

1 Mark Kappelhoff  
 2 Deputy Assistant Attorney General  
 3 Judy Preston (MD Bar, no numbers assigned)  
 4 Timothy D. Mygatt (DC Bar. No. 1021564)  
 5 Edward G. Caspar (MA Bar No. 650566)  
 6 Jennifer L. Mondino (NY Bar No. 4141636)  
 7 Paul Killebrew (LA Bar No. 32176)  
 8 Puneet Cheema (CA Bar No. 268677)  
 9 U.S. Department of Justice, Civil Rights Division  
 10 Special Litigation Section  
 11 601 D St. NW, Suite 5200  
 12 Washington, D.C. 20004  
 13 Attorneys for the United States

11 IN THE UNITED STATES DISTRICT COURT FOR THE  
 12 DISTRICT OF ARIZONA

13 Manuel de Jesus Ortega Melendres, on  
 14 behalf of himself and all others similarly  
 15 situated; et al.

15 Plaintiffs,

16 v.

17 Joseph M. Arpaio, in his individual and  
 18 official capacity as Sheriff of Maricopa  
 19 County, AZ; and Maricopa County, AZ  
 20 Defendants.

No. 2:07-cv-02513-GMS

**COMPLAINT IN INTERVENTION**

21 **INTRODUCTION**

22 1. Since at least 2007, Defendants Sheriff Joseph M. Arpaio (Arpaio) and  
 23 Maricopa County, through the Maricopa County Sheriff’s Office (MCSO) have engaged,  
 24 and continue to engage, in a pattern or practice of unlawful discriminatory police conduct  
 25 directed at Hispanic persons in Maricopa County, in violation of the United States  
 26 Constitution and Federal law. For example, as this Court found in May 2013, following a  
 27 full evidentiary trial, Defendant Arpaio and MCSO have had a practice of unlawfully  
 28

1 stopping, detaining, and investigating persons of Hispanic ancestry based on their race,  
2 and of doing so in the furtherance of its aim to enforce federal and state immigration laws  
3 against Hispanic persons, even without a lawful basis for the enforcement of such laws.  
4 See *Melendres v. Arpaio*, 989 F. Supp. 2d 822 (D. Ariz. 2013).

5 2. This pattern or practice of unlawful discrimination has resulted, and  
6 continues to result, in the systematic denial of the constitutional rights of Hispanic  
7 individuals in Maricopa County. Further, this pattern or practice of unlawful  
8 discrimination erodes the relationship between MCSO and key segments of the  
9 community, thereby threatening public safety by hampering MCSO's ability to fight  
10 crime.

11 3. The United States brings this action, as a Plaintiff-Intervenor, in order to  
12 ensure the Defendants' compliance with appropriate remedial orders in this case and to  
13 secure relief from the Defendants' equal protection violations against Hispanic persons in  
14 Maricopa County.

15 4. The United States alleges the following, based on information and belief.

16 **JURISDICTION AND VENUE**

17 5. The district court has jurisdiction over this action pursuant to 28 U.S.C. §§  
18 1331 and 1345.

19 6. The United States is authorized to initiate this action under the Violent  
20 Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, and Title VI of the  
21 Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and its implementing  
22 regulations, 28 C.F.R. §§ 42.01 to 42.112.

23 7. Injunctive relief is sought as authorized by 42 U.S.C. § 14141(b) and 28  
24 U.S.C. § 2202.

25 8. The Attorney General has certified that the instant case is a case of general  
26 public importance, pursuant to Section 902 of the Civil Rights Act of 1964. 42 U.S.C §  
27 2000h-2. The Certificate of the Attorney General is attached hereto as Exhibit A and is  
28 incorporated herein.

1 9. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b).  
2 Defendants are located in Arizona, and all events, actions, or omissions giving rise to  
3 these claims occurred in Arizona.

4 **PARTIES**

5 10. Plaintiff-Intervenor is the United States of America.

6 11. Defendant Joseph M. Arpaio (Arpaio) is the Sheriff of Maricopa County  
7 and is responsible for the operation of the Maricopa County Sheriff's Office (MCSO).  
8 Defendant Arpaio serves as the head of MCSO, and as such, has final authority over the  
9 agency's decisions and sets the overall direction and policy for the agency.

