/or ethnicity~~ and denied Mr. Ortega Plaintiffs and ~~the~~plaintiff class ~~due process of law and the~~ equal protection of the laws; in violation of the Fourteenth Amendment to the ~~United States~~U.S. Constitution and ~~2842~~2842 U.S.C. § 1983;

B. ~~B.~~ A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendants' ~~detention, search and arrest of Mr. Ortega~~stops, interrogations, detentions, searches and/or arrests of Plaintiffs and other similarly situated individuals without probable cause or reasonable, articulable suspicion to believe that they had committed a crime; violated the Fourth Amendment's guarantee against unreasonable searches and seizures, the Fourteenth Amendment and ~~2842~~2842 U.S.C. § 1983;

C. ~~A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendants' conduct violated Mr. Ortega's rights to procedural and substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution and 28 U.S.C. § 1983;~~

D. ~~A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendants' conduct violated Mr. Ortega's right to travel interstate, in violation of the Commerce Clause, the Privileges and Immunities Clause of Article IV, the Fourteenth Amendment, and 28 U.S.C. § 1983;~~

~~E. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendants' actions are unconstitutional because they violated the procedural and substantive due process guarantees of Article II, § 4 of the Arizona Constitution;~~

F. C. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendants' actions are unconstitutional because they violated Mr. Ortega's privacy rights violate the rights of Plaintiffs and other similarly situated individuals provided by Article II, § 8 of the Arizona Constitution;

G. D. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and ~~2202~~, 2202 that Defendants engaged in race discrimination in violation of Title VI of the Civil Rights Act of 1964 and 42 C.F.R. § 101 *et seq.*;

H. E. A preliminary and permanent injunction prohibiting Defendants from continuing to engage in such race, color and ~~national origin~~ /or ethnicity-based discrimination as described herein and to put into place safeguards sufficient to ensure that such discrimination does not continue in the future;

I. F. A preliminary and permanent injunction prohibiting Defendants from exceeding the limits of their authority under ~~federal immigration law~~, the MOA and the DOJ ~~Guidance~~ state and federal law;

J. ~~A preliminary and permanent injunction prohibiting Defendants from operating their so-called illegal alien hotline;~~

K. ~~A preliminary and permanent injunction directing Defendants to disband and dissolve their so-called Triple I Unit;~~

L. ~~An award of compensatory and consequential damages to Mr. Ortega in an amount to be determined at trial;~~

M. ~~An award of punitive damages against the individual Defendants for their wanton, willful and malicious violations of Mr. Ortega's constitutional and civil rights, in an amount to be determined at trial;~~

~~N. G. An award of attorneys' fees and costs of suit, plus interest, pursuant to 42 U.S.C. §§§ 1988 and 2412; and~~

~~O. H. Such other relief as the Court deems just and proper.~~

JURY DEMAND

~~Plaintiff hereby demands a trial by jury.~~

~~RESPECTFULLY SUBMITTED~~ DATED this 12¹⁶th day of ~~December, 2007.~~ July
2008.

~~BALLARD SPAHR ANDREWS &
INGERSOLL, LLP~~

STEPTOE & JOHNSON LLP

By: /s/ Julie A. Pace David J.

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AMERICAN CIVIL LIBERTIES
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I hereby certify that on the 12th day of December,
2007, I caused the foregoing document:

COMPLAINT

~~To be filed electronically with the Clerk of Court through ECF; and that ECF will send an e-notice of the electronic filing to the following ECF participants:~~

~~And to be delivered as a courtesy hard copy
To:~~

~~/s/ Kathleen Reynolds _____~~

~~561437~~