10 12. Defendant Maricopa County was recently ordered to be substituted as a  
11 party defendant for MCSO, which is a law enforcement agency in Maricopa County,  
12 Arizona. MCSO is a Maricopa County agency and provides law enforcement throughout  
13 the County and operates the county jail system.

14 **BACKGROUND**

15 13. MCSO employs approximately 900 sworn deputies and 1,800 sworn  
16 detention officers. It is a program that receives federal financial assistance, both directly  
17 and as a subrecipient through Maricopa County, from the United States Department of  
18 Justice (DOJ). In connection with the grant of such federal financial assistance, Arpaio  
19 has signed contractual assurances that MCSO will comply with federal law, including all  
20 requirements imposed by Title VI and its implementing regulations.

21 14. Maricopa County, Arizona has close to four million residents, and is the  
22 fourth largest county in the United States by population. Approximately 30 percent of  
23 the population of Maricopa County is Hispanic. Maricopa County is also a recipient of  
24 federal financial assistance from the United States Department of Justice.

25 15. On May 10, 2012, following a three-year investigation into allegations of  
26 discrimination against Hispanic persons by MCSO, the release of a letter documenting  
27 the findings of that investigation, and good faith attempts to reach a cooperative  
28 resolution of the concerns described in its findings letter, the United States filed a lawsuit

1 against Sheriff Arpaio, MCSO, and Maricopa County, alleging, *inter alia*, a pattern or  
2 practice of discriminatory and otherwise unconstitutional law enforcement actions against  
3 Hispanic persons in Maricopa County, in violation of the Fourth Amendment and  
4 Fourteenth Amendment of the United States Constitution, Title VI of the Civil Rights Act  
5 of 1964, 42 U.S.C. § 2000d to 2000d-7, and the Title VI implementing regulations issued  
6 by the DOJ, 28 C.F.R. §§ 42.101 to 42.112.

7         16. The United States' discriminatory policing claims in its ongoing litigation  
8 against Sheriff Arpaio and Maricopa County arise from much of the same unlawful  
9 discriminatory conduct found by this Court, although the United States alleges that the  
10 pattern or practice of unlawful discriminatory conduct is broader than that found by the  
11 Court here. The United States' suit further concerns three broad categories of unlawful  
12 conduct beyond those at issue in this case: discriminatory jail practices against Hispanic  
13 inmates with limited English proficiency, retaliatory actions against perceived critics of  
14 MCSO policies or activities in violation of the First Amendment, and unlawful detentions  
15 during law enforcement actions targeting Hispanic immigrants working in area  
16 businesses in violation of the Fourth and Fourteenth Amendments.

17         17. In June 2013, the United States submitted a statement of interest in this  
18 case, articulating its broad interest in ensuring that the unconstitutional conduct identified  
19 by the Court was adequately remedied, and providing recommendations as to appropriate  
20 and effective injunctive relief to be ordered by the Court. *See* Statement of Interest by  
21 the United States, *Melendres v. Arpaio*, No. 07-cv-2513 (D. Ariz. June 13, 2013), ECF  
22 No. 580.

23         18. Recent proceedings in *Melendres* have revealed and confirmed the  
24 Defendants' intransigence in this case and various and significant acts in contempt of the  
25 court's orders.

26         19. The Court's November 20, 2014 Order unsealed a report of the Monitor in  
27 this case concerning the Defendants' non-compliance with the Court's orders. *See* Order,  
28 *Melendres v. Arpaio*, No. 07-cv-2513 (D. Ariz. Nov. 20, 2014), ECF No. 795.

1           20.    On February 12, 2015, the Court entered an Order to Show Cause setting a  
2 hearing on the Defendants’ contempt of court for April 21 to 24, 2015. *See* Order to  
3 Show Cause, *Melendres v. Arpaio*, No. 07-cv-2513 (D. Ariz. Feb. 12, 2015), ECF No.  
4 880.

5           21.    Defendant Arpaio admitted his contempt of court on March 17, 2015, and  
6 acknowledged the need for further remedial orders. *See* Expedited Motion to Vacate  
7 Hearing and Request for Entry of Judgment, *Melendres v. Arpaio*, No. 07-cv-2513 (D.  
8 Ariz. March 17, 2015), ECF No. 948.

9           22.    On June 15, 2015, the Court granted the United States’ motion for summary  
10 judgment in the United States’ related lawsuit against Sheriff Arpaio and Maricopa  
11 County, finding that the United States had proven its discriminatory policing claims to  
12 the extent those claims dealt with “the pattern of discriminatory conduct found in  
13 *Melendres*,” namely, MCSO’s “discriminatory enforcement of immigration laws through  
14 vehicle stops.” Order at 39, 41, *United States v. Maricopa County* , No. 2:12-cv-981 (D.  
15 Ariz. June 15, 2015), ECF No. 379.

16           23.    On July 17, 2015, the United States, Sheriff Arpaio, and Maricopa County  
17 entered into a settlement agreement to resolve all of the claims in the United States’  
18 related lawsuit relating to worksite identity theft operations and alleged retaliation. The  
19 parties reached a separate agreement to resolve all the United States’ claims alleging  
20 discrimination in MCSO jails. That same day, July 17, 2015, the parties jointly moved  
21 the Court to approve and enter the settlement agreement relating to worksite identity theft  
22 operations and alleged retaliation.

23           24.    On July 20, 2015, the United States further moved the Court for a stay of  
24 proceedings relating to the remaining claims in the case, pending this Court’s resolution  
25 of the United States’ motion to intervene in this case.

26  
27  
28

1 **FACTS**

2 **Defendants' Discriminatory Conduct**

3 25. This Court concluded, in its May 2013 Findings of Fact and Conclusions of  
4 Law, that, "MCSO's use of Hispanic ancestry or race as a factor in forming reasonable  
5 suspicion that persons have violated state laws relating to immigration status violates the  
6 Equal Protection Clause of the Fourteenth Amendment." *Melendres*, 989 F. Supp. 2d at  
7 899.

8 26. In support of that conclusion, the Court found that Sheriff Arpaio, and other  
9 MCSO employees under his control, engaged in intentional discrimination against  
10 Hispanic persons during traffic stops conducted in connection with immigration-related  
11 law enforcement actions. *Melendres*, 989 F. Supp. 2d at 899.

12 27. The Court also found that "the most relevant facts" indicated "an  
13 institutionalized consideration of race in MCSO operations," particularly in its law  
14 enforcement operations aimed at enforcing state laws relating to immigration. *Id.*

15 28. For example, MCSO law enforcement practices included traffic stops  
16 conducted in connection with purported immigration and human smuggling law  
17 enforcement activities, including "saturation patrols," during which MCSO officers  
18 unlawfully relied on race, color, or national origin.

19 29. In conducting its "saturation patrols," MCSO officers "would conduct  
20 traffic enforcement operations with the purpose of detecting unauthorized aliens during  
21 the course of normal traffic stops." *Melendres*, 989 F. Supp. 2d at 831.

22 30. In furtherance of that purpose, MCSO officers emphasized the enforcement  
23 of traffic and vehicle infractions against vehicles occupied by Hispanic persons.

24 31. In so doing, MCSO considered Hispanic ancestry as one factor among  
25 others in choosing the location for its saturation patrols.

26 32. Similarly, MCSO considered race or Mexican ancestry as one factor among  
27 others in deciding whether or not to stop vehicles during large-scale saturation patrols.

28

1           33. Defendant Arpaio, as well as many MCSO officers, believe that most  
2 unauthorized immigrants in Maricopa County are originally from Mexico or from Central  
3 or South America.

4           34. Indeed, as this Court found, MCSO officers specifically equated being a  
5 Hispanic or Mexican day laborer with being an unauthorized alien.

6           35. In 2006, Defendant Arpaio decided to make immigration enforcement a  
7 priority for MCSO.

8           36. That same year, Defendant Arpaio created a specialized unit, known as the  
9 Human Smuggling Unit (HSU), to enforce a 2005 Arizona state human smuggling law.

10           37. In early 2007, the MCSO entered into a Memorandum of Understanding  
11 (MOU) with the United States Immigration and Customs Enforcement (ICE) under  
12 §287(g) of the Immigration and Nationality Act (INA), pursuant to which MCSO could  
13 enforce immigration law in certain circumstances.

14           38. After MCSO signed this MOU with ICE, it expanded the HSU. Within a  
15 year, the HSU had grown from two deputies to a unit of two sergeants, 12 deputies, and  
16 four detention officers, all under the leadership of a lieutenant.

17           39. Both the MOU between MCSO and ICE, and the protocols for the HSU,  
18 required that officers have a legitimate basis, under state law, to stop an individual or  
19 vehicle before investigating the individual's immigration status.

20           40. However, in MCSO news releases and public statements, Defendant Arpaio  
21 described MCSO's immigration enforcement authority as unconstrained by a requirement  
22 that MCSO officers first have a basis to pursue state law violations against stopped  
23 individuals.

24           41. Under Defendant Arpaio's leadership, MCSO command staff also believed  
25 that MCSO had inherent authority to enforce federal immigration laws, including the  
26 ability to make immigration arrests absent specific authorization from ICE.

27

28

1           42.    MCSO news releases about the agency's large-scale saturation patrols  
2 emphasized that the purpose of such operations was immigration enforcement, or  
3 highlighted the number of unauthorized aliens arrested during such operations.

4           43.    MCSO policy, training, and instruction for MCSO officers conducting  
5 saturation patrols stated that officers could consider race as one of multiple factors in  
6 making determinations as to whether there was reasonable suspicion that an individual  
7 was in the country unlawfully.

8           44.    MCSO deputies also considered an individual's immigration status relevant  
9 to their determination as to whether an individual had violated state criminal laws.

10          45.    Defendant Arpaio, MCSO command staff, and MCSO supervisors  
11 incorrectly believed, and MCSO command staff instructed MCSO deputies, that unlawful  
12 presence in the United States was a federal crime, and thus was an independent,  
13 legitimate basis for an arrest.

14          46.    ICE revoked MCSO's 287(g) authority in October 2009. At the time of the  
15 revocation, MCSO had approximately 100 field deputies certified under 287(g).

16          47.    After the revocation of MCSO's 287(g) authority, Arpaio had all MCSO  
17 sworn deputies, approximately 900 individuals, trained to enforce federal immigration  
18 law. According to MCSO, that training enabled all MCSO deputies to make immigration  
19 arrests; and routine patrol deputies did, in practice, make arrests resulting from that  
20 training.

21          48.    According to MCSO policy and training, even after MCSO lost its 287(g)  
22 authority, and until at least December 2011, all MCSO deputies had the authority to  
23 enforce immigration laws and to detain individuals suspected of being in the United  
24 States unlawfully.

25          49.    MCSO continued to engage in immigration enforcement, and to use race as  
26 an indicator of unauthorized presence in the United States, even after losing its 287(g)  
27 authority in October 2009.

28



1           50. Defendant Arpaio, and the command staff under his leadership, believed  
2 that MCSO's authority to engage in saturation patrols or other HSU operations was  
3 unaffected by the revocation of MCSO's 287(g) authority.

4           51. Defendant Arpaio, and the command staff under his leadership, have not  
5 made reasonable efforts to guard against violations of Hispanic persons' rights.  
6 Defendant Arpaio, and the command staff under his leadership, failed to make such  
7 efforts despite their awareness of public criticism and complaints that MCSO deputies  
8 were engaged in racial profiling, and even after this Court found that MCSO engaged in  
9 discrimination against Hispanic persons and ordered specific injunctive relief to remedy  
10 such discriminatory conduct.

11           52. For example, Defendant Arpaio, and other MCSO command staff, never  
12 made an evaluation to determine whether MCSO's saturation patrols were being  
13 implemented with racial bias. Neither Defendant Arpaio, nor the MCSO command staff  
14 under his leadership, collected data on the people stopped or detained to determine  
15 whether officers were engaging in racial profiling, or reviewed citations, statistics, or  
16 other documents to determine whether HSU officers were engaging in racial profiling.

17           53. Neither Defendant Arpaio, nor the command staff under his leadership,  
18 disciplined MCSO deputies for racial profiling.

19           54. Sheriff Arpaio has acknowledged that he did not believe that MCSO  
20 needed a training program to prevent racial profiling, because he did not believe that  
21 MCSO engaged in racial profiling.

22           55. Until June 2013, MCSO had no general written policy banning racial  
23 profiling.

24           56. In the immigration enforcement context, Defendant Arpaio, and the MCSO  
25 command staff under his leadership, did not believe that it constituted racial profiling to  
26 consider race as a factor in making law enforcement decisions. MCSO's written  
27 operations plans, policy descriptions, news releases, and training for its officers all  
28 inaccurately reflected that same belief.

1 57. Neither Defendant Arpaio, nor the command staff under his leadership,  
2 made any competent efforts to ensure that their interpretation of the extent of MCSO's  
3 authority to enforce federal immigration law was correct, and thus made no meaningful  
4 effort to ensure that MCSO deputies were following the law pertaining to the rights of  
5 Hispanic persons during its law enforcement operations.

6 58. The United States incorporates by reference the Court's findings of fact and  
7 conclusions of law as set forth in its May 2013 Order.

8 59. Defendant's violations of the Constitution and federal law are ongoing, as  
9 evidenced by defendants' acts in contempt of this Court's orders.

10 **VIOLATIONS**

11 60. The United States is authorized under 42 U.S.C. § 14141(b) to seek  
12 declaratory and injunctive relief to eliminate a pattern or practice of law enforcement  
13 officer conduct that deprives persons of rights, privileges, or immunities secured or  
14 protected by the Constitution or laws of the United States.

15 61. The United States is authorized under Title VI to seek declaratory and  
16 equitable relief and/or the termination of federal funds to ensure that no person shall be  
17 excluded from participation in, be denied the benefits of, or be subjected to  
18 discrimination under any program or activity receiving federal funding on the basis of  
19 race, color, or national origin.

20 **FIRST CLAIM FOR RELIEF:**

21 **DEFENDANTS' LAW ENFORCEMENT POLICIES AND PRACTICES**  
22 **VIOLATE 42 U.S.C. § 14141 AND THE FOURTEENTH AMENDMENT**

23 62. The United States re-alleges and incorporates by reference the allegations  
24 set forth in paragraphs 1-61, above.

25 63. Defendants, their agents, and persons acting on their behalf, including  
26 MCSO officers, have engaged in law enforcement practices, including traffic stops and  
27 the enforcement of federal and state immigration laws, with the intent to discriminate  
28 against Hispanic persons in Maricopa County on the basis of their race, color, or national

1 origin, and these enforcement actions have had a discriminatory effect on Hispanic  
2 persons.

3 64. Defendants' discriminatory law enforcement policies and practices  
4 constitute a pattern or practice of conduct by law enforcement officers that deprives  
5 persons of rights protected by the Due Process and Equal Protection Clauses of the  
6 Fourteenth Amendment of the United States Constitution, in violation of 42 U.S.C. §  
7 14141(a).

8 **SECOND CLAIM FOR RELIEF:**

9 **DEFENDANTS' TREATMENT OF HISPANIC INDIVIDUALS VIOLATES**  
10 **TITLE VI**

11 65. The United States re-alleges and incorporates by reference the allegations  
12 set forth in paragraphs 1-61, above.

13 66. Defendants, their agents, and persons acting on their behalf, including  
14 MCSO officers, have engaged in law enforcement practices with the intent to  
15 discriminate against Hispanic persons on the basis of their race, color, or national origin.

16 67. Defendants' law enforcement practices are unjustified and have had an  
17 adverse disparate impact on Hispanic persons.

18 68. Defendants' discriminatory law enforcement practices, and intentional  
19 discrimination, independently violate Title VI and the Title VI implementing regulations.

20  
21 **PRAYER FOR RELIEF**

22 69. WHEREFORE, the United States prays that the Court:

23 70. Order such equitable and injunctive relief as is appropriate to remedy the  
24 Defendants' constitutional violations found by the Court in this case;

25 71. Order such equitable and injunctive relief as is appropriate to remedy the  
26 Defendants' contempt of the Court's orders in this case; and

27 72. Order such other relief as the interests of justice may require.  
28

Respectfully submitted,

Mark Kappelhoff  
Deputy Assistant Attorney General  
Civil Rights Division

Judy Preston  
Acting Chief, Special Litigation Section

Timothy D. Mygatt  
Special Counsel

/s/ Edward G. Caspar  
Edward G. Caspar (MA Bar No. 650566)  
Special Counsel  
Jennifer L. Mondino (NY Bar No. 4141636)  
Paul Killebrew (LA Bar No. 32176)  
Puneet Cheema (CA Bar No. 268677)  
Trial Attorneys  
U.S. Department of Justice  
Civil Rights Division- PHB  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Tel. (202) 514-2000/Fax (202) 514-6273  
edward.g.caspar@usdoj.gov

ATTORNEYS FOR THE UNITED STATES

22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I certify that on or about August 31, 2015, I used the Court's CM/ECF system to serve a true and correct copy of the foregoing filing on counsel of record.

/s/ Edward G. Caspar  
EDWARD G. CASPAR